

## Memorandum 78-70

Subject: Study D-300 - Enforcement of Judgments (Exemptions)

Attached to this memorandum is a draft of the exemption chapter of the Enforcement of Judgments Law reflecting all Commission decisions to date. Most of the draft has previously been considered in substantially this form, but we think it would be useful to consider the complete chapter once more because it has been some time since it was last considered and several new members have been appointed to the Commission. Also attached hereto are a table comparing existing and proposed exemptions (Exhibit 1) and a copy of the exemptions in Code of Civil Procedure Sections 690.1-690.30 (Exhibit 2).

Background

The Commission's general approach in this area is to consolidate similar exemptions and make the terminology more flexible in order to provide more equitable treatment of differently situated debtors and to reduce the need for amendments in the future. The draft should be reviewed with these policies in mind. We have not proposed any radical changes in existing exemption laws in recognition of the controversial and emotional nature of this subject.

The Commission may also be interested to know that the new federal bankruptcy act will most probably not contain its own exemption provisions. The House version of the bill (H.R. 8200) contained optional exemption provisions which the Commission considered in its past discussions of the appropriate levels of exemptions from enforcement of money judgments. The Senate version of the bill (S. 2266), however, continues the principle of existing bankruptcy law that incorporates the exemption laws of the state of the bankrupt's residence.

There are two gaps in the draft statute--the homestead exemption and the application of exemptions to property of married debtors. The homestead exemption is discussed in Memorandum 78-48, to be considered at this meeting. The exemption of marital property will be considered after we receive our consultant's study, hopefully sometime next spring. The exemption of earnings is the subject of a separate chapter.

### Significant Reforms in Substantive Exemptions

Exhibit 1 (attached hereto) is a table comparing the exemptions in existing law to those in the draft statute. A few of these exemptions would, in certain fact situations, result in significant change:

1. Household furnishings, wearing apparel, and jewelry are exempt under existing law on the basis of necessity; however, the courts have on occasion permitted debtors to maintain a fairly luxurious lifestyle under this provision. The draft statute would limit the household furnishings and wearing apparel exemption to those items reasonably necessary for one household and with an item value of \$500 or less, exclusive of liens. This will have little impact on the ordinary debtor but will help prevent the abuses that occur under existing law. Although it is difficult to judge the net effect of this proposed change, it may result in additional court hearings to determine value. A separate exemption of \$500 for the aggregate of nonnecessary jewelry, heirlooms, and works of art is also proposed.

2. The draft statute restricts the life insurance benefits exemption to an amount necessary to support the debtor and the debtor's spouse and dependents. Where their needs are not great, this will result in a significant reduction from existing law which exempts benefits in the amount represented by a \$500 annual premium and provides an additional exemption in the same amount for the spouse and dependents of the insured. Correspondingly, if the needs of the debtor's family are great enough, a larger amount would be exempt under the draft statute than under existing law. The draft statute also protects unmatured life insurance policies and loan value not exceeding \$5,000, whereas under existing law a debtor may be forced to surrender a policy with a sufficiently high annual premium. It remains to be seen whether the insurance industry, which has historically favored increased protection for insurance benefits, would oppose or support this proposal.

3. Under existing law, a judgment debtor may shield \$2,500 in deposit accounts from creditors by putting \$1,000 in a savings and loan account and \$1,500 in a credit union account. The draft statute would reduce the aggregate to \$2,000, but would expand the coverage to cover all accounts, including savings and checking accounts in banks. Bills to expand the deposit account exemption to checking accounts have not made any progress in the legislature in the past.

4. The draft statute would add exemptions for settlements and awards arising out of personal injury or wrongful death. Existing law provides no such exemption.

5. The motor vehicle exemption would be increased from \$500 to \$1,000 under the draft statute.

6. The cemetery plot exemption would be reduced from 1/4 acre to a plot for one person under the draft statute. However, family plots would be completely exempt in accordance with existing provisions in the Health and Safety Code.

#### Other Important Changes

Several other provisions in the draft statute represent significant departures from existing law:

Support judgment exception. Draft Section 707.170 provides a blanket exception from the exemption provisions in cases where the judgment being enforced is for child or spousal support. Existing law provides an exception only to the exemption of retirement benefits. (The draft statute will preserve the law permitting a higher level of wage garnishment to enforce support judgments.)

Inflation escalator. Draft Section 707.200 provides for the administrative increase of dollar amounts of exemptions to keep pace with inflation. A major complaint against exemption laws throughout the United States is that legislatures fail to revise exemption laws to take account of the decline in the purchasing power of the dollar.

Exemptions from tax liability. Draft Section 707.210 makes the exemptions applicable where a tax liability is sought to be enforced except that an exemption may not be claimed for property against which a property tax liability is being enforced. As the Comment to Section 707.210 points out, existing law makes exemptions applicable depending generally upon which procedure is used to collect the tax.

Retroactive application of exemptions. As discussed in Memorandum 78-35, the staff recommends that the rule precluding retroactive application of exemptions be abolished.

Procedural changes. Several procedural changes would also be made by the draft statute. These are discussed in the text and the Comments to the sections in the attached copy of the draft.

### Tracing

At the May 1978 meeting, the Commission decided that tracing of exempt funds should be by the lowest intermediate balance method. Draft Section 707.180 implements this decision.

In the majority of jurisdictions, the lowest intermediate balance rule is applied where a trustee dips into the trust account and then deposits personal funds--the question being whether the later deposit is subject to the trust. This rule is subject to certain exceptions such as where there is an intent to replenish the trust funds. In California, however, the general rule was rejected in *Church v. Bailey*, 90 Cal. App.2d 501, 504, 203 P.2d 547 (1949), which held that the new deposit becomes a part of the trust fund and that it is unnecessary for the beneficiary to show an express intent on the part of the trustee to replace the depleted trust funds. The rejection of the majority rule in regard to trust funds does not bear upon the adoption of this rule in exemption cases, however, because the issues in the two areas are distinct.

There was some discussion at the May meeting concerning the manner of determining the lowest intermediate balance. The consensus was that this matter should be left to the courts. Since the general rule has been rejected in California, the courts probably have not developed rules for determining the lowest intermediate balance, at least insofar as trust cases are concerned. It appears to be a rather complex problem. Consider the following theories for determining the lowest intermediate balance offered to the court in *Republic Supply Co. v. Richfield Oil Co.*, 79 F.2d 375, 379 (9th Cir. 1935):

1. The daily closing balance, after crediting the opening balance and all deposits during the day and charging all withdrawals for the day, without regard to the order in point of time in which deposits and withdrawals were made.
2. The balance shown during the day as a result of periodical posting of deposits and withdrawals, after crediting the opening balance, with or without regard to the order in point of time of the transactions, observing or neglecting to observe the true balance, according to the arbitrary inclination of the posting clerk.
3. The balance shown by deducting all withdrawals posted during the day from the opening balance without crediting deposits

for the day; disregarding the true order of transactions and assuming an order in point of time which would produce the lowest possible balance during the day.

The trial court had applied the third theory; the appellate court in Republic Supply reversed and applied the first. The staff does not propose to specify the manner of determining the lowest intermediate balance in the statute.

Respectfully submitted,

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EXHIBIT 1

COMPARISON OF EXEMPTIONS IN EXISTING LAW AND DRAFT STATUTE

Type of Property	Existing Law	Draft Statute
1. Motor vehicle	\$500 over liens (\$ 690.2)	\$1,000 over liens (\$ 707.530)
2. Household goods and personal effects	All items "ordinarily and reasonably necessary to, and personally used by, the debtor and his resident family (\$ 690.1)	Items "reasonably necessary for one household and personally used" by debtor's family not over \$500 per item in value over liens (\$ 707.540)
3. Jewelry, heirlooms, works of art	See item 2 for jewelry and heirlooms; works of art of or by debtor or family (\$ 690.1)	Aggregate value of \$500 over liens (\$ 707.550)
4. Health aids	Prosthetic and orthopedic appliances (\$ 690.5)	All health aids subject to reasonable necessity standard (\$ 707.560)
5. Tools of trade	\$2,500 over liens (\$ 690.4)	Same, with 90-day proceeds exemption (\$ 707.570)
6. Deposit accounts	\$1,000 in savings and loan association (per person) and \$1,500 in credit union (\$ 690.7; Fin. Code § 15406)	Aggregate of \$2,000 in any account in financial institution and cash (\$ 707.580)
7. Deposit account into which social security payments are directly deposited	Automatic \$500 (one payee) or \$750 (two payees); remainder subject to tracing of origin (\$ 690.30)	Same

8. Life insurance	Benefits from policy with \$500 annual premium for any beneficiary; additionally, benefits from \$500 annual premium for spouse and dependents of insured; all of certain group life policies (§§ 690.9, 690.10)	Unmatured policy completely exempt except loan value over \$5,000; benefits on maturity payable to insured or spouse or dependent to extent reasonably necessary for support; loan value exemption subject to \$10,000 increase if no homestead exemption (§ 707.600)
9. Retirement benefits	All pension benefits (including disability and death benefits) from public or private employer and tax exempt private plans (§ 690.18)	Same, except disability (see item 11) and death (see item 8) (§ 707.610)
10. Unemployment benefits	Governmental unemployment benefits (§§ 690.16, 690.175, Unemp. Ins. Code §§ 988, 1342)	Same, also strike benefits paid by union (§ 707.620)
11. Disability and health benefits	Benefits represented by \$500 annual premium; all aid by fraternal benefit society (§§ 690.11, 690.14)	Same, except inapplicable against health care provider; also covers disability and health benefits under retirement plan (§ 707.630)
12. Damages for personal injury	No exemption	To extent reasonably necessary for support of debtor, spouse, and dependents; inapplicable against health care provider (§ 707.640)
13. Damages for wrongful death	None	To extent reasonably necessary for support of spouse or dependent (§ 707.650)
14. Worker's compensation	All compensation (§ 690.15)	Same (§ 707.660)

15. Aid	Aid under public assistance program and from fraternal benefit society (§§ 690.14, 690.19)	All aid, local, under federal programs administered by state, and nongovernmental aid of same type (\$ 707.670)
16. Relocation benefits	All benefits (\$ 690.8a)	Same (\$ 707.680)
17. Cemetery plots	Not exceeding 1/4 acre; family plots; not over 5 acres for religious or benevolent association; dedicated lands (\$ 690.24; Health & Saf. Code § 8650)	Plot for one person; family plots; dedicated lands (\$ 707.520)
18. Church pews	All pews owned by individual and used for religious purposes in church or meetinghouse (\$ 690.25)	Eliminated
19. Funds of prisoners held in trust	\$40 (\$ 690.21)	Aggregated with deposit accounts (see item 6)
20. Public property	Specified types of property of counties, towns, and fire and military companies, devoted to public use; many special provisions for other public entities scattered throughout codes (e.g., §§ 690.22, 690.26, 690.27, 690.29)	Draft statute unavailable for enforcement against public entity [Section 702.120]

## EXHIBIT 2

Code of Civil Procedure  
Sections 690.1 - 690.30**§ 690.1. Exemptions; household furnishings and appliances; apparel; piano; radio, television; provisions and fuel; shotgun; rifle; family art**

Necessary household furnishings and appliances and wearing apparel, ordinarily and reasonably necessary to, and personally used by, the debtor and his resident family, including, but not limited to, one piano; one radio and one television receiver; provisions and fuel actually provided for the debtor and his resident family's use, sufficient for three months; one shotgun and one rifle. Works of art shall not be exempt unless of or by the debtor and his resident family.

(Added by Stats.1970, c. 1523, § 10.)

Former § 690.1 was repealed by Stats.1970, c. 1523, § 9.

**§ 690.2. Exemptions; motor vehicle; distribution of proceeds, priority; notice**

(a) One motor vehicle with a value not exceeding five hundred dollars (\$500), over and above all liens and encumbrances on such motor vehicle. The value of such motor vehicle shall be established by reference to used car price guides customarily used by California automobile dealers, or, if not listed in such guides, fair market value, for a motor vehicle of that year and model.

(b) When the debtor has only one vehicle, the levying officer shall not receive any bid at the execution sale unless it exceeds the total of:

- (1) The motor vehicle exemption;
- (2) The aggregate amount of all liens and encumbrances on the motor vehicle; and
- (3) The amount necessary to repay the judgment creditor for the fees and costs advanced to the levying officer.

In the event no bid is accepted the levying officer shall release the motor vehicle to the debtor within five days.

(c) When the debtor has only one vehicle, the levying officer shall distribute the proceeds of any execution sale or from the undertaking, if necessary, without further order of the court, in the following order of priority:

- (1) First, the seller, lienholder or encumbrancer shall recover pursuant to paragraph (1) of Section 689c;
- (2) Second, the debtor shall recover five hundred dollars (\$500), the amount of the motor vehicle exemption;
- (3) Third, to the satisfaction of the judgment; and
- (4) Fourth, the balance, if any, to the debtor.

The distribution shall be made, whether or not the debtor has filed a claim of exemption and regardless of who purchases the motor vehicle.

(d) In addition to the procedure established under this section and Section 690.50, the levying officer shall consult the Department of Motor Vehicles and, if the department's records show that another vehicle

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is registered in the name of the debtor, the levying officer shall notify the debtor of his findings and that the debtor may file a claim of exemption pursuant to this section prior to the sale of the motor vehicle held by the levying officer but if the debtor so files he waives his right to file a claim of exemption under this section for any other motor vehicle currently registered in the name of the debtor with regard to the judgment giving rise to the existing writ of execution.

The notice required by this subdivision shall be given at the same time and in the same manner as the giving of the notice of sale to the judgment debtor. Notwithstanding the provisions of Section 690.50, a claim of exemption may be filed pursuant to this subdivision at any time prior to the sale of the motor vehicle. If the debtor files a claim of exemption, the motor vehicle held by the levying officer shall be deemed to be the sole motor vehicle owned by the debtor. The procedure for hearing the claim shall be the same as that provided in Section 690.50, and the procedure for sale, if ordered, shall be as provided in subdivisions (b) and (c) of this section.

If no claim of exemption is filed after notice is given under this subdivision, the levying officer shall distribute the proceeds of the sale in the following order of priority:

(1) First, the seller, lienholder or encumbrancer shall recover pursuant to paragraph (1) of Section 689c;

(2) Second, to the satisfaction of the judgment; and

(3) Third, the balance, if any, to the debtor.

(e) Any amount representing the motor vehicle exemption paid to the debtor shall be entitled, for a period of 90 days thereafter, to the same protection against legal process which the law gives to the motor vehicle exemption.

(Added by Stats.1976, c. 1210, § 2; Stats.1977, c. 683, § 1.)

Former § 690.2 was repealed by Stats.1976, c. 1210, § 1.

Original § 690.2 was repealed by Stats.1970, c. 1523, § 11.

Cross References

Household defined, see Business and Professions Code § 8508.

§ 690.3. Exemptions; housetrailer, mobilehome or waterborne vessel

(a) One housetrailer, mobilehome, houseboat, boat, or other waterborne vessel in which the debtor, or the

family of such debtor, actually resides, of a value not exceeding the following values:

(1) For any head of a family, of a value not exceeding thirty thousand dollars (\$30,000) in actual cash value, over and above all liens and encumbrances on that housetrailer, mobilehome, houseboat, boat, or other waterborne vessel;

(2) For any person 65 years of age or older of a value not exceeding thirty thousand dollars (\$30,000) in actual cash value, over and above all liens and encumbrances on that housetrailer, mobilehome, houseboat, boat, or other waterborne vessel; and

(3) For any other person, of a value not exceeding fifteen thousand dollars (\$15,000) in actual cash value, over and above all liens and encumbrances on that housetrailer, mobilehome, houseboat, boat, or other waterborne vessel.

(b) The exemption provided by this section shall not apply if such debtor or the spouse of such debtor has an existing homestead as provided by Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code or has obtained a prior judicial determination that the dwelling house of the debtor or the family of the debtor is exempt from execution under Section 690.31.

(Added by Stats.1970, c. 1523, § 14. Amended by Stats.1972, c. 418, § 1; Stats.1973, c. 787, § 1; Stats.1976, c. 159, § 1; Stats.1976, c. 471, § 2.)

Former § 690.3 was repealed by Stats.1970, c. 1523, § 13.

Cross References

Implement of husbandry, see Vehicle Code §§ 655, 30000 et seq.

§ 690.4. Exemptions; tools, equipment, etc., used in commercial activity, trade, calling or profession

To the maximum aggregate actual cash value of two thousand five hundred dollars (\$2,500), over and above all liens and encumbrances on such items at the time of any levy of attachment or execution thereon, any combination of the following: tools, implements, instruments, uniforms, furnishings, books, equipment, one commercial fishing boat and net, one commercial motor vehicle reasonably necessary to and actually used in a commercial activity, and other personal property ordinarily and reasonably necessary to, and personally owned and used by, the debtor exclusively in the exercise of the trade, calling, or profession by which he earns his livelihood.

(Added by Stats.1970, c. 1523, § 16.)

Former § 690.4 was repealed by Stats.1976, c. 1523, § 15.

**§ 690.5. Exemptions; prosthetic and orthopedic appliances**

All prosthetic and orthopedic appliances personally used by the debtor.

(Added by Stats.1953, c. 249, § 1. Amended by Stats.1970, c. 1523, § 17.)

**§ 690.6. Exemptions; certain earnings; determination of priority and division among levying creditors; hearing**

(a) One-half or such greater portion as is allowed by statute of the United States, of the earnings of the debtor received for his or her personal services rendered at any time within 30 days next preceding the date of a withholding by the employer under Section 682.3, shall be exempt from execution without filing a claim for exemption as provided in Section 690.50.

(b) All earnings of the debtor received for his or her personal services rendered at any time within 30 days next preceding the date of a withholding by the employer under Section 682.3, if 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, unless the debts are:

(1) Incurred by the debtor, his or her spouse, or his or her family for the common necessities of life.

(2) Incurred for personal services rendered by any employee or former employee of the debtor.

(c) The court shall determine the priority and division of payment among all of the creditors of a debtor who have levied an execution upon nonexempt earnings upon such basis as is just and equitable.

(d) Any creditor, upon motion, shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the priority and division of payment among all the creditors of the debtor who have levied an execution upon nonexempt earnings pursuant to this section.

(Added by Stats.1970, c. 1523, § 19. Amended by Stats.1971, c. 578, § 8.8; Stats.1971, c. 1645, § 1; Stats.1971, c. 1634, § 5; Stats.1972, c. 43, § 1; Stats.1974, c. 1518, § 17; Stats.1975, c. 1241, §§ 6.5, 7; Stats.1976, c. 317, § 1.)

Former § 690.6 was repealed by Stats.1970, c. 1523, § 18. See now, § 690.4.

Inapplicability of Stats.1974, c. 1518, to writs of attachment issued prior to January 1, 1977, see note under § 481.010.

Section 52 of Stats.1974, c. 1518, provided: "It is the intent of the Legislature, if this bill and Assembly Bill No. 101 [A.B.No.101 was not enacted] are both chaptered and become effective January 1, 1975, and this bill is chaptered after Assembly Bill No. 101, that

Section 690.6 of the Code of Civil Procedure shall be repealed as provided by Section 17.5 of this act. Therefore, Section 17.5 of this act shall become operative only if this bill and Assembly Bill No. 101 are both chaptered and become effective January 1, 1975, and this bill is chaptered after Assembly Bill No. 101, in which case Section 17 of this act shall not become operative."

Sections 9.3 and 9.5 of Stats.1975, c. 1241, provides:

"Sec. 9.3. Section 6.5 of this act shall be operative until the operative date of Chapter 1516 of the Statutes of 1974, and on that date is of no force and effect.

"Sec. 9.5. Section 7 of this act shall become operative on the operative date of Chapter 1516 of the Statutes of 1974."

**Cross References**

Mine, definition, see Public Resources Code § 2200.

**§ 690.7. Exemptions; savings; limit**

(a) To the maximum aggregate value of one thousand dollars (\$1,000), any combination of the following: savings deposits in, shares or other accounts in, or shares of stock of, any state or federal savings and loan association; "savings deposits" shall include "investment certificates" and "withdrawable shares" as defined in Sections 5061 and 5067 of the Financial Code, respectively.

(b) Such exemption set forth in subdivision (a) shall be a maximum of one thousand dollars (\$1,000) per person, whether the character of the property be separate or community.

(Added by Stats.1970, c. 1523, § 21.)

Former § 690.7 was repealed by Stats.1970, c. 1523, § 20. See now, § 690.4.

**Cross References**

Itinerant vendor, definition of, see Business and Professions Code § 4081.

**§ 690.8. Exemptions; compensation from dwelling taken; homestead exemption**

For a period of six months from the date of receipt, the compensation received from a public entity which acquires for a public use a dwelling actually owned and occupied by the debtor. Such compensation shall be exempt in the amount, over and above all liens and encumbrances, provided by Section 1260 of the Civil Code.

(Added by Stats.1972, c. 861, § 2. Amended by Stats.1974, c. 47, § 1.)

Another § 690.8, added by Stats.1972, c. 822, § 1 was repealed by Stats.1974, c. 47, § 3. See now, §§ 690.8, 690.8a.

Former § 690.8 was repealed by Stats.1970, c. 1523, § 22. See now, § 690.4.

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§ 690.8a. Exemptions; relocation benefits; attachment and execution

All relocation benefits for displacement from a dwelling actually owned or rented by the debtor received from a public entity pursuant to Chapter 16 (commencing with Section 7260), Division 7, Title 1 of the Government Code or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970<sup>1</sup>, as amended, shall, in addition to any other exemptions provided for by the law, be exempt from attachment or execution. Such benefits shall be exempt from attachment or execution without filing a claim of exemption, as provided in Section 690.50.

(Added by Stats.1974, c. 47, § 2.)

<sup>1</sup> 42 U.S.C.A. § 4601 et seq.

§ 690.9. Exemptions; life insurance proceeds, benefits, etc.; restriction

(a) All moneys, benefits, privileges, or immunities, accruing or in any manner growing out of any life insurance, if the annual premiums paid do not exceed five hundred dollars (\$500), or if they exceed that sum a like exemption shall exist which shall bear the same proportion to the moneys, benefits, privileges, and immunities so accruing or growing out of such insurance that such five hundred dollars (\$500) bears to the whole annual premium paid.

(b) In addition to the foregoing, all moneys, benefits, or privileges belonging to or inuring to the benefit of the insured's spouse or minor children growing out of life insurance purchased with annual premiums not exceeding five hundred dollars (\$500), or if such annual premiums exceeded that sum, a like exemption shall exist in favor of such persons which shall bear the same proportion to the moneys, benefits, or privileges growing out of such insurance that five hundred dollars (\$500) bears to the whole annual premiums paid.

(Formerly § 690.19, added by Stats.1935, c. 723, § 19. Amended by Stats.1947, c. 1056, § 1. Renumbered § 690.9 and amended by Stats.1970, c. 1523, § 39.)

Former § 690.9 was repealed by Stats.1970, c. 1523, § 24.

Cross References

Group life insurance, see Insurance Code § 10200 et seq.  
Insurance defined, see Civil Code § 2527; Insurance Code §§ 22, 101.  
Poultry, definition of, see Food and Agricultural Code § 29554.

§ 690.10. Exemptions; group life policy

Except as provided in Sections 10203.5, 10203.6, and 10203.8 of the Insurance Code, a policy of group life

insurance, or the proceeds thereof, either before or after payment, paid to the insured employee or the beneficiary.

(Added by Stats.1970, c. 1523, § 28.)

Former § 690.10 was repealed by Stats.1970, c. 1523, § 25.

Cross References

Attachment or arrestment of wages, see 46 U.S.C.A. § 601.  
Seamen defined, see Harbors and Navigation Code § 861.  
Wages, definition of, see Government Code § 18539; Labor Code § 200 et seq.  
Waiver of wages not allowed, see Harbors and Navigation Code § 864.

§ 690.11. Exemptions; disability or health insurance benefits, etc.; restriction

All moneys, benefits, privileges, or immunities, accruing or in any manner growing out of any disability or health insurance, if the annual premiums do not exceed five hundred dollars (\$500), and if they exceed that sum a like exemption shall exist which shall bear the same proportion to the moneys, benefits, privileges, and immunities so accruing or growing out of such insurance that such five hundred dollars (\$500) bears to the whole.

(Formerly § 690.20, added by Stats.1935, c. 723, § 20. Renumbered § 690.11 and amended by Stats.1970, c. 1523, § 41.)

Former section 690.11 was repealed by Stats.1970, c. 1523, § 27.

Cross References

Affidavit for attachment of earnings, see § 482.048.  
Beneficiaries, indemnification and rights of, see Insurance Code § 10342 et seq.  
Group disability insurance, see Insurance Code §§ 10270.4 et seq., 10270.97.  
Insurance defined, see Insurance Code §§ 22, 101; Civil Code § 2527.  
Wages, definition of, see Government Code § 18539; Labor Code § 200 et seq.  
Workmen's Compensation Insurance defined, see Insurance Code § 169.

§ 690.12. Exemptions; segregated benefit funds

The segregated benefit funds of a holder of a certificate of exemption issued pursuant to Section 10497 of the Insurance Code against the holder of a certificate of exemption, except that such funds shall not be exempt from process issued to enforce a claim of benefit.

(Added by Stats.1970, c. 1523, § 29.)

Original § 690.12 was repealed by Stats.1965, c. 1363, § 1.  
Former § 690.12, added by Stats.1963, c. 198, § 1, was renumbered § 690.125.

Former § 690.12, added by Stats.1968, c. 1420, § 1, was repealed by Stats.1970, c. 1523, § 28.

**§ 690.125. Repealed by Stats.1970, c. 1523, § 29.5**

See, now, § 690.18.

**§ 690.13. Exemptions; fraternal organization funds for sick or unemployment benefits**

All moneys belonging to a fraternal organization not exceeding the sum of five hundred dollars (\$500), and which moneys are used exclusively in the payment of sick or unemployment benefits to bona fide members of such fraternal organizations.

(Formerly § 690.25, added by Stats.1939, c. 728, § 1. Renumbered § 690.13 and amended by Stats.1970, c. 1523, § 48.)

Former § 690.13 was repealed by Stats.1970, c. 1523, § 30. See, now, § 690.4.

**Cross References**

Fraternal benefit societies, see Insurance Code § 10970 et seq. Seamen, definition of, see Harbors and Navigation Code § 881. Steam vessel, definition of, see Harbors and Navigation Code § 22.

**§ 690.14. Exemptions; aid by fraternal benefit society**

Money or other aid paid or rendered by any fraternal benefit society as defined in Section 10990 of the Insurance Code, either before or after payment.

(Added by Stats.1970, c. 1523, § 32.)

Former § 690.14 was repealed by Stats.1970, c. 1523, § 31. See, now, § 690.22.

**§ 690.15. Exemptions; workmen's compensation claims**

Any claim for workmen's compensation or compensation awarded, adjudged, or paid, except as provided in the Labor Code. Such claim or award, prior to actual payment, shall be exempt without filing a claim of exemption as provided in Section 690.50.

(Added by Stats.1970, c. 1523, § 34.)

Former § 690.15 was repealed by Stats.1970, c. 1523, § 33. See, now, §§ 690.1, 690.4.

**§ 690.16. Unemployment insurance contributions**

Contributions by workers, payable to the Unemployment Compensation Disability Fund, and by employers, payable to the Unemployment Fund are exempt without filing a claim of exemption as provided in Section 690.50.

(Added by Stats.1970, c. 1523, § 36.)

Former § 690.16 was renumbered section 690.22 and amended by Stats.1970, c. 1523, § 35.

**Cross References**

Unemployment insurance contributions exemptions, see Unemployment Insurance Code § 988.

**§ 690.17. Exemptions; building materials; restriction**

All material not exceeding one thousand dollars in value, purchased in good faith for use in the construction, alteration, or repair of any building, mining claim or other improvement as long as in good faith the same is about to be applied to the construction, alteration or repair of such building, mining claim or other improvement.

(Added by Stats.1935, c. 723, § 17.)

**Cross References**

**Definitions.**

Building, see Health and Safety Code § 13913.

Mine, see Public Resources Code § 2200.

**§ 690.175. Exemptions; unemployment compensation**

State unemployment compensation benefits or extended duration benefits or federal-state extended benefits or unemployment compensation disability benefits, incentive payments provided by Division 2 (commencing with Section 5000) of the Unemployment Insurance Code, and payments to an individual under a plan or system established by an employer which makes provision for his employees generally, or for a class or group of his employees, for the purpose of supplementing unemployment compensation benefits. Such benefits or payments, prior to actual payment, shall be exempt without filing a claim of exemption, as provided in Section 690.50.

(Added by Stats.1970, c. 1523, § 37. Amended by Stats.1973, c. 1206, § 3; Stats.1973, c. 1207, § 3.)

Sections 1, 2, 142 of Stats.1973, c. 1206, and Stats.1973, c. 1207, which are identical, provide:

"Section 1. This act shall be known and may be cited as the Employment Development Act of 1973.

"Sec. 2. The Legislature hereby makes the following declaration of purpose and intent in enacting the Employment Development Act of 1973.

"It is the public policy of the State of California to provide for comprehensive statewide and local manpower planning, to improve the efficiency of, and the accountability for, delivery systems for manpower programs, to promptly place job-ready individuals in suitable jobs, to provide qualified job applicants to employers, to assist potentially employable individuals to become job ready, and to create employment opportunities.

"Sec. 142. Upon receipt of a formal ruling from the Secretary of Labor, or the head of any federal agency that any provision of this act cannot be given effect without causing the state's plan to be out of conformity with federal requirements or would result in decertification of provisions of the Unemployment Insurance Code and

## § 690.175 EXECUTION OF JUDGMENT

notification of intention to withdraw federal funds from the state, such provision shall become inoperative to the extent that it is not in conformity with federal requirements."

Section 141 of Stats.1978, c. 1206, and Stats.1973, c. 1207, contained a severability clause.

### Cross References

Unemployment compensation benefits, exemption, see Unemployment Insurance Code § 1842.

## SECTION 690.18. Exemptions; public pension, retirement, disability or death benefits or private retirement plan, etc.

(a) Except with regard to court-ordered child or spousal support payments, all money received by any person, a resident of the state, as a pension, or as an annuity or retirement or disability or death or other benefit, or as a return of contributions and interest thereon, from the United States government, or from the state, or any county, city, or city and county, or other political subdivision of the state, or any public trust, or public corporation, or from the governing body of any of them, or from any public board or boards, or from any retirement, disability, or annuity system established by any of them pursuant to statute, whether the same shall be in the actual possession of such pensioner or beneficiary, or deposited by him.

(b) All money held, controlled, or in process of distribution by the state, or a city, city and county, county, or other political subdivision of the state, or any public trust or public corporation, or the governing body of any of them, or by any public board or boards, derived from the contributions by the state or such city, county, city and county, or other political subdivision, or such public trust, public corporation, governing body, or public board or boards, or by any officer or employee thereof, for retirement or pension purposes or the payment of disability, death, or other benefits, or the payment of benefits payable to, or the reimbursement of benefits paid to, employees thereof under the provisions of the Unemployment Insurance Code, and all rights and benefits accrued or accruing to any person under any system established pursuant to statute by the state, city, city and county, county, or other political subdivision of the state, or any public trust or public corporation for retirement, annuity, or pension purposes or payment of disability or death benefits, and all vacation credits accumulated by a state employee pursuant to the provisions of Section 18050 of the Government Code, or any other public employee pursuant to any law for the accumulation of vacation credits applicable to such employee. Such moneys, benefits, and credits shall be exempt without filing a claim of exemption as provided in Section 690.50.

(c) All money held, controlled, or in process of distribution by any private retirement plan, including, but not limited to, union retirement plans, or any profit-sharing plan designed and used for retirement purposes, or the payment of benefits as an annuity, pension, retirement allowance, disability payment or death benefit from such retirement or profit-sharing plans, and all contributions and interest thereon returned to any member of any such retirement or profit-sharing plan, whether the same shall be in the actual possession of such pensioner or beneficiary, or deposited by him, are exempt from execution, attachment, or garnishment \* \* \*. Except with regard to moneys withheld from employees' wages and contributions based on wages in employment under provisions of the Unemployment Insurance Code, and except with regard to court-ordered child or spousal support payments, 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 Internal Revenue Code of 1954 as amended by the federal "Employee Retirement Income Security Act of 1974" (P.L. 93-406, 29 U.S.C. 1001 et seq.) \* \* \* and by the "Tax Reform Act of 1976" (P.L. 94-455), provided that such moneys do not exceed the maximum amounts exempt from federal income taxation under these acts.

## § 690.19. Exemptions; public assistance

All aid given under a public assistance program to a debtor or for his benefit. However, as against the claim of the county, the real and personal property of a debtor who has received support from public moneys shall be exempt only to the extent provided by and in accordance with the provisions of Section 17409 of the Welfare and Institutions Code. Such

aid, prior to payment, shall be exempt without filing a claim of exemption, as provided in Section 690.50. (Added by Stats.1970, c. 1523, § 40.)

Former § 690.19 was renumbered section 690.9.  
Inalienability of aid, see Welfare and Institutions Code § 11002.

**§ 690.20. Exemptions; hospital endowment funds; extent**

To the extent provided for in Section 32508 of the Health and Safety Code, property, of any nature, given to endow an endowment hospital.

(Added by Stats.1970, c. 1523, § 42.)  
Former § 690.20 was renumbered section 690.11.

**§ 690.21. Exemptions; funds of prisoners**

The funds of any 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, held in trust for him, or to his credit, in an inmate's trust account or similar account by the state, county, or city, or any agency thereof, not to exceed the sum of forty dollars (\$40), shall be exempt from execution without filing a claim for exemption as provided in Section 690.50.

(Formerly § 690.235 added by Stats.1959, c. 339, § 1. Renumbered § 690.21 and amended by Stats.1970, c. 1523, § 46; Stats.1974, c. 1516, § 18.)

Inapplicability of Stats.1974, c. 1516, to writs of attachment issued prior to January 1, 1977, see note under § 481.010.

Former § 690.21 was repealed by Stats.1970, c. 1523, § 43. See, now, § 690.7.

**§ 690.22. Exemptions; public buildings, grounds and personal property**

All courthouses, jails, fire companies, public offices, and public buildings, lots, grounds, and personal property, including automotive and truck equipment, fixtures, furniture, books, papers, and appurtenances belonging to the jail, fire company, and public offices belonging and appertaining to any county of this state; and all cemeteries, public squares, parks, and places, public buildings, town halls, and buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament, or public use, or for the use of any fire or military company organized under the laws of this state.

(Formerly § 690.16, added by Stats.1935, c. 722, § 16. Renumbered § 690.22 and amended by Stats.1970, c. 1523, § 35.)

Former § 690.22 was renumbered section 690.18.

**§ 690.23. Repealed by Stats.1970, c. 1523, § 45**

See, now, § 690.18.

**§ 690.235. Repealed by Stats.1976, c. 1000, § 3**

See, now, § 690.31.

Former § 690.235 was renumbered § 690.21.

**§ 690.24. Exemptions; cemetery lots**

All lots of land, not exceeding one-quarter of an acre in size, owned, used, or occupied by any person, or by any person in joint tenancy or tenancy in common with any other person or persons, in any graveyard, cemetery, or other place for the sole purpose of burying the dead, together with the railing or fencing enclosing the same, and all grave-stones, tombstones, monuments, and other appropriate improvements thereon erected, are exempt from levy and forced sale by virtue of any writ, order, judgment, or decree, or by any legal process whatever. In cases of religious or benevolent associations or corporations, the amount of land so exempt may extend to not exceeding five acres.

Not more than one lot owned, used, or occupied by any such person or by any person in joint tenancy or tenancy in common with any other person or persons or such association or corporation in any one cemetery, graveyard or other place is exempted by this section.

This section does not apply to land held by any person or persons, association, or corporation for the purpose of sale or disposition as burial lots or otherwise.

No property dedicated as a cemetery by a cemetery authority shall be subject to execution because of debts due from an individual owner of an interment plot.

All money payable or to become payable as the purchase price or on account of the purchase price of unused cemetery lands, or lands from which all remains have been removed, is not subject to execution if used for the purpose enumerated in Section 7925 of the Health and Safety Code.

(Formerly § 690.51 added by Stats.1955, c. 59, § 7. Renumbered § 690.24 and amended by Stats.1970, c. 1523, § 57; Stats.1974, c. 1516, § 19.)

Former § 690.24 was repealed by Stats.1970, c. 1523, § 47. See, now, §§ 690.2, 690.3.

Inapplicability of Stats.1974, c. 1516, to writs of attachment issued prior to January 1, 1977, see note under § 481.010.

**Cross References**

Motor vehicle defined, see Vehicle Code § 415.

§ 690.25

EXECUTION OF JUDGMENT

Part 2

§ 690.25. Exemptions; pews

All pews in churches and meetinghouses, used for religious purposes, owned and claimed by any person, or held, in accordance with the rules and regulations of such churches shall be exempt without filing a claim of exemption as provided in Section 690.50. (Formerly § 690.52, added by Stats.1955, c. 59, § 8. Renumbered § 690.25 and amended by Stats.1970, c. 1523, § 58.) Former § 690.26, was renumbered section 690.14.

§ 690.26. Exemptions; property of certain boards and districts

The property of the Reclamation Board and the Sacramento and San Joaquin Drainage District. (Added by Stats.1970, c. 1523, § 50.) Former § 690.26 was repealed by Stats.1970, c. 1523, § 49. See, now, § 690.50.

Cross References

- Affidavit defined, see § 2008.
Amendment of pleadings, see § 472 et seq.
Claim of exemption, see §§ 690 to 690.25.
Levy by officers, see §§ 682, 683, 691.
Motion, notice and service of, see §§ 1006, 1010, 1011.
Pleadings generally, see § 420 et seq.
Sale of perishable property, see § 692.
Verification, use of affidavit for, see § 2009.

§ 690.27. Exemptions; housing authority realty

The real property of a housing authority, as defined in Part 2 (commencing with Section 84200) of Division 24 of the Health and Safety Code. (Added by Stats.1970, c. 1523, § 52.) Former § 690.27 was renumbered § 690.51.

§ 690.28. Exemptions; grants for educational purposes; restrictions

Any property granted to a trustee for educational purposes, pursuant to Section 31051 of the Education Code, if the action under which the execution or attachment is issued, or the proceeding under which the sale is ordered, is not commenced within two years of the filing for record of the grant. No property shall be subject to execution or forced sale under any judgment obtained in any proceeding instituted within two years, if there is other property of the grantor subject to execution or forced sale sufficient to satisfy the judgment. Nothing in this section shall be construed to affect mechanics' or laborers' liens. (Added by Stats.1970, c. 1523, § 58.)

§ 690.29. Exemptions; redevelopment agency property

All property of a redevelopment agency, including funds, owned or held by it for the purposes of Chapter 2 (commencing with Section 83100) of Part 1 of Division 24 of the Health and Safety Code. (Added by Stats.1970, c. 1523, § 54.)

§ 690.30. Exemptions; direct deposits of federal payments; excess amounts; court determinations

With respect to any deposit account maintained with a bank or any investment certificate, share account or withdrawable share maintained with a state or federally chartered savings and loan association in which payments authorized by the Social Security Administration are directly deposited by the United States government pursuant to Public Law No. 92-366 (86 Stats. 506 (1972))<sup>1</sup> and any regulations promulgated thereunder:

(a) The first five hundred dollars (\$500) of such account shall not be subject to levy of attachment or execution in any manner where one depositor to the account is the designated payee of the directly deposited payments. The first seven hundred fifty dollars (\$750) of such account shall not be subject to levy of attachment or execution in any manner where two or more depositors to the account are the designated payees of the directly deposited payments; provided, however, that where two or more such depositors are joint payees of directly deposited payments which represent a benefit to only one of the depositors, the exemption shall be the first five hundred dollars (\$500) of such account.

(b) Any amounts in excess of those authorized under subdivision (a) are exempt to the extent such amounts consist of payments authorized by the Social Security Administration which are directly deposited by the United States government pursuant to Public Law No. 92-366 (86 Stats. 506 (1972)) and any regulations promulgated thereunder or exempt under any other provisions of law as hereinafter provided:

(1) The financial institution shall either place the amounts in excess of those authorized by subdivision (a) in a suspense account or otherwise prohibit their withdrawal pending notification of the judicial determination of their exempt status, and advise the levying officer in writing of the nature and balance of the account of the debtor within 10 business days after the levy;

(2) No claim of exemption shall be required with respect to payments authorized by the Social Security Administration which are directly deposited by the United States government pursuant to Public Law No. 92-366 (86 Stats. 506 (1972)). If the judgment creditor delivers an affidavit or declaration alleging that the property is not exempt within the meaning of this subdivision to the levying officer within five days after the levying officer has notified the judgment creditor that all or parts of the amounts being held by the financial institution pursuant to paragraph (1) are nonexempt the procedure in Section 690.50 shall be followed. If no affidavit or declaration is timely delivered by the judgment creditor, then subdivision (d) of Section 690.50 shall apply. For purposes of subdivision (i) of Section 690.50, the judgment debtor has the burden of proving that the moneys are exempt;

(3) No finding shall be required in an exemption hearing under this section. At the conclusion of the hearing, the court shall give judgment determining whether or not the excess moneys are exempt, in whole or in part, and may give judgment determining the priority or division of payment between one or more creditors from nonexempt moneys which judgment shall be determinative as to the right of the creditor to have the moneys held by the financial institution pursuant to the writ. In the judgment, the court shall make all appropriate orders for the prompt disposition of such moneys;

(4) If the court determines that all or part of the excess is exempt, a certified copy of the judgment shall be transmitted forthwith by the clerk to the financial institution in order to permit the financial institution to transfer such moneys from the suspense account to the debtor's account or otherwise release any restrictions on its withdrawal by the debtor. The transfer or release shall be effected within three business days of the receipt of the judgment. If the court has determined that all or part of the excess is nonexempt, a certified copy of the judgment shall be transmitted forthwith by the clerk to the levying officer and the levying officer shall serve the copy of the judgment forthwith upon the financial institution. With respect to any part of the excess which is exempt, the financial institution shall transfer such moneys from the suspense account or otherwise release any restrictions on its withdrawal by the debtor. The transfer or release shall be effected within three business days of the receipt of a certified copy of the judgment by the financial institution.

(c) For 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.

(Added by Stats.1976, c. 810, § 1.)

131 U.S.C.A. § 492

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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.<sup>1</sup> These exemptions are among the most generous in the United States.<sup>2</sup> In general, exemption laws are intended to reserve an amount of property sufficient to support the debtor and the debtor's family and to facilitate the financial rehabilitation of the debtor.<sup>3</sup> They also serve to shift the cost of social welfare from the community to creditors.<sup>4</sup>

The substantive exemptions were extensively revised in 1970 in response to a 1967 report by the State Bar Committee on Debtor and Creditor.<sup>5</sup> Both the substantive exemptions and the procedural provisions are in need of further revision. Important factors prompting the

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1. 1851 Cal. Stats., Ch. 123, § 219.
  2. 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).
  3. Bailey v. Superior Court, 215 Cal. 548, 554, 11 P.2d 865, 867 (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).
  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.
  5. See Committee on Debtor and Creditor of State Bar of California, Modernization of Statutory Exemptions, 42 Cal. St. B.J. 869 (1967).

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,<sup>6</sup> and the approval of a Uniform Exemptions Act by the National Conference of Commissioners on Uniform State Laws in 1976.

#### Exempt Property

The substantive exemption provisions should strike a fair balance between the interest of the debtor in maintaining a basic standard of living for the debtor and the debtor's family and the interest of creditors in satisfying money judgments. Exemptions should shield property in such a manner that debtors will be afforded the basic protection without regard to the type of assets held. Accordingly, the general approach of the proposed law is to protect income and property needed for the subsistence of the judgment debtor and his or her family, such as a home,<sup>7</sup> household furnishings, clothes, provisions, a motor vehicle, tools of a trade, wages, insurance benefits, retirement benefits, unemployment benefits, and aid.

In drafting the proposed exemptions, the Commission has sought to strike a balance between designating specific items as exempt (such as a table, refrigerator, or stove) and creating general categories of exempt property (such as household furnishings).<sup>8</sup> Specific exemptions result in more certainty but they can be overly restrictive and are more likely to be rendered obsolete over time. General exemptions provide a greater flexibility and equality of treatment but are more difficult to

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6. 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. (1978); S. 2266, 95th Cong., 2d Sess. (1978).

7. The revision of the homestead exemption is not included in this draft.

8. 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).

administer. The Commission's recommendations are also tempered with the knowledge that exemption laws are highly controversial.<sup>9</sup>

Although 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.<sup>10</sup> Some property is exempt without making a claim<sup>11</sup> and other property must be claimed as exempt or the exemption is waived.<sup>12</sup> Section 690 provides that property which is exempt without filing a claim is not subject to levy of attachment or execution in any manner. There is no clear distinction between these concepts. Consequently, 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.<sup>13</sup> In the proposed law, property which is described as not subject to the enforcement of a money judgment should be readily identifiable.<sup>14</sup>

9. 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, H. Korn, & A. Miller, *New York Civil Practice* § 5205.01 (1976).
10. E.g., Fin. Code § 15406 (credit union account); Labor Code § 270.5 (property held in trust by logging employer).
11. E.g., Sections 690.6 (portion of earnings), 690.8a (relocation benefits), 690.175 (unemployment compensation prior to payment).
12. E.g., Sections 690.1 (household furnishings, etc.), 690.2 (motor vehicle), 690.9 (life insurance benefits).
13. Property which is exempt from levy is also exempt from other procedures for the enforcement of a money judgment. See, e.g., Section 719 (order in supplementary proceedings to apply nonexempt property toward the satisfaction of the judgment). See the discussion under "Property Subject to the Enforcement of a Money Judgment" supra.
14. This type of property in general 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 not subject to enforcement in the proposed law, consistent with Section 688(e); however, a procedure is recommended for reaching liquor licenses. See the discussion under "Receiver to Enforce Judgment" infra.

The following material discusses the major statutory exemptions of existing law and the more important revisions proposed by the Commission.<sup>15</sup>

#### 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.<sup>16</sup> Under this provision, the courts have applied a station-in-life test resulting in the exemption of substantial amounts of personal property.<sup>17</sup>

The proposed law provides a more restrictive exemption for this type of property. It 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 \$500 in value.<sup>18</sup> In most cases, a debtor will have few if any items of personal property which will bring at least \$500 at an execution sale.<sup>19</sup> To prevent abuse by debtors investing in valuable

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15. The more technical revisions are discussed in the Comments to the proposed sections, infra, and in the Comments to the repealed sections in the Appendix, infra.
  16. Section 690.1.
  17. See *Independence Bank v. Heller*, 275 Cal. App. 84, 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).
  18. Section 8(a) of the Uniform Exemptions Act (1976) provides a similar exemption.
  19. The proposed law precludes an execution sale of property that is exempt in a prescribed amount unless the amount bid exceeds the total of the exempt value and any liens that are superior to the judgment creditor's lien. The \$500 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 \$500, the proceeds are applied toward the satisfaction of the judgment.

items and thereby insulating assets from creditors, items having a value in excess of \$500 would be nonexempt. Nonnecessary property would not be exempt regardless of its value.

A limited exemption, not subject to the necessity standard, is provided for jewelry, heirlooms, and works of art which in the aggregate do not exceed \$500 in value.<sup>20</sup> This exemption is intended to protect some items of relatively modest value that are likely to be of sentimental value without regard for their necessity.

#### Motor Vehicle

Existing law provides an exemption for one motor vehicle with a value, over all liens and encumbrances on the vehicle, not exceeding \$500.<sup>21</sup> 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 \$1,000. The exemption for proceeds is extended to proceeds from a voluntary sale or from insurance or other indemnification received for the damage or destruction of the vehicle.<sup>22</sup> Although permitting reference to used car guides, the proposed law would not require such reference because other factors may be relevant, such as in cases where the vehicle has been customized. The interest of the debtor is protected by the exemption of proceeds and the prohibition of an execution sale where no bid sufficient to satisfy liens and encumbrances and pay the debtor the amount of the exemption is received.

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20. 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 aggregate value.
  21. Section 690.2. Section 690.4 also provides an exemption for a commercial motor vehicle used in the debtor's trade, calling, or profession.
  22. Section 9(a) of the Uniform Exemptions Act (1976) provides a similar exemption traceable for 18 months.

### 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 in excess of liens and encumbrances on such items.<sup>23</sup> The proposed law continues this exemption and includes building materials for which existing law provides a separate exemption in the amount of \$1,000.<sup>24</sup> 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.<sup>25</sup>

### Health Aids

Existing law provides an exemption for prosthetic and orthopedic appliances personally used by the debtor.<sup>26</sup> This exemption is too narrow<sup>27</sup> 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.<sup>28</sup> 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.

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23. Section 690.4.

24. Section 690.17.

25. 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.

26. Section 690.5.

27. "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.

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

### Deposit Accounts

Existing law provides exemptions for \$1,000 in a savings and loan association account<sup>29</sup> and \$1,500 in a credit union account.<sup>30</sup> 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.<sup>31</sup> There is no specific exemption for savings or checking accounts in banks.<sup>32</sup>

There is no justifiable reason for distinguishing between deposit accounts in different banking institutions.<sup>33</sup> Under the proposed law, a deposit account in any financial institution and money<sup>34</sup> are exempt in

29. Section 690.7.
30. Fin. Code § 15406.
31. 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, limits the application of the rule in *Phillips v. Bartholomie*, 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.
32. Exempt amounts may be traced into bank accounts under existing law. See the discussion under "Tracing Exempt Amounts" infra.
33. 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).
34. 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.

the aggregate amount of \$2,000. 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 as exempt.<sup>35</sup>

#### Life Insurance

Existing law exempts benefits growing out of life insurance in an amount resulting from payment of a \$500 annual premium and provides an additional exemption in the same amount in favor of the insured's spouse or minor children.<sup>36</sup> Certain types of group life insurance are completely exempt.<sup>37</sup> Death benefits from a public entity or a private retirement plan are also exempt.<sup>38</sup> The life insurance exemption shields benefits from the reach of creditors of the insured and of the beneficiary.<sup>39</sup> The exemption also protects a beneficiary under a credit insurance policy.<sup>40</sup>

Consistent with the policy of protecting a minimal amount of property necessary to support the debtor and the debtor's family, the proposed law would substantially revise these exemptions. A creditor would not be able to reach the cash surrender value of a policy. The proposed law would, however, permit the creditor to reach the loan value of the

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35. See the Comment to proposed Section 707.590 infra.

36. 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, 201, 363 P.2d 479, \_\_\_, 14 Cal. Rptr. 439, \_\_\_ (1961).

37. 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).

38. Section 690.18.

39. Holmes v. Marshall, 145 Cal. 777, 779-82, 79 P.2d 534, \_\_\_ (1905).

40. Jackson v. Fisher, 56 Cal.2d 196, 199, 363 P.2d 479, \_\_\_, 14 Cal. Rptr. 439, \_\_\_ (1961).

policy to the extent it exceeds \$5,000.<sup>41</sup> The debtor should not be forced to surrender the policy 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 in an amount reasonably necessary for the support of the insured and the spouse and dependents of the insured or decedent, if the benefits are payable to a living insured or to a spouse or dependent of a living or decedent insured.<sup>42</sup> This exemption would protect benefits from creditors of the insured as well as from 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.<sup>43</sup> 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 insured when the policy was taken out, and the length of coverage.<sup>44</sup>

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41. 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.
  42. Section 6(a)(4) of the Uniform Exemptions Act (1976) provides a similar exemption.
  43. 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).
  44. For example, the exempt benefits deriving from a \$500 premium amounted to \$113,200 in Jackson v. Fisher, 56 Cal.2d 196, 363 P.2d 479, 14 Cal. Rptr. 439 (1961) (\$883 annual premium on \$100,000 policy with double indemnity clause), and \$8,900 in California United States Bond & Mort. Corp. v. Grodzins, 139 Cal. App. 240, 34 P.2d 193 (1934) (\$558 annual premium on \$10,000 policy).

### Retirement Benefits

Existing law exempts retirement plan benefits both before payment, when no claim is required to be made, and after payment, when the exemption must be claimed.<sup>45</sup> The exemption does not apply, however, against a judgment for child or spousal support.<sup>46</sup> The proposed law would continue the substance of this exemption.

### 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.<sup>47</sup> Money of a fraternal organization used to pay sick benefits to members of the organization is exempt in the amount of \$500.<sup>48</sup> Money paid by a fraternal benefit society is exempt before and after payment.<sup>49</sup> Disability benefits under a retirement plan are exempt to the same extent as other retirement benefits.<sup>50</sup>

Under the proposed law, disability and health benefits, before payment, are not subject to the enforcement of a money judgment and, after payment, are exempt. This exemption would not apply where the creditor provided health care concerning the condition for which the benefits are collected.

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45. 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.
46. Section 690.18. See the discussion under "Exception for Judgments for Spousal or Child Support" infra.
47. 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.
48. Section 690.13.
49. Section 690.14.
50. Section 690.18. See the discussion under "Retirement Benefits" supra.

### Damages for Personal Injury

Existing law provides an exemption for insurance benefits for injury<sup>51</sup> or death<sup>52</sup> 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.<sup>53</sup> This exemption would not apply when the creditor provided health care for the bodily injury 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.<sup>54</sup>

### Unemployment Benefits and Contributions, Strike Benefits

Under existing law, contributions of employees and employers to unemployment programs, and benefits from such programs, prior to payment, are exempt without making a claim.<sup>55</sup> After payment, these benefits are exempt if a claim is made.<sup>56</sup> The proposed law would continue the substance of this exemption and would also provide a similar exemption for strike benefits paid to a union member.

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

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

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

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

55. 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).

56. See Sections 690.13, 690.175.

### Aid

Existing law provides a complete exemption for aid given under a public assistance program<sup>57</sup> and for aid from a fraternal benefit society.<sup>58</sup> 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.<sup>59</sup> 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.

### Cemetery Plot

Existing law exempts a debtor's 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.<sup>60</sup> The proposed exemption provision incorporates a definition of "plot" which includes graves, crypts, vaults, and niches,<sup>61</sup> whereas existing law specifically applies only to land to be used for burial purposes and fixtures. The proposed law exempts a cemetery plot for one person. The proposed law also protects a family plot<sup>62</sup> from enforcement of a money judgment. Land which is held for the purpose of sale as cemetery plots would be

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57. Section 690.19. Before payment, the aid is exempt without making a claim; after payment, a claim of exemption must be made.
58. Section 690.14. This exemption must be claimed.
59. Section 690.8a.
60. Section 690.24.
61. See Health & Saf. Code § 7022.
62. For provisions concerning family plots, see Health & Saf. Code §§ 8650-8653.

nonexempt as under existing law.<sup>63</sup> The five-acre limitation on the exemption for religious or benevolent associations or corporations is unnecessary and is not continued in the proposed law.

#### Church Pews

Existing law exempts pews in churches and meetinghouses used for religious purposes and owned by the debtor.<sup>64</sup> The proposed law does not continue this exemption because it is obsolete, the practice of member ownership of pews having generally ceased.<sup>65</sup>

#### Applicability of Exemptions

It is implicit under existing law that property which is exempt from execution is also exempt from other procedures for the enforcement of a money judgment.<sup>66</sup> 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.<sup>67</sup>

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63. 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.

64. Section 690.25.

65. See 6 J. Weinstein, H. Korn, & A. Miller, *New York Civil Practice* ¶ 5205.15 (rev. 1976).

66. 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 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 certain warrants or notices 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."

67. See the discussion under "Special Procedures for the Enforcement of Money Judgments" infra.

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<sup>68</sup> (other than a lien created in the course of enforcing a general money judgment) is continued in the proposed law.

The proposed law also makes clear that exemptions are to be determined and applied under the circumstances existing when the exemption claim is made. This provision is intended to reject the holding in California United States Bond & Mortgage Corp. v. Grodzins<sup>69</sup> which 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 less than the amount protected by statute.<sup>70</sup> Exemption laws are intended to protect 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

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68. 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).

69. 139 Cal. App. 240, 34 P.2d 193 (1934).

70. 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 \$1,100 of the remaining \$5,000. The result could have been more detrimental 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.

exemption of property does not arise until the creditor seeks to reach the property and apply it toward the satisfaction of a judgment.<sup>71</sup>

#### Exception for Judgments for Spousal or Child Support

Under existing law, the standard exemptions of earnings<sup>72</sup> and retirement benefits<sup>73</sup> 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.<sup>74</sup> 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.<sup>75</sup>

#### Exception for Welfare Payment Reimbursement

Existing law provides that the debtor is entitled to a more limited set of exemptions against a claim by a county for reimbursement for county aid used to support the debtor than is available against claims

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71. *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. The court held that only one-half of the particular paycheck could be garnished.
72. Section 723.052 [enacted by 1978 Cal. Stats., Ch. 1133] provides an exemption for one-half of the debtor's earnings where a support order is enforced. This exemption preempts the less restrictive federal provision. See 15 U.S.C.A. § 1673(b)(1) (Supp. 1978).
73. Section 690.18.
74. 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.
75. This codifies the holding in *Rankins v. Rankins*, 52 Cal. App.2d 231, 234-35, 126 P.2d 125, \_\_\_\_ (1942).

of creditors generally.<sup>76</sup> This exception to the standard exemptions is not continued in the proposed law because it is constitutionally suspect under the equal protection clause.<sup>77</sup>

#### 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.<sup>78</sup> Thus, if the judgment debtor is a joint tenant, only the interest of the judgment debtor may be reached.<sup>79</sup> However, if one spouse is a judgment debtor, the community property, in which the spouses have equal interests,<sup>80</sup> is generally liable for the satisfaction of the judgment<sup>81</sup> and, if the debt was

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76. 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.
77. Cf. *James v. Strange*, 407 U.S. 128 (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).
78. See the discussion under "Property Subject to Enforcement of a Money Judgment" supra.
79. See *In re Rauer's Collection Co.*, 87 Cal. App.2d 238, 259, 19 P.2d 803, \_\_\_ (1948); *Russel 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).
80. Civil Code § 5105.
81. 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 one spouse pursuant to Civil Code Section 5125(d) is liable for the debts of the nonbusiness spouse. See H. Verrall, *Cases and Materials on California Community Property* 396-97, 401

incurred for necessities of life after marriage, the separate property of the nondebtor spouse may also be reached.<sup>82</sup>

A nondebtor spouse is clearly entitled to prevent property that is not liable under the community property laws from being applied toward the satisfaction of the judgment.<sup>83</sup> 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.<sup>84</sup>

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.<sup>85</sup> It is clear that, if only one spouse is the debtor, the spouses may reduce the amount of property available to satisfy the

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(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).

82. 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).
83. 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).
84. 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.
85. See Bailey v. Superior Court, 215 Cal. 548, 554, 11 P.2d 865, 867 (1932).

judgment by holding it in joint tenancy rather than as community property.<sup>86</sup> Existing law, however, provides no general rule governing whether joint debtor spouses may each claim exemptions in community or separate property, or whether a nondebtor spouse may claim an exemption in community property (or in separate property in the case of a debt for necessities).

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:

(1) 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.<sup>87</sup>

(2) Household furnishings, wearing apparel, and the like, are exempt to the extent "ordinarily and reasonably necessary to, and personally used by, the debtor and his resident family."<sup>88</sup> 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.

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86. See *Siberell v. Siberell*, 214 Cal. 767, 772-74, 7 P.2d 1003, \_\_\_ (1932); *In re Rauer's Collection Co.*, 87 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).

87. 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.

88. Section 690.1.

(3) The exemption of earnings from garnishment depends in part on amounts withheld pursuant to the tax withholding laws<sup>89</sup> and consequently 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.<sup>90</sup> 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."<sup>91</sup> 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.

(4) The life insurance exemption is doubled in favor of the spouse of the insured.<sup>92</sup>

(5) The automatic 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.<sup>93</sup>

(6) The exemption for savings and loan accounts is specifically stated to be a maximum of \$1,000 "per person, whether the character of

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89. 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).

90. 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).

91. Section 690.6(b).

92. Section 690.9(b).

93. Section 690.30(a).

the property be separate or community."<sup>94</sup> The meaning of this provision is unclear and it has not been interpreted by the courts. It might be read 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 generally 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.

(7) On the other hand, the motor vehicle exemption appears to protect only one vehicle registered in the debtor's name,<sup>95</sup> apparently without regard to the nature of title.<sup>96</sup>

The Commission has retained a consultant to study this problem in greater detail and make suggestions for its resolution. The nature of the Commission's final recommendation in this area awaits preparation and consideration of the consultant's study.

#### Tracing Exempt Amounts

An exemption for money derived 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 a check or cash. Presently, case law and, to a limited extent, statutory law, recognize the right of a debtor to trace exempt amounts through a change in form.<sup>97</sup> The proposed law contains a general provision which

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

95. Section 690.2(d).

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

97. 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); 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); 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).

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.<sup>98</sup> Consistent with the general burden on the debtor to claim exemptions,<sup>99</sup> the debtor would have the burden of tracing the exempt amount.

#### 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 items are exempt without value limits. Legislatures have typically been slow to adjust exemptions in response to changes in the value of the dollar.<sup>100</sup> For example, the exemption for an account in a savings and loan association<sup>101</sup> was set at \$1,000 in 1901.<sup>102</sup> The dollar was worth approximately seven times as much in 1901 as it is now,<sup>103</sup> yet the amount of the exemption remains unchanged. The credit union account exemption<sup>104</sup> was

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98. 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.

99. See Section 690.50(i).

100. 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).

101. Section 690.7.

102. 1901 Cal. Stats., Ch. 28, § 1 (then building and loan associations).

103 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].

104. Fin. Code § 15406.

raised to \$1,500 in 1939<sup>105</sup> when the dollar was worth approximately four times as much.<sup>106</sup> The life insurance exemption<sup>107</sup> was set at the amount of benefits represented by a \$500 annual premium in 1868<sup>108</sup> when the dollar was worth approximately six times what it is today.<sup>109</sup> 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.<sup>110</sup> The protection 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.<sup>111</sup>

The proposed law provides for the automatic adjustment of the dollar amount of exemptions based upon changes in the consumer price index.<sup>112</sup> The change would be made at two-year intervals if the increase or decrease in the consumer price index over that time was at

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105. 1939 Cal. Stats., Ch. 965, § 2.

106. See Historical Statistics, supra note 103, Table E-135, at 210; Statistical Abstract, supra note 103, Table No. 708, at 439.

107. Section 690.9.

108. 1868 Cal. Stats., Ch. 404, § 1.

109. Historical Statistics, supra note 103, Table E-183, at 212; Statistical Abstract, supra note 103, Table No. 708, at 439.

110. 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.

111. Statistical Abstract, supra note 103, Table No. 709, at 440.

112. 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).

least 10 percent of the index on the operative date of the proposed law.<sup>113</sup> 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 measuring the amount of the exemption from the time it is claimed rather than from the time the exemption was enacted.

#### Procedure for Claiming Exemptions After Levy

Existing law provides a detailed procedure through which exemptions may be claimed and determined.<sup>114</sup> The debtor or the debtor's agent may, within 10 days after property has been levied upon, claim an exemption by filing an affidavit with the levying officer; otherwise the exemption is waived and the property will be applied toward the satisfaction of the judgment.<sup>115</sup> If the debtor files an affidavit, the levying officer immediately serves it 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 this 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

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113. For examples of the operation of the proposed section, see the Comment to proposed Section 707.200 infra.

114. 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).

115. 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).

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.<sup>116</sup> Since the debtor may not receive notice of levy for some time after levy has occurred,<sup>117</sup> 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 delivered to the judgment debtor. 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.<sup>118</sup> 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 achieve the policy of the exemptions laws to protect only a limited amount of the debtor's property.

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

117. Notice of levy is required to be given the judgment debtor promptly after levy. See Section 688(b) (incorporating the levy provisions in the Attachment Law, Sections 488.310-488.430).

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

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.<sup>119</sup>

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

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

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## STAFF DRAFT

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" includes both of the following:

- (a) An individual judgment debtor.
- (b) A person authorized to exercise the rights of the 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. Subdivision (b) permits agents, guardians, conservators, and persons holding a power of attorney to claim exemptions.

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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 702.320, 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). This procedure is distinct from the procedure under this chapter for claiming an exemption.

Subdivision (b) continues former law. See the last portion of subdivision 1 of former Section 682 (real property subject to judgment lien); *Riley v. Nance*, 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, 844 (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), 703.200 (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 702.310 (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 702.320 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 707.510) 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, as a general rule, property described as exempt may be reached. See Section 707.150.

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.

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) or a property tax is being collected (see Section 707.210(d)).

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

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§ 707.150. Waiver of exemptions

707.150. Except as provided in Section 473, an exemption is waived unless it is claimed within the time provided and pursuant to the applicable procedure.

Comment. Section 707.150 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 Section 707.140(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 707.210). 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).

The introductory clause recognizes the power of the court under Section 473 to relieve the claimant from the consequences of failure to timely file a claim of exemption through mistake, inadvertance, surprise, or excusable neglect.

29214

§ 707.160. Exemption rights of married persons

Note. The drafting of this section awaits the completion of a consultant's study.

§ 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 707.510-707.680. Former Section 690.18 provided such an exception applicable to the exemption of pensions, annuities, and retirement, disability, death, or other benefits, from a public entity or under a private plan.

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 funds

707.180. (a) A fund for which an exemption may be claimed 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 claimant has the burden of tracing an exempt fund.

(c) The tracing of exempt funds in deposit accounts shall be accomplished by application of the lowest intermediate balance principle unless the judgment debtor or the judgment creditor shows that some other method of tracing would be more appropriate under the circumstances of the case.

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 [707.510 (proceeds from homestead),] 707.530 (proceeds from motor vehicle), 707.570 (proceeds from tools of trade), 707.580 (deposit accounts and money), 707.590 (deposit account into which Social Security benefits are paid), 707.600 (life insurance benefits), 707.610 (retirement benefits), 707.620 (unemployment benefits), 707.630 (disability and health benefits), 707.640 (damages for personal injury), 707.650 (damages for wrongful death), 707.660 (worker's compensation), 707.670 (aid), and 707.680 (relocation benefits). Proceeds from a dwelling, motor vehicle, or tools may be traced only during the applicable period. See Sections [707.510 (six months in case of dwelling),] 707.530 (90 days in case of motor vehicle), and 707.570 (90 days in case of tools).

Subdivision (b) 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).

Subdivision (c) prescribes the general rule for tracing exempt funds in deposit accounts. Under the lowest intermediate balance rule, the exempt fund may not exceed the lowest balance occurring at any time between the deposit of the exempt amount of money and the time of levy. New deposits do not replenish the original exempt fund although the new deposits may themselves be exempt.

100/913

#### § 707.190. Loss of exemption from change in circumstances

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 occurring after the property was determined to be exempt, or after the time for opposing a claim of exemption had expired, 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 \_\_\_\_\_

§ 707.200. Adjustments of dollar amounts of exemptions

707.200. (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 707.200 is new to 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 employees' retirement benefits), 82001 (campaign spending limits); Welf. & Inst. Code §§ 11453 (AFDC payments), 12201(1) (aged, blind, and disabled payments). Section 707.200 is also based on provisions in some uniform laws. See Uniform Consumer Credit Code § 1.106 (1974 version); Uniform Exemptions Act § 2 (1976). 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 707.200, 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 707.580:

(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 707.580. 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

§ 707.210. Exemptions from tax liability

707.210. (a) Except as otherwise provided in this section, the provisions of this chapter apply where a tax liability is sought to be collected pursuant to the Revenue and Taxation Code or the Unemployment Insurance Code. For the purpose of this section, "judgment creditor" means the public entity which seeks to collect the tax, 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 located as if the property were levied upon under a writ of execution issued from such court.

(c) If a levy is not made by a levying officer, the claim of exemption shall be filed with the public entity within 10 days after the judgment debtor is notified of the levy, withholding, or seizure.

(d) If the tax liability arises from assessment of property tax, an exemption may not be claimed for the property subject to the tax.

Comment. Section 707.210 supersedes former Section 690.51, which applied the exemptions from execution to certain procedures for the collection of several state taxes. Section 707.210 makes all tax collections by the state or by local public entities subject to the substantive and procedural provisions of this chapter except as provided in subdivision (d). This provision changes the general rule under former law that the exemption laws did not apply to the collection of tax liabilities except where specifically provided otherwise, as in former Section 690.50, or where a homestead had been declared prior to the attachment of a tax lien having the effect of a judgment lien. See Curtis v. County of Kern, 37 Cal. App.3d 704, 706, 113 Cal. Rptr. 41, \_\_\_ (1974); Greene v. Franchise Tax Bd., 27 Cal. App.3d 38, 103 Cal. Rptr. 483 (1972); Morrison v. Barham, 184 Cal. App.2d 267, 272, 7 Cal. Rptr. 442, \_\_\_ (1960).

Subdivision (b) continues the substance of the second sentence of former Section 690.51.

Subdivision (c) is a general provision which codifies the practice developed under Unemployment Insurance Code Section 1755.

Subdivision (d) is new.

100/902

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), [704.510 (dwellings),] 707.590 (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 a 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 707.530, 707.550, or 707.570, 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 707.580 or subdivision (b) of Section 707.600, the claimant shall state the nature and amount of all other funds of the same type.

(4) A statement of all sources and amounts 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 702.160. See also 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 702.510 (personal delivery permitted). The form of the notice of claim of exemption is prescribed by the Judicial Council pursuant to Section 702.160.

968/708

§ 707.340. Opposition to exemption claim

707.340. Within 10 days after the date of the mailing of the notice of claim of exemption, a judgment creditor who opposes the claim of exemption shall file with the levying officer a notice of opposition to the claim of exemption and 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 690.50. The form of the notice of opposition is prescribed by the Judicial Council pursuant to Section 702.160.

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 also 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 703.240.

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 interest 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 determination of whether property is exempt shall be made under the circumstances existing at the time of the hearing. 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 claimed pursuant to Section 707.580 or subdivision (b) of Section 707.600 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 to the levying officer. The levying officer shall release the property in the manner provided by Section 703.240, 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 a portion of subdivision (i) of former Section 690.50.

The second sentence of subdivision (d) is new. This provision is intended to reject 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). It adopts the principle that the question of exemptions does not arise until the creditor has sought to apply the debtor's property toward the satisfaction of the judgment. See Medical Fin. Ass'n v. Rambo, 33 Cal. App.2d Supp. 756, 758-60, 86 P.2d 159, \_\_\_ (1939).

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

See also Section 707.110 ("claimant" defined).

101/133

§ 707.390. Extension of time

707.390. 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 opposing party, unless notice is waived, and to the levying officer.

Comment. Section 707.390 continues the substance of a portion of former Section 690.50(1).

§ 707.400. Appeal

707.400. 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 707.400 continues the substance of subdivision (m) of former Section 690.50.

100/909

§ 707.410. Disposition of property during pendency of proceedings

707.410. (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 707.410 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 also Section 707.110 ("claimant" defined).

15327

Article 3. Exempt Property

§ 707.510. Dwelling

Note. The drafting of this section awaits Commission consideration of a consultant's study.

§ 707.520. Cemetery plot

707.520. (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 one person 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 707.520 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 one person. See also Health & Saf. Code § 8601 (spouse's vested right of interment). 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).

27/868

§ 707.530. Motor vehicle; proceeds

707.530. (a) One motor vehicle is exempt if its value does not exceed one thousand dollars (\$1,000), 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 dollars (\$1,000) for a

period of 90 days after the sale, in the case of a voluntary sale, or 90 days after receipt of the proceeds, in all other cases. Notwithstanding Section 707.150, 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 707.530 supersedes subdivisions (a) and (e) of former Section 690.2. Subdivision (a) of this section increases the motor vehicle exemption from \$500 to \$1,000. 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 also Section 707.200 (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 in certain circumstances. See Section 707.150. Section 703.810 requires distribution of such proceeds to the judgment debtor before the judgment creditor. See also Section 703.740 (sale price required to exceed liens, costs, and proceeds exemption).

15329

§ 707.540. Household furnishings, wearing apparel, personal effects

707.540. 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 the judgment debtor's principal place of residence, are exempt if the judgment debtor's interest, not exceeding five hundred dollars (\$500) per item in value, exclusive of liens and encumbrances superior to the judgment creditor's lien.

Comment. Section 707.540 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 707.540 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. 868 (1969), and Newport Nat'l Bank v. Adair, 2 Cal. App.3d 1043, 83 Cal. Rptr. 1 (1969). See also Section 707.200 (adjustment of dollar amounts of exemptions).

15330

§ 707.550. Jewelry, heirlooms, works of art

707.550. 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 707.550 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 707.550 depends upon an estimation of its value rather than upon its being ordinarily and reasonably necessary to the judgment debtor. See also Section 707.200 (adjustments of dollar amounts of exemptions).

405/332

§ 707.560. Health aids

707.560. 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 707.560 supersedes former Section 690.5 which exempted prosthetic and orthopedic appliances used by the debtor. Section 707.560 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 gymnasium equipment merely because their use is conducive to maintaining good health.

045/222

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

707.570. (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one vehicle, one vessel, and other personal property, which are reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profes-

sion by which the judgment debtor earns a livelihood are exempt to the extent that the aggregate value of the judgment debtor's interest therein 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 707.570 continues the substance of former Section 690.4 and a portion of former Section 690.17 (building materials not exceeding \$1,000). See also Section 707.200 (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 707.530(b).

27/867

§ 707.580. Deposit accounts and money

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

Comment. Section 707.580 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 701.160 ("deposit account" defined). Section 707.580 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), 707.590 (exemption of deposit account into which social security payments are directly deposited). See also Section 707.200 (adjustment of dollar amounts of exemptions).

32/239

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

707.590. (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:

(1) Where one depositor is the designated payee of the directly deposited payments, in the amount of five hundred dollars (\$500).

(2) Where two or more depositors are the designated payees of the directly deposited payments, in the amount of seven hundred fifty dollars (\$750) unless such depositors are joint payees of directly deposited payments which represent a benefit to only one of the depositors in which case only five hundred dollars (\$500) is not subject to the enforcement of a money judgment.

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

(d) Notwithstanding Section 703.190, 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 that the deposit account is one described in subdivision (b) and state the balance of the deposit account within 10 business days after the levy. Promptly upon receipt of the notice, the levying officer shall mail notice of the nature and balance of the deposit account to the judgment creditor.

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

(1) Within five days after the levying officer mails notice of the nature and balance of the deposit account to the judgment creditor, a judgment creditor who desires to claim that the excess amount is not exempt shall file with the levying officer an affidavit alleging that the excess amount is not exempt. 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 707.340, 707.360, and 707.380. 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) The judgment debtor is not required to file a counter affidavit regarding an excess amount exempt pursuant to subdivision (c).

(3) If the judgment creditor does not file the affidavit with the levying officer and give notice to the judgment debtor pursuant to Section 707.360 within the time provided, the property shall be released in the manner provided by Section 703.240.

(4) The affidavit shall be filed by the levying officer with the court before the date set for the hearing and constitutes the pleading of the judgment creditor, subject to the power of the court to permit amendments in the interest of justice. The affidavit is deemed controverted.

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

(6) At the conclusion of the hearing, the court by order shall determine whether or not the excess amount of the deposit account is exempt pursuant to subdivision (c), in whole or in part. The order is determinative of the right of the judgment creditor to apply such amount toward the satisfaction of the judgment. No findings are required in a proceeding under this subdivision.

(7) Upon determining that all or part of the excess amount of the deposit account is exempt pursuant to subdivision (c), 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.

(f) If the judgment debtor claims that a portion of the excess amount is exempt other than pursuant to subdivision (c), the claim of exemption shall be made pursuant to Article 2 (commencing with Section 707.310). If the judgment debtor also opposes the judgment creditor's affidavit regarding an excess amount exempt pursuant to subdivision (c), both exemptions shall be determined at the same hearing. If the judgment debtor does not comply with Article 2 (commencing with Section 707.310) as to a claim of exemption other than pursuant to subdivision (c), the exemption is waived and may not be determined at a hearing under subdivision (e) except as provided by Section 707.150.

Comment. Section 707.590 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. Subdivision (e), along with subdivision (f), 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 (6) 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 (7) continues former Section 690.30(b)(4).

Where a deposit account is not one described by subdivision (b) or where an exemption of excess funds in a deposit account described in subdivision (b) is claimed on other grounds, the procedures provided in Article 2 (commencing with Section 707.310) apply to the determination of the exemption. See Section 707.580 and subdivision (f) of this section.

See also Sections 701.160 ("deposit account" defined), 703.240 (release), 707.200 (adjustment of dollar amounts of exemptions).

101/153

§ 707.600. Life insurance, endowment, annuity policies; death benefits

707.600. (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 subject to the enforcement of a money judgment but is exempt in the amount of 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) 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 707.600 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 or private retirement plan). 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. See Section 707.160 (spouse's exemption right).

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, 200, 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. See Section 707.510 (dwelling exemption). See also Section 707.200 (adjustment of dollar amounts of exemptions).

968/999

§ 707.610. Retirement benefits and contributions

707.610. (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, trust, or other private entity (including a profit-sharing plan designed and used for retirement purposes) or under self-employed retirement plans and individual retirement annuities and accounts which are exempt from federal income taxation.

(b) Before payment, retirement benefits are not subject to the enforcement of a money judgment. After payment, retirement benefits are exempt.

Comment. Section 707.610, in conjunction with Section 707.170 (exemptions not applicable in case of support judgment), supersedes the provisions relating to exemptions for retirement benefits (other than retirement plan death benefits covered by Section 707.600 and disability payments covered by Section 707.630) provided by former Section 690.18.

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§ 707.620. Unemployment benefits and contributions; strike benefits

707.620. (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.

(8) Benefits used in the payment by a union due to a labor dispute.

(c) After payment, the benefits described in subdivision (b) are exempt.

Comment. Section 707.620 supersedes former Sections 690.13, 690.16, and 690.175 and portions of Unemployment Insurance Code Sections 988 and 1342. Subdivision (b)(8) is new.

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§ 707.630. Disability and health benefits and contributions

707.630. (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.

(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 707.630 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.

§ 707.640. Damages for personal injury

707.640. (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 bodily injury for which the award or settlement was made.

Comment. Section 707.640 is new. It should be noted that a cause of action for personal injury or wrongful death is not subject to enforcement of a money judgment (see *Murphy v. Allstate Ins. Co.*, 17 Cal.2d 937, 945-46, 553 P.2d 584, 589-90, 132 Cal. Rptr. 424, 429-30 (1976)) and that a pending cause of action may only be reached by the lien procedure provided by Article 5 (commencing with Section 705.510) of Chapter 5.

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§ 707.650. Damages for wrongful death

707.650. 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.

Comment. Section 707.650 is new. See the Comment to Section 707.640.

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§ 707.660. Worker's compensation

707.660. 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 707.660 continues the substance of former Section 690.15.

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§ 707.670. Aid

707.670. 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 707.670 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. See also Welf. & Inst. Code § 10052 ("aid" defined).

Section 707.670 also expands the category of nongovernmental aid that is exempt. Former Section 690.14 applied only to fraternal benefit societies.

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§ 707.680. Relocation benefits

707.680. 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 707.680 supersedes Section 690.8a. The last sentence of Section 707.680 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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§ 707.690. Licenses

707.690. 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 707.690 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).