

Memorandum 78-20

Subject: Study D-39.200 - Enforcement of Judgments (Comprehensive Statute--Exemptions)

Attached to this memorandum is a revised draft of Chapter 7 of the Enforcement of Judgments Law relating to exemptions from enforcement of money judgments. This memorandum incorporates material from Memorandum 78-17 and the First Supplement thereto which were distributed for the March meeting but were not considered. The attached draft implements decisions made at the February meeting. The draft includes quite a few editorial revisions and several staff proposals as noted below.

Preliminary text

This material has not been reviewed by the Commission.

Article 1. General Provisions

Article 1 has been substantially revised and reorganized.

§ 707.110. Claimant

This section has been moved from Article 2 since "claimant" is used in the defined sense in Article 1. The reference to a spouse entitled to claim exemptions pursuant to Section 707.140 (now Section 707.160 as revised) has been deleted since it is unnecessary in light of Section 707.160.

§ 707.120. Property subject to enforcement of money judgment

This section has been revised to refer specifically to the type of property that is subject to enforcement in the case of a married judgment debtor.

§ 707.130. Property not subject to enforcement of a money judgment

Technical revision.

§ 707.140. Applicability of exemptions

Subdivision (d) is new. See the discussion under Section 707.180.

§ 707.150. Exemptions cumulative

Technical revision.

§ 707.160. Exemption rights of married judgment debtors

This provision is substantially different from that contained in prior drafts. Formerly, this section read as follows:

§ [707.140.] Exemption rights of spouse

[707.140.] The spouse of a judgment debtor may claim exemptions as provided in this chapter where the judgment creditor seeks to satisfy the judgment out of the community property or the spouse's separate property which is otherwise liable for the satisfaction of the judgment, regardless of whether the spouse is a judgment debtor.

Comment. Section [707.140] establishes the right of a nondebtor spouse of a judgment debtor to claim exemptions for community property and for separate property of the nondebtor spouse which is sought to be applied to the satisfaction of a money judgment against the judgment debtor pursuant to the community property laws. See Civil Code §§ 5116, 5120, 5121, 5122, 5125, 5131, 5132. Such a provision is not without precedent in California cases. See *White v. Gobey*, 130 Cal. App. Supp. 789, 791, 19 P.2d 876, ___ (1933) (husband allowed to claim exemption for his earnings levied upon to satisfy judgment against wife where husband's earnings liable under community property laws). Section [707.140] permits the nondebtor spouse to take advantage of exemptions to the same extent as if the nondebtor spouse were a judgment debtor. It also has the effect of making the same amount of property liable for the satisfaction of a judgment regardless of whether the property is community property and the judgment is against one or both spouses or the property is held in joint tenancy and the judgment is against both spouses. For example, a \$10,000 deposit account which is community property would be exempt in the amount of \$4,000 (\$2,000 exemption under Section 707.480 for each spouse) whether the judgment was against one or both spouses. Similarly, if the judgment is against both spouses, each may claim a \$2,000 exemption in the respective half interest where the account is held in joint tenancy. However, if the account is held in joint tenancy, the nondebtor spouse may not claim an exemption since only the judgment debtor's interest in the joint tenancy account is levied upon.

This section does not change the amount of property exempt where the exemption is not limited either in terms of the number of items, such as one motor vehicle (see Section 707.430), or in terms of monetary amount, such as \$2,000 in a deposit account (see Section 707.480) or jewelry worth \$500 (see Section 707.450). Consequently, a husband and wife may claim as exempt only so much of the household furnishings which are community property liable for the satisfaction of the judgment as is reasonably necessary for one household inasmuch as there can be only one principal place of the residence under Section 707.440. The spouse must meet the terms of the exemption in order to make a successful claim.

A nondebtor spouse who claims that the community property or separate property is not liable for the satisfaction of the judgment pursuant to the community property laws, may not assert the claim pursuant to this chapter. Such a claim is normally asserted by way of the third-party claims procedure in Chapter 6 (commencing with Section 706.110). See the Comment to Section 707.110.

Existing law is unclear. Where two unrelated heads of households are jointly liable on the same judgment, there should be no question that each debtor may claim a complete set of exemptions. We have not been able to determine whether the fact of marriage between debtors makes a difference although there are reasons to believe that it does since community property is liable for debts of either spouse and several exemption provisions are drafted in terms of the family rather than the individual. Nor is it known whether it makes a difference in the number of claimable exemptions if the judgment is against one or both spouses or if the property liable is community or separate. The most useful statement appears in *White v. Gobey*, 130 Cal. App. Supp. 789, 791, 19 P.2d 876 (1933) where the husband's earnings were levied upon to satisfy the wife's debt for necessities incurred before marriage and it was held that the common necessities exception to the total exemption of earnings was applicable only where the debt was incurred during marriage:

Respondent contends that the exemption can be availed of only by a "judgment debtor", and that the appellant is not one. But, while the appellant was not joined as a defendant in the action, and is, therefore, not a judgment debtor in the technical sense, nevertheless, the very theory upon which his earnings were levied upon is that his liability was in the nature of that of a debtor (to the extent of community earnings). . . . The husband cannot be treated for one purpose as a judgment debtor, and then not be permitted to assert the rights that every judgment debtor has.

. . . An ordinary loan obtained by him to carry on his business, if reduced to judgment, could not be collected out of earnings, if the debtor made a proper showing under subdivision 10 of section 690 of the Code of Civil Procedure; and it is difficult to see how a debt contracted by the woman who afterwards becomes his wife is in any better position, or surrounded with any greater legal immunity, than an ordinary debt of his own.

We believe the principle of the prior version is sound--i.e., to permit the nondebtor spouse to take advantage of exemptions to the same extent as if the nondebtor spouse were a judgment debtor. However, the manner of achieving this result--by doubling exemptions in community property except where an exemption is specifically a household exemption, such as furnishings or a dwelling--is likely to be politically unacceptable and is at odds with the generally stated policy of the exemption laws to protect an amount of property sufficient to support

the debtor and the debtor's dependents. See *Bailey v. Superior Court*, 215 Cal. 548, 554, 11 P.2d 865, 867 (1932). ("The underlying purpose of the statute exemption from execution certain property is to provide for the support and welfare of the family of the person claiming exemption."). It is also unclear how it applies to certain exemptions.

Section 707.160 is offered as an alternative which would achieve the same basic policy but would not double exemptions. The prior version treats spouses as if they are unrelated joint judgment debtors and community property as if it is separate property and is based on the assumption that if the spouses held their property in joint tenancy, each would be able to claim a set of exemptions for it. The proposed version takes nearly the opposite approach by ignoring joint tenancy for the purpose of applying exemption laws and is based on the assumption that in general the exemption laws are based on the family unit (a principle consistent with the treatment of property liable for debts under the community property laws). Neither version affects the principle that only the debtor spouse's interest in jointly owned property may be reached by creditors (except for debts for necessities incurred during marriage as provided by Civil Code Sections 5121 and 5132).

By way of illustration, under the prior version the spouses would be entitled to two \$2,000 deposit account exemptions and two motor vehicle exemptions regardless of whether the judgment was against one or both spouses. Under the proposed version they would be entitled to one deposit account and one motor vehicle exemption regardless of whether the judgment was against one or both spouses. Under either version, separate property of the nondebtor spouse is not subject to enforcement, except for necessities pursuant to Civil Code Section 5121. Where one spouse is the judgment debtor and the spouses have both community and separate deposit accounts, the proposed version reflects the better policy since the single exemption may be claimed for the community account--no exemption is needed for the separate account because it may not be reached.

It should also be noted that a transfer of the debtor spouse's interest to the nondebtor spouse, such as by way of changing community property to separate property, is voidable as a fraudulent conveyance. See *Wikes v. Smith*, 465 F.2d 1142 (9th Cir. 1972).

§ 707.170. Exemptions inapplicable against support judgments

Subdivision (c) is new.

§ 707.180. Tracing exempt amounts

Subdivision (a) has been revised in response to Commission suggestions. Subdivision (b) has been revised to permit the judgment debtor to select the manner of tracing. Previously, the Commission had decided to make first-in first-out mandatory. As proposed to be revised, subdivision (b) adopts the principle of the Uniform Exemptions Act. We propose this principle as a result of further analysis of the application of tracing in the exemption context and the desire to reject the rule in *California United States Bond & Mort. Corp. v. Grodzins*, 139 Cal. App. 240, 34 P.2d 193 (1934), where it was held that the portion of life insurance benefits which exceeded the exempt amount when received was earmarked for creditors even though benefits remaining at the time of levy were below the exempt amount. In *Grodzins*, the surviving wife received \$10,000 in life insurance benefits, deposited \$5,000 in a savings and loan account, and spent the remainder for the support of herself and her minor children. Under the exemption in effect at the time, approximately \$8,900 of the \$10,000 would have been exempt. The creditor was permitted to reach \$1,100 of the remaining \$5,000.

We consider this rule to be undesirable because, if the lump-sum received at a remote time before levy had been \$15,000, for example, and the wife had spent \$7,000 of it before levy, the creditor would have been able to apply the remaining \$8,000 to the judgment. The staff considers this to be an unjust result which destroys the purpose of the exemption. A preferable rule was applied in *Medical Fin. Ass'n v. Rambo*, 33 Cal. App.2d Supp. 756, 758-60, 86 P.2d 159 (1939), where the court stated that the "question of exemption does not arise until there is a levy, and the intent of the statute is that it be determined on facts then existing." This case involved garnishment of wages at a time when one-half of the earnings received during a 30-day period were exempt. The debtor had already received some earnings and the creditor claimed that those earnings should be counted toward the exemption, leaving the remainder subject to levy in the amount of one-half of the total. The court viewed the purpose of the exemption to be to shield

one-half of each installment of earnings for the debtor to support himself and his family.

Assuming the rejection of Grodzins and the codification of Rambo, when an exemption claim is made, it will be necessary for the debtor to identify the nature of the funds in a deposit account by tracing their origin. We believe that the debtor should have the option of selecting the manner of tracing in order to avoid different results depending upon the fortuity of the nature and number of accounts the debtor has maintained. Tracing was easy in Grodzins because apparently the \$5,000 in life insurance benefits was segregated in one account. If the debtor had comingled the benefits with earnings and spent money from the account, application of first-in first-out might determine that the exempt benefits had been consumed before the creditor had levied or even before judgment was entered. On the other hand, if the benefits were deposited in an account with a large amount in it already, the debtor could have the benefit of the exemption under the first-in first-out rule. Mandatory use of first-in first-out would also have the effect of nullifying other exemptions, such as the exemption for proceeds from the sale or destruction of a motor vehicle.

We have attempted to discover the manner of tracing employed by California courts in exemption cases but have not as yet been successful. In cases involving constructive trusts and equitable liens, the courts apply a variety of tracing methods depending on the factual situation. See generally D. Dobbs, Handbook on the Law of Remedies § 5.16, at 425-30 (1973); 7 B. Witkin, Summary of California Law Trusts §§ 86-88, at 5446-49 (8th ed. 1974). The method of tracing used may depend, for example, on whether several trust funds have been comingled, whether the trustee acted wrongfully, whether funds were used to purchase valuable property, or whether funds were dissipated and then replaced. The principles governing which method of tracing will be applied in these cases offer no guidance in the area of exemptions because the factual situations are distinct. No trust principles are involved in exemption cases, nor are we concerned with detecting and penalizing wrongdoers. The ability to trace in the case of constructive trusts and equitable liens results in the beneficiary obtaining priority over general creditors, whereas in the exemption context, the question

of priority is not involved. We do believe, however, that the principle in this area which permits utilization of different tracing methods may be appropriately adopted in the tracing of exemptions.

§ 707.190. Prohibition against reaching property determined to be exempt

This section has been moved from Article 2 to Article 1 because it applies to all enforcement procedures.

§ 707.200. Liability for interference with exemption rights

This section has been moved from Article 2 to Article 1 and revised to make clear that it applies regardless of the exemption procedure followed. See the discussion under Section 707.310.

§ 707.210. Adjustments of dollar amounts of exemptions

Technical revisions.

§ 707.220. Exemptions from tax liability

Subdivision (c) has been revised.

Article 2. Procedure for Claiming Exemptions After Levy

Article 2 remains largely unchanged.

§ 707.310. Applicable procedure for claiming exemptions

The general provision in the prior draft for determining exemptions on noticed motion in cases where there has not been a levy has been deleted. It is preferable to specify the appropriate manner of claiming exemptions for each procedure.

§ 707.320. Claim of exemption

The last two sentences of subdivision (b)(3) and subdivision (b)(4) are new material. The additions to subdivision (b)(3) implement a decision made at the February meeting.

§ 707.380. Hearing and order

The last sentence of subdivision (d) is new. Technical revisions have also been made.

§ 707.385. Extension of time

This section is new.

§ 707.395. Disposition of property during pendency of proceedings

Technical revisions.

Article 3. Exempt Property

§ 707.420. Cemetery plots

Some time ago the Commission decided that a cemetery plot for two persons should be exempt. Section 707.420(c) was changed to provide that a cemetery plot for one person was exempt when the provision granting exemption rights to spouses was approved. If Section 707.160, which provides that spouses may claim only one set of exemptions, is approved, Section 707.420(c) should again provide an exemption for a cemetery plot for two persons. Note that the way this provision is worded, if the spouses have two separate plots, only one would be exempt, unless the other plot is subject to a spouses vested right of interment or is part of a family plot.

§ 707.430. Motor vehicle; proceeds

The last sentence of subdivision (b) is new. It is consistent with the holding in Smith v. Rhea, 72 Cal. App.3d 361, 370-72, 140 Cal. Rptr. 116 (1977).

§ 707.440. Household furnishings, wearing apparel, personal effects

Technical revisions.

§ 707.450. Jewelry, heirlooms, works of art

Technical revisions.

§ 707.460. Health aids

This section has been revised pursuant to decisions made at the February meeting.

§ 707.470. Tools, etc.

Technical revisions.

§ 707.490. Deposit account in which social security payments are directly deposited

Technical revisions.

§ 707.500. Life insurance, endowment, annuity policies; death benefits; wrongful death awards

Subdivisions (a)-(c) and (e) have been revised pursuant to decisions made at the February meeting.

The Commission may want to consider restricting the loan value exemption to amounts that are left with the insurance company. We can

identify three reasons for exempting a portion of loan value. It may be to attempt to ensure that the protected amount will be available upon maturity of the policy; protecting the loan value in the hands of the insurer provides a fund out of which the debtor can pay the policy premiums; and the loan value may be drawn on as a bank account to meet current expenses. The staff tends to believe the first two are the more important policies and that, since we propose a \$2,000 deposit account exemption for dealing with current expenses, it is worthwhile to consider preventing tracing of the exemption of loan value into deposit accounts or cash.

Subdivision (d) is new; it is derived from Section 6(a)(3) of the Uniform Exemptions Act.

§ 707.510. Retirement benefits

The staff recommends that retirement benefits be exempt to the extent reasonably necessary for support, rather than completely exempt, as under existing law and the prior draft.

Generally, there will be a hearing on the exemption claim since these benefits will be in deposit accounts and the debtor will have to trace their origin in exempt benefits. Consequently, the additional issue of whether the benefits are necessary for support should not result in significantly more hearings.

The last sentence of existing Section 690.18(c) contains the following exception to the exemption money held by private retirement plans:

Except with regard to moneys withheld from employees' wages and contributions based on wages in employment under provisions of the Unemployment Insurance Code . . . , the exemption given by this subdivision shall apply to any moneys held in self-employed retirement plans and individual retirement annuities or accounts provided for in the Federal "Employee Retirement Income Security Act of 1974" (P.L. 93-406).

We are informed that the intent of this exception is to permit the enforcement of the tax withholding laws (both unemployment tax and personal income tax which is collected by the Department of Benefit Payments for the Franchise Tax Board) where a self-employed person with an ERISA plan has misappropriated moneys withheld from the wages of his employees. This exception does not appear to require a showing that the

amounts withheld from employees' wages were diverted into the employer's ERISA account. Accordingly, it may be asked why the exception is restricted to ERISA accounts. If no tracing of misappropriated amounts is required, it is not clear why the exception does not apply to all exemptions. Nor have we been able to determine why this problem is not dealt with directly, rather than through an exception to one particular exemption. We suspect that this exception is in the nature of special legislation which was enacted to enable the tax authorities to handle a particularly difficult case. Should this special exception be continued?

§ 707.520. Unemployment benefits and contributions

Subdivision (b)(7) has been added to continue a portion of Section 690.13 (unemployment benefits from fraternal organization). As in the case of retirement benefits, the staff believes that such benefits should be exempt to the extent reasonably necessary for support.

§ 707.530. Disability and health benefits

Subdivision (a) has been revised to provide an exemption to the extent reasonably necessary for support or to the extent benefits will be used to pay for health care. This is similar to Sections 5(4) and 6(a)(1) of the Uniform Exemptions Act.

§ 707.540. Damages for personal injury

This section is new. It is similar to Section 6(a)(3) of the Uniform Exemptions Act.

§ 707.560. Aid

The specific reference to fraternal benefit societies has been added.

Respectfully submitted,

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STAFF DRAFT

EXEMPTIONS FROM ENFORCEMENT OF MONEY JUDGMENTS

Introduction

Since 1851, California law has provided that certain property of judgment debtors is exempt from the enforcement of a money judgment.¹ In general, exemption laws are intended to reserve an amount of property sufficient to support the debtor and the debtor's family and to permit the financial rehabilitation of the debtor.² Some exemption provisions are the result of lobbying efforts of special interest groups.³ Exemption and bankruptcy laws also serve to shift the cost of social welfare from the community to creditors.⁴

The exemption laws of California are among the most generous in the United States.⁵ The substantive exemptions were comprehensively revised

1. 1851 Cal. Stats., Ch. 123, § 219.
2. Bailey v. Superior Court, 215 Cal. 548, 554, 11 P.2d 365, 367 (1932); see generally Vukowich, Debtors' Exemption Rights, 62 Geo. L.J. 779, 782-88 (1974). It has also been suggested that early exemptions were enacted to attract settlers in newly admitted states. See Haskins, Homestead Exemptions, 63 Harv. L. Rev. 1289, 1290 (1950).
3. E.g., life insurance, credit union accounts, savings and loan association accounts. See Sections 690.7, 690.9, 690.10; Fin. Code § 15406. See Cohen, Exemption of Property Purchased With Exempt Funds, 27 Va. L. Rev. 576, 613 (1941); Riesenfeld, Life Insurance and Creditors' Remedies in the United States, 4 U.C.L.A. L. Rev. 583, 617 (1957); Vukowich, Debtors' Exemption Rights, 62 Geo. L.J. 779, 810, 831 (1974).
4. See Comment, Bankruptcy Exemptions: Critique and Suggestions, 68 Yale L.J. 1459, 1497-1502 (1959). Although it has been suggested that no property should be exempt and that insolvent debtors should rely on social welfare legislation, this alternative is undesirable because of the cost to the community of providing welfare and the low level of available benefits, because most creditors are in a position to control their extension of credit and can take account of exemption laws, and because the lack of exemptions would drive greater numbers of debtors into bankruptcy. See id.; Vukowich, Debtors' Exemption Rights, 62 Geo. L.J. 779, 867-69 (1974).
5. D. Cowans, Bankruptcy Law and Practice § 589, at 326 (1963); Committee on Debtor and Creditor of State Bar of California, Modernization of Statutory Exemptions, 42 Cal. St. B.J. 869, ___ (1967).

in 1970 in response to a 1967 report by the State Bar Committee on Debtor and Creditor.⁶ Both the substantive exemptions and the procedural provisions are in need of further revision.⁷

Exempt Property

The substantive exemption provisions should strike a fair balance between the interests of the debtor in maintaining a basic standard of living for the debtor and the debtor's family and the interests of creditors in satisfying money judgments. Exemptions should shield property in such a manner that debtors with different types of assets will be afforded the basic protection. Accordingly, the general approach of the proposed law is to protect important items of property, such as a home,⁸ household furnishings, clothes, provisions, a motor vehicle, and tools of a trade, and also important sources of income, such as wages,⁹ insurance benefits, retirement benefits, unemployment benefits, and aid. The proposed law seeks to strike a balance between the specific designation of items, which has the virtue of certainty but the drawback of being too restrictive and subject to changing tastes and times, and the general categorization of exempt items, which provides more flexibility and equality of treatment, but is more difficult to

6. See Committee on Debtor and Creditor of State Bar of California, Modernization of Statutory Exemptions, 42 Cal. St. B.J. 869 (1967). Not all of the committee's recommendations were enacted.
7. Important factors prompting the proposals in this recommendation include the dramatic inflation occurring over the past several years, the introduction of bills to revise the bankruptcy laws of the United States (see Report of the Commission on the Bankruptcy Laws of the United States, House Doc. No. 93-137, Part I, 93d Cong., 1st Sess. (1973); H.R. 8200, 95th Cong., 2d Sess. (1977)), and the approval of a Uniform Exemptions Act by the National Conference of Commissioners on Uniform State Laws in 1976.
8. The revision of the homestead exemption is not included in this draft.
9. The form of the wage garnishment exemption depends upon legislative action on A.B. 393 and is not included in this draft.

apply and results in a higher administrative cost.¹⁰ The Commission's recommendations are also tempered with the knowledge that exemption laws are highly controversial and that many of them are the result of compromises between various interest groups.¹¹

Most of the statutory exemptions are collected in Sections 690.1 through 690.31 of the Code of Civil Procedure. Some exemptions are set forth in other codes.¹² Some property is exempt without making a claim¹³ and other property must be claimed as exempt or the exemption is waived.¹⁴ Section 690 equates the concepts of property which is exempt without making a claim and property which is not subject to enforcement. In the proposed law, property which is exempt without the necessity of making a claim is consistently described as property not subject to the enforcement of a money judgment.¹⁵ The following material discusses the

10. See generally Joslin, Debtors' Exemption Laws; Time for Modernization, 34 Ind. L.J. 355, 356-57 (1959); Note, Debtor Exemptions in Personal Property--Proposals for Modernization, 52 Kent. L.J. 456, ___ (1964); Rombauer, Debtors' Exemption Statutes--Revision Ideas, 36 Wash. L. Rev. 484, ___ (1961).

11. The Advisory Committee in charge of the revision of New York laws on enforcement of money judgments gave as a reason for declining to recommend changes in exemption provisions "that they are the result of legislative compromise; that they reflect the diverse pulls of various groups within the state." 6 J. Weinstein, E. Lorn, & A. Miller, New York Civil Practice § 5205.01 (1976).

12. E.g., Fin. Code § 15406 (credit union account); Labor Code § 270.5 (property held in trust by logging employer).

13. E.g., Sections 690.6 (portion of earnings), 690.8a (relocation benefits), 690.175 (unemployment compensation prior to payment).

14. E.g., Sections 690.1 (household furnishings, etc.), 690.2 (motor vehicle), 690.9 (life insurance benefits).

15. There is no clear distinction between property which is not subject to enforcement of a money judgment and property which is exempt without making a claim. Describing property as not subject to enforcement may mean that there is no procedure through which it may be reached or that it is not the sort of property interest which, through tradition or public policy, can be applied toward the satisfaction of a money judgment. See the discussion under "Property Subject to the Enforcement of a Money Judgment" supra. In the proposed law, property which is described as not subject to the enforcement of a money judgment should be readily identifiable and generally consists of funds under the control of a third person, such as an insurance company, a retirement plan, or a governmental entity. Licenses are also described as not subject to enforcement in the proposed law, consistent with Section 683(e); however, a procedure is recommended for reaching liquor licenses. See the discussion under "Receiver to Enforce Judgment" infra.

major statutory exemptions of existing law and the more important revisions proposed by the Commission.¹⁶

Household Furnishings, Wearing Apparel, and Personal Effects

Existing law provides a general exemption for necessary household furnishings, appliances, and wearing apparel, and a specific exemption for a piano, radio, television receiver, shotgun, rifle, provisions and fuel for three months, and works of art by the debtor or the debtor's resident family.¹⁷ Under this provision, the courts have applied a station-in-life test so as to permit the exemption of substantial amounts of personal property.¹⁸

The proposed law provides a more restrictive exemption for this type of property. The proposed exemption would protect household furnishings, appliances, wearing apparel, provisions, and other personal effects reasonably necessary for one household and personally used or procured for use by the debtor and members of the debtor's household for use at their principal residence so long as the item of property claimed as exempt does not exceed \$300 in value.¹⁹ The proposed law does not specifically exempt items such as a shotgun or a radio. In most cases, a debtor will probably not have any or very much personal property which

16. The more technical revisions are discussed in the Comments to the proposed sections, supra, and in the Comments to the repealed sections in the Appendix, supra. The exemption for church pews provided by Section 690.25 is archaic and should be deleted since the practice of the ownership of pews by church members has generally ceased. See 6 J. Weinstein, H. Korn, & A. Miller, New York Civil Practice, 5205.15 (rev. 1976).

17. Section 690.1.

18. See Independence Bank v. Heller, 275 Cal. App. 54, 79 Cal. Rptr. 868 (1969) (furniture worth over \$22,000 held exempt); Newport Nat'l Bank v. Adair, 2 Cal. App.3d 1043, 83 Cal. Rptr. 1 (1969) (furniture for 14-room apartment held exempt); Comment, California's New Household Goods Exemption and the Problem of Personal Accountability, 12 Santa Clara Law. 155 (1972).

19. Section 3(a) of the Uniform Exemptions Act (1976) provides a similar exemption for such property subject to a \$500 limitation.

will bring at least \$300 at an execution sale.²⁰ More valuable property would be nonexempt even if it meets the necessary standard in order to prevent abuse. Nonnecessary property would be nonexempt regardless of its value.

The proposed law also provides a separate exemption for jewelry, heirlooms, and works of art which in the aggregate do not exceed \$500 in value.²¹ This limited exemption is not subject to the necessity standard but is intended to protect some items that are likely to be of sentimental value even though they are not necessities.

Motor Vehicle

Existing law provides an exemption for one motor vehicle with a value not exceeding \$500 over all liens and encumbrances on the vehicle.²² The value of the vehicle is required to be determined from used car price guides customarily used by California automobile dealers or, if not listed, by fair market value. If the debtor's equity in the motor vehicle exceeds \$500, it may be sold at an execution sale, but the proceeds remaining after satisfaction of liens and encumbrances are exempt in the amount of \$500 for a period of 90 days.

Under the proposed law, a motor vehicle would be exempt if the debtor's equity does not exceed \$1,500.²³ The exemption for proceeds is

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20. The proposed law precludes an execution sale of property which is exempt to a particular value unless the amount bid at least equals the exempt value. The \$300 value limitation in this provision of the proposed law does not exempt proceeds when there is a sale as in the case of the motor vehicle exemption. It is strictly a ceiling on the value of property that may be claimed as exempt. If an item of property may be sold at an execution sale for over \$300, the proceeds are applied toward the satisfaction of the judgment.
 21. Section 8(a)(3) of the Uniform Exemptions Act (1976) exempts family portraits and heirlooms of particular sentimental value if the value of the item does not exceed \$500 and Section 8(b) exempts jewelry not exceeding \$750 in the aggregate.
 22. Section 690.2. Section 690.4 also provides an exemption for a commercial motor vehicle used in the debtor's trade, calling, or profession.
 23. The motor vehicle exemption is set at this level in the Uniform Exemptions Act Section 8(c) (1976) and in H.R. §200, 95th Cong., 2d Sess. (1977) (House version of proposed Bankruptcy Act).

extended to proceeds from a voluntary sale or from insurance or other indemnification received for the damage or destruction of the vehicle.²⁴ The proposed law would permit, rather than require, reference to used car price guides because other factors may be relevant, such as where the vehicle has been customized. The interests of the debtor are protected, not by the assessed or assigned value of the vehicle, but by the exemption of proceeds and the prohibition of an execution sale where no bid is received which is sufficient to satisfy liens and encumbrances and pay the debtor the amount of the exemption.

Tools of a Trade

Existing law provides an exemption for tools and other items, including one commercial fishing boat and one commercial motor vehicle, ordinarily and reasonably necessary for the use of the debtor in the exercise of the trade, calling, or profession by which the debtor earns a livelihood, to the maximum aggregate actual cash value of \$2,500 over liens and encumbrances on such items.²⁵ The proposed law continues this exemption and includes building materials for which existing law provides a separate exemption in the amount of \$1,000.²⁶ The proposed law would also exempt proceeds from the sale or indemnification for the loss, damage, or destruction of such items in the amount of \$2,500 for a period of 90 days after a voluntary sale or, in other cases, after receipt of the proceeds or indemnification.²⁷

Health Aids

Existing law provides an exemption for prosthetic and orthopedic appliances personally used by the debtor.²⁸ This exemption is too

24. Section 9(a) of the Uniform Exemptions Act (1976) provides a similar exemption traceable for 18 months.

25. Section 690.4.

26. Section 690.17.

27. Section 9(a) of the Uniform Exemptions Act (1976) provides a similar exemption traceable for 18 months. The 90 day limitation on the protection of proceeds is the same as that provided by Section 690.2(e) in the case of a motor vehicle.

28. Section 690.5.

narrow²⁹ and should be expanded to include health aids reasonably necessary to enable the debtor or the spouse or dependents of the debtor to work or sustain health.³⁰ This provision would permit the exemption of items such as a wheel chair for a person unable to walk to work, an air conditioner for a person afflicted with asthma, or an elevator for a person unable to climb stairs, but would not exempt a swimming pool, sauna, bicycle, golf clubs, or gymnastic equipment merely because their use is conducive to good health.

Deposit Accounts

Existing law provides exemptions for \$1,000 in a savings and loan association account³¹ and \$1,500 in a credit union account.³² An account into which social security benefits are directly deposited is protected from levy to the extent of \$500 if there is one recipient and \$750 if there are two or more recipients, and is exempt to the extent that additional amounts consist of social security payments.³³ There is no specific exemption for savings or checking accounts in banks.³⁴

29. "Prosthesis" is defined as the "addition to the human body of some artificial part, as a leg, eye, or tooth." Webster's New Collegiate Dictionary 678 (1956). "Orthopedics" is defined as the "correction or prevention of deformities, esp. in children." Id. at 593.

30. This provision is derived from Section 5(2) of the Uniform Exemptions Act (1976).

31. Section 690.7.

32. Fin. Code § 15406.

33. Section 690.30. Section 690.30 requires the judgment creditor to initiate the exemption proceedings to determine whether nonexempt amounts reside in the account. At the hearing, however, the judgment debtor has the burden of proof. This provision, enacted by 1976 Cal. Stats., Ch. 810, § 1, appears to be in reaction to *Phillips v. Partholomie*, 46 Cal. App.3d 346, 121 Cal. Rptr. 56 (1975), which held that a judgment debtor is not entitled to a hearing before social security, AFDC, county welfare, and veterans' benefits in a bank account could be levied upon. Of course, such benefits are exempt when a claim is made under general principles regarding tracing of exempt benefits. See *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 416-17 (1973) (disability benefits in bank account); *Kruger v. Wells Fargo Bank*, 11 Cal.2d 352, 367, 521 P.2d 441, 113 Cal. Rptr. 449, (1974) (unemployment benefits in checking account). Section 690.30 provides an additional protection since it shields a certain portion of the account from the reach of creditors without the necessity of making a claim of exemption.

34. Exempt amounts may be traced into bank accounts under existing law. See the discussion under "Tracing Exempt Amounts" infra.

Under the proposed law, a deposit account in any financial institution and money³⁵ is exempt in the amount of \$2,000. There is no justifiable reason for distinguishing between different types of deposit accounts.³⁶ The proposed law would continue the special procedural protections regarding accounts into which social security benefits are directly deposited and would clarify the procedure for claiming additional amounts exempt.³⁷

Life Insurance

Existing law exempts benefits growing out of life insurance to the extent represented by a \$500 annual premium and another such amount in favor of the insured's spouse or minor children.³⁸ Group life insurance is completely exempt.³⁹ Death benefits from a public entity or a private retirement plan are also exempt.⁴⁰ The life insurance exemption shields benefits from the reach of creditors of the insured and of the beneficiary.⁴¹ The exemption also protects a creditor who is a beneficiary under a credit insurance policy.⁴²

35. The proposed exemption would also supersede Section 690.21 (prisoner's trust fund exempt in amount of \$40). Section 487.010(c)(7) in the Attachment Law also provides an aggregate exemption for deposit accounts and money.

36. A report by the State Bar Committee on Debtor and Creditor recommended consolidation of deposit account exemptions in 1967. See Committee on Debtor and Creditor of State Bar of California, Modernization of Statutory Exemptions, 42 Cal. St. B. J. 869, ___ (1967).

37. See the Comment to proposed Section 707.490 infra.

38. Section 690.9. The exemption also applies to endowment and annuity policies. See Hing v. Lee, 37 Cal. App. 313, ___, 174 P. 356, ___ (1918). Where there are multiple beneficiaries entitled to claim the exemption, each beneficiary is entitled to assert an exemption in proportion to the total proceeds of the policy. Jackson v. Fisher, 56 Cal.2d 196, 199, 363 P.2d 479, ___, 14 Cal. Apptr. 439, ___ (1961).

39. Section 690.10; Ins. Code § 10213. This exemption does not apply in certain cases. See Ins. Code §§ 10203.5 (borrower and installment purchaser groups), 10203.6 (credit union groups), 10203.8 (savings account depositors).

40. Section 690.18.

41. Kolmes v. Marshall, 145 Cal. 777, 779-82, 79 P.2d 534, ___ (1905).

42. Jackson v. Fisher, 56 Cal.2d 196, 199, 363 P.2d 479, ___, 14 Cal. Apptr. 439, ___ (1961).

The proposed law would substantially revise these exemptions consistent with the policy of protecting a minimal amount of property necessary to support the debtor and the debtor's family. A creditor should not be able to force a debtor to surrender a policy in order to reach its cash value. The proposed law would permit the creditor to reach the loan value of the policy to the extent it exceeds \$5,000.⁴³ The debtor should not be forced to surrender the policy, particularly if the debtor is an older person, because the debtor may be uninsurable, or insurable only at a prohibitive premium.

The proposed law provides an exemption of benefits from a matured life insurance, endowment, or annuity policy, or from death benefits, payable to the insured while living or to a spouse or dependent of the living insured or decedent, in an amount reasonably necessary for the support of the insured and the spouse and dependents of the insured or decedent.⁴⁴ This exemption would protect benefits from creditors of the insured as well as creditors of the spouse or dependent beneficiary.

The proposed law would eliminate the arbitrary feature of existing law which exempts benefits to the extent represented by a \$500 annual premium.⁴⁵ The existing standard can result in widely varying exempt amounts depending upon the type of policy (e.g., straight life, endowment, or annuity), the type of insurer (e.g., private, group, industrial, government), the age of the insurer when the policy was taken out, and the length of coverage.⁴⁶

43. Where the debtor has not claimed a dwelling exemption, the maximum exempt loan value under the proposed law would be \$15,000 in recognition of the need to provide for housing.

44. Section 6(a)(4) of the Uniform Exemptions Act (1976) provides a similar exemption.

45. This standard dates from 1868 when the life insurance exemption was enacted. 1868 Cal. Stats., Ch. 404, § 1. The first life insurance exemption provision, the Verplanck Act enacted in New York in 1840, also based the exemption upon the amount of the annual premium. See Riesenfeld, *Life Insurance and Creditors' Remedies in the United States*, 4 U.C.L.A. L. Rev. 583, 589 (1957). At the time such exemptions were first enacted, life insurance was used to provide support for the family of the deceased. Today, a majority of payments under life insurance policies are made to policyholders. See Institute of Life Insurance, *Life Insurance Fact Book '77*, at 49-50 (1977); Vukowich, *Debtors' Exemption Rights*, 62 Geo. L.J. 779, 810 & n.183 (1974).

46. For example, the total amount exempt in *Jackson v. Fisher*, 56 Cal.2d 196, 363 P.2d 479, 14 Cal. Rptr. 439 (1961), was \$113,200.

Retirement Benefits

Existing law exempts benefits from a retirement plan both before payment, when no claim is required to be made, and after payment, when the exemption must be claimed.⁴⁷ The exemption does not apply when the judgment being enforced is for child or spousal support payments.⁴⁸ The complete exemption of retirement benefits is overly generous since the debtor may be the beneficiary of several retirement plans or may have other property sufficient to maintain an adequate standard of living. Under the proposed law, retirement benefits would not be subject to enforcement of a money judgment prior to payment and would be exempt to the extent necessary for the support of the debtor and the spouse and dependents of the debtor after payment.⁴⁹

Disability and Health Benefits

Existing law provides several exemptions for benefits from a disability or health insurance policy or program. Disability or health insurance benefits are exempt to the extent represented by a \$500 annual premium.⁵⁰ Money of a fraternal organization used to pay sick benefits to members of the organization is exempt in the amount of \$500.⁵¹ Money

47. Section 690.18. This exemption covers pensions, annuities, and retirement, disability, death, or other benefits from a public entity and money held or paid by a private retirement plan, union retirement plan, or profit-sharing plan designed and used for retirement purposes. Section 690.18(c) also provides an exception to the exemption for private retirement plans with regard to amounts withheld from employees' wages under provisions of the Unemployment Insurance Code. The proposed law does not continue this exception.

48. Section 690.18. See the discussion under "Exception for Judgments for Spousal or Child Support" infra.

49. Section 6(a)(5) of the Uniform Exemptions Act (1976) provides a similar exemption. The proposed law would not, of course, affect provisions of federal law exemption certain retirement benefits. See, e.g., 10 U.S.C. § 1440 () (annuities of members of armed forces), 50 U.S.C. § 403 () (CIA retirement and disability fund).

50. Section 690.11. For a discussion of tying the exemption of insurance benefits to the amount of the premium, see the discussion under "Life Insurance" supra.

51. Section 690.13.

paid by a fraternal benefit society is exempt before and after payment.⁵² Disability benefits under a retirement plan are exempt to the same extent as other retirement benefits.⁵³

Under the proposed law, disability or health benefits are not subject to the enforcement of a money judgment before payment and, after payment, are exempt to the extent necessary for the support of the debtor and the spouse and dependents of the debtor or to the extent the benefits will be used to pay for medical, surgical, or hospital care.⁵⁴ This exemption would not apply where the creditor provided health care concerning the condition for which the benefits are collected.

Damages for Personal Injury

Existing law provides an exemption for insurance benefits for injury⁵⁵ or death⁵⁶ but does not exempt settlements or awards for the bodily injury of the debtor. The proposed law provides an exemption for a settlement or award arising out of the bodily injury of the debtor to the extent necessary for the support of the debtor and the spouse and dependents of the debtor.⁵⁷ This exemption would not apply when the creditor provided health care for the condition for which the settlement or award was made.

Wrongful Death Awards

Existing law does not exempt wrongful death settlements or awards. The proposed law would exempt settlements and awards arising out of the wrongful death of a person of whom the judgment debtor was a spouse or a dependent to the extent reasonably necessary for support.⁵⁸

52. Section 690.14.

53. Section 690.18. See the discussion under "Retirement Benefits" supra.

54. Section 6(a)(1) of the Uniform Exemptions Act (1976) provides a similar exemption.

55. See Section 690.11 (disability and health insurance).

56. See Sections 690.9 (life insurance), 690.10 (group life insurance).

57. Section 6(a)(3) of the Uniform Exemptions Act (1976) provides a similar exemption.

58. Section 6(a)(3) of the Uniform Exemptions Act (1976) provides a similar exemption.

Unemployment Benefits and Contributions

Under existing law, contributions of employees and employers to unemployment programs, and benefits prior to payment, are exempt without making a claim.⁵⁹ After payment, these benefits are exempt if a claim is made.⁶⁰ Under the proposed law, contributions and benefits prior to payment would continue to be not subject to the enforcement of a money judgment. After payment, unemployment benefits would be exempt to the extent reasonably necessary for the support of the debtor and the spouse and dependents of the debtor.⁶¹

Aid

Existing law provides a complete exemption for aid given under a public assistance program⁶² and for aid from a fraternal benefit society.⁶³ Under the proposed law, these exemptions are combined and the protection is extended to aid of the same nature given by a charitable organization.

Relocation Benefits

Under existing law, relocation benefits for displacement from a dwelling owned or rented by the debtor are exempt without filing a claim.⁶⁴ Under the proposed law, once the benefits have been paid, an exemption claim must be made since it is necessary for the debtor to trace the funds to their source in order to qualify for the exemption.

59. See Sections 690.13 (\$500 used by fraternal organization as unemployment benefits for members), 690.16 (contributions to the Unemployment Compensation Disability Fund and the Unemployment Fund), 690.175 (state and federal-state benefits and payments under a plan or system established by an employer for employees generally or for a class or group of employees for the purpose of supplementing unemployment compensation benefits), 690.18(b) (contributions and reimbursement for benefits received under Unemployment Insurance Code by government employees); Unemp. Ins. Code § 988 (incorporating Section 690.16), 1342 (incorporating Sections 690.175, 690.18).

60. See Sections 690.13, 690.175.

61. Section 6(a)(1) of the Uniform Exemptions Act (1976) provides a similar exemption for unemployment benefits.

62. Section 690.19. Before payment, the aid is exempt without making a claim; after payment, a claim of exemption must be made.

63. Section 690.14. This exemption must be claimed.

64. Section 690.8a.

Cemetery Plot

Existing law exempts a cemetery lot not exceeding one-quarter of an acre and, in the case of a religious or benevolent association or corporation, not exceeding five acres.⁶⁵ The proposed law has been drafted to be consistent with various provisions governing cemeteries in the Health and Safety Code. The proposed exemption provision incorporates a definition of "plot" which includes graves, crypts, vaults, and niches,⁶⁶ whereas existing law specifically applies only to land to be used for burial purposes and fixtures. The proposed law exempts a cemetery plot for two persons. This is consistent with the spouse's vested right of interment.⁶⁷ The proposed law also protects a family plot⁶⁸ from enforcement of a money judgment. Land which is held for the purpose of sale as cemetery plots would be nonexempt, as under existing law.⁶⁹ The five-acre limitation on the exemption for religious or benevolent associations or corporations is unnecessary and is not continued in the proposed law.

Applicability of Exemptions

Under existing law, property which is exempt from execution is also exempt from other procedures for the enforcement of a money judgment.⁷⁰

65. Section 690.24.

66. See Health & Saf. Code § 7022.

67. See Health & Saf. Code § 8601.

68. See Health & Saf. Code §§ 8650-8653.

69. Section 690.24. The proposed law would also continue portions of Section 690.24 which provide that property dedicated as a cemetery is not subject to enforcement of a debt due from an individual owner of a plot and that money from the sale of unused cemetery lands is not subject to enforcement of a money judgment if used for the purposes specified in Health and Safety Code Section 7925.

70. Section 690(a) provides that the property mentioned in Sections 690.1-690.29 is "exempt from execution." Section 690.31 exempts a dwelling house from "execution" and Civil Code Section 1240 provides that a homestead is "exempt from execution or forced sale." Section 690.50(1) provides that the judgment rendered in exemption proceedings thereunder is "determinative as to the right of the creditor . . . to subject the property to payment or other satisfaction of his judgment." Section 710(c) incorporates Section 690.50 for the determination of exemption claims concerning money owed to the debtor by a public entity. Section 719 provides that the court in supplementary proceedings may order the application of

This principle is made explicit in the proposed law, and provisions for the determination of exemption claims are included in the special procedures for enforcement of money judgments where appropriate.⁷¹

The principle that exemptions do not apply where the judgment is for the purchase price of the property involved or is for the foreclosure of a lien on the property (other than a lien created in the course of enforcing a general money judgment)⁷² is continued in the proposed law.

The proposed law also makes clear that exemptions are to be determined and applied as of the date the exemption claim is made. This provision is intended to reject the holding in California United States Bond & Mortgage Corp. v. Grodzins⁷³ where it was held that the portion of life insurance benefits which exceeded the exempt amount at the time they were received was "earmarked" for creditors even though the amount of benefits remaining at the time they were levied upon was below the amount protected by statute.⁷⁴ Exemption laws are intended to protect

property "not exempt from execution" toward the satisfaction of the judgment. Section 690.51 incorporates Section 690.50 for the determination of exemption claims when property is levied upon pursuant to a warrant or notice of levy for the collection of tax liability. Section 302(c) of the Consumer Credit Protection Act, 15 U.S.C. § 1672(c) (1970), defines garnishment to mean "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt."

71. See the discussion under "Special Procedures for the Enforcement of Money Judgments" supra.

72. See Civil Code § 1241; Code Civ. Proc. §§ 690.28, 690.31, 690.52; Willen v. Willen, 121 Cal. App. 351, ___, 8 P.2d 942, ___ (1932) (lien on insurance policies created by court order in proceedings to enforce alimony award foreclosed by execution).

73. 139 Cal. App. 240, 34 P.2d 193 (1934).

74. In Grodzins, the surviving wife received \$10,000 in life insurance benefits, deposited \$5,000 in a savings and loan account, and spent the remainder for the support of herself and her minor children. Under the exemption in effect at the time, approximately \$8,900 of the \$10,000 would have been exempt if the creditor had levied upon the funds immediately. The creditor was permitted to reach \$1,000 of the remaining \$5,000. The result could have been more pernicious since, if the lump-sum originally received at some remote time before levy had been \$18,000, for example, and the wife had spent \$9,000 of it before levy, the creditor would have been able to apply the remaining \$9,000 to the judgment.

an amount of property sufficient for the support of the debtor and the debtor's family at the time it is needed, i.e., when the creditor attempts to enforce the judgment. The question of exemption of property does not arise until the creditor seeks to reach the property and apply it toward the satisfaction of a judgment.⁷⁵

Exception for Judgments for Spousal or Child Support

Under existing law, the standard exemptions of earnings⁷⁶ and retirement benefits⁷⁷ do not apply where the money judgment being enforced is for child or spousal support. The proposed law would extend this exception to all exemptions.⁷⁸ Since a major purpose of exemption laws is to protect an amount of property sufficient for the debtor to support dependents, it makes no sense to protect the debtor's property from a judgment for the support of those dependents. Where the debtor has a family from a new marriage, the court would be empowered to make an equitable division of the property that takes into account the needs of all the persons the debtor is required to support.

75. Medical Fin. Ass'n v. Rambo, 33 Cal. App.2d Supp. 756, 758-60, 86 P.2d 159, ___ (1939). This case involved the garnishment of wages at a time when one-half of the earnings received during a 30-day period were exempt. The debtor had already received some earnings and the creditor argued that those earnings should be counted toward the exemption, leaving the remainder earned during the 30-day period subject to levy in the amount of one-half of the total.

76. Section 690.6 provides an exemption for one-half of the debtor's earnings. This exemption is superseded by the more restrictive federal provision pursuant to Section 303(c) of the Consumer Credit Protection Act, 15 U.S.C. § 1673(c) (1970). State exemption laws are not superseded, however, in the case of a judgment for support. Consumer Credit Protection Act § 303(b)(1), 15 U.S.C. § 1673(b)(1) (1970).

77. Section 690.18 [as proposed to be amended by S.B. 1360 and A.B. 1969 in the 1978 legislative session].

78. Section 10 of the Uniform Exemptions Act (1976) provides a similar exception. Under the proposed law, the spouse or dependent would not be able to reach property which is not subject to the enforcement of a money judgment, but only that which is described as exempt.

Exception for Welfare Payment Reimbursement

Existing law provides that the debtor is entitled to only a very limited set of exemptions against a claim by a county for reimbursement for county aid used to support the debtor.⁷⁹ This exception to the standard exemptions is not continued in the proposed law because it is constitutionally suspect under the equal protection clause.⁸⁰

Exemption Rights of Married Debtors

The interrelation between the creditor's remedies and exemption laws, community property laws, and other laws pertaining to the manner of holding title to property is complicated and sometimes inconsistent. Generally, only the property of the judgment debtor may be applied toward the satisfaction of a money judgment.⁸¹ Consistent with this principle, if the judgment debtor has a joint tenancy in property with persons who are not also liable, only the interest of the judgment debtor may be reached.⁸² However, if one spouse is a judgment debtor, the community property, in which the spouses have equal interests,⁸³ is

79. See Section 690.19; Welf. & Inst. Code § 17409. Welfare and Institutions Code Section 17409 provides the following exemptions in such cases: \$50 in cash, personal effects and household furniture with a value of \$500, a cemetery plot, \$500 placed in trust for funeral expenses, insurance policies with a cash surrender value of \$500, and relocation assistance benefits.

80. See *James v. Strange*, 407 U.S. 123 (1972) (Kansas statute imposing liability on indigent defendant for costs of counsel provided the defendant and denying exemptions available to other judgment debtors held unconstitutional).

81. See the discussion under "Property Subject to Enforcement of a Money Judgment" supra.

82. See *In re Kauer's Collection Co.*, 87 Cal. App.2d 233, 259, 19 P.2d 303, ___ (1948); *Mussel v. Lescalet*, 248 Cal. App.2d 310, 312, 56 Cal. Rptr. 399, ___ (1967); 5 B. Witkin, *California Procedure Enforcement of Judgment* § 13, at 3398 (2d ed. 1971).

83. Civil Code § 5105.

generally liable for the satisfaction of the judgment⁸⁴ and, where the debt was incurred for necessities of life after marriage, the separate property of the nondebtor spouse may be reached.⁸⁵

A nondebtor spouse is clearly entitled to prevent the application of property toward the satisfaction of the judgment where the property is not liable under applicable law.⁸⁶ If only one spouse is a judgment debtor and the separate property of the nondebtor spouse has been levied upon, the nondebtor spouse has been permitted to seek the release of the property through the third-party claims procedure.⁸⁷

84. Civil Code §§ 5116, 5120, 5122, 5125; see D. Reith, California Debt Collection Practice Supplement 176-77 (Cal. Cont. Ed. Bar 1976). Either spouse has management and control of the community property with certain exceptions. Civil Code § 5125(a). It has been declared by the Legislature that the "liability of community property for the debts of the spouses has been coextensive with the right to manage and control community property and should remain so." 1974 Cal. Stats., Ch. 1206, § 1. It seems fairly certain, however, that community business property that is subject to the sole management and control of operating spouse pursuant to Civil Code Section 5125(d) is liable for the debts of the nonbusiness spouse. See R. Verrall, Cases and Materials on California Community Property 396-97, 401 (3d ed. 1977); Comment, The Implications of the New Community Property Laws for Creditors' Remedies and Bankruptcy, 63 Calif. L. Rev. 1610, 1628-34 (1975).

85. Civil Code § 5121. Resort must first be had to community and quasi-community property. See Civil Code § 5132; Reppy, Retroactivity of 1975 California Community Property Reforms, 48 So. Cal. L. Rev. 977, 1033 n. 174 (1975).

86. Where a spouse's separate property is sought to be applied to the debt of the other spouse incurred for necessities pursuant to the liability provided in Civil Code Sections 5121 and 5132, the spouse whose separate property is sought to be reached must be made a party to the action for the purpose of obtaining a limited personal judgment. Credit Bureau of Santa Monica Bay Dist., Inc. v. Terranova, 15 Cal. App.3d 854, 860, 93 Cal. Rptr. 538, 542 (1971).

87. Sherwood v. Cornfield, 216 Cal. App.2d 364, 369, 31 Cal. Rptr. 264, 267-68 (1963); Adler v. Blair, 169 Cal. App.2d 92, ___, 336 P.2d 971, ___ (1959); Spear v. Farwell, 5 Cal. App.2d 111, 112, 42 P.2d 391, ___ (1935). In one case, a third-party claim was filed on the basis that the husband's wages were exempt because the wife's debt for necessities was incurred before marriage, making the exception to the wage garnishment exemption inapplicable. White v. Gobey, 130 Cal. App. Supp. 789, 790-91, 19 P.2d 876, ___ (1933). See the discussion under "Third Party Claims" infra.

It is clear that, in a case where only one spouse is the debtor, the spouses may reduce the amount of property available to satisfy the judgment by holding it in joint tenancy rather than as community property.⁸⁸ The extent to which joint debtor spouses may claim exemptions in community or separate property, or to which a nondebtor spouse may claim an exemption in community property (or in separate property in the case of a debt for necessities), is far from clear. The generally stated policy underlying the exemption laws is to protect an amount of property sufficient to support the debtor and the debtor's family.⁸⁹ However, in general the availability or amount of an exemption does not appear to depend upon whether the debtor is married or has any dependents.

There are several exceptions. A head of a family may select a homestead not exceeding \$30,000 in value, whereas any other person under 65 years of age may select a homestead of only \$15,000 in value.⁹⁰

The exemption for savings and loan accounts is specifically stated to be a maximum of \$1,000 "per person, whether the character of the property be separate or community."⁹¹ The meaning of this provision is unclear and it has not been interpreted by the courts. It might be read

88. See *Siberell v. Siberell*, 214 Cal. 767, 772-74, 7 P.2d 1003, (1932); *In re Rauer's Collection Co.*, 37 Cal. App.2d 248, 257, 196 P.2d 803, ___ (1948); 7 B. Witkin, *Summary of California Law Community Property* § 48, at 5139 (8th ed. 1974). It should be noted, however, that a transfer of a debtor spouse's interest in property to the nondebtor's spouse, such as by way of changing community property to separate property, is voidable as a fraudulent conveyance. See *Wikes v. Smith*, 465 F.2d 1142, ___ (9th Cir. 1972); *Gould v. Fuller*, 249 Cal. App.2d 18, 24-27, 57 Cal. Rptr. 23, ___ (1967).

89. *Bailey v. Superior Court*, 215 Cal. 548, 554, 11 P.2d 865, 867 (1932).

90. Civil Code § 1260 (declared homestead); Code Civ. Proc. § 690.3 (mobilehomes and vessels), 690.31 (claimed dwelling). A person aged 65 is entitled to the same exemption as a head of a family. Civil Code Section 1261 provides that a head of a family includes husband and wife when the claimant is married and any person who resides with and cares for or maintains certain relatives. A homestead may be selected from community property, quasi-community property, property held by the spouses as tenants in common or in joint tenancy, or separate property. Civil Code § 1238.

91. Section 690.7(b). The exemption for credit union accounts does not have this feature. Fin. Code § 15406.

to permit both spouses, whether jointly liable or not, to claim exemptions. It might mean that only debtor spouses may claim an exemption (if the view is taken that only debtors may claim exemptions) and that, in the case of a joint account, the levy severs the joint tenancy and thus preserves the separate half interest of the nondebtor spouse.

Household furnishings, wearing apparel, and the like, is exempt to the extent "ordinarily and reasonably necessary to, and personally used by, the debtor and his resident family."⁹² This exemption specifically takes into account the needs of the debtor's spouse and dependents and should not vary depending upon whether one or both spouses are liable on the judgment.

The exemption of earnings from garnishment depends in part on amounts withheld pursuant to the tax withholding laws⁹³ and so is affected by the number of deductions the wage earner claims. However, the federal restrictions on wage garnishment permit a creditor to reach a larger amount of earnings where the debtor claims a greater number of tax withholding deductions.⁹⁴ The additional hardship exemption is based upon the amount "necessary for the use of the debtor or the debtor's family residing in this state and supported in whole or in part by the debtor."⁹⁵ It may also be assumed that, if both spouses are liable on the judgment, the garnishment of each spouse's wages is restricted by the federal law.

92. Section 690.1.

93. See Consumer Credit Protection Act § 302(b), 15 U.S.C. § 1672(b) (1970) (defining "disposable earnings" which provide the basis for determining the amount subject to garnishment, as the amount remaining after the deduction of any amounts required by law to be withheld).

94. This is so because a wage earner claiming more withholding deductions will have a larger disposable income at the same level of earnings than a wage earner claiming fewer deductions. The federal formula permits garnishment of all of the debtor's disposable weekly earnings that exceed 30 times the minimum wage but that do not exceed 40 times the minimum wage or, when the earnings exceed 40 times the minimum wage, 25% of the total amount of disposable earnings. See Consumer Credit Protection Act § 303(a), 15 U.S.C. § 1673(a) (1970).

95. Section 690.6(b).

The life insurance exemption is doubled in favor of the spouse of the insured.⁹⁶

The exemption for deposit accounts into which social security benefits are directly deposited is increased from \$500 to \$750 where two or more depositors to the account are designated payees of the benefits.⁹⁷

On the other hand, the motor vehicle exemption appears to protect only one vehicle with a value not exceeding \$500 over liens and encumbrances so long as the vehicle is registered in the debtor's name,⁹⁸ apparently without regard to the nature of title.⁹⁹

The foregoing should demonstrate that existing law is unclear and that it embodies no consistent policy regarding the exemption rights of married persons. Under the proposed law, married persons would be restricted to one set of exemptions regardless of whether one or both spouses are liable on the judgment. This principle is consistent with the general policy of the exemption laws--to protect the debtor and the debtor's family. It would not result in significant unfairness to married persons because nonliable separate property will remain so and several important exemptions are proposed to be revised to depend upon the amount necessary for the support of the debtor and the debtor's spouse and dependents.¹⁰⁰

Tracing Exempt Amounts

An exemption for an amount of money from a particular source, such as retirement or life insurance benefits, is illusory if the exemption is lost when the benefits are deposited in a bank or held in the form of

96. Section 690.9(b).

97. Section 690.30(a).

98. Section 690.2(d).

99. See Veh. Code §§ 4150.5, 5600.5 (coownership of motor vehicle).

100. See the discussion of the exemptions for life insurance benefits, retirement benefits, unemployment benefits, disability and health benefits, and personal injury awards, supra.

a check or cash. Case law and, to a limited extent, statutory law, recognize the right of a debtor to trace exempt amounts through a change in form.¹⁰¹ The proposed law contains a general provision which would permit the judgment debtor to trace exempt amounts through deposit accounts and in the form of cash and the equivalent of cash, including cashier's checks, certified checks, and money orders. This tracing provision would apply to relocation, life insurance, retirement, unemployment, disability, health, social security, and veteran's benefits, worker's compensation, aid, and proceeds from the sale of or indemnification for a dwelling, a motor vehicle, and tools of a trade.¹⁰² The debtor should have the burden of tracing the exempt amount, consistent with the general burden on the debtor to claim exemptions.¹⁰³ The debtor should also be permitted to select any reasonable method of tracing.¹⁰⁴ The mandatory use of a principle such as first-in first-out or last-in first-out would result in some debtors being deprived of exemptions depending upon the order in which money was deposited in an account or whether the debtor was not foresighted enough to segregate exempt funds in separate accounts.

101. See, e.g., Sections 690.18(a) (pension benefits exempt in debtor's possession and when deposited), 690.30 (direct deposit of social security payments); *Fruger v. Wells Fargo Bank*, 11 Cal.3d 352, 367, 521 P.2d 441, ___, 113 Cal. Rptr. 449, ___ (1974) (unemployment benefits in checking account); *Colmes v. Marshall*, 145 Cal. 777, 782-83, 79 P. 534, ___ (1905) (life insurance benefits deposited in bank account); *Lowman v. Wilkinson*, 153 Cal App.2d 391, 395-96, 314 P.2d 574, ___ (1957) (life insurance check converted to cashier's check and deposited in attorney's trust account); *Phillpott v. Essex County Welfare Bd.*, 409 U.S. 413, 416-17 (1973) (disability benefits in bank account); *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 162 (1962) (veterans' benefits in savings and loan account).

102. The opportunity to trace exempt proceeds from the sale of a dwelling would be limited to six months and from the sale of a motor vehicle or tools to 90 days.

103. See Section 690.50(i).

104. This principle is derived from Section 9(c) of the Uniform Exemptions Act (1976). A variety of tracing principles is also used in cases involving constructive trusts and equitable liens. See D. Dobbs, *Handbook on the Law of Remedies* § 5.16, at 425-30 (1973); 7 B. Witkin, *Summary of California Law Trusts* §§ 6-8, at 5446-49 (8th ed. 1974).

Liability for Interference With Exemption Rights

Under existing law, the debtor may seek damages in an action for abuse of process where the creditor levies upon property which is exempt or not subject to enforcement of a money judgment.¹⁰⁵ Because of the expense and delay of bringing an independent action for abuse of process, the debtor may be effectively deprived of any remedy. Accordingly, the proposed law provides that the judgment debtor may apply to the court on noticed motion for an order assessing damages resulting from the application or attempted application of property which is not subject to enforcement of a money judgment or has been determined to be exempt toward the satisfaction of the judgment.¹⁰⁶ Any damages awarded would also be exempt.¹⁰⁷ The debtor would also be permitted to apply for an order that damages be set off against the judgment. Set off should not be a requirement, however, because the debtor may need the amount representing the wrongfully taken property for support. This remedy would not supplant other statutory and common law remedies.¹⁰⁸

Automatic Adjustment of Exempt Dollar Amounts

Exemptions subject to dollar amount limitations have the virtue of certainty and prevent the abuse that arises where specific types of items are exempt without value limits. Legislatures have typically been

105. *Czap v. Credit Bureau of Santa Clara Valley*, 7 Cal. App.3d 1, 5-6, 86 Cal. Rptr. 417, ___ (1970), cf. *White Lighting Co. v. Wolfson*, 68 Cal.2d 336, 348-49, 438 P.2d 345, ___, 66 Cal. Rptr. 697, ___ (1968) (attachment of exempt property).

106. A summary procedure for assessing damages for wrongful attachment is provided by Section 490.010-490.060.

107. New York law provides that damages for taking or injuring exempt personal property are exempt for a period of one year. N.Y. Civ. Prac. Law & R. § 5205(b) (McKinney 19__).

108. In addition to an action for abuse of process, in appropriate circumstances, the debtor may bring an action for slander of title, conversion, or infliction of emotional distress. See generally 5 B. Witkin, *California Procedure Enforcement of Judgment* § 97, at 3463-64 (2d ed. 1971); Riesenfeld, *Torts Involving Use of Legal Process*, in *Debt Collection Tort Practice* §§ 5.1-5.33 (Cal. Cont. Ed. Bar 1971).

slow to adjust exemptions in response to changes in the value of the dollar.¹⁰⁹ For example, the exemption for an account in a savings and loan association¹¹⁰ was set at \$1,000 in 1901.¹¹¹ The dollar was worth approximately seven times as much in 1901 as it is now,¹¹² yet the amount of the exemption remains unchanged. The credit union account exemption¹¹³ was raised to \$1,500 in 1939¹¹⁴ when the dollar was worth approximately four times as much.¹¹⁵ The life insurance exemption¹¹⁶ was set at the amount of benefits represented by a \$500 annual premium in 1868¹¹⁷ when the dollar was worth approximately six times what it is today.¹¹⁸ Less dramatic, but still significant, disparities have occurred in exemptions such as the motor vehicle exemption which has been frequently amended since its original enactment in 1935.¹¹⁹ The protection

109. See Countryman, For a New Exemption Policy in Bankruptcy, 14 Rutgers L. Rev. 678, 683 (1960); Joslin, Debtors' Exemption Laws: Time for Modernization, 34 Ind. L.J. 355, 356 (1959).

110. Section 690.7.

111. 1901 Cal. Stats., Ch. 28, § 1 (then building & loan associations).

112. See Bureau of Census, Historical Statistics of the United States, Table E-183, at 212, (1975) [hereinafter cited as Historical Statistics]. Bureau of Census, Statistical Abstract of the United States: 1976, Table No. 708, at 439 [hereinafter cited as Statistical Abstract].

113. Fin. Code § 15406.

114. 1939 Cal. Stats., Ch. 965, § 2.

115. See Historical Statistics, supra note 112, Table E-135, at 210; Statistical Abstract, supra note 112, Table No. 708, at 439.

116. Section 690.9.

117. 1868 Cal. Stats., Ch. 404, § 1.

118. Historical Statistics, supra note 112, Table E-183, at 212; Statistical Abstract, supra note 112, Table No. 708, at 439.

119. 1935 Cal. Stats., Ch. 723, § 24. The motor vehicle exemption at first protected a vehicle valued at \$100, regardless of the extent of the debtor's equity. This limit was raised to \$250 in 1949 and to \$350 in 1959. In 1967 the debtor's equity was protected in the amount of \$350 so long as the vehicle was not worth more than \$1,000. The equity exemption was raised to \$500 in 1972 and in 1976 the value limitation was repealed. See 1949 Cal. Stats., Ch. 628, § 1; 1959 Cal. Stats., Ch. 1474, § 1; 1967 Cal. Stats., Ch. 1241, § 1; 1972 Cal. Stats., Ch. 744, § 1; 1976 Cal. Stats., Ch. 1210, § 2.

of a motor vehicle in which the debtor has no more than \$500 equity, established in 1972, has been significantly eroded because by 1976 the average price of new cars had risen over 20% and the average price of used cars had risen over 40 percent.¹²⁰

The proposed law provides for the automatic adjustment of the dollar amount of exemptions based upon changes in the consumer price index.¹²¹ The change would be made at two-year intervals if the increase or decrease in the consumer price index over that time was at least 10 percent of the index on the operative date of the proposed law.¹²² The Judicial Council would be given the responsibility of calculating the change and adopting a rule announcing the change. The revised amount would apply to any claims made when the change is in effect. This has the effect of freeing the debtor from inadequate exemptions existing at the time the debt was incurred, which may have been many years before the time the exemption is needed.

Procedure for Claiming Exemptions After Levy

Existing law provides a detailed procedure through which exemptions may be claimed and determined.¹²³ The debtor or the debtor's agent must claim an exemption for property within 10 days after it has been levied upon by filing an affidavit with the levying officer; otherwise the

120. Statistical Abstract, supra note 112, Table No. 709, at 440.

121. Cost of living adjustment provisions are contained in the Uniform Consumer Credit Code § 1.106 (1974 version) and the Uniform Exemptions Act § 2 (1976) and in several California statutes. See Govt. Code § 9360.9 (legislative retirement system), 21221(c) (public employees' retirement benefits), 31870 (county employees' retirement benefits), 82001 (campaign spending limits); Welf. & Inst. Code §§ 11453 (AFDC payments), 12201(1) (aged, blind, and disabled payments).

122. For examples of the operation of the proposed section, see the Comment to proposed Section 707.210 infra.

123. Section 690.50; see generally 5 B. Witkin, California Procedure Enforcement of Judgment §§ 88-92 (2d ed. 1971 & Supp. 1977). Special procedures are provided for determining certain exemptions. See Sections 690.30 (deposit account into which social security benefits directly deposited), 690.31 (dwelling exemption).

exemption is waived and the property will be applied toward the satisfaction of the judgment.¹²⁴ The levying officer immediately serves the affidavit on the judgment creditor along with a notice that the property will be released unless the creditor files a counteraffidavit with the levying officer within five days after the debtor's affidavit is served. The creditor is also required to serve a copy of the counteraffidavit on the debtor and file proof of service with the levying officer. Once the counteraffidavit is filed, either party is permitted to make a motion for an order determining the exemption claim within five days after the filing of the counteraffidavit. The hearing is required to be held within 15 days after the motion is made unless a continuance is granted. The moving party must give at least five days' notice of the hearing to the other party and to the levying officer. If no motion is made within five days after the counteraffidavit is filed or if the levying officer is not served with notice of the hearing within 10 days after such filing, the property is required to be released to the debtor. At the hearing the debtor has the burden of proof. The affidavit and counteraffidavit are filed with the court by the levying officer and constitute the pleadings of the parties, subject to the power of the court to permit amendments. The court may also permit the production of other evidence. At the conclusion of the hearing, the court determines the exemption and makes any necessary orders for the disposition of the property.

The proposed law would make several changes in this procedure.¹²⁵ The 10-day period within which the claim of exemption must be filed with the levying officer runs from the date notice of levy is mailed or

124. Section 690(a). Some exemptions are not subject to waiver. See, e.g., Section 690.6(b) (portion of earnings not subject to garnishment), 690.15 (worker's compensation benefits prior to payment), 690.19 (aid under public assistance program prior to payment), Smith v. Rhea, 72 Cal. App.3d 361, 370-72, ___ Cal. Rptr. ___, ___ (1977) (exempt portion of proceeds from execution sale of motor vehicle).

125. For other minor and technical revisions, see the Comments to the sections in the proposed law, infra, and to the repealed sections in the Appendix, infra.

delivered to the judgment debtor since the debtor may not receive notice of levy for some time after levy has occurred.¹²⁶ In addition to the judgment debtor, the debtor's spouse,¹²⁷ dependents, and persons authorized to exercise the rights of the debtor, such as agents, guardians, and conservators should be permitted to claim exemptions. The five-day period for filing the counteraffidavit should be increased to 10 days, but this period should not be extended where the claim of exemption is served on the creditor by mail.¹²⁸ As a condition of claiming an exemption for a motor vehicle, heirlooms, works of art, jewelry, or tools of a trade, the debtor should be required to describe other property of the same type for which an exemption is not claimed. Similarly, where the debtor claims an exemption for deposit accounts and money or for the loan value of an insurance policy, the debtor should describe all other such funds. This will enable the creditor to obtain information regarding other property of the debtor and will help ensure that the policy of the exemptions laws to protect only a limited amount of the debtor's property is carried out.

The right of the judgment debtor to move for a hearing on the exemption claim should be eliminated as unnecessary. Under the proposed law, if the creditor does not file the notice of opposition with the levying officer and file notice of motion within the 10-day period after service of the claim of exemption, the property will be released and the creditor will be precluded from levying on it again absent a showing of changed circumstances. Accordingly, the debtor has nothing to gain by moving for a hearing on the exemption claim. The 15-day period after the motion is filed, during which the hearing is required to be commenced, should be increased to 20 days so that the debtor may be given 10 days' rather than five days' notice of the hearing.¹²⁹

126. Notice of levy is required to be given the judgment debtor promptly after levy. See Section 683(b) (incorporating the levy provisions in the Attachment Law, Sections 488.310-488.430).

127. The right of the debtor's spouse to claim exemptions is particularly important because generally the community property, and sometimes the spouse's separate property, is liable for the satisfaction of a money judgment. See the discussion under "Property Subject to Enforcement of a Money Judgment" supra.

128. See Section 1013 (general provision for extension of time where notice served by mail).

129. This period should not be subject to the extension of time provided by Section 1013.

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CHAPTER 7. PROPERTY SUBJECT TO ENFORCEMENT OF
MONEY JUDGMENTS AND EXEMPTIONS

Article 1. General Provisions

§ 707.110. Claimant

707.110. As used in this chapter, "claimant" means an individual judgment debtor, a person authorized to exercise the rights of the judgment debtor, and the spouse or a dependent of an individual judgment debtor.

Comment. Section 707.110 specifies the persons who are entitled to claim exemptions on behalf of the judgment debtor. Under former Section 690.50(a), only the judgment debtor and the agent of the judgment debtor were expressly authorized to claim an exemption. The reference to persons authorized to exercise rights of the judgment debtor includes agents, guardians, conservators, and persons holding a power of attorney. Section 707.110 extends this right to the spouse and dependents of a judgment debtor since a major purpose of the exemption laws is to protect such persons.

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§ 707.120. Property subject to enforcement of money judgment

707.120. (a) Except as provided in Section 707.130, the following property is subject to enforcement of a money judgment:

(1) All the property of the judgment debtor.

(2) If the judgment debtor is married:

(i) The separate property of the judgment debtor.

(ii) The community property, to the extent provided in the community property laws.

(iii) The separate property of the spouse of the judgment debtor, to the extent provided in Sections 5121 and 5132 of the Civil Code.

(b) Subject to Section 702.155, property described in subdivision (a) remains subject to enforcement of a money judgment notwithstanding transfer or other disposition if the property is subject to an attachment lien, judgment lien, execution lien, or other lien in favor of the judgment creditor arising in the action or from enforcement of the judgment.

Comment. Subdivision (a)(1) of Section 707.120 supersedes a portion of subdivision (a) of former Section 688. The reference in former law to "any interest" in property and the enumeration of certain types of property ("goods, chattels, moneys or other property") are deleted;

the deletion is not intended to limit in any way the scope of property subject to the enforcement of a money judgment. Generally, property interests that are assignable may, by some procedure, be reached to satisfy a money judgment. See *Murphy v. Allstate Ins. Co.*, 17 Cal.3d 937, 945-46, 553 P.2d 584, 589-90, 132 Cal. Rptr. 424, 429-30 (1976). See also 1 A. Freeman, *Law of Executions* §§ 110, 112, 159, 162 (3d ed. 1900); 2 *id.* §§ 172, 177; 3 *id.* § 425. Except to the extent provided in Article 6 (commencing with Section 705.610) of Chapter 5 (order of assignment of right to future payments), a debt which is uncertain or contingent in the sense that it may never become due and payable may not be reached. See *Javorek v. Superior Court*, 17 Cal.3d 629, 640, 552 P.2d 728, 737, 131 Cal. Rptr. 768, 777 (1976); *Dawson v. Bank of America*, 100 Cal. App.2d 305, 309, 223 P.2d 280, 283 (1950); *Clecak v. Dunn*, 95 Cal. App. 537, 540, 272 P. 1104, 1105 (1928).

Paragraph (2) of subdivision (a) incorporates the special rules governing the liability of a married person's property to the satisfaction of a judgment provided in the community property laws. See Civil Code §§ 5116, 5120, 5121, 5122, 5123, 5131, 5132. Where a spouse's separate property is sought to be applied to the debt of the other spouse incurred for necessities pursuant to the liability provided in Civil Code Sections 5121 and 5132, the spouse whose separate property is sought to be reached must be made a party to the action for the purpose of obtaining a limited personal judgment. *Credit Bureau of Santa Monica Bay Dist., Inc. v. Terranova*, 15 Cal. App.3d 854, 860, 93 Cal. Rptr. 538, 542 (1971). However, if property has been levied upon, the spouse who is not a judgment debtor may claim that the property may not be applied to the satisfaction of the judgment because it is the spouse's separate property. This claim may be made by way of the third-party claims procedure in Chapter 6 (commencing with Section 706.110). *Sherwood v. Cornfield*, 216 Cal. App.2d 364, 369, 31 Cal. Rptr. 264, 267-68 (1963); *Adler v. Blair*, 169 Cal. App.2d 92, ___, 336 P.2d 971, ___ (1959).

Subdivision (b) continues former law. See the last portion of subdivision 1 of former Section 682 (real property subject to judgment lien); *Riley v. Wance*, 97 Cal. 203, 31 P. 1126 (1893) (property subject to attachment lien when owned by eventual judgment debtor); *Puissegur v. Yarbrough*, 29 Cal.2d 409, 412-13, 175 P.2d 830, 832 (1946) (property subject to execution lien when owned by judgment debtor); *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242, 245 (1909) (judgment in supplementary proceedings or creditor's suit relates back to time of garnishment of debt by service of writ of execution); *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 29-30, 87 P.2d 830, 344 (1939) (creditor's suit creates equitable lien on property sought to be reached from time of service of process). For provisions concerning the creation of liens, see Sections 488.500, 488.510 (attachment lien), 486.110 (temporary protective order in attachment), 674 (judgment lien), 703.250 (execution lien), 704. ___ (lien of earnings withholding order), 705.120 (lien of order for examination of judgment debtor), 705.130 (lien of order for examination of judgment debtor's debtor), 705.250 (lien of creditor's suit), 705.340 (receiver's lien), 705.420 (lien of charging order), 705.510 (lien on cause of action and nonfinal judgment), 705.620 (lien of assignment order), 705.780 (lien on money owed judgment debtor as creditor of public entity). See also Section 702.150 (relation back of liens). The introductory clause of subdivision (b) recognizes that a lien may not follow property when it is transferred to a bona fide purchaser. See Section 702.155 and the Comment thereto.

§ 707.130. Property not subject to enforcement of a money judgment

707.130. Property that is not subject to enforcement of a money judgment pursuant to Article 3 (commencing with Section 707.410) or pursuant to any other law may not in any manner be applied toward the satisfaction of a money judgment.

Comment. Section 707.130 supersedes former Section 690(b) which provided that property for which a claim of exemption was not required to be filed was not subject to levy of attachment or execution in any manner. The category of property exempt without filing a claim of exemption is not continued in this title since it does not differ from property which is not subject to enforcement of a money judgment. Property which has been determined to be exempt by a court or which is exempt because the judgment creditor has failed to oppose a claim of exemption may not be applied toward the satisfaction of the judgment without a showing of changed circumstances under Section 707.190 just as is the case with property which is not subject to enforcement of a money judgment. However, if a timely claim of exemption is not made, property described as exempt may be reached. See Section 707.140(c).

Section 707.130 also recognizes that the description of property which is not subject to the enforcement of a money judgment in Article 3 is not comprehensive. For example, property in custodia legis is not subject to execution under certain circumstances. See, e.g., Robbins v. Bueno, 262 Cal. App.2d 79, 68 Cal. Rptr. 347 (1968); North v. Evans, 1 Cal. App.2d 64, 36 P.2d 133 (1934); Hawi Mill & Plantation Co. v. Leland, 56 Cal. App. 224, 205 P. 485 (1922); 5 B. Witkin, California Procedure Enforcement of Judgment §§ 21-23, at 3402-04 (2d ed. 1971). A trademark may only be reached in connection with the business in which it is used. See Ward-Chander Bldg. Co. v. Caldwell, 8 Cal. App.2d 375, 378-79, 47 P.2d 758, ___ (1935). The portion of a cemetery containing human remains is not subject to enforcement of a money judgment. See Peebler v. Danziger, 104 Cal. App.2d 491, ___, 231 P.2d 895, ___ (1951). Other statutes designate certain property as not subject to enforcement of a money judgment. See, e.g., Civil Code § 765 (estates at will); Educ. Code § 21116 (educational endowment funds); Health & Saf. Code §§ 7925 (money from purchase of unused cemetery lands), 32508 (hospital endowment funds); Labor Code §§ 270.5 (property held in trust by logging employer, except on claim by employee), 270.6 (property held in trust by employer of certain salespersons, except on claim by employee). Federal law also precludes the application of certain types of property to the satisfaction of a money judgment. See, e.g., 22 U.S.C. § 1104 (___) (foreign service retirement); 33 U.S.C. § 916 (___) (longshoreman retirement); 42 U.S.C. § 407 (___) (social security); 45 U.S.C. § 2281 (___) (railroad retirement).

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§ 707.140. Applicability of exemptions

707.140. (a) Except as otherwise provided by statute, property that is exempt pursuant to this chapter is exempt from all procedures for the enforcement of a money judgment.

(b) Exemptions do not apply where the judgment to be enforced is for the purchase price of the property or is for the foreclosure of a mortgage or other lien on the property other than a lien created pursuant to this title.

(c) An exemption is waived unless it is claimed within the time provided and pursuant to the applicable procedure.

(d) Exemptions shall be determined as of the date the judgment debtor makes an exemption claim.

Comment. Subdivision (a) of Section 707.140 makes clear that the exemptions provided by this chapter apply regardless of the procedure selected for the enforcement of a money judgment. This provision supercedes subdivision (a) of former Section 690. However, certain exemptions do not apply where a judgment for child or spousal support is being enforced. See Section 707.170.

Subdivision (b) continues the substance of former Section 690.52 and the last sentence of former Section 690.28.

Subdivision (c) continues the principle of subdivision (a) of former Section 690 but is broader in its application since it is not limited to exemptions provided in this chapter. Former law also referred to exemptions "from execution" whereas this section makes clear that exemptions apply in all proceedings for the enforcement of a money judgment. See subdivision (a). Where property is levied upon by a levying officer, the applicable procedure for claiming an exemption is that provided in Article 2 (commencing with Section 707.310) of this chapter. This procedure is also incorporated in other instances: e.g., where property is attached under an ex parte writ of attachment (see Section 485.610) or where a warrant or notice of levy for the collection of taxes is treated as a writ of execution (see Section 707.220). If the property is sought to be reached by some process other than a levy under a writ, such as an order in examination proceedings (see Sections 705.110-705.190) or an assignment order (see Sections 705.610-705.630), the procedures for claiming exemptions provided by this chapter do not apply. In these situations, a court hearing is required and exemption claims will be determined at such time or later upon noticed motion. See, e.g., Sections 705.160(c) (determination of exemption claim in examination proceedings).

Subdivision (d) makes clear that the exemption claimed is to be determined as of the time a claim of exemption is made pursuant to the applicable procedure. This codifies the result in *Medical Fin. Ass'n v. Rambo*, 33 Cal. App.2d Supp. 756, 758-60, 86 P.2d 159, ___ (1939) and rejects the holding in *California United States Bond & Mort. Corp. v. Grodzins*, 139 Cal. App. 240, 242-43, 34 P.2d 193, ___ (1934) (portion of life insurance benefits which exceeded exempt amount when received was earmarked for creditors even though benefits remaining at time of levy were below exempt amount). In order to take advantage of the principle stated in subdivision (d), the judgment debtor must trace the funds for which an exemption is claimed. See Section 707.180 (tracing).

§ 707.150. Exemptions cumulative

707.150. (a) Property may be allocated among exemptions so as to exempt the maximum amount of property.

(b) If property is exempt under more than one provision, the claimant may select which provision is to be applied to the property.

Comment. Section 707.150 makes clear that a judgment debtor is entitled to claim as many exemptions as the law permits. This is a reflection of the policy that exemption statutes should be liberally applied. See *Holmes v. Marshall*, 145 Cal. 777, 778-79, 79 P. 534, 535 (1905); *White v. Gobey*, 130 Cal. App. Supp. 789, ___, 19 P.2d 876, ___ (1933). Under the principles stated in this section, if one item or fund may be claimed as exempt in more than one category of exemption, it may be claimed as exempt in one category and another category of exemption may be used to shield other property. For example, if a motor vehicle which the judgment debtor uses in a trade meets the criteria of the exemption provided in Section 707.430 (general motor vehicle exemption), the judgment debtor may claim it as exempt under that provision and apply the entire \$2,500 exemption in Section 707.470 to other tools of the trade, including another motor vehicle. However, the determination of an exemption based upon the amount reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor must take account of other exempt property. See Sections 707.500(c) (life insurance benefits), 707.500(d) (wrongful death award), 707.510(b) (retirement benefits), 707.520(c) (unemployment benefits), 707.530(a) (disability and health benefits), 707.540 (personal injury award). It should be noted that there are specific exceptions to this general principle. For example, a judgment debtor may not claim the full dwelling exemption and also the additional \$10,000 exemption for the loan value of unmaturing life insurance. See Section 707.500(b), (e). Nor may a judgment debtor claim a \$2,500 exemption for the tools of a trade and also a \$2,500 exemption for indemnification for the loss of tools. See Section 707.470.

§ 707.160. Exemption rights of married judgment debtors

707.160. Where the property of a married person is sought to be applied toward the satisfaction of a money judgment, the married person and the spouse are entitled to only one set of exemptions, regardless of whether one or both spouses are judgment debtors.

Comment. Section 707.160 is new. The general policy of the exemption laws is to provide for the support and welfare of the debtor and the debtor's family. *Bailey v. Superior Court*, 215 Cal. 548, 554, 11 P.2d 865, 867 (1932). Accordingly, Section 707.160 makes clear that only one set of exemptions may be claimed by spouses. This limitation applies regardless of whether one or both spouses are judgment debtors.

or whether the property that is liable for the satisfaction of the judgment is community or separate property. See Section 707.120 (property subject to enforcement of a money judgment).

A nondebtor spouse who claims that the community property or separate property is not liable for the satisfaction of the judgment pursuant to the community property laws may not assert the claim pursuant to this chapter. Such a claim is normally asserted by way of the third-party claims procedure in Chapter 6 (commencing with Section 706.110). See the Comment to Section 707.120.

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§ 707.170. Exemptions inapplicable against support judgment

707.170. (a) The exemptions provided by this chapter do not apply where the judgment being enforced is for child or spousal support.

(b) Where property for which an exemption is provided by this chapter is sought to be applied toward the satisfaction of a judgment for child or spousal support, the court shall, upon motion of an interested party, make an equitable division of the property that takes into account the needs of all the persons the judgment debtor is required by law to support. The court shall effectuate the equitable division by an order determining the amount of the property to be applied toward the satisfaction of the judgment.

(c) The person making the motion shall notify the levying officer of the motion and the levying officer shall not dispose of the property until receipt of the court order for application of the property.

Comment. Subdivision (a) of Section 707.170 provides a general exception to the application of the exemptions provided by Sections 707.410-707.580. Former Section 690.18 provided such an exception applicable only to the exemption of pensions, annuities, and retirement, disability, death, or other benefits, from a public entity or, in the case of child support only, under the federal Employee Retirement Income Security Act of 1974 [unless amended by AB 1969, 1978 session].

Subdivision (b) codifies and makes generally applicable the case law concerning the equitable division of earnings levied upon to enforce a support judgment. See *Rankins v. Rankins*, 52 Cal. App.2d 231, 234-35, 126 P.2d 125, ___ (1942).

Subdivision (c) requires notice of the motion to be given the levying officer in order to preserve the status quo until the court makes its order.

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§ 707.180. Tracing exempt amounts

707.180. (a) An exempt amount remains exempt to the extent that it may be traced through deposit accounts and in the form of cash and the equivalent of cash.

(b) The tracing of exempt amounts in deposit accounts shall be accomplished by application of the principle of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the claimant.

(c) The claimant has the burden of tracing exempt amounts.

Comment. Section 707.180 provides the general rule concerning the duration of an exemption for payments to the judgment debtor through deposit accounts and in the form of cash and its equivalents, including cashier's checks, certified checks, and money orders. Subdivision (a) is consistent with decisions under prior law. See, e.g., *Kruger v. Wells Fargo Bank*, 11 Cal.3d 352, 367, 521 P.2d 441, ___, 113 Cal. Rptr. 449, ___ (1974) (unemployment benefits in checking account); *Holmes v. Marshall*, 145 Cal. 777, 782-83, 79 P. 534, ___ (1905) (life insurance benefits deposited in bank account); *Bowman v. Wilkinson*, 153 Cal. App.2d 391, 395-96, 314 P.2d 574, ___ (1957) (life insurance check converted to cashier's check and deposited in attorney's trust account). See also former Sections 690.18(a) (pension benefits exempt in debtor's possession and when deposited), 690.30 (direct deposit of social security payments); *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 416-17 (1973) (disability benefits in bank account); *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 162 (1962) (veterans' benefits in savings and loan account). This section applies to any fund which is exempt as provided in this chapter. See Sections [707.410 (proceeds from homestead)], 707.430 (proceeds from motor vehicle), 707.470 (proceeds from tools of trade), 707.480 (deposit accounts and money), 707.490 (deposit account into which Social Security benefits are paid), 707.500 (life insurance benefits), 707.510 (retirement benefits), 707.520 (unemployment benefits), 707.530 (disability and health benefits), 707.550 (worker's compensation), 707.560 (aid), and 707.570 (relocation benefits). Proceeds from a dwelling, motor vehicle, or tools may be traced only during the applicable period. See Sections [707.410 (six months in case of dwelling)], 707.430 (90 days in case of motor vehicle), and 707.470 (90 days in case of tools).

Subdivision (b) permits the claimant to select the manner of tracing exempt amounts. This provision is derived from Section 9(c) of the Uniform Exemptions Act (1976).

Subdivision (c) states the rule under former law concerning the burden of tracing exempt funds. This is consistent with the general burden on the claimant in exemption proceedings. See Section 707.380(b).

100/913

§ 707.190. Prohibition against reaching property determined to be exempt

707.190. If the judgment creditor has failed to oppose a claim of exemption within the time allowed by Section 707.340 or if property has been determined to be exempt pursuant to a court order, the judgment creditor may not levy upon or otherwise seek to apply the property toward the satisfaction of the same money judgment unless the judgment

creditor shows, upon noticed motion, that a change in circumstances occurred after the property was determined to be exempt, or after the time for opposing a claim of exemption had expired, that renders the property not exempt in whole or in part.

Comment. Section 707.190 is new. A court order determining exemptions may be issued pursuant to Sections _____.

100/905

§ 707.200. Liability for interference with exemption rights

707.200. (a) Except as provided in Section 707.190, the judgment debtor may apply to the court on noticed motion for an order assessing damages caused by the application or attempted application of the following types of property toward the satisfaction of the judgment:

(1) Property which is exempt because the judgment creditor has previously failed to oppose a claim of exemption within the time allowed by Section 707.340.

(2) Property which has previously been determined by court order to be exempt.

(3) Property which is not subject to enforcement of a money judgment.

(b) Damages awarded pursuant to subdivision (a) are exempt both before and after collection. Upon application of the judgment debtor, the court may order the damages awarded against the judgment creditor set off against the judgment.

Comment. Section 707.200 is new. It provides an expeditious remedy through which the judgment debtor may be compensated for improper application or attempted application to the satisfaction of the judgment of exempt property or property not subject to enforcement of a money judgment. This remedy is in addition to other remedies such as abuse of process or injunction. See *Czap v. Credit Bureau of Santa Clara Valley*, 7 Cal. App.3d 1, 5-7, 86 Cal. Rptr. 417, ___ (1970). A court order determining exemptions may be issued pursuant to Sections _____.

968/995

§ 707.210. Adjustments of dollar amounts of exemptions

707.210. (a) Except as provided in subdivision (e), as used in this section:

(1) "Index" means an index stated as the average of the Consumer Price Index (all items, 1967 equals 100) for the Los Angeles-Long Beach

area and for the San Francisco-Oakland area compiled by the Bureau of Labor Statistics of the United States Department of Labor.

(2) "Reference Base Index" means the Index for June [1980--June of the even-numbered year immediately preceding the operative date of this section].

(b) The dollar amounts of the exemptions provided in this chapter change as provided in this section to correspond to changes in the cost of living as reflected in changes in the Index. The dollar amounts of the exemptions change on January 1 of each odd-numbered year if the difference between the Index for the preceding June and the Reference Base Index is not less than 10 percent of the Reference Base Index.

(c) The dollar amounts of exemptions provided in this chapter change by a percentage which is the highest multiple of 10 percent not exceeding the difference computed pursuant to subdivision (b) between the Index for the preceding June and the Reference Base Index.

(d) The Judicial Council shall compute the changes in dollar amounts and adopt a rule announcing the changes before December 1 immediately preceding the day on which the change occurs. A change in the amount of exemptions applies to claims of exemption made on or after the day on which the change occurs.

(e) If the Index is revised to change its base year, a revised Reference Base Index shall be determined by multiplying the Reference Base Index by the rebasing factor furnished by the Bureau of Labor Statistics of the United States Department of Labor. If the Index is otherwise revised, the percentage of change shall be calculated on the basis of the revised Index. If the Index is superseded, the change in the cost of living shall be calculated on the basis of an index represented by the Bureau of Labor Statistics as most accurately reflecting changes in the purchasing power of the dollar for consumers.

Comment. Section 707.210 is new so far as concerns the laws relating to exemptions from enforcement of money judgments. It is derived in part from other provisions in California law which rely upon the Consumer Price Index for a determination of adjustments in the cost of living. See Govt. Code §§ 9360.9 (legislative retirement system), 21221(c) (public employees' retirement benefits), 31870 (county employee's retirement benefits), 82001 (campaign spending limits); Welf. & Inst. Code §§ 11453 (AFDC payments), 12201(i) (aged, blind, and disabled payments). Section 707.210 is also based on provisions in some uniform laws. See Uniform Consumer Credit Code § 1.106 (1974 version); Uniform

Exemptions Act § 2. See also [11 U.S.C. § 104 (Supp. __ 197_) (adjustments of dollar amounts under bankruptcy Act determined by Judicial Conference based on change in cost of living)].

Under Section 707.210, the dollar amounts of exemptions provided in this chapter automatically change on January 1 of each odd-numbered year if the change in the Index (as defined in subdivision (a)(1)) is great enough. This change in the Index is figured in June of even-numbered years. See subdivisions (a)(2), (b). The Judicial Council is given the responsibility of determining whether the requisite change in the Index has occurred and the amount of the change in the dollar amount of each of the exemptions provided by this chapter. See subdivision (d).

It should be noted that this section does not apply to exemptions not provided by this chapter. Subdivision (b). Hence, the exemption of earnings from garnishment pursuant to Chapter 4 (Sections 704.110-704.____) is not changed in the manner stated here. Similarly, exemptions provided in this chapter which depend on Chapter 4 for a determination of the exempt amount are not governed by this section.

The following examples illustrate the operation of this section in the case of the exemption of deposit accounts provided by Section 707.460:

(1) Assume that the Reference Base Index (which, pursuant to subdivision (a)(2), is the Index for June 1980) is 190. If the Index for June 1982 is 205, the change from the Reference Base Index is approximately eight percent. Since the change is less than 10 percent, no change in dollar amounts of exemptions occurs. Note that the calculation is made on the basis of a percentage change in the Index, not on the basis of a change in Index points.

(2) If the Index for June of 1984 is 222, the change from the Reference Base Index of 190 is approximately 17 percent so a change in the amount of the exemption occurs. The portion in excess of 10 percent, however, is disregarded pursuant to subdivision (c). Ten percent of \$2,000 is \$200 so the deposit account exemption is \$2,200 beginning on January 1, 1985.

(3) If the Index for June of 1986 is 226, the change from the Reference Base Index of 190 is approximately 19 percent. The portion in excess of 10 percent is disregarded, indicating a 10-percent change in the dollar amount of exemptions. However, no change in exemption amounts occurs because the change was already made in the previous adjustment.

(4) If the Index for June of 1988 is 234, the change from the Reference Base Index of 190 is approximately 23 percent so a change should occur. The portion of 23 percent in excess of a multiple of 10 percent (here three percent) is disregarded so a 20-percent change in the exemption is indicated. Twenty percent of \$2,000 is \$400 so the deposit account exemption is \$2,400 beginning on January 1, 1989.

(5) If the Index for June of 1990 is 220, the change from the Reference Base Index of 190 is approximately 16 percent. Note that a decline in the Index from 1988 to 1990 indicates an increase in the purchasing power of the dollar although it is still an overall decrease since the Reference Base Index of 190 in 1980. The portion in excess of 10 percent is disregarded so a 10-percent change is indicated in the dollar amount of the exemption as stated in Section 707.480. Ten percent of \$2,000 is \$200 so the deposit account of exemption is \$2,200 beginning on January 1, 1991.

(6) If the Bureau of Labor Statistics revises the Index in 1990 by changing the components of the Consumer Price Index, the revised Index

should be used as provided in subdivision (e). If a new base period is selected, such as 1990 equals 100, the Reference Base Index will have to be revised when the determination of the changes is made in 1992. In this hypothetical case, the rebasing factor would be approximately 0.455. The revised Reference Base Index is 86.4 (190 times 0.455). If the Index for June of 1992 is 112 (1990 equals 100), the change from the revised Reference Base Index is approximately 31 percent. A 30-percent change in the amount of the exemption provided by statute is indicated so the deposit account exemption is \$2,600 beginning on January 1, 1993.

4456

§ 707.220. Exemptions from tax liability

707.220. (a) Except as otherwise provided in subdivision (c), the provisions of this chapter apply where a warrant or notice of levy is issued by the state, or a department or agency thereof, pursuant to Section 1755 or 1785 of the Unemployment Insurance Code, or Section 6776, 7881, 9001, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code, for the collection of tax liability. For the purpose of this section, "judgment creditor" means the state, or a department or agency thereof, and "judgment debtor" means the tax debtor.

(b) Claims of exemption shall be heard and determined in the superior court of the county, where the property is levied upon as if the property were levied upon under a writ of execution issued from such court.

(c) If the levy is not made by a levying officer, the claim of exemption shall be made upon noticed motion filed with the court within 10 days after the judgment debtor receives notice of levy.

Comment. Subdivisions (a) and (b) of Section 707.220 continue the substance of former Section 690.51. Where a levy is not made by a levying officer, such as pursuant to Unemployment Insurance Code Section 1755, the exemption proceedings are initiated in the court on noticed motion pursuant to subdivision (c).

Article 2. Procedure for Claiming Exemptions After Levy

§ 707.310. Applicable procedure for claiming exemptions

707.310. Except as otherwise provided by statute, where property has been levied upon by a levying officer, the property may be claimed to be exempt as provided in this article.

Comment. Section 707.310 indicates the scope of the application of the exemption procedure provided in this article. As noted in the introductory clause, special exemption procedures apply in certain cases where property has been levied upon. See, e.g., Sections 704.____ (garnished earnings), 704.410 (dwellings), 707.490 (deposit accounts consisting of Social Security benefits). This continues the introductory portion of former Section 690.50(a).

16/973

§ 707.320. Claim of exemption

707.320. (a) The claimant shall, within 10 days after the date the notice of levy was mailed or delivered to the judgment debtor, file with the levying officer a claim of exemption, together with a copy thereof.

(b) The claim of exemption shall be executed under oath and shall include all of the following:

(1) The name of the claimant and the address where service by mail may be made upon the claimant of the notice of opposition to the claim of exemption.

(2) The name and address of the judgment debtor if the claimant is not the judgment debtor.

(3) A description of the property which is claimed to be exempt. If an exemption is claimed pursuant to Section 707.430, 707.450, or 707.470, the claimant shall describe all other property of the same type and state which items are claimed as exempt. If an exemption is claimed pursuant to Section 707.480 or 707.500(b), the claimant shall describe all other funds of the same type.

(4) A statement of all sources of income of the judgment debtor and of the judgment debtor's spouse and dependents, if the property is claimed as exempt pursuant to a provision exempting property to the extent it is necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

(5) A citation of the provision of this chapter or other law upon which the claim is based.

(6) A statement of the facts necessary to support the claim.

(7) Points and authorities supporting any legal issues raised.

Comment. Section 707.320 supersedes subdivision (a) of former Section 690.50. The form of the claim of exemption is prescribed by the Judicial Council pursuant to Section 702.280. See Section 707.110 ("claimant" defined).

16/972

§ 707.330. Notice of claim of exemption

707.330. Upon the filing of the claim of exemption, the levying officer shall promptly mail to the judgment creditor both of the following:

(a) A copy of the claim of exemption.

(b) A notice of claim of exemption which states that the claim of exemption has been filed and that the levying officer will release the property unless a notice of opposition to the claim of exemption is filed with the levying officer by the judgment creditor within 10 days after the date of the mailing of the notice of claim of exemption.

Comment. Section 707.330 supersedes subdivision (b) of former Section 690.50. The five-day period provided by former law for giving the notice of opposition has been increased to 10. See Section 702.200 (personal delivery permitted). The form of the notice of claim of exemption is prescribed by the Judicial Council pursuant to Section 702.280.

968/708

§ 707.340. Contest of exemption claim

707.340. In order to contest the claim of exemption, the judgment creditor shall, within 10 days after the date of the mailing of the notice of claim of exemption (1) file with the levying officer a notice of opposition to the claim of exemption and (2) file with the court a notice of motion for an order determining the claim of exemption.

Comment. Section 707.340 supersedes portions of subdivisions (c) and (e) of former Section 690.50. Section 707.340, unlike former law, does not provide the claimant with the right to request a hearing on the claim of exemption since, if the judgment creditor does not file a notice of opposition and file a notice of motion for an order determining the claim of exemption within the time provided, the property is released pursuant to Section 707.370, making a hearing unnecessary. Consequently, the delay between the filing of the counteraffidavit and the notice of motion provided by subdivision (e) of former Section 690.50 has been eliminated.

The 10-day period for filing the notice of opposition and notice of motion runs from the date of mailing the notice of claim of exemption. This specific provision is intended to take precedence over the general provisions of Section 1013 (extra time to act after mail service). Cf. Labarthe v. McRae, 35 Cal. App.2d 734, 97 P.2d 251 (1939) (provision for running of time for notice of intention to move for new trial from receipt of notice of entry of judgment controls over Section 1013).

16/971

§ 707.350. Contents of notice of opposition

707.350. The notice of opposition to the claim of exemption shall be executed under oath and shall include all of the following:

- (a) The name and address of the judgment creditor.
- (b) The date of mailing of the notice of claim of exemption.
- (c) An allegation that the property is not exempt within the meaning of the provision of this chapter or other law relied upon or that the value of the judgment debtor's interest in the property claimed to be exempt, exclusive of liens and encumbrances superior to the judgment creditor's lien, is in excess of the amount stated in the applicable provision.
- (d) A statement of the facts necessary to support the allegation.
- (e) Points and authorities supporting any legal issues raised.

Comment. Section 707.350 supersedes a portion of subdivision (c) of former Section 90.50. The form of the notice of opposition is prescribed by the Judicial Council pursuant to Section 702.280. The value of the judgment debtor's interest in the property is determined by its market value, not its forced sale value. See Wade v. Rathbun, 23 Cal. App.2d Supp. 758, ___, 67 P.2d 767, ___ (1937).

16/970

§ 707.360. Notice of motion for hearing

707.360. (a) If the notice of opposition to the claim of exemption and the notice of motion are filed as provided by Section 707.340, the hearing on the motion shall be held not later than 20 days from the date the notice of motion was filed unless continued by the court for good cause.

(b) Not less than 10 days prior to the hearing, the judgment creditor shall mail notice of the hearing to the levying officer and shall mail a notice of the hearing and a copy of the notice of opposition to the claim of exemption to the claimant and to the judgment debtor, if other than the claimant. Mailing is deemed made when the notice of the

hearing and a copy of the notice of opposition to the claim of exemption are deposited in the mail, postage prepaid, addressed to the person to whom notice is to be mailed at the address stated in the claim of exemption. The judgment creditor shall file proof of mailing with the court.

(c) After receiving the notice of the hearing and before the date set for the hearing, the levying officer shall file the claim of exemption and the notice of opposition to the claim of exemption with the court.

Comment. Section 707.360 supersedes portions of subdivisions (c) and (e) of former Section 690.50. The 10-day period for service of the notice of hearing is not subject to Section 1013. See Welden v. Davis Auto Exch., 153 Cal. App.2d 515, 521-22, 315 P.2d 33, 37 (1957). See Section 707.110 ("claimant" defined).

16/969

§ 707.370. Release

707.370. If the levying officer does not receive a notice of opposition to the claim of exemption within the time prescribed by Section 707.340 and a notice of the hearing within the time prescribed by Section 707.360, the levying officer shall immediately release the property to the extent it is claimed to be exempt in the manner provided by Section 703.290.

Comment. Section 707.370 supersedes subdivisions (d) (release if no counteraffidavit served) and (f) (release if no motion) of former Section 690.50.

16/968

§ 707.380. Hearing and order

707.380. (a) The claim of exemption and notice of opposition to the claim of exemption filed with the court constitute the pleadings, subject to the power of the court to permit amendments in the interests of justice. The claim of exemption shall be deemed controverted by the notice of opposition to the claim of exemption.

(b) At a hearing under this section, the claimant has the burden of proof.

(c) If the court is not satisfied that sufficient facts are shown by the claim of exemption, the notice of opposition to the claim of exemption, or other evidence, the court shall order the hearing continued for the production of other evidence, oral or documentary. No findings are required in a proceeding under this section.

(d) At the conclusion of the hearing, the court by order shall determine whether or not the property is exempt, in whole or in part. The order is determinative of the right of the judgment creditor to apply the property toward the satisfaction of the judgment. Where some, but not all, of the funds of the type for which an exemption may be claimed pursuant to Section 707.480 or 707.500(b) have been levied upon, the court shall first apply the exemption to the funds which have not been levied upon.

(e) The clerk shall immediately transmit a copy of the order entered in the court to the levying officer. The levying officer shall release the property in the manner provided by Section 703.290, or apply the property toward the satisfaction of the judgment, in compliance with the order.

Comment. Subdivisions (a)-(d) of Section 707.380 continue the substance of subdivision (i) of former Section 690.50, with the exception of the jury trial provision, which is not continued, and the provision requiring court order of disposition of property and proceeds, which is unnecessary. See, e.g., Section 703.750 (disposition of proceeds).

Subdivision (e) continues the substance of the first sentence of subdivision (j) of former Section 690.50.

See Section 707.110 ("claimant" defined).

101/133

§ 707.385. Extension of time

707.385. If the court extends the time allowed for an act to be done under this article, written notice of the extension shall be given promptly to the levying officer.

Comment. Section 707.385 continues the substance of a portion of former Section 690.50(1). The portion of subdivision (1) relating to notice to the opposing party is not continued. See Section 1054 (general provision for extension of time).

16/967

§ 707.390. Appeal

707.390. An appeal lies from any order made under this article and shall be taken in the manner provided for appeals in the court in which the proceeding takes place.

Comment. Section 707.390 continues the substance of subdivision (n) of former Section 690.50.

§ 707.395. Disposition of property during pendency of proceedings

707.395. (a) The levying officer may not release the property until the final determination of the claim of exemption. The property may not be sold prior to the final determination except pursuant to an order of the court.

(b) At any time while the exemption proceedings are pending, upon motion of the judgment creditor or a claimant, or upon its own motion, the court may (1) order the sale of any perishable property and direct the disposition of the proceeds of the sale and (2) make such other orders as may be proper under the circumstances of the case.

(c) An order made under subdivision (b) may be modified or vacated by the court at any time during the pendency of the exemption proceedings upon such terms as are just.

Comment. Subdivision (a) of Section 707.395 continues the substance of subdivision (h) and the second sentence of subdivision (j) of former Section 690.50. It requires, as did former Section 690.50(h), that the levying officer preserve the status quo by maintaining the lien on the property.

Subdivisions (b) and (c) continue the substance of subdivision (g) of former Section 690.50.

See Section 707.110 ("claimant" defined).

Article 3. Exempt Property§ 707.410. Dwelling

707.410. [The drafting of this section awaits the conclusions of a consultant's study and Commission action thereon.]

4457

§ 707.420. Cemetery plot

707.420. (a) As used in this section:

(1) "Cemetery" has the meaning provided by Section 7003 of the Health and Safety Code.

(2) "Family plot" is a plot which satisfies the requirements of Section 8650 of the Health and Safety Code.

(3) "Plot" has the meaning provided by Section 7022 of the Health and Safety Code.

(b) A family plot is not subject to the enforcement of a money judgment.

(c) Except as provided in subdivision (d), a cemetery plot for two persons is exempt.

(d) Land held for the purpose of sale or disposition as cemetery plots or otherwise is not exempt.

(e) Notwithstanding subdivision (b) of Section 707.140, property dedicated as a cemetery by a cemetery authority is not subject to enforcement of a claim on a debt due from an individual owner of a cemetery plot.

Comment. Section 707.420 supersedes portions of former Section 690.24 which provided an exemption for a cemetery lot not exceeding one-quarter of an acre in size or, in the case of a religious or benevolent association or corporation, five acres in size. Subdivision (b) recognizes that family plots are inalienable. See Health & Saf. Code § 8650. Subdivision (c) exempts a cemetery lot for two persons which is consistent with the spouse's vested right of interment. See Health & Saf. Code § 8601. Subdivision (d) continues the substance of the third paragraph of former Section 690.24. Subdivision (e) continues the substance of the fourth paragraph of former Section 690.24. The portion of land containing graves of human beings is not subject to enforcement of a money judgment. See *Peebler v. Danziger*, 104 Cal. App.2d 491, 493, 231 P.2d 895, ___ (1951).

§ 707.430. Motor vehicle; proceeds

707.430. (a) One motor vehicle is exempt if its value does not exceed one thousand five hundred dollars (\$1,500), exclusive of liens and encumbrances superior to the judgment creditor's lien. The fair market value of the motor vehicle may be determined by reference to used car price guides customarily used by California automobile dealers.

(b) If the motor vehicle is sold, or if it has been lost, damaged, or destroyed, the proceeds of sale or of insurance or other indemnification are exempt in the amount of one thousand five hundred dollars (\$1,500) for a period of 90 days after the sale, in the case of a voluntary sale, or after receipt of the proceeds by the judgment debtor, in all other cases, notwithstanding subdivision (c) of Section 707.140, if the judgment debtor has only one motor vehicle, no claim of exemption need be made for proceeds of an execution sale of the motor vehicle.

Comment. Section 707.430 supersedes subdivisions (a) and (e) of former Section 690.2. Subdivision (a) of this section increases the motor vehicle exemption from \$500 to \$1,500. Under subdivision (a), the court is permitted to refer to used car price guides, but is not required to do so as under former Section 690.2(a). See Section 707.210 (adjustments of dollar amounts of exemptions).

Subdivision (b) provides an exemption for proceeds of sale, or of insurance or other indemnification, whereas subdivision (e) of former Section 690.2 exempted "any amount representing the motor vehicle exemption." Cf. *Houghton v. Lee*, 50 Cal. 101, ___ (1875) (exemption of proceeds from insurance on homestead). Subdivision (b) also makes clear that the 90-day period during which proceeds are exempt runs from the receipt of the proceeds by the judgment debtor except in the case of a voluntary sale in which case the period runs from the date of sale. This principle is derived from the provisions exempting the proceeds from the sale of a homestead. See Civil Code §§ 1257, 1265; *Chase v. Bank of America*, 227 Cal. App. 2d 259, 263-64, 38 Cal. Rptr. 567, ___ (1964).

The second sentence of subdivision (b) makes clear that the exemption of proceeds from an execution sale is not waived for failure to make a timely claim where the debtor has only one motor vehicle. See Section 707.140(c). Section 703.750 requires distribution of such proceeds to the judgment debtor before the judgment creditor. See also Section 703. ___ (sale price required to exceed liens, costs, and proceeds exemption).

It should be noted that this exemption protects only one motor vehicle where the judgment debtor has more than one motor vehicle but that another motor vehicle may be exempt pursuant to Section 707.470 (tools of trade). See Section 707.150 (exemptions cumulative).

§ 707.440. Household furnishings, wearing apparel, personal effects

707.440. Household furnishings, appliances, wearing apparel, provisions, and other personal effects, reasonably necessary for one household and personally used or procured for use by the judgment debtor and members of the judgment debtor's household at their principal place of residence, are exempt if the judgment debtor's interest, not exceeding three hundred dollars (\$300) per item in value, exclusive of liens and encumbrances superior to the judgment creditor's lien.

Comment. Section 707.440 supersedes the first sentence of former Section 690.1 which provided an exemption for like items "ordinarily and reasonably necessary to, and personally used by, the debtor and his resident family." Section 707.440 continues the reasonably necessary standard in modified form but places a limit on the value of the item. This value limitation, in conjunction with the standard of reasonably necessary items for one household, is intended to eliminate the unfairness inherent in the station in life test as applied in cases such as *Independence Bank v. Heller*, 275 Cal. App.2d 84, 79 Cal. Rptr. 368 (1969), and *Newport Nat'l Bank v. Adair*, 2 Cal. App.3d 1043, 83 Cal. Rptr. 1 (1969).

§ 707.450. Jewelry, heirlooms, works of art

707.450. Jewelry, heirlooms, and works of art are exempt to the extent that their aggregate value does not exceed five hundred dollars (\$500), exclusive of liens and encumbrances superior to the judgment creditor's lien.

Comment. Section 707.450 provides a \$500 exemption for items likely to be of sentimental value. This section supersedes portions of former Section 690.1 which provided an exemption for wearing apparel and furnishings "ordinarily and reasonably necessary to, and personally used by, the debtor and his resident family" and an exemption for works of art "of or by the debtor and his resident family." The property exempt under Section 707.450 depends upon an estimation of its value rather than upon its being ordinarily and reasonably necessary to the judgment debtor. It should be noted that jewelry, heirlooms, and works of art may also be exempt under the exemption for household furnishings, wearing apparel, and personal effects, not exceeding \$300 in value per item provided by Section 707.440. See Section 707.210 (adjustments of dollar amounts of exemptions).

§ 707.460. Health aids

707.460. Health aids reasonably necessary to enable the judgment debtor or a spouse or dependent of the judgment debtor to work or sustain health and prosthetic and orthopedic appliances are exempt.

Comment. Section 707.460 supersedes former Section 690.5 which exempted prosthetic and orthopedic appliances used by the debtor. Section 707.460 is based on Section 5(2) of the Uniform Exemptions Act (1976). The requirement that health aids be reasonably necessary to enable the individual to work or sustain health permits the exemption of such items as a wheel chair for a person unable to walk to work, an air conditioner for a person afflicted with asthma, or an elevator for a person unable to climb stairs, but does not permit the exemption of a swimming pool, sauna, bicycle, golf clubs, or gymnastic equipment merely because their use is conducive to maintaining good health.

045/222

§ 707.470. Tools, etc., used in trade, business, or profession; proceeds

707.470. (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one vehicle, one vessel, and other personal property reasonably necessary to and actually used by the judgment debtor or the judgment debtor's spouse in the exercise of the trade, business, or profession by which the judgment debtor or the judgment debtor's spouse earns a livelihood are exempt to the extent that their aggregate value does not exceed two thousand five hundred dollars (\$2,500), exclusive of liens and encumbrances superior to the judgment creditor's lien.

(b) If an item exempt pursuant to subdivision (a) is sold, or if it has been lost, damaged, or destroyed, the proceeds of sale or of insurance or other indemnification are exempt in an amount of two thousand five hundred dollars (\$2,500), less the value of other items exempt pursuant to subdivision (a), for a period of 90 days after the sale, in the case of a voluntary sale, or after receipt of the proceeds by the judgment debtor, in all other cases.

Comment. Subdivision (a) of Section 707.470 continues the substance of former Section 690.4 and a portion of former Section 690.17 (building materials not exceeding \$1,000). See Section 707.210 (adjustments of dollar amounts of exemptions).

Subdivision (b) provides an exemption for the proceeds of sale or of insurance or other indemnification analogous to that provided by Section 707.430(b).

27/367

§ 707.480. Deposit accounts and money

707.480. Any combination of deposit accounts and money is exempt in the maximum aggregate amount of two thousand dollars (\$2,000).

Comment. Section 707.480 supersedes former Sections 690.7 (\$1,000 of savings deposits in, shares or other accounts in, or shares of stock of, savings and loan associations) and 690.21 (inmate's trust account) and former Financial Code Section 15406 (\$1,500 of shares or certificates in credit unions), and extends the exemption to cover bank accounts. See Section 701.____ ("deposit account" defined). Section 707.480 also aggregates the deposit account exemption with money. Under this section, \$2,000 is exempt regardless of whether the account or share is in a bank, savings and loan association, or credit union, or any combination thereof. See Sections 703.____ (order determining right to levy on deposit accounts in amounts less than \$2,000), 707.490 (exemption of deposit account into which social security payments are directly deposited). See also Section 707.210 (adjustment of dollar amounts of exemptions).

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§ 707.490. Deposit account in which social security payments are directly deposited

707.490. (a) For the purposes of this section, "payments authorized by the Social Security Administration" means regular retirement and survivors' benefits, supplemental security income benefits, coal miners' health benefits, and disability insurance benefits.

(b) A deposit account in which payments authorized by the Social Security Administration are directly deposited by the United States government is not subject to the enforcement of a money judgment in the maximum amount of five hundred dollars (\$500) where one depositor is the designated payee of the directly deposited payments or seven hundred fifty dollars (\$750) where two or more depositors are the designated payees of the directly deposited payments unless such depositors are joint payees of directly deposited payments which represent a benefit to only one of the depositors in which case five hundred dollars (\$500) is not subject to the enforcement of a money judgment.

(c) A deposit account consisting of an amount in excess of the amount not subject to the enforcement of a money judgment pursuant to subdivision (b) is exempt to the extent that such account consists of payments authorized by the Social Security Administration.

(d) The financial institution shall either place the excess amount in a suspense account or otherwise prohibit withdrawal of the excess amount pending notification of the judicial determination of the exempt status of the excess amount and shall notify the levying officer in writing of the nature and balance of the deposit account of the judgment

debtor within 10 business days after the levy. Promptly upon receipt of the notice, the levying officer shall notify the judgment creditor of the nature and balance of the deposit account.

(e) Notwithstanding Article 2 (commencing with Section 707.310), an excess amount exempt under subdivision (c) shall be determined as follows:

(1) A judgment creditor who desires to claim that the excess amount is not exempt shall deliver an affidavit alleging that the excess amount is not exempt to the levying officer within five days after the levying officer notifies the judgment creditor of the nature and balance of the deposit account. The affidavit shall be in the form of the notice of opposition provided by Section 707.350, and a hearing shall be set and held, and notice given, as provided by Sections 707.360 and 707.380. The judgment debtor shall file a counteraffidavit supporting the exemption not later than 10 days before the date set for the hearing and mail a copy to the judgment creditor and to the levying officer. For the purpose of this paragraph, the "notice of opposition to the claim of exemption" in Sections 707.350, 707.360, and 707.380 means the affidavit under this paragraph.

(2) If the judgment creditor does not deliver the affidavit to the levying officer and give notice to the judgment debtor within the time provided, the property shall be released in the manner provided in Section 703.290. If the judgment debtor does not file the counteraffidavit and mail a copy to the judgment creditor within the time provided, the excess amount of the deposit account remains subject to the lien of execution and shall be applied toward the satisfaction of the judgment.

(3) The affidavit and counteraffidavit shall be filed by the levying officer with the court before the date set for the hearing and constitute the pleadings, subject to the power of the court to permit amendments in the interests of justice.

(4) At a hearing under this subdivision, the judgment debtor has the burden of proof.

(5) At the conclusion of the hearing, the court by order shall determine whether or not the excess amount of the deposit account is exempt, in whole or in part. The order is determinative of the right of the judgment creditor to apply the excess amount toward the satisfaction

of the judgment. No findings are required in a proceeding under this subdivision.

(6) Upon determining that all or part of the excess amount of the deposit account is exempt, the clerk shall immediately transmit a copy of the order to the levying officer and the levying officer shall serve the copy of the order on the financial institution. The financial institution shall comply with the order within three business days after its receipt.

Comment. Section 703.490 supersedes former Section 690.30. Social Security payments may be directly deposited pursuant to 31 U.S.C. § 492 (1970, Supp. V 1975). Subdivision (a) continues former Section 690.30(c). Subdivision (b) continues the substance of the first paragraph and subdivision (a) of former Section 690.30. Subdivision (c) continues the substance of the introductory paragraph and paragraph (1) of subdivision (b) of former Section 690.30. Subdivision (d) makes explicit what was implicit in a portion of former Section 690.30(b)(2).

Subdivision (e) supersedes paragraphs (2), (3), and (4) of subdivision (b) of former Section 690.30. However, subdivision (d) clarifies the procedure applicable to claiming exemptions for excess amounts in deposit accounts described in this section and the relation between this procedure and the procedure provided by Article 2 (commencing with Section 707.310) (which supersedes former Section 690.50, incorporated by reference in former Section 690.30). Paragraph (1) requires the judgment debtor to file a counteraffidavit. Former Section 690.30 was silent on this matter but seemed to require some showing by the judgment debtor since the last sentence of Section 690.30(b)(2) placed the burden of showing the excess amount to be exempt on the judgment debtor. If the judgment debtor does not comply with paragraph (1) by filing the counteraffidavit within the time provided and sending a copy to the judgment creditor and the levying officer, no hearing is held and the property is applied toward the satisfaction of the judgment. Paragraph (5) supersedes former Section 690.30(b)(3). The provision for an order determining priority or dividing the property between several creditors is not continued. Paragraph (6) continues former Section 690.30(b)(4).

Where a deposit account is not one described by subdivision (b), the procedures provided in Article 2 (commencing with Section 707.310) apply to the determination of the exemption provided for deposit accounts generally in Section 707.480. Where an account described in subdivision (b) exceeds the amount not subject to enforcement, the exemption provided by subdivision (c) is determined pursuant to subdivision (e), not by Article 2 procedures.

See Sections 701.____ ("deposit account" defined), 703.290 (release), 707.210 (adjustment of dollar amounts of exemptions).

§ 707.500. Life insurance, endowment, annuity policies; death benefits; wrongful death awards

707.500. (a) Except as otherwise provided in subdivision (b), unmatured life insurance, endowment, and annuity policies are not subject to the enforcement of a money judgment.

(b) The aggregate loan value of unmatured life insurance, endowment, and annuity policies is exempt in an amount not exceeding five thousand dollars (\$5,000).

(c) Benefits from matured life insurance, endowment, and annuity policies, and death benefits, payable to the insured or a spouse or dependent of the insured or decedent, are exempt to the extent reasonably necessary for the support of the insured and the spouse and dependents of the insured or decedent.

(d) An award of damages or a settlement arising out of the wrongful death of a person of whom the judgment debtor was a spouse or a dependent is exempt to the extent reasonably necessary for support.

(e) If a dwelling exemption has not been obtained, the amount of the exemption provided by subdivision (b) is increased by ten thousand dollars (\$10,000). If the exemption provided by this subdivision is obtained and the claimant later claims a dwelling exemption, the dwelling exemption shall be reduced by the amount of the exemption claimed under this subdivision.

Comment. Section 707.500 supersedes the exemptions provided in former Sections 690.9 (life insurance represented by \$500 annual premium), 690.10 (group life insurance), 690.14 (fraternal benefit society), and portions of former Section 690.18 (death benefits from public entity). Under subdivision (a), the judgment creditor is precluded from reaching an unmatured policy except to the extent provided by subdivision (b). Subdivision (a) prevents the judgment creditor from forcing the judgment debtor to surrender a life insurance policy for its cash value.

Subdivision (c) limits the exemption of benefits from a life insurance policy to the insured or a spouse or dependent of the insured who need the benefits for support. Under former law, the exemption was available to any person, including creditors of the judgment debtor and artificial persons. See *Jackson v. Fisher*, 56 Cal.2d 196, ___, 363 P.2d 479, ___, 14 Cal. Rptr. 439, ___ (1961). The exemption may be asserted against creditors of the insured or of the spouse or dependents of the insured. See *Holmes v. Marshall*, 145 Cal. 777, 779-82, 79 P. 534, ___ (1905).

Subdivision (d) is new.

Subdivision (e) is new, it affords a larger exemption for the loan value of life insurance to the extent that the full dwelling exemption is not claimed. See Section 707.410 (dwelling exemption).

See also Section 707.210 (adjustment of dollar amounts of exemptions).

968/999

§ 707.510. Retirement benefits

707.510. (a) As used in this section, "retirement benefits" means money held for payment or paid as an annuity, pension, or retirement allowance under a retirement plan of a public entity, private employer, union, or other private entity, or under the Internal Revenue Code of 1954, as amended by the federal Employee Retirement Income Security Act of 1974 (Pub. L. No. 93-406) and by the Tax Reform Act of 1976 (Pub. L. No. 94-455), and includes a profit-sharing plan designed and used for retirement purposes.

(b) Before payment, retirement benefits are not subject to the enforcement of a money judgment. After payment, retirement benefits are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

Comment. Section 707.510, in conjunction with Section 707.150 (exemptions not applicable in case of support judgment), supersedes the provisions relating to exemptions for retirement benefits (other than disability payments from retirement plans covered by Section 707.530) provided by former Section 690.18 [as proposed to be amended by S.B. 1360 and A.B. 1969 in the 1978 session].

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§ 707.520. Unemployment benefits and contributions

707.520. (a) Contributions by workers payable to the Unemployment Compensation Disability Fund and by employers payable to the Unemployment Fund are not subject to the enforcement of a money judgment.

(b) Before payment, the following benefits are not subject to the enforcement of a money judgment:

(1) Unemployment compensation benefits payable under Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code.

(2) Unemployment compensation disability benefits payable under Part 2 (commencing with Section 2601) of Division 1 of the Unemployment Insurance Code.

(3) Extended duration benefits payable under Part 3 (commencing with Section 3501) of Division 1 of the Unemployment Insurance Code.

(4) Federal-state extended benefits payable under Part 4 (commencing with Section 4001) of Division 1 of the Unemployment Insurance Code.

(5) Incentive payments payable under Division 2 (commencing with Section 5000) of the Unemployment Insurance Code.

(6) Benefits under a plan or system established by an employer which makes provision for employees generally or for a class or group of employees for the purpose of supplementing unemployment compensation benefits.

(7) Money used exclusively in the payment of unemployment benefits by a fraternal organization to bona fide members.

(c) After payment, the benefits described in subdivision (b) are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

Comment. Section 707.520 supersedes former Sections 690.13, 690.16, and 690.175 and portions of Unemployment Insurance Code Sections 388 and 1342.

15331

§ 707.530. Disability and health benefits.

707.530. (a) Before payment, benefits from a disability or health insurance policy or program are not subject to the enforcement of a money judgment. After payment, the benefits are exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor or to the extent such benefits will be used to pay for medical, surgical, or hospital care.

(b) Subdivision (a) does not apply to a claim by a provider of health care whose claim arises out of the judgment debtor's condition for which the benefits are collected.

Comment. Subdivision (a) of Section 707.530 supersedes former Section 690.11 (disability or health insurance benefits represented by \$500 annual premium), 690.13 (money used exclusively in payment of sick benefits by fraternal organization to bona fide members), 690.14 (fraternal benefit society funds), and portions of former Section 690.18 (disability benefits from retirement plans). Subdivision (b) is new.

§ 707.540. Damages for personal injury

707.540. (a) An award of damages or a settlement arising out of bodily injury of the judgment debtor is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

(b) Subdivision (a) does not apply to a claim by a provider of health care whose claim arises out of the judgment debtor's condition for which the award or settlement was made.

Comment. Section 707.540 is new.

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§ 707.550. Worker's compensation

707.550. Except as provided by Chapter 1 (commencing with Section 4900) of the Labor Code, before payment, a claim for worker's compensation or compensation awarded or adjudged is not subject to the enforcement of a money judgment. After payment, the award is exempt.

Comment. Section 707.550 continues the substance of former Section 690.15.

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§ 707.560. Aid

707.560. Before payment, aid provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or similar aid provided by a charitable organization or a fraternal benefit society as defined in Section 10990 of the Insurance Code, to the judgment debtor or for the benefit of the judgment debtor is not subject to the enforcement of a money judgment. After payment, the aid is exempt.

Comment. Section 707.560 is based on former Sections 690.14 and 690.19. This section exempts local aid as well as federal aid administered by the state pursuant to the Welfare and Institutions Code. This section does not limit exemptions for aid provided by federal statutes, such as Social Security benefits. See also Welf. & Inst. Code § 10052 ("aid" defined).

Section 707.550 also expands the category of nongovernmental aid that is exempt. Former Section 690.14 applied only to fraternal benefit societies.

§ 707.570. Relocation benefits

707.570. Before payment, relocation benefits for displacement from a dwelling actually owned or rented by the judgment debtor which are to be paid by a public entity pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, are not subject to the enforcement of a money judgment. After payment, such benefits are exempt.

Comment. Section 707.570 supersedes Section 690.3a. The last sentence of Section 707.570 requires the debtor to claim an exemption for such benefits after payment, whereas under former law these benefits were designated as exempt without filing a claim.

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§ 707.580. Licenses

707.580. Except as provided in Section 705.330, a license to engage in any business, profession, or activity issued by a public entity is not subject to the enforcement of a money judgment.

Comment. Section 707.580 is derived from a portion of subdivision (e) of former Section 688 which precluded levy or sale on execution of "licenses issued by this state to engage in any business, profession, or activity." See Section 705.330 (receiver to sell liquor license).