

## Memorandum 78-37

Subject: Study D-39.200 - Enforcement of Judgments (Comprehensive Statute--Definitions and General Provisions)

Attached to this memorandum is a draft of Chapters 1 (Definitions) and 2 (General Provisions) of the Enforcement of Judgments Law. The Commission has not previously considered the definitions. Most of the material in Chapter 2 was tentatively approved some time ago, but it has been substantially reorganized and redrafted. The preliminary text has not yet been considered. It should be noted that some cross-references are made in the footnotes to discussions of subjects elsewhere in the preliminary text which have not yet been drafted or which are included in portions of the preliminary text accompanying other chapters. When the complete draft is assembled, the preliminary text will also be interwoven and complete.

We would like to note the following matter:

§ 702.130. Remedies of state tax agency

This section continues existing law except that the references to specific sections of the Revenue and Taxation and Unemployment Insurance Codes have been deleted. We have not revised this provision in the same manner as the provisions incorporating the third-party claims procedure (Section 706.130) or exemptions provisions (Section 707.210) because to do so would involve an expansion of the authority of the tax agencies. The staff also suggests that enforcement under Section 702.130 be left in the superior court because the issue of the validity of the tax may arise and this is a matter reserved for superior courts. See Section 86(a)(1) (municipal and justice court have jurisdiction in civil cases where amount in controversy does not exceed \$5,000 except cases which involve the legality of a tax). The division of authority between municipal and superior courts in tax matters was discussed more fully in Memorandum 78-34 (with regard to Section 706.130) prepared for consideration at the June meeting.

Respectfully submitted,

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GENERAL PROVISIONS

Scope of Enforcement Procedures of Title 9

Title 9 of the Code of Civil Procedure<sup>1</sup> provides for the enforcement of money judgments, judgments for the possession or sale of real or personal property, and judgments enforceable by contempt.<sup>2</sup> Its provisions are also available for the enforcement of a tax liability in a situation where the state is authorized to issue a warrant pursuant to particular sections in the Revenue and Taxation Code and the Unemployment Insurance Code.<sup>3</sup> For the most part, however, Title 9 is concerned with enforcement of money judgments.

The scope of the proposed revision of Title 9 is essentially the same as that of existing law.<sup>4</sup> The proposed law separates the provisions pertaining to the enforcement of the various types of judgments and clarifies the extent to which general provisions apply to nonmoney judgments. Under existing law, it is not always clear which provisions apply to which types of judgments.<sup>5</sup>

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1. Sections 681-724e.
  2. See, e.g., Sections 682, 684.
  3. Section 722.5. This provision applies where warrants are issuable pursuant to Sections 6776, 7881, 9001, 10111, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code or Section 1785 of the Unemployment Insurance Code. Four recently enacted warrant provisions are not listed in Section 722.5. See Rev. & Tax. Code §§ 3202, 16071, 38541, 40161. The proposed law omits the references to specific sections providing authority for issuing warrants to collect a tax so that further amendment will not be required when tax laws are revised.
  4. The proposed law would not apply to enforcement of money judgments against public entities. See the discussion under "Enforcement of Money Judgments Against Public Entities" infra.
  5. The word "execution" leads a chameleon-like existence in existing law; it is frequently unclear whether "execution" or "writ of execution" refers to process to enforce money judgments and judgments for the possession or sale of property, process to enforce money judgments and judgments for the possession but not the sale of property, or only process to enforce money judgments. For example, Section 684 provides that a writ of execution may be used to enforce a money judgment or a judgment for the possession of real or personal property; a judgment for the sale of property may

## Enforcement of Money Judgments Against Public Entities

Under existing law, property of the state is exempt from execution (presumably including supplementary proceedings and other collection remedies) unless a specific statute creates an exception to this principle.<sup>6</sup> It has been held that the personal property of a municipal housing authority which is a state agency is subject to execution.<sup>7</sup> The general rule concerning property of a local public entity is that property held in a proprietary capacity, i.e., not devoted to public use, is subject to execution.<sup>8</sup> Several statutes also provide exemptions for

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be enforced by a "writ reciting such judgment." Section 683 provides for the return of the "execution" not less than 10 nor more than 60 days after its receipt by the levying officer, but it was held in *Magnaud v. Traeger*, 66 Cal. App. 526, 530-31, 226 P. 990, \_\_\_ (1924), that a writ of execution for the possession of real property remained in force insofar as it directed the restitution of the premises although it had expired insofar as it directed the levying officer to levy on property to satisfy the part of the judgment awarding damages. Section 681 was amended in 1955 to add a reference to "enforcement" of the judgment since it was felt that the word "execution" was arguably not broad enough to cover enforcement of a mortgage foreclosure decree, i.e., a judgment for the sale of real property. See Review of 1955 Code Legislation 101 (Cal. Cont. Ed. Bar 1955). Section 692 (sale on execution), on its face seems to apply only to the enforcement of money judgments, although it has been held that foreclosure sales of real and personal property should be made in the same manner as in a sale under a money judgment. See *Podrat v. Oberndorff*, 207 Cal. 457, 459-60, 278 P. 1035, \_\_\_ (1929) (personal property); *Johnson v. Tyrell*, 77 Cal. App. 179, 182, 246 P. 140, \_\_\_ (1926).

6. *Westinghouse Elec. & Mfg. Co. v. Chambers*, 169 Cal. 131, 135, 145 P. 1025, \_\_\_ (1915); *Meyer v. State Land Settlement Bd.*, 104 Cal. App. 577, 584-86, 286 P. 743, \_\_\_ (1930).
7. Code of Civil Procedure Section 690.27 and Health and Safety Code Section 34217 exempt the real property of a housing authority. In *Maurice L. Bein, Inc. v. Housing Auth.*, 157 Cal. App.2d 670, 690, 321 P.2d 753, \_\_\_ (1958), the omission of an exemption for personal property of housing authorities was held to leave such property subject to execution.
8. *C.J. Kubach Co. v. City of Long Beach*, 8 Cal. App.2d 567, 573, 48 P.2d 181, \_\_\_ (1935); *Marin Water & Power Co. v. Town of Sausalito*, 49 Cal. App. 78, 83, 193 P. 294, \_\_\_ (1920).

certain items of property of counties, towns, and incorporated cities.<sup>9</sup> Existing law also provides exemptions for specific public entities.<sup>10</sup>

The proposed law would preclude resort to the normal remedies for enforcement of money judgments against state and local public entities. Money judgments against public entity debtors would be enforceable only by means of a writ of mandate.<sup>11</sup> Use of a clerk-issued writ of execution is potentially disruptive of the functions of a public entity. From the judgment creditor's standpoint, a writ of execution will frequently be ineffective because, even if the property is not of a type exempted by statute, it may be exempt under the public use doctrine.<sup>12</sup> Execution is an ill-designed remedy for enforcement against a public entity, as compared with mandamus. The public entity debtor and its functionaries are under a duty to pay. Although the public entity may not currently have funds with which to pay the judgment, it has the

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9. Section 690.22 exempts courthouses, jails, fire companies, public offices, public buildings, lots, grounds, and personal property, including automotive and truck equipment, fixtures, furniture, books, papers, and the like.
  10. See Sections 690.26 (property of the Reclamation Board and the Sacramento and San Joaquin Drainage District), 690.29 (property of re-development agency).
  11. See Section 1085; *McPherson v. City of Los Angeles*, 8 Cal.2d 748, 750, 68 P.2d 707, \_\_\_\_ (1937); *Title Guar. & Trust Co. v. City of Long Beach*, 4 Cal.2d 56, \_\_\_\_, 47 P.2d 472, \_\_\_\_ (1935); *Emeric v. Gilman*, 10 Cal. 404, 410 (1858); *Cook v. Board of Supervisors*, 99 Cal. App. 169, 171, 277 P.2d 1064, \_\_\_\_ (1929).
  12. The attempts to enforce a money judgment by the C.J. Kubach Co. against the City of Long Beach are instructive in this regard. The Kubach Company caused the levy of execution on a lot used for parking for hire which the city claimed was held for eventual public use and on an oil lease of which the city was the lessor. In *C.J. Kubach Co. v. City of Long Beach*, 8 Cal. App.2d 567, 48 P.2d 181 (1935), the court held that the parking lot was not subject to execution because two-thirds of the original parcel was in fact being used for governmental purposes. However, the royalties from the oil lease were found not to be dedicated to a public purpose. Nevertheless, a year and a half later the Kubach Company found it necessary to resort to mandamus for the collection of the more than two-thirds of the judgment remaining unpaid. See *Title Guar. & Trust Co. v. City of Long Beach*, 4 Cal.2d 56, 47 P.2d 472 (1935).

means with which to eventually pay through the taxing and bond-issuing powers.<sup>13</sup> Enforcement by mandamus should for the most part be a more effective remedy and result in less disruption of government functions than enforcement by execution. Although enforcement by way of mandamus necessarily involves a court hearing, the issue of whether property levied upon under execution is devoted to a public use or is held in a proprietary capacity would also require a court determination. There is also no need for the speedy, ex parte remedy of execution because the public entity is incapable of fleeing the jurisdiction and is not generally in a position to conceal assets.

#### Time for Enforcement of Judgments

Under existing law, a writ or order for the enforcement of a judgment may be obtained as a matter of course within 10 years after the entry of the judgment.<sup>14</sup> The judgment may be enforced after 10 years in the discretion of the court upon motion by the judgment creditor with notice to the judgment debtor.<sup>15</sup> The judgment may also be renewed by

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13. See, e.g., Govt. Code §§ 970.8-971 (levy of taxes by local public entities to pay tort and inverse condemnation judgments free of debt limitations and tax rate restrictions), 975-978.8 (funding of judgments by local public entities through bond issuance), 50170-50175 (payment of judgments in installments by cities and counties); Educ. Code §§ 35201 (payment of judgments by school districts), 72501 (payment of judgments by community college districts); Water Code §§ 39091-39096 (payment of judgments by water districts).
  14. Section 681. Stays of enforcement are excluded from the computation of the 10-year period. Id. Section 681 and its companion provision pertaining to issuance after 10 years, Section 685, govern issuance of writs or orders for the enforcement of money judgments and judgments for the possession or sale of property. See, e.g., Butcher v. Brouwer, 21 Cal.2d 354, 132 P.2d 205 (1942) (money judgment); Laubisch v. Roberdo, 43 Cal.2d 702, 708-09, 713-15, 277 P.2d 9, 13, 16-17 (1954) (judgment for sale of real property); City of Los Angeles v. Forrester, 12 Cal. App.2d 146, 148-49, 55 P.2d 277, 278 (1936) (judgment for possession of real property); see 5 B. Witkin, California Procedure Enforcement of Judgment § 68, at 3443, § 199, at 3553 (2d ed. 1971); Review of 1955 Code Legislation 101 (Cal. Cont. Ed. Bar 1955).
  15. Section 685. This provision requires the judgment creditor to file an affidavit stating the reasons for failure to enforce the judgment within the 10 years allotted by Section 681. See the cases cited in 5 B. Witkin, California Procedure Enforcement of Judgment § 202, at 3555 (2d ed. 1971).

bringing an action upon it within 10 years after entry.<sup>16</sup> This scheme is a direct descendant of the common law rules concerning actionability and executability of a money judgment.<sup>17</sup>

The proposed law would modernize these rules by extending the time during which the judgment creditor may obtain the issuance of a writ by application to the clerk to 20 years not counting the time during which enforcement is stayed.<sup>18</sup> At the end of the 20-year period, all enforce-

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16. Section 337.5 (statute of limitations); *Atkinson v. Adkins*, 92 Cal. App. 424, 426, 268 P. 461, 462 (1928).

17. At common law, a writ of the appropriate type--*leviari facias*, *fieri facias*, or *elegit*--could be issued to enforce a money judgment only for a year and a day after the signing of the judgment. If a writ was not issued within this time, the judgment became dormant and the judgment creditor was required to initiate proceedings to revive the judgment by means of a writ of *scire facias* or to bring an action of debt to renew the judgment. *Scire facias* could be obtained without application to the court for a period of 10 years after judgment. At a later time, the common law developed a rebuttable presumption of payment after 20 years. See *Riesensfeld, Collection of Money Judgments in American Law--A Historical Inventory and a Prospectus*, 42 Iowa L. Rev. 155, 156-59, 172-73 (1957).

18. At least three states provide absolute limits on the time for enforcement of domestic judgments. In North Dakota, the life of a judgment is limited to 20 years from the date of entry. See N.D. Cent. Code § 28-20-35 (1975); *Berg v. Torgerson*, 100 N.W.2d 153 (N.D. 1959). In Oregon, a domestic judgment is executable for 10 years and may be extended by motion within that time for one more 10-year period. See Or. Rev. Stat. § 18-360 (1977); *Newhouse v. Newhouse*, 271 Or. 109, 530 P.2d 848 (1975). An Oregon domestic judgment may not be renewed by action. See Or. Rev. Stat. § 12-070 (1977); *Mason v. Mason*, 148 Or. 34, 34 P.2d 328 (1934). In Washington, the maximum life of a domestic judgment is limited to six years and it may not be revived by motion or renewed by action. See Wash. Rev. Code §§ 4.56.210 (1962), 4.56.190 (Supp. 1976); *St. Germain v. St. Germain*, 22 Wash.2d 747, 157 P.2d 981 (1945). In *Ferry County Title & Escrow Co. v. Fogle's Garage, Inc.*, 4 Wash. App. 874, 484 P.2d 458 (1971), a sale of real property was enjoined because the six-year period was due to expire two days after the sale was scheduled and the statute required court confirmation of sale 10 days after the sale. New York provides a conclusive presumption of payment after 20 years (except where the indebtedness has been acknowledged in writing or is partially paid), but permits renewal of the judgment by action within the 20-year period. See N.Y. Civ. Prac. Law & R. § 211(b) (McKinney 1972); *Levine v. Bronson*, 4 N.Y.2d 241, 173 N.Y.S.2d 599 (1958).

ment proceedings against the judgment creditor would cease<sup>19</sup> and the judgment would in effect be discharged. Although the selection of a 20-year period is somewhat arbitrary, as any such decision must be, the Commission has concluded that this is an adequate length of time for the enforcement of a judgment by a diligent creditor.<sup>20</sup> This proposal benefits judgment creditors by eliminating the need to apply to the court after 10 years or to satisfy the vague standard of diligence developed under existing law.<sup>21</sup> The 20-year limitation also eliminates the possibility of revival of stale judgments and, like a statute of limitations, provides surcease to those few debtors who have been subject to the pursuit of creditors for at least two decades.

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19. The rule announced in *Alonso Inv. Corp. v. Doff*, 17 Cal.3d 539, 551 P.2d 1243, 131 Cal. Rptr. 411, (1976), permitting the enforcement of a writ of execution after the expiration of the 10-year period provided by Section 681 if the writ had been timely issued, is not continued in the proposed law. The judgment creditor would be able to continue a creditor's suit against a third person holding property of or owing debts to the judgment debtor and enforce any judgment obtained in that suit after the time for enforcement of the original judgment against the judgment debtor had expired. See the discussion under "Creditor's Suit" infra.

20. Cases cited in *Long v. Long*, 76 Cal. App.2d 716, 722, 173 P.2d 840, 843 (1946), reveal that execution has been permitted under Section 685 for as much as 20 years after judgment. In *Hatch v. Calkins*, 21 Cal.2d 364, 371, 132 P.2d 210, 214 (1942), the court denied issuance of a writ of execution 29 years after entry of judgment for lack of diligence.

21. Prior to the amendment of Section 685 in 1933, the creditor could obtain issuance of a writ of execution "almost as a matter of right" after the expiration of the period prescribed by Section 681. *Butcher v. Brouwer*, 21 Cal.2d 354, 357, 132 P.2d 205, \_\_\_\_ (1942). However, in *Butcher* the court held that execution could issue only if the judgment creditor has

exercised due diligence in locating and levying upon property owned by the debtor, or in following available information to the point where a reasonable person would conclude that there was no property subject to levy within that time. And even though the creditor may have satisfied the court that he has proceeded with due diligence . . . , the court may still deny him its process if the debtor shows circumstances occurring subsequent to the five-year period upon which, in the exercise of a sound discretion, it should conclude that he is not now entitled to collect his judgment.

Id. at 358, 132 P.2d at \_\_\_\_ . For the application of this standard in a variety of factual settings, see the cases cited in 5 B. Witkin, *California Procedure Enforcement of Judgment* § 202, at 3555 (2d ed. 1971).

In the case of installment judgments for the payment of money,<sup>22</sup> the proposed law would codify existing case law which holds that the time for enforcement runs from the time each installment falls due.<sup>23</sup>

The proposed law would not preclude the bringing of an action on a judgment, but it would prevent the extension of the period of enforceability beyond 20 years running from the entry of the original judgment. An action may be brought on a domestic judgment for some other purpose,<sup>24</sup> but the 20-year period of enforceability would remain absolute.

#### Effect of Liens

The important matter of the creation and effect of liens that arise in the course of enforcing a money judgment is currently left largely to case law. Existing statutes provide for the creation of judgment liens,<sup>25</sup> execution liens,<sup>26</sup> and liens on causes of action and judgments.<sup>27</sup> The proposed law provides explicitly for the creation of liens pursuant to all of the various enforcement procedures, and specifies the time a lien arises, which is the essential factor in determining the

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22. See Civil Code §§ 4700 (child support), 4801 (spousal support); Code Civ. Proc. §§ 85 (installment payment of money judgment of municipal or justice court), 667.7 (periodic payment of future damages in action against provider of health care services); Labor Code § 5801 (installment payment of worker's compensation award); Veh. Code § 16380 (installment payment of vehicle accident damage judgment).

23. See, e.g., *Wolfe v. Wolfe*, 30 Cal.2d 1, 4, 180 P.2d 345, \_\_\_ (1947); *Lohman v. Lohman*, 29 Cal.2d 144, 150, 173 P.2d 657, \_\_\_ (1946); *DeUprey v. DeUprey*, 23 Cal. 352, 353 (1863).

24. See 5 B. Witkin, *California Procedure Enforcement of Judgment* § 192, at 3547 (2d ed. 1971).

25. Sections 674, 674.5, 674.7. See the discussion under "Judgment Liens" infra.

26. Section 688(d), (e). See the discussion under "Writ of Execution" infra.

27. Section 688.1. See the discussion under "Lien on Cause of Action and Judgment" infra.

rights of a creditor against transferees of the debtor's property and against other creditors.<sup>28</sup>

The proposed law provides general rules concerning the effect of liens. It codifies the case law rule that a creditor's priority relates back to the time as of which the first of a series of overlapping liens is created on a particular item of property or fund.<sup>29</sup> The proposed law also makes clear that, unless a lien is specifically limited to a shorter duration,<sup>30</sup> a lien expires when the judgment under which it was created ceases to be enforceable.<sup>31</sup>

Decisions under existing law have held that equitable liens-- typically those liens created by service of an order in supplementary proceedings or by commencement of a creditor's suit<sup>32</sup>--are not effective

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28. A lien signifies the right of the judgment creditor to resort to the property subject to the lien for the satisfaction of the money judgment. In a sense, acquisition of a lien elevates a general judgment creditor to the status of a secured creditor. See S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 54 (2d ed. 1975). The time of creation of the lien is essential because the creditor having the earliest valid lien in time will prevail over other creditors. See Civil Code §§ 2897-2899 (general provisions concerning the priority of liens). In most cases, a judgment creditor holding a valid lien will also prevail over a secured party whose security interest is not perfected before the creation of the lien. See Com. Code § 9301.

29. See, e.g., *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242, \_\_\_ (1909); *Riley v. Nance*, 97 Cal. 203, 205, 31 P. 1126, \_\_\_ (1893); *Bagley v. Ward*, 37 Cal. 121, 131 (1869) (dictum); *Durkin v. Durkin*, 133 Cal. App.2d 283, 294, 284 P.2d 185, \_\_\_ (1955); *Balzano v. Traeger*, 93 Cal. App. 640, 643-44, 270 P. 249, \_\_\_ (1928). This relation back effect may provide the judgment creditor with a priority predating the date of entry of the judgment if property of the debtor had been attached in the action. An attachment lien may run for as long as five years. See Sections 488.500, 488.510. See also Section 488.500(i) (lien of attachment effective as of date of service of temporary protective order pursuant to Section 486.080).

30. Section 688(e) provides that a writ of execution does not bind property for more than a year from the date of issuance of the writ. Under the proposed law, the lien of execution would last for a year from the date property is levied upon. See the discussion under "Writ of Execution" infra.

31. See the discussion under "Time for Enforcement of Judgments" supra.

32. See *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 28-30, 87 P.2d 830, 844 (1939).

against a subsequent transferee of the property subject to the lien who gives fair consideration for the property without knowledge of the lien.<sup>33</sup> The proposed law codifies this rule and makes it uniform by applying it to execution liens.<sup>34</sup> In most cases, however, a transferee of property levied upon under a writ of execution will not meet the requirements of a bona fide purchaser because the manner of levy entails taking custody of tangible personal property and recording a notice of levy on real property. Where the property sought to be levied upon is held or owed by a third person, the judgment creditor is protected by the provision making the third person liable in the amount of the debt or the value of the property for failure to comply with the levy.

#### Liability of Levying Officer

The existing provisions concerning the liability of a levying officer are incomplete and inconsistent.<sup>35</sup> Under the proposed law, these provisions would be superseded by a general provision protecting the levying officer from liability for compliance with the provisions of Title 9.

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33. See *Jud Whitehead Heater Co. v. Obler*, 111 Cal. App.2d 861, 872-74, 245 P.2d 608, 616 (1952); *Wagner v. Sariotti*, 56 Cal. App.2d 693, 698, 133 P.2d 430, 433 (1943); cf. *Taylor v. S & M Lamp Co.*, 190 Cal. App.2d 700, 711-13, 12 Cal. Rptr. 323, \_\_\_ (1961) (transferee of partnership property with knowledge of charging order which created lien is liable to judgment creditor); see generally 1 J. Pomeroy, *Equity Jurisprudence* §§ 165, 171(4) (5th ed. 1941); 4 *id.*, §§ 1233-1234.

34. The effect of an execution lien against a bona fide purchaser under existing law is not clear. In one decision, it was indicated that a levy of attachment would not be effective as against a good faith purchaser from the defendant. See *Rogers v. Gilmore*, 51 Cal. 309, 312 (1876). N.Y. Civ. Prac. Law & R. § 5202 (McKinney \_\_\_) protects bona fide purchasers in certain situations.

35. See Sections 262 (judgment creditor's instructions must be in writing to discharge levying officer from liability), 262.1 (levying officer required to execute all process regular on its face and issued by competent authority), 689 (levying officer not liable to third person for levy, etc., if no third-party claim delivered or if provisions of Section 689 followed), 689b(9) (levying officer not liable for levy, etc., if undertaking given), 697 (levying officer not liable for more than amount bid by subsequent purchaser where first bidder fails or refuses to pay amount bid at execution sale).

### Miscellaneous Procedural Provisions

Manner of mailing notice. The proposed law provides as a general rule that notices required or permitted to be mailed shall be sent by first-class mail, postage prepaid.<sup>36</sup> First-class mail is preferable because it is cheaper and is more likely to be received expeditiously. The proposed law also permits persons giving notice to deliver the notice personally whenever notice by mail is permitted. A notice that is mailed is also required to state the date of mailing because frequently the time of mailing a notice triggers the running of a time within which to respond.

Judicial Council authority. The proposed law provides the Judicial Council with authority to make rules for practice and procedure under Title 9 and to prescribe forms for applications, notices, orders, writs, and other documents.<sup>37</sup> The promulgation of a complete set of forms will aid in the uniform and efficient operation of the Enforcement of Judgments Law.

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36. Notice provisions vary under existing law. See, e.g., Sections 11 (certified mail complies with registered mail requirement), 682a (bank notice to holder of joint account levied upon sent by registered mail), 682.1 (copy of writ of execution mailed to judgment debtor after levy), 688(b) (service of writ of execution on judgment debtor by personal delivery or by mail), 689 (demand for undertaking sent to judgment creditor by registered or certified mail), 689b(3) (demand for undertaking or deposit sent to judgment creditor by registered or certified mail), 690.2(d) (notification by levying officer to judgment debtor of multiple vehicle registration), 690.30(b)(2) (notification by levying officer to judgment creditor of nature of account into which social security payments are directly deposited), 690.31(1) (copies of papers in dwelling exemption proceedings sent to judgment debtor and certain third persons by first-class mail), 692, para. 2 (notice of personal property sale mailed or delivered to judgment debtor), 692, para. 3 (notice of real property sale sent by certified mail or delivered to judgment debtor), 692a (notice of sale mailed to persons requesting notice), 710(d) (notice mailed by court clerk to parties interested in condemnation award).
37. The Judicial Council has issued approved forms for the general writ of execution (covering money judgments and judgments for the possession of property) and for the writ of execution against a dwelling house. A statutory form of the writ of execution on a money judgment is provided by Section 682.1 and a statutory form for notice of proposed levy on a dwelling is provided by Section 690.31.

General Procedural Provisions Continued Without Substantial Change

Provisions concerning enforcement of judgments after the death of the judgment debtor or the judgment creditor,<sup>38</sup> contribution among judgment debtors,<sup>39</sup> entry of costs on writs,<sup>40</sup> requests for notice of sale,<sup>41</sup> execution of commercial paper by the levying officer,<sup>42</sup> judgment creditor's instructions to the levying officer,<sup>43</sup> the manner of custody of property levied upon,<sup>44</sup> the deposit of fees prior to performance of a duty by the levying officer,<sup>45</sup> and stays of enforcement<sup>46</sup> are continued in the proposed law without substantial change.

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38. See Section 686; Prob. Code § 732.
39. See Section 709. The proposed law would make clear, however, that the right to contribution is to be determined at a hearing on noticed motion and that the Title 9 procedures do not apply to the determination of the right to contribution among joint tortfeasors governed by Title 11 (commencing with Section 875).
40. See Section 682.2. The proposed law would also provide for the entry of costs on a writ of sale, whereas existing law applies only to writs of execution--apparently referring only to writs employed to enforce money judgments and judgments for the possession of property. Cf. Section 684 (writ of execution used to enforce judgments for money or possession).
41. See Section 692a. The proposed law would permit a person to request notice of sale under any writ, not only under a writ of execution.
42. See Section 688(g) (incorporating Section 488.520). The proposed law would permit execution of commercial paper regardless of the type of writ under which it comes into the levying officers' hands.
43. See Sections 262, 488.010(a) (incorporated by Section 688(b)), 692, subds. 2, 3.
44. See Section 688(c). The proposed law extends this provision to custody under any writs, not only a writ of execution.
45. See Section 488.050 (incorporated by Section 688(b)); Govt. Code §§ 6100, 24350.5. The proposed law would permit the levying officer to make an oral demand for advance of additional costs whereas Section 488.050 requires a written demand.
46. See Section 681a. The proposed law would codify the rules in *Industrial Indem. Co. v. Levine*, 49 Cal. App.3d 698, 699, 122 Cal. Rptr. 712, \_\_\_ (1975) (stay of enforcement issued ex parte unless court orders otherwise; stay does not preclude filing of abstract of judgment to create judgment lien), and *Garrett v. Garrett*, 31 Cal. App. 173, 181, 159 P. 1050, \_\_\_ (1916) (30-day stay runs from day the stay order is made).

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TITLE 9. ENFORCEMENT OF JUDGMENTS LAWCHAPTER 1. SHORT TITLE; DEFINITIONS§ 701.110. Short title

701.110. This title shall be known and may be cited as the Enforcement of Judgments Law.

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§ 701.120. Application of definitions

701.120. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this title.

Comment. Section 701.120 is a standard provision found in the definitional portion of several California codes and laws. E.g., Code Civ. Proc. §§ 481.010, 1235.110; Evid. Code § 100; Veh. Code § 100. Additional definitions are provided in the preliminary provisions of the Code of Civil Procedure. See Section 17.

27855

§ 701.130. Chattel paper

701.130. "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper. As used in this section, "instrument" means a negotiable instrument, or a security, or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in the ordinary course of business transferred by delivery with any necessary indorsement or assignment.

Comment. Section 701.130 is substantively the same as paragraph (b) of subdivision (1) of Section 9105 of the Commercial Code. The term "instrument" used in paragraph (b) of subdivision (1) of Section 9105 is defined in paragraph (g) of subdivision (1) of Section 9105. Section 701.130 incorporates the same definition in its third sentence. Thus, "chattel paper" under this title has basically the same meaning as "chattel paper" under Section 9105 of the Commercial Code, and the following excerpt from the Comment to Section 9105 should help to explain the term:

A dealer sells a tractor to a farmer on conditional sales contract. The conditional sales contract is a "security agreement", the farmer is the "debtor", the dealer is the "secured party" and the tractor is the type of "collateral" defined in Section 9-109 as "equipment". But now the dealer transfers the contract to his bank, either by outright sale or to secure a loan. Since the conditional sales contract is a security agreement relating to specific equipment the conditional sales contract is now the type of collateral called "chattel paper". In this transaction between the dealer and his bank, the bank is the "secured party", the dealer is the "debtor", and the farmer is the "account debtor".

Under the definition of "security interest" in Section 1-207(37) a lease does not create a security interest unless intended as security. Whether or not the lease itself is a security agreement, it is chattel paper when transferred if it relates to specific goods. Thus, if the dealer enters into a straight lease of the tractor to the farmer (not intended as security), and then arranges to borrow money on the security of the lease, the lease is chattel paper.

See also Sections 703.180 (collection of payments under chattel paper), 703.390 (manner of levy on chattel paper), 703.610 (sale of chattel paper), 705.610 (assignment of right to payment under chattel paper).

31502

§ 701.140. Costs

701.140. "Costs" means fees, commissions, charges, disbursements, and other expenses.

Comment. Section 701.140 defines costs to include all costs of collection. As used in this title, the term may in some cases be limited, such as to "costs of the levying officer" [or to "court costs"]. See, e.g., Section 702.620 (costs of levying officer).

31520

§ 701.150. Court

701.150. "Court" means the court where the judgment sought to be enforced was entered.

Comment. Section 701.150, which defines "court" to mean the court where the judgment was entered, may in some cases be inapplicable. See, e.g., Section 705.150 (court of similar jurisdiction in another county). See also Section 701.120 (application of definitions).

§ 701.160. Deposit account

701.160. "Deposit account" means any of the following:

(a) An account in any "bank" described in Section 102 of the Financial Code.

(b) An account in any state or federal savings and loan association. As used in this subdivision, "account" includes investment certificate, share account, and withdrawable share.

(c) An account for funds received from a member of a credit union.

(d) For the purposes of the exemption provided by Section 707.380, an inmate's trust account or similar account in which are deposited the funds of a person confined in any prison or facility under the jurisdiction of the Department of Corrections or the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility.

Comment. Subdivisions (a), (b), and (c) of Section 701.160 are based on Section 481.080 (attachment). Subdivision (d) is derived from former Section 690.21 and has the effect of treating an inmate's trust account in the same manner as deposit accounts and money for purposes of the exemption provided by Section 707.480. See also Sections 703.430 (manner of levy on deposit account), 703.435 (manner of levy on deposit account not standing solely in name of judgment debtor).

27858

§ 701.170. Document

701.170. "Document" means a "document of title" as defined by subdivision (15) of Section 1201 of the Commercial Code.

Comment. Section 701.170 defines "document" by incorporating by reference the term "document of title" defined by subdivision (15) of Section 1201 of the Commercial Code. A negotiable document is levied upon in the same manner as a negotiable instrument (Section 703.400), and goods subject to a negotiable document may not be levied upon. See Section 703.330(c). On the other hand, goods subject to a nonnegotiable document may be levied upon pursuant to Section 703.330.

38025

§ 701.180. Financial institution

701.180. "Financial institution" means a bank, trust company, savings and loan association, credit union, or other similar institution.

Comment. Section 701.180 is new. It is based on a portion of former Section 682a.

§ 701.190. Judgment

701.190. "Judgment" means a judgment, order, or decree of a court of this state.

Comment. Section 701.190 is new. This title deals only with enforcement of domestic judgments. See the Comment to Section 702.110.

10/907

§ 701.200. Judgment creditor

701.200. "Judgment creditor" means the person in whose favor a judgment is rendered or such person's assignee or successor in interest.

Comment. "Judgment creditor," as defined by Section 701.200, includes the person in whose favor the following types of judgments are rendered: judgments for the payment of money, judgments for the possession of personal property, judgments for the possession of real property, and judgments for the sale of real or personal property. The term is not used in Chapter 11 (commencing with Section 711.110) pertaining to enforcement of other types of judgments directly through the contempt power.

10/908

§ 701.210. Judgment debtor

701.210. "Judgment debtor" means the person against whom a judgment is rendered.

Comment. "Judgment debtor," as defined by Section 701.210, includes the persons against whom the following types of judgments are rendered: judgments for the payment of money, judgments for the possession of personal property, judgments for the possession of real property, and judgments for the sale of real or personal property. The term is not used in Chapter 11 (commencing with Section 711.110) pertaining to enforcement of other types of judgments directly through the contempt power. A judgment is enforceable pursuant to this title against the estate of a deceased judgment debtor. Section 702.420.

10/913

§ 701.220. Levying officer

701.220. "Levying officer" means the sheriff, marshal, or constable who is directed to execute a writ or order under this title.

Comment. Section 701.220 is new. In certain situations, other persons will be authorized to perform the duties of levying officers. See, e.g., Civil Code § 726 (commissioner or elisor selling property pursuant to a judgment foreclosing a mortgage); Code Civ. Proc. §§ 262.8-262.10 (elisor to perform certain duties when sheriff and coroner are parties to action); Govt. Code § 27469 (coroner to discharge duties of sheriff where sheriff is party to action or proceeding). See also Section 17 ("sheriff" includes marshal and constable).

§ 701.230. Motor vehicle

701.230. "Motor vehicle" means a "motor vehicle" as defined by Section 415 of the Vehicle Code.

Comment. Section 701.230 is new. Section 415 of the Vehicle Code provides: "A 'motor vehicle' is vehicle which is self-propelled." This definition includes not only cars, trucks, and buses but all sorts of heavy equipment and miscellaneous vehicles, e.g., golf carts, snowmobiles, forklifts, and farm equipment. See also Sections 703.320, 703.330, 703.360, 703.370 (manner of levy on motor vehicle), 703.350 (notice of levy to legal owner of registered motor vehicle).

§ 701.240. Negotiable instrument

701.240. "Negotiable instrument" means a "negotiable instrument" as defined by Section 3104 of the Commercial Code.

Comment. Section 701.240 is the same as Section 481.160 (attachment). See also Sections 703.180 (collection on negotiable instrument), 703.400 (manner of levy on negotiable instrument), 703.610 (sale of negotiable instrument), 705.610 (assignment right to payment on negotiable instrument).

§ 701.250. Person

701.250. "Person" includes an individual, a corporation, a partnership or other unincorporated association, and a public entity.

Comment. Section 701.250 is new. See also Sections 17 (defining "person") and 705.710 ("public entity" defined for purposes of collection of money judgment where judgment debtor is creditor of public entity).

§ 701.260. Property

701.260. "Property" includes real and personal property and any interest therein.

Comment. Section 701.260 is new; see also Section 17 ("property" includes both real and personal property).

§ 701.270. Security

701.270. "Security" means a "security" as defined by Section 8102 of the Commercial Code.

Comment. Section 701.270 is the same as Section 481.210 (attachment). See also Section 703.410 (manner of levy on a security).

§ 701.280. Vessel

701.280. "Vessel" means a "vessel" as defined by subdivision (a) of Section 9840 of the Vehicle Code.

Comment. Section 701.280 defines "vessel" by incorporating the definition in the Vehicle Code. This definition is broader than the definition of "vessel" in Section 481.230 (attachment), which is restricted to "numbered vessels." See also Sections 703.320, 703.330, 703.360, 703.370 (manner of levy on vessel), 703.350 (notice of levy to legal owner).

§ 701.290. Writ

701.290. "Writ" includes a writ of execution, a writ of possession of personal property, a writ of possession of real property, and a writ of sale.

Comment. Section 701.290 defines "writ" for the purpose of general provisions pertaining to all writs issuable under this title. See Chapters 2 (commencing with Section 702.110) (general provisions), 3 (commencing with Section 703.110) (writs of execution), 8 (commencing with Section 708.110) (writs of possession of personal property), 9 (commencing with Section 709.110) (writs of possession of real property), and 10 (commencing with Section 710.110) (writs of sale). See also Sections 701.120 (application of definitions) and 17 ("writ" defined).

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CHAPTER 2. PROVISIONS OF GENERAL APPLICATIONArticle 1. General Provisions§ 702.110. Provisions for enforcing judgments

702.110. Except as otherwise provided by statute, a judgment may be enforced pursuant to the following provisions:

- (a) A money judgment shall be enforced as provided in Chapters 3 (commencing with Section 703.110), 4 (commencing with Section 704.110), and 5 (commencing with Section 705.110).
- (b) A judgment for possession of personal property shall be enforced as provided in Chapter 8 (commencing with Section 708.110).
- (c) A judgment for possession of real property shall be enforced as provided in Chapter 9 (commencing with Section 709.110).
- (d) A judgment for sale of real or personal property shall be enforced as provided in Chapter 10 (commencing with Section 710.110).
- (e) A judgment requiring performance of any act not described in subdivisions (a) through (d) shall be enforced as provided in Chapter 11 (commencing with Section 711.110).

Comment. Section 702.110 is new. It refers to the chapters in this title that provide the means available to a judgment creditor for the enforcement of a judgment entered in this state. See Sections 701.190 ("judgment" defined), 701.220 ("judgment creditor" defined). A judgment is enforceable upon entry, subject to stays of enforcement. See Sections 702.140, 702.210. The introductory clause recognizes that this title does not provide the exclusive means for enforcing all judgments. See, e.g., Civil Code § 4701 (payment of child support enforceable by order for wage assignment); Govt. Code § 970.2 (tort and inverse condemnation judgment against local public entity enforceable by writ of mandate); Code Civ. Proc. § 702.120 (money judgment against public entity enforceable only by writ of mandate). A money judgment entered in another state is not enforceable pursuant to this title until a California judgment has first been entered based on the sister state money judgment. See Sections 1710.10(c) ("sister state judgment" defined), 1710.25 (entry of California judgment), 1710.35 (enforcement), 1710.60 (action on judgment). A support order issued in another state is enforceable in the same manner as a support order rendered in this state after it has been registered in California. See Sections 1698 (registration of foreign support order), 1699 (enforcement). A federal district court judgment entered or registered in this state is enforceable in the manner provided by federal law which to some extent incorporates state enforcement procedures. See Fed. R. Civ. P. 69(a) (enforcement of district court money judgment); 28 U.S.C. § 1963 (\_\_\_\_\_) (registration of judgment of one district court in another district). A money judgment of a court of a foreign nation is enforceable pursuant to Section 1713.3.

§ 702.120. Enforcement of money judgment against public entity

702.120. Notwithstanding any other provision of this title, a money judgment against a public entity may be enforced only by writ of mandate pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3.

Comment. Section 702.120 is new. It supersedes former Sections 690.22, 690.26, 690.27, and 690.29 (exemption of public property from execution) and portions of Health and Safety Code Sections 33124 and 34217.

29/325

§ 702.130. Remedies of state tax agency

702.130. If a warrant may properly be issued to enforce a lien arising under the provisions of the Revenue and Taxation Code or the Unemployment Insurance Code, the state agency authorized to issue the warrant may use the remedies available to judgment creditors under this title. For the purpose of this section, the lien shall be deemed to be a judgment. Where jurisdiction of a court is required for the enforcement of such remedies, jurisdiction is conferred upon the superior court of the county where the person against whom enforcement is sought resides or the property against which enforcement is sought is situated, or if the person does not reside in this state, in any county of this state.

Comment. Section 702.130 supersedes former Section 722.5. See also Sections 706.130 (third-party claims), 707.210 (exemptions).

29/645

§ 702.140. Stay of enforcement without bond

702.140. (a) Upon ex parte application by the judgment debtor or, if the court so orders, after a noticed hearing, the court may, without bond, stay enforcement of the judgment, other than the recording of an abstract of judgment to create a judgment lien, as follows:

(1) Where enforcement of the judgment would be stayed on appeal only if a bond were given, enforcement may be stayed for not more than 30 days after the stay order is made.

(2) Notwithstanding paragraph (1), where a motion for a new trial or for judgment notwithstanding the verdict is pending, enforcement may

be stayed for not more than 10 days after the determination of the motion.

(b) Notwithstanding subdivision (a), the court may stay enforcement of any judgment for a time and on terms consented to by the parties.

Comment. Section 702.140 supersedes former Section 681a. Subdivision (a) provides for an ex parte stay order unless the court orders otherwise and precludes the court from staying the filing of an abstract to create a judgment lien under Section 674. This codifies the result in *Industrial Indem. Co. v. Levine*, 49 Cal. App.3d 698, 699, 122 Cal. Rptr. 712, \_\_\_ (1975). Paragraph (1) of subdivision (a) makes clear that the 30-day period during which enforcement of a judgment may be stayed begins on the day the stay order is made. This codifies the rule in *Garrett v. Garrett*, 31 Cal. App. 173, 181, 159 P. 1050, \_\_\_ (1916). Paragraph (2) continues the substance of the last sentence of former Section 681a.

Subdivision (b) recognizes that the parties may stipulate to a stay for a longer period than is provided by subdivision (a) and may also include other terms such as whether a bond is required. See *Rio Grande Oil Co. v. Seaboard Sur. Corp.*, 139 Cal. App. 164, 173-75, 33 P.2d 887, \_\_\_ (1934), and the first sentence of former Section 681a.

If a judgment debtor appeals from a judgment, a stay of enforcement may be obtained pending appeal pursuant to Sections 916-923. See also Section 1174(c) (mandatory five-day stay under certain circumstances in unlawful detainer proceedings).

29/648

§ 702.150. Contribution among judgment debtors

702.150. (a) Where two or more judgment debtors are jointly liable on a money judgment:

(1) A judgment debtor who satisfies more than the judgment debtor's due proportion of the judgment, whether voluntarily or through enforcement, may compel contribution from the other judgment debtors.

(2) If the judgment is based upon an obligation of one judgment debtor as surety for another and the surety satisfies the judgment or any part thereof, whether voluntarily or through enforcement, the surety may compel repayment from the principal.

(b) A judgment debtor entitled to contribution or repayment pursuant to this section may apply on noticed motion to the court which entered the money judgment for a judgment for contribution or repayment against the other judgment debtors. At the hearing on the motion, the court shall determine the liability of the other judgment debtors and have judgment entered accordingly. The judgment may be enforced in the same manner as any other money judgment.

(c) This section does not apply to contribution among joint tortfeasors governed by Title 11 (commencing with Section 875).

Comment. Subdivision (a) of Section 702.150 continues the substance of the first sentence of former Section 709. Subdivision (a) permits contribution where a joint judgment debtor satisfies a disproportionate share of a money judgment, or satisfies the judgment as a surety, whether by voluntary payment or involuntarily through levy upon and sale of property, wage garnishment, examination proceedings, or some other procedure. This section is procedural; the joint judgment debtor's share depends on the circumstances of the case. See, e.g., *Tucker v. Nichol森*, 12 Cal.2d 427, 433, 84 P.2d 1045, \_\_\_ (1938); *Pacific Freight Lines v. Pioneer Express Co.*, 39 Cal. App.2d 609, 614, 103 P.2d 1056, \_\_\_ (1940); *Stowers v. Fletcher*, 84 Cal. App.2d Supp. 845, 848, 190 P.2d 338, \_\_\_ (1948).

Subdivision (b) supersedes the second sentence of former Section 709. It codifies the prior practice of determining the right to contribution only after a hearing on noticed motion. See *Stowers v. Fletcher*, 84 Cal. App.2d Supp. 845, 848, 190 P.2d 338, \_\_\_ (1948); 5 B. Witkin, *California Procedure Enforcement of Judgment* § 211, at 3564 (2d ed. 1971).

Subdivision (c) is new. It clarifies the relationship between the general provisions of this section and the provisions of Title 11 (commencing with Section 875) which are applicable to contribution among joint tortfeasors. This continues prior law. Cf. *Adams v. White Bus Line*, 184 Cal. 710, 713-14, 195 P. 389, \_\_\_ (1921) (prior to enactment of Title 11, rule against contribution between joint tortfeasors not changed by enactment of former Section 709).

29/329

§ 702.160. Rules for practice and procedure; forms

702.160. (a) The Judicial Council may provide by rule for the practice and procedure in proceedings under this title.

(b) The Judicial Council shall prescribe the form of the applications, notices, orders, writs, and other documents required by this title.

Comment. Section 702.160 is new. Under subdivision (b), the Judicial Council may adopt and revise forms as necessary but must act in a manner consistent with the provisions of this title. [More detailed authority is provided in Chapter 4 relating to wage garnishment. See Section 704. \_\_\_.]

968/673

Article 2. Time for Enforcement

§ 702.210. Time for enforcement of judgment

702.210. (a) Except as provided in subdivision (b) and in Section 702.220, upon the expiration of 20 years after the date of entry of a

money judgment or a judgment for possession or sale of property, the judgment may not be enforced, all enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease, and any lien created by an enforcement procedure is extinguished.

(b) The time during which enforcement is stayed or enjoined by court order or by operation of law is not counted in the computation of the 20-year period of enforceability under subdivision (a).

Comment. Subdivision (a) of Section 702.210 supersedes the first sentence of former Section 681, which provided a 10-year enforcement period, and former Section 685, which permitted revival of the judgment after the 10-year period on motion of the judgment creditor. Under Section 702.210, a judgment is enforceable for 20 years; at the end of this period, the judgment is in effect discharged and any liens created by the enforcement process expire. No further action, including levy, sale, collection, or delivery pursuant to the judgment, or pursuant to a writ or order issued to enforce the judgment, may take place. The rule announced in *Alonso Inv. Corp. v. Doff*, 17 Cal.3d 539, 541-43, 551 P.2d 1243, \_\_\_, 131 Cal. Rptr. 411, \_\_\_ (1976), permitting the enforcement of a writ of execution after the expiration of the 10-year period if the writ had been timely issued, is not continued.

Under former law, a judgment creditor could renew the judgment by bringing an action on it and obtaining a new judgment. This method of perpetuating the enforceability of a judgment is precluded by Section 702.230. The introductory clause of subdivision (a) of this section recognizes that the period of enforceability may be longer than the 20 years therein prescribed in two situations. Subdivision (b) provides for the exclusion of any time during which enforcement of the judgment is stayed or enjoined by court order or by operation of law. This continues the substance of the second sentence of former Section 681. Section 702.220 provides special rules applicable to money judgments payable in installments. The 20-year period is not extended for any other reason. Hence, the statement in *Nutt v. Nutt*, 247 Cal. App.2d 166, 168, 55 Cal. Rptr. 380, \_\_\_ (1966), that the absence from the state of the judgment debtor and his property tolls the running of the time to seek a writ of execution under former Section 681, is disapproved.

Judgments enforceable directly by contempt, such as those governed by Chapter 11 (commencing with Section 711.110), are not subject to the 20-year rule of Section 702.210.

968/675

#### § 702.220. Time for enforcement of installment judgment

702.220. Where a judgment for the payment of money is payable in installments, the 20-year period of enforceability prescribed by Section 702.210 runs as to each installment from the date the installment becomes due.

Comment. Section 702.220 codifies case law concerning the time within which installment judgments may be enforced. See, e.g., *Wolfe v.*

Wolfe, 30 Cal.2d 1, 4, 180 P.2d 345, \_\_\_ (1947); Lohman v. Lohman, 29 Cal.2d 144, 150, 173 P.2d 657, \_\_\_ (1946); DeUprey v. DeUprey, 23 Cal. 352, 353 (1863). The most common form of installment judgments are for spousal or child support. See Civil Code §§ 4700 (child support) and 4801 (spousal support). See also Code Civ. Proc. §§ 85 (municipal or justice court may order installment payment of money judgment), 667.7 (periodic payment of future damages in action against provider of health care services); Labor Code § 5801 (installment payment of worker's compensation award); Veh. Code § 16380 (installment payment of vehicle accident damage judgment).

968/677

§ 702.230. Enforceability of judgment in action upon judgment

702.230. The period of enforceability of a judgment in an action on a money judgment or on a judgment for possession or sale of property relates back to the commencement of the period of enforceability of the original judgment.

Comment. Section 702.230 prevents the extension of the enforceability of a judgment entered in this state by bringing an action upon it, which was permitted under former law. See *Atkinson v. Adkins*, 92 Cal. App. 424, 426, 268 P. 461, \_\_\_ (1928). Sections 702.210 and 702.220 provide exclusively for the period of enforceability of judgments entered in the courts of this state for the payment of money or for the sale or possession of real or personal property. Section 702.230 does not preclude the bringing of an action on a judgment of a sister state; however, once a judgment has been entered in this state, Section 702.230 makes clear that a later judgment resulting from an action on the original judgment does not extend the period of enforceability. See Section 1710.60 (action on sister state judgment). An action may be brought on a domestic judgment for a purpose other than extending its period of enforceability. See 5 B. Witkin, *California Procedure Enforcement of Judgment* § 192, at 3547 (2d ed. 1971). See also Section 701.190 ("judgment" defined).

968/682

Article 3. Liens

§ 702.310. Relation back of liens

702.310. Where a lien in favor of a judgment creditor is created pursuant to this title on property that is subject to an existing lien in favor of the judgment creditor, the priority of the lien relates back to the effective date of the existing lien.

Comment. Section 702.310 states the general rule regarding the relation back of liens which preserves the judgment creditor's priority as of the creation of the first in a series of overlapping liens on the same property. This principle continues former law. See former Section 700 (title of execution purchaser of real property relates back to

attachment or judgment lien); Nordstrom v. Corona City Water Co., 155 Cal. 206, 212-13, 100 P. 242, \_\_\_ (1909); Riley v. Nance, 97 Cal. 203, 205, 31 P. 1126, \_\_\_ (1893); Bagley v. Ward, 37 Cal. 121, 131 (1869) (dictum); Durkin v. Durkin, 133 Cal. App.2d 283, 294, 284 P.2d 185, \_\_\_ (1955); Balzano v. Traeger, 93 Cal. App. 640, 643-44, 270 P. 249, \_\_\_ (1928).

Attachment liens, which may exist for as long as five years, are governed by Sections 488.500 and 488.510. The lien of a temporary protective order served in an attachment proceeding is governed by Section 486.110. An attachment lien relates back to the effective date of the lien of a temporary protective order pursuant to Section 488.500(i).

The judgment lien on real property, which may exist for 20 years (not counting the time when enforcement is stayed), is provided by Section 674.

Various liens are provided by this title. See Sections 703.250 (execution lien), 704. \_\_\_ (lien of earnings withholding order), 705.120(d) (lien of order for examination of judgment debtor), 705.130(c) (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 by public entity).

General provisions concerning the priority of liens appear in Civil Code Sections 2897-2899. Note that a lien on after-acquired property arises as of the time when the property is acquired by the person whose property is subject to the lien. Civil Code § 2883.

405/884

§ 702.320. Effect of lien against subsequent transferee

702.320. A lien created pursuant to this title is effective against a subsequent transferee of the property subject to the lien other than a transferee who gives fair consideration for the property without knowledge of the lien.

Comment. Section 702.320 makes generally applicable a principle applicable to "equitable" liens. See *Jud Whitehead Heater Co. v. Obler*, 111 Cal. App.2d 861, 872-74, 245 P.2d 608, 616 (1952); *Wagner v. Sariotti*, 56 Cal. App.2d 693, 698, 133 P.2d 430, 433 (1943); *cf.* *Taylor v. S & M Lamp Co.*, 190 Cal. App.2d 700, 711-13, 12 Cal. Rptr. 323, \_\_\_ (1961) (transferee of partnership property with knowledge of charging order which created lien liable to judgment creditor); see generally 1 J. Pomeroy, *Equity Jurisprudence* §§ 165, 171(4) (5th ed. 1941); 4 *id.*, §§ 1233-1234. Former law did not specify the effect of the lien of execution; however, in at least one decision, it was intimated that a levy of attachment would not be effective as against a good faith purchaser from the defendant. See *Rogers v. Gilmore*, 51 Cal. 309, 312 (1876). Section 702.320 is based in part on a provision of New York law. See N.Y. Civ. Prac. Law & R. § 5202 (McKinney \_\_\_). It should be noted that, even if the transferee gives fair consideration and has no notice of the existence of a lien on the property, the transfer may, in certain circumstances, be attacked as a fraudulent conveyance. See Civil Code §§ 3439-3440.

§ 702.330. Duration of liens

702.330. Except to the extent expressly limited by statute, a lien created pursuant to this title is effective during the time the judgment pursuant to which it is created is enforceable.

Comment. Section 702.330 is new. For the period of enforceability of a judgment, see Article 2 (commencing with Section 702.210). The introductory portion of Section 702.330 recognizes that a particular lien may be limited in duration. See, e.g., Section 703.250 (lien of execution for one year). See also Section 917.1 (stay of enforcement on appeal).

10012

§ 702.340. Extinction of liens

702.340. If a lien created pursuant to this title is extinguished, any property held pursuant to the lien shall be released and any duties imposed with respect to property subject to the lien are discharged.

Comment. Section 702.340 is new.

29/646

Article 4. Enforcement After Death of Party§ 702.410. Enforcement after death of judgment creditor

702.410. If the judgment creditor dies after entry of judgment, the judgment may be enforced as provided in this title by the judgment creditor's executor or administrator or successor in interest.

Comment. Section 702.410 continues the substance of subdivision 1 of former Section 686. The reference of the former provision to the "application" of the executor, administrator, or successor in interest is not continued. The judgment is enforceable by such persons in the same manner as by a judgment creditor. See Section 701.200 ("judgment creditor" includes successor in interest). An executor or administrator must qualify under the applicable statutory provisions. See, e.g., Fin. Code § 1503; Prob. Code §§ 401, 405.1, 420.

29/647

§ 702.420. Enforcement after death of judgment debtor

702.420. After the death of the judgment debtor:

(a) A money judgment may be enforced only as provided by Probate Code Section 732.

(b) A judgment for possession or sale of property may be enforced against the judgment debtor's estate in the manner provided by this title.

Comment. Subdivision (a) of Section 702.420 incorporates Probate Code Section 732, which provides for the enforcement of a money judgment after the death of the judgment debtor.

Subdivision (b) supersedes subdivision 2 of former Section 686.

Note. Probate Code Section 732 will be amended in the conforming revisions.

29/326

#### Article 5. Procedural Provisions

##### § 702.510. Manner of mailing notice; personal delivery

702.510. (a) Unless otherwise expressly provided, if a notice or other paper is required or permitted to be mailed pursuant to this title, it shall be sent by first-class mail, postage prepaid.

(b) Mailing is complete under this title when the item is deposited in the mail, postage prepaid, addressed to the person to whom the item is mailed.

(c) If a notice is mailed, it shall state the date of mailing.

(d) Notwithstanding subdivision (a), if a notice or other paper is required or permitted to be mailed pursuant to this title, whether by first-class, certified, or registered mail, it may be delivered personally.

Comment. Section 702.510 is new. Several provisions of former law provided for service by mail or personal delivery. See, e.g., former Sections 688(b) (service of writ of execution), 690.50(b) (service of claim of exemption).

045/125

##### § 702.520. Person on whom service may be made

702.520. (a) Except as provided in subdivision (b), service of a writ, notice, or order shall be made upon a person upon whom summons may be served.

(b) Service of a writ, notice, or order upon a bank, savings and loan association, credit union, title insurance company or underwritten title company (as defined in Section 12402 of the Insurance Code), or industrial loan company (as defined in Section 18003 of the Financial

Code) shall be made at the office or branch thereof that has actual possession of the property or carries the deposit account that is levied upon or is otherwise sought to be applied to the satisfaction of the judgment. Service shall be made upon the officer, manager, or other person in charge of such office or branch at the time of service.

Comment. Section 702.520 is new. It is comparable to Section 488.040 (attachment). Section 702.210, however, applies to all writs and other process served under this title. For persons upon whom summons may be served, see Sections 416.10-416.90. Service not made in accordance with this section is ineffective.

29/334

§ 702.530. Entry of costs and interest on writ; additional costs and interest

702.530. (a) A writ issued pursuant to this title shall contain the following information:

(1) The amount of any costs determined pursuant to Section 1033.7 which have accrued from the date of entry of the judgment to the date of issuance of the writ and the fee for issuance of the writ.

(2) If the judgment creditor has filed an affidavit stating the amount of interest which has accrued from the date of entry of the judgment to the date of issuance of the writ, the amount of such interest.

(3) The amount of any interest which accrues daily, from the date of issuance of the writ, on the amount of the judgment remaining unpaid.

(b) Interest on the amount of the judgment remaining unpaid as shown on the writ, from the date of issuance of the writ to the date of levy under the writ, shall be computed by the levying officer and this amount plus the costs of the levying officer shall be added to the net balance actually due on the date of the issuance of the writ, as stated therein, in determining the total amount to be satisfied.

Comment. Section 702.520 continues the substance of the first paragraph of former Section 682.2 but does not apply only to writs of execution as did the former provision. See Section 701.290 ("writ" defined). See also Sections 703.120, 708.110, 709.110, 710.110 (writs issued by court clerk), and 167 (clerk's duties performed by judge if no clerk). Paragraph (1) of subdivision (a) makes clear that only costs that have been properly determined, along with the fee for issuance of the writ, may be entered on the writ by the clerk.

Subdivision (b) continues the substance of the second paragraph of former Section 682.2.

The term "costs" is defined in Section 701.140 ("costs" includes fees, commissions, charges, disbursements, and other expenses).

[Note that in the case of a judgment for the possession of personal property the recoverability of interest depends on whether the specific property in question can be found. See Sections 708.130, 708.160.]

29/335

§ 702.540. Request for notice of sale

702.540. (a) After judgment has been entered, any person may file with the clerk a written request for notice by mail of any sale pursuant to a writ issued pursuant to the judgment. The request shall specify the title of the court, the case and number of the action in which the judgment was rendered, and the date of entry thereof, and shall state the address to which the notice of sale is to be mailed.

(b) Whenever a writ is issued pursuant to the judgment, the clerk shall note upon the writ whether notice by mail has or has not been requested. If notice has been requested, the clerk shall note upon the writ the name and address of the person requesting notice.

(c) The levying officer conducting a sale under a writ upon which appears a notation that notice has been requested shall mail a copy of the notice of sale to such person at the address noted upon the writ. The copy of the notice shall be mailed at the time notice is posted pursuant to Section 703.630.

Comment. Section 702.540 continues the substance of former Section 692a except that Section 702.540 is not limited to writs of execution. Sales of property take place under writs of execution and writs of sale as a matter of course (see Sections 703.610, 710.130) and under writs of possession of real or personal property as an ancillary matter (see Sections 708.130, 708.160, 709.130). Notice of sale is required to be given to the judgment debtor and other interest holders of record of real property in all cases. See Sections 703.630, 710.130(b). Failure to give the required notice may subject the levying officer to liability. See Section 703.640.

29/327

Article 6. Levying Officers

§ 702.610. Instructions to levying officer

702.610. The judgment creditor shall give the levying officer instructions in writing, signed by the judgment creditor, containing the information needed by the levying officer to comply with the provisions of this title.

Comment. Section 702.610 is new. It is based on subdivision (a) of Section 488.010 (attachment) and on parts of subdivisions 2 and 3 of former Section 692 (sale of personal and real property). See also Sections 262 (levying officer not liable for carrying out signed instructions of plaintiff), 703.210 (writ of execution), 708.130 (writ of possession of personal property), 709.130 (writ of possession of real property), 710.130 (writ of sale).

29/339

§ 702.620. Deposit of costs prior to performance of duty

702.620. Except as otherwise provided by law:

(a) As a prerequisite to the performance by the levying officer of a duty under this title, the judgment creditor shall deposit a sum of money with the levying officer sufficient to pay the costs of performance of the duty.

(b) As a prerequisite to the taking of property into custody by the levying officer, whether by keeper or otherwise, the judgment creditor shall deposit with the levying officer a sum of money sufficient to pay the costs of taking the property and keeping it safely for a period of 15 days. In the event that continuation of the custody of the property is required, the levying officer shall, from time to time, demand orally or in writing that the judgment creditor deposit additional amounts to cover estimated costs for periods not to exceed 30 days each. A written demand may be mailed to the judgment creditor. In the event that the money so demanded is not paid within the time specified in the demand, the levying officer shall release the property in the manner provided by Section 703.290.

Comment. Subdivision (a) of Section 702.620 makes more specific the requirement that costs of the levying officer be paid in advance. See Govt. Code §§ 6100, 24350.5. Subdivision (b) is comparable to Section 488.050 (expenses in attachment). Subdivision (b) also recognizes the practice under former law of making an oral demand for costs. The introductory clause recognizes that there are exceptions to the general rule, such as where certain governmental agencies are judgment creditors. See Labor Code § 101 (Labor Commissioner). Similarly, certain creditors may not be required to prepay costs. See Section 1677 (collection of support payments under Uniform Reciprocal Enforcement of Support Act); *Martin v. Superior Court*, 176 Cal. 289, 296-97, 168 P. 135, \_\_\_ (1917) (actions in forma pauperis). See also Section 701.140 ("costs" defined).

§ 702.630. Execution of certain commercial paper by levying officer

702.630. (a) When a check, draft, money order, or other order for the withdrawal of money from a financial institution, the United States, any state, or any public entity within any state, payable to the judgment debtor on demand, comes into the possession of a levying officer pursuant to this title, the levying officer shall promptly endorse and present it for payment.

(b) The levying officer shall endorse the check, draft, money order, or other order by writing the name of the judgment debtor thereon and the name and official title of the levying officer and giving the title of the court and the cause in which the writ or other enforcement process was issued. The endorsement is a valid endorsement. No financial institution or public entity on which the check, draft, money order, or other order is drawn is liable to any person by reason of paying to the levying officer the check, draft, money order, or other order by reason of the endorsement. No levying officer is liable by reason of endorsing, presenting, and obtaining payment of the check, draft, money order, or other order.

(c) If it appears from the face of the check, draft, money order, or other order that it has been tendered to the judgment debtor in satisfaction of a claim or demand and endorsement thereof shall be considered a release and satisfaction by the judgment debtor of the claim or demand, the levying officer shall not endorse the check, draft, money order, or other order unless the judgment debtor has first endorsed it to the levying officer. If the judgment debtor does not endorse the check, draft, money order, or other order to the levying officer, the levying officer shall hold it subject to the lien of the writ or other enforcement process and is not liable to the judgment debtor or to any other person for delay in presenting it for payment.

Comment. Section 702.630 continues the substance of subdivision (g) of former Section 688 (which incorporated Section 488.520 in the Attachment Law by reference) except that Section 702.630 is not limited to situations where commercial paper comes into the possession of a levying officer or a receiver pursuant to a writ of execution. See also Section 701. \_\_\_ ("financial institution" defined).

§ 702.640. Manner of custody

702.640. Except as otherwise provided by statute, where a levying officer is directed to take property into custody, the levying officer may do so either by removing the property to a place of safekeeping or by installing a keeper.

Comment. Section 702.640 continues the substance of the second sentence of subdivision (c) of former Section 688 except that Section 702.640 is not limited to custody under a writ of execution. The introductory clause recognizes exceptions to this general rule. See Sections 703.360 (tangible personal property of a going business), 703.370 (keeper for personal property used as dwelling).

405/202

§ 702.650. Liability of levying officer

702.650. The levying officer is not liable for actions taken in conformance with the provisions of this title.

Comment. Section 702.650 is new. This general protection afforded levying officers who perform their duties in accordance with this title supersedes the second sentence of the sixth paragraph of former Section 689 and the fourth sentence of former Section 689b(9). See also Section 703.710.