

Memorandum 79-4

Subject: Study D-300 - Enforcement of Judgments

Attached to this memorandum is a staff draft of the complete Tentative Recommendation Relating to Enforcement of Judgments. Most of this material has been reviewed by the Commission in substantially this form. Significant changes and new material are indicated below. We hope to be able to approve the tentative recommendation to be distributed for comment after the February meeting, subject to editorial revisions.

§ 702.160. Judicial Council authority

At the December meeting, the Commission decided that the Judicial Council should not be required to prepare all the forms under the Enforcement of Judgments Law and that the staff should consider whether a separate chapter should be drafted which would set forth the content of the various forms or whether the content of forms should be left to law publishers based on the sections prescribing their content. This decision was made in recognition of the delay in the effective date of the statute that would be required for the Judicial Council to prepare forms and for their distribution to levying officers. It was also suggested that this duty might be too great a burden on the Judicial Council budget.

The staff has reviewed the draft statute to see how many forms are required. If an official form were drafted for every writ, notice, application, petition, motion, and order in the draft statute, as many as 110 forms would be required. The task of preparing this many forms would be extremely burdensome for the Judicial Council and also for the staff. We do not believe, however, that official forms are needed for most functions under the draft statute. Forms for various applications and petitions, responsive papers, and court orders are unnecessary. We conclude that the only forms needed are the forms for the writs of execution, possession, and sale, and perhaps for a separate notice of levy (see Section 703.150) and the memorandum required of the garnishee (see Section 703.190). Under existing law, the Judicial Council has issued an omnibus form to cover execution and possession and a separate form for dwelling executions. It would be possible to draft the same

sort of omnibus form under the draft statute that would also cover writs for the sale of property. The notice of levy could be a part of the writ or a separate paper.

In light of this conclusion, and in consideration of the expertise of the Judicial Council-State Bar committee on forms and the continuing need to revise forms, we think that the Judicial Council should be directed to prepare only forms for writs and notice of levy, and perhaps the memorandum of the garnishee.

§§ 703.120, 703.250. Issuance and return of writ of execution

At the December meeting, the Commission discussed the rules concerning issuance, leviability, duration, and return of writs of execution. Various ideas were discussed, such as extending the life of the writ to 20 years and permitting the judgment creditor's attorney to issue writs, with the hope of streamlining the enforcement process and making it more economical. The draft statute has been revised to permit the judgment creditor's attorney to issue writs (see Section 703.120), but the rules concerning leviability and return have been left unchanged from prior drafts. The 20-year writ would probably be opposed by levying officers because it would require additional file space and might require additional clerical help. Permitting issuance of the writ by the creditor's attorney would accomplish much of the economy envisioned by the 20-year writ proposal. (In New York, most writs are issued by attorneys according to the practice commentary to N.Y. Civ. Prac. Law & R. § 5230.) Creditor issuance of writs may also be opposed by clerks and levying officers, however, because there will be more errors in the calculation of the amount to be satisfied. A court clerk told the staff that in his estimation over 50% of writ applications incorrectly calculate the amount to be satisfied, particularly the amount of daily interest. We are also informed that clerks (in the Bay Area at least) check the writ against the file before issuance and place the writ in the file when it is returned. The Association of Municipal Court Clerks Manual of Procedures: Civil provides that the clerk is to check the court title, title of case and case number, date of judgment, county to which the writ is issued, names of debtor and creditor, amount of judgment, accrued interest, costs, acknowledged credits, whether any other writs are outstanding in the county, whether execution is stayed, whether a

previous writ has been returned fully satisfied, whether satisfaction of judgment has not been entered, and whether the daily interest is correctly computed. We think it would be beneficial to retain this provision in the tentative recommendation to ascertain the reactions of clerks, levying officers, debtors, and creditors.

§ 703.260. Service of writ by registered process server

The Commission has not seen this provision before. It continues the substance of 1978 Cal. Stats. ch. 1419 and makes some clarifying changes.

§ 703.810. Distribution of proceeds of execution sale

This section has been revised to provide for the satisfaction of voluntary encumbrances subordinate to the judgment creditor's lien out of any proceeds exemption, in accordance with a decision made at the November 1978 meeting. Distribution of proceeds is discussed in the text on page 28.

§§ 705.450-705.490. Judgment liens

This article has not been reviewed by the Commission. It implements decisions made at the May 1977, November 1977, and November 1978 meetings and contains some other proposed revisions. Judgment liens are discussed in the text on pages 38-46.

§§ 707.810-707.850. Dwelling exemption

This article has not been reviewed by the Commission. It implements decisions made at the November and December 1978 meetings and contains some other proposed revisions. The dwelling exemption is discussed in the text on pages 66-78.

§§ 708.110, 709.110, 710.110. Issuance of writs to enforce nonmoney judgments

These sections have been revised to permit judgment creditors' attorneys to issue writs of possession of real or personal property and writs of sale. In these cases the judgment itself describes the property to be sold or recovered so there should be less latitude for mistake or abuse than in the case of creditor issuance of writs of execution.

Respectfully submitted,

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STATE OF CALIFORNIA
CALIFORNIA LAW
REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

relating to

ENFORCEMENT OF JUDGMENTS

California Law Revision Commission
Stanford Law School
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STAFF DRAFT

TENTATIVE RECOMMENDATION

relating to

ENFORCEMENT OF JUDGMENTS

GENERAL PROVISIONS

Scope of Enforcement Procedures of Title 9

Title 9 of the Code of Civil Procedure¹ provides for the enforcement of money judgments, judgments for the possession or sale of real or personal property, and judgments enforceable by contempt.² Its provisions are also available for the enforcement of a tax liability in a situation where the state is authorized to issue a warrant pursuant to particular sections in the Revenue and Taxation Code and the Unemployment Insurance Code.³ For the most part, however, Title 9 is concerned with enforcement of money judgments.

The scope of the proposed revision of Title 9 is essentially the same as that of existing law.⁴ The proposed law separates the provisions pertaining to the enforcement of the various types of judgments and clarifies the extent to which general provisions apply to nonmoney

1. Sections 681-724e. Except as otherwise noted, all statutory citations are to the Code of Civil Procedure.
2. See, e.g., Sections 682, 684. See the discussion under "Enforcement of Nonmoney Judgments" infra.
3. Section 722.5. This provision applies where warrants are issuable pursuant to Sections 6776, 7881, 9001, 10111, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code or Section 1785 of the Unemployment Insurance Code. Four recently enacted warrant provisions are not listed in Section 722.5. See Rev. & Tax. Code §§ 3202, 16071, 38541, 40161. The proposed law omits the references to specific sections providing authority for issuing warrants to collect a tax so that further amendment will not be required when tax laws are revised.
4. The proposed law would not, however, apply to enforcement of money judgments against public entities. See the discussion under "Enforcement of Money Judgments Against Public Entities" infra.

judgments. Under existing law, it is not always clear which provisions apply to which types of judgments.⁵

Enforcement of Money Judgments Against Public Entities

Under existing law, property of the state is exempt from execution (presumably including supplementary proceedings and other collection remedies) unless a specific statute creates an exception to this principle.⁶ It has been held that the personal property of a municipal

5. The word "execution" leads a chameleon-like existence in existing law; it is frequently unclear whether "execution" or "writ of execution" refers to process to enforce money judgments and judgments for the possession or sale of property, process to enforce money judgments and judgments for the possession but not the sale of property, or only process to enforce money judgments. For example, Section 684 provides that a writ of execution may be used to enforce a money judgment or a judgment for the possession of real or personal property; a judgment for the sale of property may be enforced by a "writ reciting such judgment." Section 683 provides for the return of the "execution" not less than 10 nor more than 60 days after its receipt by the levying officer, but it was held in *Magnaud v. Traeger*, 66 Cal. App. 526, 530-31, 226 P. 990, ___ (1924), that a writ of execution for the possession of real property remained in force insofar as it directed the restitution of the premises although it had expired insofar as it directed the levying officer to levy on property to satisfy the part of the judgment awarding damages. Section 681 was amended in 1955 to add a reference to "enforcement" of the judgment since it was felt that the word "execution" was arguably not broad enough to cover enforcement of a mortgage foreclosure decree, *i.e.*, a judgment for the sale of real property. See Review of 1955 Code Legislation 101 (Cal. Cont. Ed. Bar 1955). Section 692 (sale on execution), seems on its face to apply only to the enforcement of money judgments, although it has been held that foreclosure sales of real and personal property should be made in the same manner as in a sale under a money judgment. See *Podrat v. Oberndorff*, 207 Cal. 457, 459-60, 278 P. 1035, ___ (1929) (personal property); *Johnson v. Tyrell*, 77 Cal. App. 179, 182, 246 P. 140, ___ (1926).
6. *Westinghouse Elec. & Mfg. Co. v. Chambers*, 169 Cal. 131, 135, 145 P. 1025, ___ (1915); *Meyer v. State Land Settlement Bd.*, 104 Cal. App. 577, 584-86, 286 P. 743, ___ (1930).

housing authority which is a state agency is subject to execution.⁷ The general rule concerning property of a local public entity is that property held in a proprietary capacity, i.e., not devoted to public use, is subject to execution.⁸ Several statutes also provide exemptions for certain items of property of counties, towns, and incorporated cities.⁹ Existing law also provides exemptions for specific public entities.¹⁰

The proposed law would preclude resort to the normal remedies for enforcement of money judgments against state and local public entities. Money judgments against public entity debtors would be enforceable only by means of a writ of mandate.¹¹ Use of a clerk-issued writ of execution is potentially disruptive of the functions of a public entity. From the judgment creditor's standpoint, a writ of execution will frequently be ineffective because, even if the property is not of a type exempted by statute, it may be exempt under the public use doctrine.¹²

7. Code of Civil Procedure Section 690.27 and Health and Safety Code Section 34217 exempt the real property of a housing authority. In *Maurice L. Bein, Inc. v. Housing Auth.*, 157 Cal. App.2d 670, 690, 321 P.2d 753, ___ (1958), the omission of an exemption for personal property of housing authorities was held to leave such property subject to execution.
8. *C.J. Kubach Co. v. City of Long Beach*, 8 Cal. App.2d 567, 573, 48 P.2d 181, ___ (1935); *Marin Water & Power Co. v. Town of Sausalito*, 49 Cal. App. 78, 83, 193 P. 294, ___ (1920).
9. Section 690.22 exempts courthouses, jails, fire companies, public offices, public buildings, lots, grounds, and personal property, including automotive and truck equipment, fixtures, furniture, books, papers, and the like.
10. See Sections 690.26 (property of the Reclamation Board and the Sacramento and San Joaquin Drainage District), 690.29 (property of re-development agency).
11. See Section 1085; *McPherson v. City of Los Angeles*, 8 Cal.2d 748, 750, 68 P.2d 707, ___ (1937); *Title Guar. & Trust Co. v. City of Long Beach*, 4 Cal.2d 56, ___, 47 P.2d 472, ___ (1935); *Emeric v. Gilman*, 10 Cal. 404, 410 (1858); *Cook v. Board of Supervisors*, 99 Cal. App. 169, 171, 277 P.2d 1064, ___ (1929).
12. The attempts to enforce a money judgment by the C.J. Kubach Co. against the City of Long Beach are instructive in this regard. The Kubach Company caused the levy of execution on a lot used for parking for hire which the city claimed was held for eventual public use and on an oil lease of which the city was the lessor. In *C.J.*

As compared with mandamus, execution is an ill-designed remedy for enforcement against a public entity. The public entity debtor and its functionaries are under a duty to pay. Although the public entity may not currently have funds with which to pay the judgment, it has the means with which to eventually pay through the taxing and bond-issuing powers.¹³ Enforcement by mandamus should for the most part be a more effective remedy and result in less disruption of government functions than enforcement by execution. Although enforcement by way of mandamus necessarily involves a court hearing, the issue of whether property levied upon under execution is devoted to a public use or is held in a proprietary capacity would also require a court determination. There is also no special need for the speedy, ex parte remedy of execution because the public entity is incapable of fleeing the jurisdiction and is not generally in a position to conceal assets.

Time for Enforcement of Judgments

Under existing law, a writ or order for the enforcement of a judgment may be obtained as a matter of course within 10 years after the entry of the judgment.¹⁴ The judgment may be enforced after 10 years in the discretion of the court upon motion by the judgment creditor with

Kubach Co. v. City of Long Beach, 8 Cal. App.2d 567, 48 P.2d 181 (1935), the court held that the parking lot was not subject to execution because two-thirds of the original parcel was in fact being used for governmental purposes. However, the royalties from the oil lease were found not to be dedicated to a public purpose. Nevertheless, a year and a half later the Kubach Company found it necessary to resort to mandamus for the collection of the more than two-thirds of the judgment remaining unpaid. See Title Guar. & Trust Co. v. City of Long Beach, 4 Cal.2d 56, 47 P.2d 472 (1935).

13. See, e.g., Gov't Code §§ 970.8-971 (levy of taxes by local public entities to pay tort and inverse condemnation judgments free of debt limitations and tax rate restrictions), 975-978.8 (funding of judgments by local public entities through bond issuance), 50170-50175 (payment of judgments in installments by cities and counties); Educ. Code §§ 35201 (payment of judgments by school districts), 72501 (payment of judgments by community college districts); Water Code §§ 39091-39096 (payment of judgments by water districts).
14. Section 681. Stays of enforcement are excluded from the computation of the 10-year period. Id. Section 681 and its companion provision pertaining to issuance after 10 years, Section 685, govern issuance of writs or orders for the enforcement of money

notice to the judgment debtor.¹⁵ The judgment may also be renewed by bringing an action upon it within 10 years after entry.¹⁶ This scheme is a direct descendant of the common law rules concerning actionability and executability of a money judgment.¹⁷

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

judgments and judgments for the possession or sale of property. See, e.g., Butcher v. Brouwer, 21 Cal.2d 354, 132 P.2d 205 (1942) (money judgment); Laubisch v. Roberdo, 43 Cal.2d 702, 708-09, 713-15, 277 P.2d 9, 13, 16-17 (1954) (judgment for sale of real property); City of Los Angeles v. Forrester, 12 Cal. App.2d 146, 148-49, 55 P.2d 277, 278 (1936) (judgment for possession of real property); see 5 B. Witkin, California Procedure Enforcement of Judgment § 68, at 3443, § 199, at 3553 (2d ed. 1971); Review of 1955 Code Legislation 101 (Cal. Cont. Ed. Bar 1955).

15. Section 685. This provision requires the judgment creditor to file an affidavit stating the reasons for failure to enforce the judgment within the 10 years allotted by Section 681. See the cases cited in 5 B. Witkin, California Procedure Enforcement of Judgment § 202, at 3555 (2d ed. 1971).
16. Section 337.5 (statute of limitations); Atkinson v. Adkins, 92 Cal. App. 424, 426, 268 P. 461, 462 (1928).
17. At common law, a writ of the appropriate type--leviari facias, fieri facias, or elegit--could be issued to enforce a money judgment only for a year and a day after the signing of the judgment. If a writ was not issued within this time, the judgment became dormant and the judgment creditor was required to initiate proceedings to revive the judgment by means of a writ of scire facias or to bring an action of debt to renew the judgment. Scire facias could be obtained without application to the court for a period of 10 years after judgment. At a later time, the common law developed a rebuttable presumption of payment after 20 years. See Riesefeld, Collection of Money Judgments in American Law--A Historical Inventory and a Prospectus, 42 Iowa L. Rev. 155, 156-59, 172-73 (1957).
18. At least three states provide absolute limits on the time for enforcement of domestic judgments. In North Dakota, the life of a judgment is limited to 20 years from the date of entry. See N.D. Cent. Code § 28-20-35 (1975); Berg v. Torgerson, 100 N.W.2d 153 (N.D. 1959). In Oregon, a domestic judgment is executable for 10 years and may be extended by motion within that time for one more 10-year period. See Or. Rev. Stat. § 18-360 (1977); Newhouse v.

ment proceedings against the judgment creditor would cease¹⁹ and the judgment would in effect be discharged. Although the selection of a 20-year period is somewhat arbitrary, as any such decision must be, the Commission has concluded that this is an adequate length of time for the enforcement of a judgment by a diligent creditor.²⁰ This proposal benefits judgment creditors by eliminating the need to apply to the court after 10 years or to satisfy the vague standard of diligence developed

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

19. The rule announced in *Alonso Inv. Corp. v. Doff*, 17 Cal.3d 539, 551 P.2d 1243, 131 Cal. Rptr. 411, (1976), permitting the enforcement of a writ of execution after the expiration of the 10-year period provided by Section 681 if the writ had been timely issued, is not continued in the proposed law. The judgment creditor would be able to continue a creditor's suit against a third person holding property of or owing debts to the judgment debtor and enforce any judgment obtained in that suit after the time for enforcement of the original judgment against the judgment debtor had expired. See the discussion under "Creditors' Suits" infra.
20. Cases cited in *Long v. Long*, 76 Cal. App.2d 716, 722, 173 P.2d 840, 843 (1946), reveal that execution has been permitted under Section 685 for as much as 20 years after judgment. In *Hatch v. Calkins*, 21 Cal.2d 364, 371; 132 P.2d 210, 214 (1942), the court denied issuance of a writ of execution 29 years after entry of judgment for lack of diligence.

under existing law.²¹ The 20-year limitation also eliminates the possibility of revival of stale judgments and, like a statute of limitations, provides surcease to those few debtors who have been subject to the pursuit of creditors for at least two decades.

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

The proposed law would not preclude the bringing of an action on a judgment, but it would prevent the extension of the period of enforceability beyond 20 years running from the entry of the original judgment or, in the case of an installment judgment, from the date a particular

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

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

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

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

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

installment becomes due. An action may be brought on a domestic judgment for some other purpose,²⁴ but the 20-year period of enforceability would remain absolute.

Effect of Liens

The important matter of the creation and effect of liens that arise in the course of enforcing a money judgment is currently left largely to case law. Existing statutes provide for the creation of judgment liens,²⁵ execution liens,²⁶ and liens on causes of action and judgments.²⁷ The proposed law provides explicitly for the creation of liens pursuant to all of the various enforcement procedures, and specifies the time a lien arises, which is the essential factor in determining the rights of a creditor against transferees of the debtor's property and against other creditors.²⁸

The proposed law provides general rules concerning the effect of liens. It codifies the case law rule that a creditor's priority relates back to the time as of which the first of a series of overlapping liens

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24. E.g., where a spouse seeks to invoke contempt power of court in another county to enforce support judgment, or where an action to foreclose a lien is necessary because the judgment creating the lien did not direct sale of the security. See 5 B. Witkin, California Procedure Enforcement of Judgment § 192, at 3547 (2d ed. 1971).
25. Sections 674, 674.5, 674.7. See the discussion under "Judgment Liens" infra.
26. Section 688(d), (e). See the discussion under "Execution Lien" infra.
27. Section 688.1. See the discussion under "Liens on Causes of Action and Judgments" infra.
28. A lien signifies the right of the judgment creditor to resort to the property subject to the lien for the satisfaction of the money judgment. In a sense, acquisition of a lien elevates a general judgment creditor to the status of a secured creditor. See S. Riesenfeld, Creditors' Remedies and Debtors' Protection 54 (2d ed. 1975). The time as of which a lien is created is essential because the creditor having the earliest valid lien in time will prevail over other creditors. See Civil Code §§ 2897-2899 (general provisions concerning the priority of liens). In most cases, a judgment

is created on a particular item of property or a fund.²⁹ The proposed law also makes clear that, unless a lien is specifically limited to a shorter duration,³⁰ a lien expires when the judgment under which it was created ceases to be enforceable.³¹

Decisions under existing law have held that equitable liens-- typically those liens created by service of an order in supplementary proceedings or by commencement of a creditor's suit³²--are not effective against a subsequent transferee of the property subject to the lien who gives fair consideration for the property without knowledge of the lien.³³ The proposed law codifies this rule and makes it uniform by

creditor holding a valid lien will also prevail over a secured party whose security interest is not perfected before the creation of the lien. See Com. Code § 9301.

29. See, e.g., *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242, ___ (1909); *Riley v. Nance*, 97 Cal. 203, 205, 31 P. 1126, ___ (1893); *Bagley v. Ward*, 37 Cal. 121, 131 (1869) (dictum); *Durkin v. Durkin*, 133 Cal. App.2d 283, 294, 284 P.2d 185, ___ (1955); *Balzano v. Traeger*, 93 Cal. App. 640, 643-44, 270 P. 249, ___ (1928). This relation back effect may provide the judgment creditor with a priority predating the date of entry of the judgment if property of the debtor had been attached in the action. An attachment lien may run for as long as five years. See Sections 488.500, 488.510. See also Section 488.500(i) (lien of attachment effective as of date of service of temporary protective order pursuant to Section 486.080).
30. Section 688(e) provides that a writ of execution does not bind property for more than a year from the date of issuance of the writ. Under the proposed law, the lien of execution would last for a year from the date property is levied upon. See the discussion under "Execution Lien" infra.
31. See the discussion under "Time for Enforcement of Judgments" supra.
32. See *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 28-30, 87 P.2d 830, 844 (1939).
33. See *Jud Whitehead Heater Co. v. Obler*, 111 Cal. App.2d 861, 872-74, 245 P.2d 608, 616 (1952); *Wagner v. Sariotti*, 56 Cal. App.2d 693, 698, 133 P.2d 430, 433 (1943); cf. *Taylor v. S & M Lamp Co.*, 190 Cal. App.2d 700, 711-13, 12 Cal. Rptr. 323, ___ (1961) (transferee of partnership property with knowledge of charging order which created lien is liable to judgment creditor); see generally 1 J. Pomeroy, *Equity Jurisprudence* §§ 165, 171(4) (5th ed. 1941); 4 id., §§ 1233-1234.

applying it to execution liens.³⁴ In most cases, however, a transferee of property levied upon under a writ of execution will not meet the requirements of a bona fide purchaser because the manner of levy entails taking custody of tangible personal property and recording a notice of levy on real property. Where the property sought to be levied upon is held or owed by a third person, the judgment creditor is protected by the provision making the third person liable in the amount of the debt or the value of the property for failure to comply with the levy.

Liability of Levying Officers

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

Miscellaneous Procedural Provisions

Manner of mailing notice. The proposed law provides as a general rule that notices required or permitted to be mailed shall be sent by first-class mail, postage prepaid.³⁶ First-class mail is preferable

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34. The effect of an execution lien against a bona fide purchaser under existing law is not clear. In one decision, it was indicated that a levy of attachment would not be effective as against a good faith purchaser from the defendant. See *Rogers v. Gilmore*, 51 Cal. 309, 312 (1876). N.Y. Civ. Prac. Law & R. § 5202 (McKinney ____) protects bona fide purchasers in certain situations.
35. See Sections 262 (judgment creditor's instructions must be in writing to discharge levying officer from liability), 262.1 (levying officer required to execute all process regular on its face and issued by competent authority), 689 (levying officer not liable to third person for levy, etc., if no third-party claim delivered or if provisions of Section 689 followed), 689b(9) (levying officer not liable for levy, etc., if undertaking given), 697 (levying officer not liable for more than amount bid by subsequent purchaser where first bidder fails or refuses to pay amount bid at execution sale).
36. Notice provisions vary under existing law. See, e.g., Sections 11 (certified mail complies with registered mail requirement), 682a (bank notice to holder of joint account levied upon sent by registered mail), 682.1 (copy of writ of execution mailed to judgment debtor after levy), 688(b) (service of writ of execution on judgment debtor by personal delivery or by mail), 689 (demand for

because it is cheaper and is more likely to be received expeditiously. The proposed law also permits persons giving notice to deliver the notice personally whenever notice by mail is permitted. A notice that is mailed is also required to state the date of mailing because frequently the time of mailing a notice triggers the running of a time within which to respond.

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

General Procedural Provisions Continued Without Substantial Change

Provisions concerning enforcement of judgments after the death of the judgment debtor or the judgment creditor,³⁸ contribution among

undertaking sent to judgment creditor by registered or certified mail), 689b(3) (demand for undertaking or deposit sent to judgment creditor by registered or certified mail), 690.2(d) (notification by levying officer to judgment debtor of multiple vehicle registration), 690.30(b)(2) (notification by levying officer to judgment creditor of nature of account into which social security payments are directly deposited), 690.31(1) (copies of papers in dwelling exemption proceedings sent to judgment debtor and certain third persons by first-class mail), 692, para. 2 (notice of personal property sale mailed or delivered to judgment debtor), 692, para. 3 (notice of real property sale sent by certified mail or delivered to judgment debtor), 692a (notice of sale mailed to persons requesting notice), 710(d) (notice mailed by court clerk to parties interested in condemnation award).

37. Under existing law, the Judicial Council has issued approved forms for the general writ of execution (covering money judgments and judgments for the possession of property) and for the writ of execution against a dwelling house. A statutory form of the writ of execution on a money judgment is provided by Section 682.1 and a statutory form for notice of proposed levy on a dwelling is provided by Section 690.31. [The proposed law specifies important matters to be included in certain forms, but would not enact the actual forms.]

38. See Code Civ. Proc. § 686; Prob. Code § 732.

judgment debtors,³⁹ entry of costs on writs,⁴⁰ execution of commercial paper by the levying officer,⁴¹ judgment creditor's instructions to the levying officer,⁴² the manner of custody of property levied upon,⁴³ the deposit of fees prior to performance of a duty by the levying officer,⁴⁴ and stays of enforcement⁴⁵ are continued in the proposed law without substantial change.

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

ENFORCEMENT OF MONEY JUDGMENTS

Execution

Several procedures are available for the enforcement of a money judgment. The simplest and most common is by way of a writ of execution. With certain exceptions, all of the judgment debtor's nonexempt property, tangible and intangible, is subject to levy under a writ of execution followed by the sale of tangible property or the collection or sale of a debt.⁴⁶

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46. In general, nonexempt 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. 414, 429-30 (1976). For a discussion of exempt property, see "Exemptions From Enforcement of Money Judgments" infra.

For a discussion of procedures to reach property not subject to execution, see "Special Procedures for Enforcement of Money Judgments" infra. In three situations, property that is not owned by the judgment debtor is also subject to execution or some other enforcement procedure:

1. Under the community property laws, the community property is liable for the satisfaction of the debts of either spouse and, if the debt was incurred for necessities of life after marriage, the separate property of the nondebtor spouse may also be applied to the judgment against the other spouse. See Civil Code §§ 5116, 5120, 5121, 5122, 5125, 5132. This aspect of the law is the subject of a separate study currently being undertaken by the Commission.
2. Property that was subjected to a lien when owned by the debtor may also be reached. See Section 682 (real property subjected to judgment lien); *Riley v. Nance*, 97 Cal. 203, 31 P. 1126 (1893) (property subjected to attachment lien when owned by debtor); *Puissegur v. Yarbrough*, 29 Cal.2d 409, 412-13, 175 P.2d 830, 832 (1946) (property subjected to execution lien when owned by judgment debtor).
3. Where the debtor makes a fraudulent conveyance, the creditor may "disregard the conveyance and . . . levy execution upon the property conveyed." Civil Code § 3439.09.

Issuance and Return of Writ of Execution

Under existing law, a writ of execution for enforcement of a money judgment is issued by the clerk of the court where the judgment is entered upon application of the judgment creditor.⁴⁷ A writ may be issued to the levying officer in each county in which the judgment debtor has property that the judgment creditor desires to reach.⁴⁸ Only one writ to enforce the judgment may be outstanding in a county at a time.⁴⁹

The writ of execution may be in force for one year from its date of issuance, but it must be returned to the court clerk between 10 and 60 days after its delivery to the levying officer.⁵⁰ The return provides an account of the levying officers' activities in executing the writ and the amounts collected in satisfaction of the judgment.⁵¹ If proceeds are received after the writ has been returned, the writ may be redelivered to the levying officer who then makes an alias return.⁵²

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47. See Section 682. A court hearing is required before a writ of execution may be issued to enforce a judgment for support of a child or spouse. See Civil Code § 4380; *Messenger v. Messenger*, 46 Cal.2d 619, 630, 297 P.2d 988, ___ (1956); *Jackson v. Jackson*, 51 Cal. App.3d 363, ___, 124 Cal. Rptr. 101, ___ (1975). This limitation is codified in the proposed law. A judgment creditor who seeks to execute upon a dwelling house for which a homestead declaration has not been recorded is required to apply to the court in the county where the house is located. See Code Civ. Proc. § 690.31; *Krause v. Superior Court*, 78 Cal. App.3d 499, 505, 144 Cal. Rptr. 194, 197 (1978). For the proposed modification of this feature of existing law, see the discussion under "Dwelling Exemption" infra.
48. See Sections 682, 687. The writ may also be issued to a registered process server where the judgment creditor seeks to levy upon a debt owed the judgment debtor by a third person. See Sections 682, 687(b), as amended by 1978 Cal. Stats. ch. 1419, §§ 1, 4.
49. See Section 683; 32 Ops. Cal. Att'y Gen. 22 (1958). Section 690.31 may create an implied exception to this general rule because the special writ issued pursuant to court order under that section for the purpose of levying upon a dwelling presumably may not be used for a levy on other property and, correspondingly, a general writ of execution issued by the clerk to the same county may not be used against a dwelling.
50. See Sections 683, 688(e). The writ may, however, be retained to complete a sale after its return date. *Southern California Lumber Co. v. Ocean Beach Hotel*, 94 Cal. 217, ___, 26 P. 627, ___ (1892).
51. See Section 682.1; *Marshal's Manual of Procedure* § 404 (rev. 1977).
52. See Section 683. Under the common law, a writ of venditioni exponas was required to enable the sheriff to sell goods which had

The writ of execution states the amount due on the judgment at the time of its issuance.⁵³ The clerk also enters the amount of interest accruing daily and the fee for issuance of the writ, and the levying officer adds the costs of levy and sale to the amount to be collected under the writ.⁵⁴

The proposed law would modify these procedures in several important respects. The writ of execution could be issued by the judgment creditor's attorney as an officer of the court⁵⁵ or by the court clerk upon application of the judgment creditor. Permitting the judgment creditor's attorney to issue the writ without the involvement of the clerk will save time and reduce expenses for both the judgment creditor and the court system. An attorney who issues a writ of execution would be under the control of the court and subject to the court's authority for abuse of this authority. A writ would be returned to the court regardless of whether it was issued by the judgment creditor's attorney or the clerk.

The writ of execution would be leviable at any time during the first 90 days after its issuance, rather than 60 days after its delivery to the levying officer. If property is levied upon during the 90-day period, the writ would be retained by the levying officer for the purpose of selling or collecting thereafter during the life of the writ, thus avoiding the need for redelivery of the writ and alias returns. The creditor would also be able to issue or obtain another writ of execution for the same county after the first writ is at least 90 days

already been levied upon under a writ of fieri facias that had lost its active force. See S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 87 (2d ed. 1975).

53. See Sections 682, 682.2.

54. See Section 682.2.

55. The provision of the proposed law is derived from New York procedure. See N.Y. Civ. Prac. Law & R. § 5230(b) (McKinney ___).

old so that additional property may be levied upon while sale or collection proceeds under the first writ. Writs would be returnable after the duties thereunder have been performed, but not later than one year after issuance.⁵⁶

If no property is levied upon during the first 90 days after the writ is issued, the writ would be returnable promptly after the expiration of the 90-day period. The writ would also be returnable at the written request of the judgment creditor in order to permit issuance of a new writ when the time for levy under the prior writ has almost expired without any property having been levied upon. Ultimately, the writ would be returnable when the time for enforcement of the judgment has expired.

Levy Under Writs of Execution

The levying officer executes the writ of execution⁵⁷ pursuant to the instructions of the judgment creditor describing the nature and location of the property to be levied upon.⁵⁸ Under existing law, the levying officer is required to levy first upon property previously attached in the action, next upon personal property, and finally upon real property.⁵⁹ This rule is ineffective because the levying officer

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56. In the case of a levy upon an interest of an heir, devisee, or legatee in personal property in the estate of a decedent, the writ would be returnable as late as one year after the date the decree distributing the interest is final.
57. Service of the writ on a third person may also be accomplished by a registered process server if the levy does not require the sale, delivery, or custody of the property levied upon. See Sections 682, 687, as amended by 1978 Cal. Stats. ch. 1419, §§ 1, 4. The proposed law would continue this provision.
58. See Section 262 (levying officer not liable for carrying out signed instructions); cf. Section 692 (instructions for sale of property); see generally Marshal's Manual of Procedure § 301.1 (rev. 1977); Cal. State Sheriffs' Association, Civil Procedural Manual 4.05 (1978).
59. Sections 682, 684.2. The preferential protection of real property from the claims of creditors dates from feudal times and is recognized in clause 9 of the Magna Carta.

follows the instructions of the judgment creditor as to the property to be levied upon. The order of levy rule is not continued in the proposed law because it is not efficient and is not necessarily beneficial to either the debtor or the creditor. For example, the creditor may have attached real property before entry of the judgment whereas more liquid assets such as earnings or bank accounts can be more efficiently reached after the judgment.⁶⁰ On the other hand, the creditor should not be prevented from reaching real property because there is some personal property which could be applied to the satisfaction of the judgment perhaps only at a great sacrifice to the debtor, as in the case of used furniture or intangibles. The proposed law would, however, permit the judgment debtor to require the judgment creditor to apply or release attached property to avoid any hardship that might result should the judgment creditor hold property previously levied upon for extended periods of time while searching for other property.

General Rules Governing Levy

The levy procedures under the proposed law are essentially the same as those under existing law which in general incorporates the rules governing levy under a writ of attachment.⁶¹ The proposed law makes specific provision for the manner of levy upon particular types of property, however, as does the Attachment Law, rather than incorporating the attachment provisions. This avoids the need to resolve conflicts in the terminology in the attachment and execution contexts and results in a more convenient statutory scheme for practitioners and levying officers since the vast majority of levies take place after judgment.

Property is levied upon, i.e., seized in the eyes of the law, in four ways: by physical seizure accompanied by service of a writ and notice of levy, by service of a writ and notice of levy alone, by filing or recording of a writ and notice of levy, and by mere delivery of a writ and instructions to levy to the levying officer.

60. An individual debtor's real property may be attached before entry of judgment (Section 487.010(c)(1)), but the creditor may not attach earnings (Section 487.020(c)) or accounts receivable, chattel paper, or choses in action with an individual balance of less than \$150 (Section 487.010(c)(2)).

61. See Section 688.

Seizure and service is employed where tangible personal property to be levied upon is in the judgment debtor's possession. Service alone is used for a levy upon intangible personal property or any personal property under the control of a third person. Filing or recording is used to levy upon real property, property under estate administration, or a judgment. Delivery of a writ and instructions to the levying officer constitutes a "paper levy" upon property already levied upon by the levying officer.⁶²

Under the proposed law, both a copy of the writ of execution and a notice of levy will be served when service is required. The notice of levy informs the person served of the capacity in which the person is served, such as judgment debtor, garnishee or interest holder of record, the property which is levied upon, the person's rights under the levy, including the right to make a third-party claim or claim an exemption, and the person's duties under the levy, such as the requirement that a garnishee file a memorandum with the levying officer. Notice of levy is required to be given promptly to the judgment debtor in every case. Levy is valid, however, even if no notice is given to the judgment debtor or a third person, provided that the essential levy requirements are satisfied.

Execution Lien

A levy creates a lien upon the property levied upon which runs for one year from the date of the issuance of the writ.⁶³ This general principle is continued in the proposed law. The clarification of the exact method of levy on a particular type of property in the proposed law is intended to facilitate the determination of the exact time a lien is created which is necessary for a determination of the priorities among various creditors.⁶⁴

62. This provision codifies case law. See *O'Connor v. Blake*, 29 Cal. 312, 315 (1865); *Colver v. W.B. Scarborough Co.*, 73 Cal. App. 441, 443, 238 P. 1104, ___ (1925).

63. See Section 688(e). The lien of execution has a longer duration in the case of a levy on interests or claims of heirs, devisees, or legatees in assets of decedents remaining in the hands of executors or administrators.

64. See the discussions under "Effect of Liens" supra and "Distribution of Proceeds of Sale and Collection" infra.

Levy on Property in a Private Place

The right of the judgment creditor to cause a levying officer to seize property from the possession of the judgment debtor is limited by the debtor's right to privacy.⁶⁵ The proposed law permits the judgment creditor to apply to the court ex parte, or on noticed motion if the court so directs, for an order directing the levying officer to seize property in a private place consistent with constitutional protections. As a prerequisite to issuance of such an order, the judgment creditor must describe with particularity both the property sought to be levied upon and the place where it is to be found. The court must be satisfied that there is probable cause to believe that the property is located in the place described.

Duties of Garnishee

The proposed law contains detailed provisions concerning the duties of a garnishee which are not found in existing law.⁶⁶ The proposed law makes clear that service of a writ of execution and notice of levy creates a lien on any of the judgment debtor's property under the control of the garnishee or on any debt owed the judgment debtor. The garnishee is notified that if no right of possession of tangible personal property is claimed by the garnishee, the property described is to be delivered to the levying officer. If the garnishee does not deny the debt to the judgment debtor, it is to be paid as it becomes due to the levying officer during the period of the lien of execution which runs for one year from the date of the writ's issuance. The garnishee would also be required to execute any documents necessary to effect a transfer or payment. At the time of levy, the levying officer would request the

65. This right to privacy and the protection of the security of the home derives from early common law. See 2 A. Freeman, Law of Executions § 256 (3d ed. 1900). In *Blair v. Pitchess*, 5 Cal.3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971), the claim and delivery procedure was held unconstitutional partly because the seizure of the property in a private place constituted an unreasonable intrusion on the debtor's privacy in the absence of probable cause. Cf. *Camara v. Municipal Court*, 387 U.S. 523 (1967).

66. Section 488.080(b) provides for a garnishee's memorandum in attachment, but this provision is not specifically incorporated by the enforcement of judgment provisions and does not provide as much detail as the memorandum under the proposed law.

garnishee to mail a memorandum to the levying officer within 10 days. The memorandum is to be executed under oath and describe the tangible personal property levied upon and the interest of the judgment debtor therein, state the amount and terms of any debt owed the judgment debtor, give any reasons for not delivering any property of the judgment debtor or paying a debt owed the judgment debtor, and describe superior interests of any other persons in the property or debt. If the garnishee complies with this memorandum requirement, the judgment creditor will be provided with information useful in deciding the most efficient manner of enforcing the judgment. If the garnishee does not fully comply with the garnishment and provide the memorandum, the garnishee may be required in the court's discretion to pay the costs of any proceedings, such as an examination or creditor's suit,⁶⁷ instituted to obtain possession of the property, payment of the debt, execution of necessary documents, or the information required to be supplied in the memorandum.

Methods of Levy on Particular Types of Property

The proposed law contains specific provisions for levy upon the following categories of property: interests in real property, tangible personal property in the debtor's possession, tangible personal property in a third person's possession, tangible personal property in a levying officer's custody, debts, motor vehicles and vessels, tangible personal property of a going business, personal property used as a dwelling, growing crops and standing timber, chattel paper, negotiable instruments and documents, money, securities, deposit accounts and safe deposit boxes, judgments owed to judgment debtors, and interests in personal property of a decedent's estate. Most of these provisions are the same in substance as existing law which in general incorporates the methods of levy under attachment. The following are the more important revisions:

Real property. The proposed law would make clear that leasehold interests in real property are to be levied upon in the same manner as

67. See the discussions under "Examination Proceedings" infra and "Creditor's Suit" infra.

freehold interests. Under existing law, it is the practice to treat some leases as personal property and some as real property for the purpose of determining the correct manner of levy.⁶⁸ The proposed law would specifically require the recording of a writ of execution and notice of levy in all cases of a levy on an interest in real property, whereas under existing law, no recordation is required if the judgment is already a lien on the property.⁶⁹ The proposed law would also require notice of levy to be sent to persons holding an interest of record in the property so as to provide early notice to interested persons that the property may be sold.⁷⁰

Paper levy. The proposed law contains a new provision codifying case law concerning a paper levy--that is, a levy on tangible personal property which is already in the levying officer's custody.⁷¹ There is no need to re seize the property in such a case, so the levy is accomplished and a lien arises when the creditor delivers the writ of execution to the levying officer with instructions to levy upon the property already in the officer's custody. If the writ is directed to a levying officer other than the one in custody of the property, the receiving officer would levy upon the property by serving a copy of the writ and a notice of levy on the officer having custody. This procedure permits second judgment creditor to establish an interest in the surplus proceeds that might remain after a sale of the property⁷² and to prevent

68. See Marshal's Manual of Procedure § 300.3 (rev. 1977) (leases for a definite term of years treated as personal property, leases for indefinite term treated as real property). The Attachment Law, however, does not make this distinction. See Section 488.310.

69. See Lehnhardt v. Jennings, 119 Cal. 192, 195-97, 48 P. 56, 51 P. 195, ___ (1897). The practice has been to make a complete levy in every case. See Marshal's Manual of Procedure § 303.2 (rev. 1977).

70. Notice would be required to be given to a person holding an interest in the property acquired by an instrument sufficient to impart constructive notice of the interest if the instrument is recorded in the office of the county recorder so as to impart constructive notice prior to the date of levy on the property. Cf. Civil Code § 2924b(3)(a).

71. See O'Connor v. Blake, 29 Cal. 312, 315 (1965); Colver v. W.B. Scarborough Co., 73 Cal. App. 441, 443, 238 P. 1104, ___ (1925).

72. See the discussion under "Distribution of Proceeds of Sale and Collection" infra.

the release of the property should the lien of the first judgment creditor cease, such as pursuant to the direction of the first judgment creditor, or pursuant to a claim of exemption⁷³ or a third-party claim⁷⁴ in the proceedings involving the first creditor.

Motor vehicles and vessels. Existing law requires the levying officer to give notice of levy to the legal owner if different from the registered owner.⁷⁵ The proposed law is worded so as to avoid giving duplicate notice to legal owners, since if the legal owner is in possession, notice generally will be given at the time the property is seized. The proposed law also makes clear that notice need not be mailed to the legal owner in the case of a keeper levy on property of a going business or of a vehicle or vessel used as a dwelling until the levying officer takes exclusive possession of the property.

Personal property used as a dwelling. Existing law provides that personal property used as a dwelling, such as a housetrailer, mobile-home, or vessel, is to be levied upon by placing a keeper in charge for at least two days and then removing the occupants and taking exclusive custody of the property, unless the court orders otherwise or the parties agree to some other disposition.⁷⁶ The proposed law continues this aspect of existing law but also permits the judgment creditor to waive the keeper provision and yet still maintain a lien with priority over other creditors.⁷⁷ In appropriate cases, this provision will permit the

73. See the discussion under "Exemptions From Enforcement of Money Judgments" infra.

74. See the discussion under "Third-Party Claims and Related Procedures" infra.

75. See Section 689b(1).

76. See Section 688(c).

77. It would be possible for the judgment creditor to lose the lien if the judgment debtor transfers the property to a purchaser who gives fair consideration without knowledge of the lien. See the discussion under "Effect of Liens" supra.

judgment debtor and his or her family to remain in the dwelling until an exemption claim may be determined and will save the substantial costs of the keeper and of taking the property into exclusive custody.⁷⁸ The judgment creditor would be able to resort to the greater security of a keeper levy, however, in a case where it is believed that the debtor might remove or transfer the property.

Turnover Orders

The proposed law would make available a turnover order remedy derived from the laws pertaining to claim and delivery and attachment.⁷⁹ The judgment creditor would be able to obtain an order on ex parte application or on noticed motion, if the court so directs, requiring the judgment debtor to transfer possession of property sought to be levied upon or documentary evidence of title to property or a debt sought to be levied upon. The order would be enforceable by the power of the court to punish for contempt. Use of a turnover order in appropriate cases may avoid the need to obtain an order for a levy on property in a private place, would facilitate reaching intangible assets with a situs outside California, and by permitting a turnover of evidence of title, would facilitate eventual collection of a debt or sale of property such as a motor vehicle.

Disposition of Perishable Property

The proposed law makes specific provision for the prompt sale by the levying officer or a receiver of perishable property that has been levied upon.⁸⁰ Such property may be sold pursuant to court order obtained on noticed motion of the judgment creditor. However, if the levying officer determines that the property is so perishable or subject

78. A two-day keeper levy on an occupied mobilehome requires a deposit of \$200 plus the cost of moving the mobilehome and storing its contents. See Marshal's Manual §§ 10, 369 (rev. 1977); see also California State Sheriffs' Ass'n, Civil Procedural Manual 1.22-1.23, 4.09 (1978).

79. See Sections 482.080 (attachment), 512.070 (claim and delivery).

80. This provision is derived from Section 488.530 (attachment), and portions of Sections 689 (third-party claims proceedings) and 690.50(g) (exemption proceedings).

to deterioration or depreciation that there is not time to obtain a court order, the levying officer may take any action necessary to preserve its value or may sell the property. The levying officer would be protected from liability if the determination is made in good faith.

Release of Property

Existing law incorporates the provisions of the Attachment Law pertaining to the release of property which has been levied upon.⁸¹ The proposed law continues the substance of existing law but adds a provision for property to be sold if the person from whom it was taken cannot be found, with the proceeds deposited in the county treasury payable to the order of such person.

Sale and Collection

Sale in General

The general assumption of existing law is that property levied upon will be sold to satisfy the money judgment.⁸² This principle is continued in the proposed law subject to some modifications. The proposed law makes clear that cash or the equivalent of cash are not to be sold. Certain types of property that are especially susceptible to sacrifice sales--chattel paper, debts, judgments, and negotiable instruments that are not of a type customarily transferred in established markets or that arise out of consumer transactions--may be sold only pursuant to a court order issued on noticed motion and only on terms and conditions specified in the order that are designed to ensure that fair consideration is obtained at a sale.

Collection

If a court order for a sale of one of the specified debts is not sought or is refused or if the judgment creditor so instructs the levying officer, debts are to be collected under the proposed law during the period of the lien of execution which lasts for one year from the date of issuance of the writ of execution.⁸³ This represents a significant

81. See Section 488.560.

82. See Section 691.

83. The proposed law also provides other remedies for collecting debts. See the discussion under "Special Procedures for the Enforcement of Money Judgments" infra.

change from existing law under which the writ of execution has active force only for a maximum 60-day period after delivery to the levying officer whereupon it must be returned.⁸⁴ By encouraging collection over as long as a year's time, the proposed law would save collection costs and result in much less disruption of the relation between the debtor and the debtor's debtors.

Sale Procedure

Notice of sale. Except as noted, the proposed law would continue the substance of existing law governing the notice of sale. In order to reach potentially interested bidders at an execution sale more effectively, the proposed law would permit the judgment creditor to advertise the sale in an advertising section of a newspaper of general circulation or other periodical and recover reasonable costs of such advertising. The proposed law would afford the judgment debtor an opportunity to claim any available exemption for personal property by precluding its sale until 10 days after the notice of levy was mailed to the debtor. Under existing law the 10-day period runs from the date of levy,⁸⁵ but since the debtor may not be aware of the levy, it provides little protection. If real property is to be sold, the proposed law would require both a legal description and a street address, other common designation, or directions to the location of the property, whereas existing law permits the omission of the street address and apparently provides for a designation of the location of property only in cases of a foreclosure sale.⁸⁶ The proposed law would also require notice of sale to be sent to interest holders of record⁸⁷ and to be served on an occupant of the property or left at the premises.⁸⁸ The notice of sale of real property is delayed under the proposed law until 120 days after the notice of levy is mailed to the judgment debtor. This provision gives the judg-

84. See Section 683.

85. See Section 690.50(a).

86. See Section 692.

87. See note 70 supra. The provision of Section 692a for requesting notice of sale is not continued in the proposed law because it is infrequently used and requires a search of the file in the action whenever a writ is issued to enforce the judgment.

88. This provision is analogous to the provision for notice of levy.

ment debtor time to redeem the property from the judgment creditor's lien before the sale, to sell the property, or to seek the attendance of other potential purchasers at the judicial sale. This delay provision compensates for the proposed elimination of the statutory right to redeem real property for one year after a judicial sale.⁸⁹

Manner of sale. The existing law pertaining to the time, place, and nature of sale is largely continued in the proposed law.⁹⁰ However, the requirement that personal property be in view of those attending the sale is subject to an exception where the court orders otherwise. This option avoids the expense of moving bulky objects or large lots of items to the place where the sale is to be held. Under the proposed law, the judgment debtor may request that property be sold in certain lots or in a particular order, but the levying officer would not be bound to follow the request unless it is likely that the requested manner of sale will yield an amount equal to any other manner of sale. Under existing law, it appears that the judgment debtor has absolute control over this aspect of sale.⁹¹

Manner of payment. Existing law requires bidders at an execution sale other than the judgment creditor to pay in cash or by certified check or cashier's check; the judgment creditor may credit the judgment on any bids but must pay cash to cover the expenses of the levying officer, preferred labor claims, exempt proceeds, and other superior claims that are required to be satisfied.⁹² The proposed law continues this general requirement, but also would permit a high bidder to elect to treat a bid of over \$5,000 as a credit transaction by paying \$5,000 or 10 percent of the amount bid, whichever is greater, in cash, and paying the balance and additional accruing costs within 30 days after the date of the sale.⁹³ This provision should encourage outside bidding

89. See the discussion under "Repeal of Statutory Redemption From Judicial Sales" infra.

90. See Section 694.

91. See Section 694.

92. See Kelley v. Barnet, 24 Cal. App. 119, 121, 140 P. 605, ___ (1914).

93. This proposal is patterned after Revenue and Taxation Code Section 3693.1 pertaining to sales of tax deeded property to private persons.

at execution sales of valuable property, particularly real property, whereas under existing law it was difficult for interested bidders to have the necessary cash at a sale. If the credit bidder does not complete payment of the amount bid within the 30-day period allowed, the amount paid would be applied to the satisfaction of the judgment and any excess would be returned to the bidder.

Minimum bids. The proposed law would specifically preclude the sale of property at an execution sale if the amount bid does not exceed the total of superior claims that are required to be satisfied, third-party claims that have been paid off by the judgment creditor,⁹⁴ any proceeds exemption,⁹⁵ and any upset price exemption.⁹⁶ This provision is intended to enforce the principle that the debtor's property should not be sold, particularly at a sacrificial sale, if none of the proceeds would go toward the satisfaction of the judgment.

Liability where sale set aside. Under existing law, if a sale is set aside because of irregularities in the proceedings or because the property was not subject to levy and sale, the purchaser is authorized to recover against the judgment debtor.⁹⁷ Since the purchaser may be unable to recover against the judgment debtor, the proposed law also permits recovery from the judgment creditor, in which case the parties are restored to their respective positions before the sale, and the judgment creditor's judgment is revived for the purpose of eventual recovery against the judgment debtor.

94. Cf. Section 689c (proceeds of sale paid first to repayment of sum paid by creditor to satisfy interest of third-party claimant). See the discussion under "Distribution of Proceeds of Sale and Collection" infra.

95. Proceeds of sale may be exempt where a dwelling, a motor vehicle, or tools of trade are sold. See the discussion under "Exemptions From Enforcement of Money Judgments" infra.

96. Under the proposed law, necessary household furnishings, wearing apparel, and the like may not be applied to the satisfaction of a money judgment unless they have an item value of at least \$500 over any liens or encumbrances. If an item of property is sold for an amount in excess of \$500, the debtor is not entitled to a share of the proceeds. See the discussion under "Exemptions From Enforcement of Money Judgments" infra.

97. See Section 708.

Distribution of Proceeds of Sale and Collection

Existing law contains several incomplete and somewhat contradictory provisions relating to the distribution of the proceeds of sale and collection.⁹⁸ The proposed law contains one general section governing the distribution of proceeds resulting from sale or collection under a writ of execution. Proceeds are applied as follows: first, to the satisfaction of liens and claims that are required to be paid off, including a third-party claim that the judgment creditor has satisfied;⁹⁹ second, to the judgment debtor in the amount of any applicable exemption of proceeds except to the extent such proceeds are not required to satisfy voluntary encumbrances subordinate to the judgment creditor's lien;¹⁰⁰ third, to the levying officer for the reimbursement of costs which have not been advanced; fourth, to the judgment creditor to satisfy costs advanced to the levying officer, costs and interest accruing after entry of judgment but before issuance of the writ, the fee for issuance of the writ, and the amount remaining unsatisfied on the judgment; fifth, to any other judgment creditor who has delivered a writ of execution to the levying officer with instructions to levy on the same property and to other persons entitled to a share of the proceeds of sale;¹⁰¹ finally, to the judgment debtor in the amount remaining. Proceeds of sale may be distributed immediately, but the proposed law would delay the distribution of proceeds of collection for 10 days after the date notice of levy was mailed to the judgment debtor to permit the debtor to claim any available exemption while the proceeds are still in the hands of the levying officer.

98. See Civil Code § 1256; Code Civ. Proc. §§ 689c, 690.2(c), (d), 690.31(j), 691.

99. The proposed law would eliminate the rule requiring satisfaction of liens and encumbrances on a dwelling that are superior to the judgment creditor's lien. See the discussion under "Treatment of Liens and Encumbrances Superior to Judgment Creditor's Lien" infra.

100. See the discussion under "Treatment of Voluntary Encumbrances Subordinate to Judgment Creditor's Lien" infra.

101. See Mitchell v. Alpha Hardware & Supply Co., 7 Cal. App.2d 52, 57, 45 P.2d 442, ____ (1935).

Repeal of Statutory Redemption From Judicial Sales

Existing Law

In California, statutes providing a right of redemption from execution sales were first enacted in 1851.¹⁰² This system, patterned after the Field Code proposed for New York,¹⁰³ has been described as the "scramble" type of redemption.¹⁰⁴ Under this system, the right to redeem is afforded the judgment debtor who owns the land, the successors in interest of the judgment debtor, and persons holding liens on the land which are subordinate to the lien under which the sale takes place.¹⁰⁵ Redemption may take place at any time within twelve months after the sale of the property.¹⁰⁶ Redemption is accomplished by paying the execution sale purchaser or prior redemptioner the amount paid to purchase or redeem the property plus the amount of a prior redemptioner's

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102. 1851 Cal. Stats. ch. 5, §§ 229-236. Statutory redemption from execution and foreclosure sales is currently governed by Sections 700a-707.
103. See New York Commissioners on Practice and Pleading, *The Code of Civil Procedure of the State of New-York* §§ 844-850 (1850). Although the redemption system proposed in the Field Code was not enacted in New York, it became the prevailing type of redemption in the United States. S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 150-51 (2d ed. 1975). The California statute in turn became the model for redemption laws in the western states. See Durfee & Doddridge, Redemption From Foreclosure Sale--The Uniform Mortgage Act, 23 Mich. L. Rev. 825, 866 n.93 (1925).
104. See generally, J. Hetland, *Secured Real Estate Transactions* §§ 7.7-7.19 (Cal. Cont. Ed. Bar 1974); S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 149-54 (2d ed. 1975); 5 B. Witkin, *California Procedure Enforcement of Judgment* §§ 98-102, at 3464-68 (2d ed. 1971); Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846 (1964).
105. Section 701. Creditors entitled to redeem are termed "redemptioners" by this section.
106. Section 702. A redemption by a redemptioner must occur within 60 days after a redemption by a prior redemptioner. Section 703. It has been suggested that these 60-day redemption periods conceivably may continue to run after the 12-month period as long as there are qualified redemptioners prepared to redeem within 60 days after a prior redemption. See Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 852-53 (1964).

lien and specified amounts of interest and other expenses.¹⁰⁷ Redemption by the judgment debtor or a successor in interest terminates the effect of the sale so that the judgment debtor or successor in interest is restored to his estate.¹⁰⁸ However, liens which have not been paid off in the process of redemption reattach,¹⁰⁹ and a judgment lien under which the property is sold reattaches to the extent it has not been satisfied when the debtor redeems.¹¹⁰ Redemption by a junior lienholder has the effect of satisfying the prior lien which is a part of the redemption price and preserving the junior lienholder's security in the property which would otherwise be lost at the conclusion of the redemption period as a result of the sale under a superior lien.¹¹¹

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107. See Sections 702-703. A person redeeming from the purchaser must pay two-thirds of one percent per month interest. Section 702. A person redeeming from a redemptioner must pay, in addition, two percent of the amount paid by the prior redemptioner. Section 703. The other items making up the redemption price specified in the statute are assessments, taxes, reasonable sums for fire insurance, maintenance, upkeep, or repair of improvements on the property, and sums necessarily paid on a prior obligation secured by the property. Sections 702-703. Rents and profits or the value of the use and occupation of the property may be set off against the redemption price. Section 707; *House v. Lala*, 214 Cal. App.2d 238, 245-46, 29 Cal. Rptr. 450, 454 (1963). Section 702 provides a summary hearing procedure in the event of a disagreement over the redemption price. As the discussion in Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 863-69 (1964), fully demonstrates, the determination of the redemption price frequently is not an easy matter.
108. Section 703; *Bateman v. Kellogg*, 59 Cal. App. 464, 474-78, 211 P. 46, 51-52 (1922).
109. Section 703; *Kaiser v. Mansfield*, 160 Cal. App.2d 620, 628-29, 325 P.2d 865, 870-71 (1958).
110. See *Fry v. Bihr*, 6 Cal. App.3d 248, 251, 85 Cal. Rptr. 742, 743 (1970); *Moore v. Hall*, 250 Cal. App.2d 25, 29, 58 Cal. Rptr. 70, 72 (1967).
111. *Bank of America v. Hill*, 9 Cal.2d 495, 502, 71 P.2d 258, 261 (1937).

These provisions apply as well to foreclosure sales under a mortgage or deed of trust.¹¹² If the property is sold for less than the amount of the judgment, the redemption period is 12 months, as in the case of redemption from an execution sale.¹¹³ If the property is sold at a foreclosure sale under a deed of trust or a mortgage with the power of sale at a price sufficient to satisfy the judgment, including interest, costs, and expenses of sale, the redemption period is three months.¹¹⁴ There is, however, no statutory right of redemption after a private sale under a power of sale in a mortgage or deed of trust.¹¹⁵

Where a right of redemption exists, the judgment debtor or a tenant of the debtor is entitled to remain in possession of the real property during the redemption period.¹¹⁶ The purchaser is entitled to receive

112. Subdivision (a) of Section 700a provides in relevant part:

Sales of personal property, and of real property, when the estate therein is less than a leasehold of two years' unexpired term, are absolute. In all other cases the property is subject to redemption, as provided in this chapter.

Similar language in the law in effect in 1852 was termed "inapt" but found to be sufficiently comprehensive to apply to foreclosure sales. *Kent & Cahoon v. Laffan*, 2 Cal. 595 (1852).

113. Section 725a. Even if there is a power of sale in the mortgage or deed of trust, a mortgagee or trustee must follow the judicial foreclosure procedures in order to be able to obtain a deficiency judgment for the difference between the fair market value of the property and the total debt. See Sections 580b, 580d, 726; *Roseleaf Corp. v. Chierighino*, 59 Cal.2d 35, 40-44, 378 P.2d 97, 99-101, 27 Cal. Rptr. 873, 875-77 (1963).
114. Section 725a.
115. *Penryn Fruit Co. v. Sherman-Worrell Fruit Co.*, 142 Cal. 643, 645, 76 P. 484, 485 (1904); *Py v. Pleitner*, 70 Cal. App.2d 576, 579, 161 P.2d 393, 395 (1945); *Hetland*, Land Contracts, in *California Real Estate Secured Transactions* § 3.78, at 130 (Cal. Cont. Ed. Bar 1970).
116. Section 706; *First Nat'l Trust & Sav. Bank v. Staley*, 219 Cal. 225, 227, 25 P.2d 982, 982 (1933).

rent or the value of the use and occupancy of the property from the tenant in possession until a redemption takes place.¹¹⁷ If the debtor redeems, rents and profits paid to the purchaser are a credit on the redemption price.¹¹⁸ If the purchaser or redemptioner has occupied the property, the debtor who redeems is entitled to the value of the use and occupancy of the property.¹¹⁹

Purpose of Statutory Redemption

The primary purpose of statutes permitting redemption from judicial sales of real property is to force the purchaser at the sale (almost always the judgment creditor or mortgagee)¹²⁰ to bid an amount near the property's fair value.¹²¹ The theory behind permitting other lien

117. Section 707; see *Carpenter v. Hamilton*, 24 Cal.2d 95, 101-03, 147 P.2d 563, 566-67 (1944) ("tenant in possession" includes judgment debtor occupying property during redemption period); Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 865-69 (1964). A redemptioner has the same rights to rents and profits from the time such person redeems until a later redemption.

118. Section 707.

119. *House v. Lala*, 214 Cal. App.2d 238, 245-46, 29 Cal. Rptr. 450, 454 (1963) (free use of property by judgment creditor is a profit within meaning of Section 707).

120. The defeasible title obtained at a sale subject to redemption, the lack of notice, and the requirement of cash payment by outside bidders, while the judgment creditor or mortgagee can bid the amount of the judgment, are the major factors discouraging bidding. See National Conference of Commissioners on Uniform State Laws, Handbook 258-59 (1922); G. Osborne, Handbook on the Law of Mortgages § 8, at 18 (2d ed. 1970); Durfee & Doddridge, Redemption From Foreclosure Sale--The Uniform Mortgage Act, 23 Mich. L. Rev. 825, 832-33 (1925); Madsen, Equitable Considerations of Mortgage Foreclosure and Redemption in Utah: A Need for Remedial Legislation, 1976 Utah L. Rev. 327, 335. In a study in New York in 1938, it was reported that, out of 40,853 foreclosures, the mortgagee bid in the amount of the obligation in 40,570 cases. Murray, Statutory Redemption: The Enemy of Home Financing, 28 Wash. L. Rev. 39, 40 n.13 (1953).

121. See *Moore v. Hall*, 250 Cal. App. 25, 29, 58 Cal. Rptr. 70, 73 (1967); G. Osborne, Handbook on the Law of Mortgages § 8, at 17-18 (2d ed. 1970), Durfee & Doddridge, Redemption From Foreclosure Sale--The Uniform Mortgage Act, 23 Mich. L. Rev. 825, 839-41, 851 (1925); Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 848 (1964).

creditors to redeem is that the property should be used to satisfy as many creditors as possible.¹²² If the property is valuable enough, subordinate lienholders are enabled to protect security that they would otherwise lose.¹²³ Statutory redemption also has the purpose of giving the debtor another chance to save the property by refinancing or otherwise finding assets sufficient to pay off the debt.¹²⁴

It is difficult to assess the actual effect of statutory redemption. The states are almost evenly divided between those which permit redemption from execution or foreclosure sales and those which do not;¹²⁵

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122. S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 149 (2d ed. 1975).
123. See Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 848 (1964).
124. See G. Osborne, *Handbook on the Law of Mortgages* § 8, at 17-18 (2d ed. 1970); Durfee & Doddridge, Redemption From Foreclosure Sale--The Uniform Mortgage Act, 23 Mich. L. Rev. 825, 839 (1925). The one-year redemption period has been termed a "farm mortgage proposition . . . based on the allowance to the mortgagor of possession of his farm for another crop year after default, to see if conditions will not better and he be able to save the farm." National Conference of Commissioners on Uniform State Laws, *Handbook* 270 (1922). A commentary on the law of New York, where statutory redemption was eliminated in 1962, terms the "desire to give judgment debtors every opportunity to recover their real property . . . a form of paternalism predicated in part on the special status accorded ownership of real property." 6 J. Weinstein, H. Korn, & A. Miller, *New York Civil Practice* ¶ 5236.02, at 52-675 (1976).
125. See G. Osborne, *Handbook on the Law of Mortgages* § 307 (2d ed. 1970); S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 150-51 (2d ed. 1975). Although there are some exceptions, redemption states usually permit redemption from both execution and foreclosure sales. Of the 27 states permitting redemption from execution sales, five permit only the judgment debtor to redeem, three permit redemption by the debtor and by creditors in order of priority, 13 provide "scramble" redemption, and six have some other variation. Among the states without redemption are Florida, Georgia, Missouri, New Jersey, New York, Ohio, Pennsylvania, Texas, and Virginia. Approximately 17 states have neither redemption nor any other special provisions designed to prevent sacrifice sales of real property.

however, there do not appear to be any studies comparing the results in redemption states as opposed to nonredemption states. It is certain that very few redemptions take place.¹²⁶

Proposed Law

The Commission has concluded that statutory redemption from execution and foreclosure sales has failed to achieve its purposes. The very existence of the right of redemption operates as the greatest impediment to the achievement of the primary purpose of obtaining a fair bid at the sale because the purchaser can only obtain title which is defeasible for another year or, in certain cases, three months.¹²⁷ The right of re-

126. G. Osborne, Handbook on the Law of Mortgages § 8, at 18 (2d ed. 1970); Brodkey, Current Changes in Illinois Real Property Law, 10 DePaul L. Rev. 567, 578 (1961) (fewer than one percent of foreclosed properties are redeemed); Murray, Statutory Redemption: The Enemy of Home Financing, 28 Wash. L. Rev. 39, 42 n.25 (1953) (reporting a 1938 study showing that, out of 22,000 properties foreclosed, only 204 were redeemed); Stattuck, Washington Legislation 1961--Real Property Mortgage Foreclosure--Redemption, 36 Wash. L. Rev. 239, 309, 311 n.3 (1961) (reporting a four-year study showing that, out of 276 foreclosures, one redemption was made by a mortgagor and two by other persons). The records of the San Francisco Sheriff's Department from mid-1970 through mid-1975 show that there were three redemptions out of 86 sales of real property. Letter from Carl M. Olsen, County Clerk, City and County of San Francisco (October 20, 1975) (on file at office of California Law Revision Commission).

127. The commentators are nearly unanimous in recognizing the drastic effect the nature of the title obtained at a sale subject to redemption has on bidding. See, e.g., G. Osborne, Handbook on the Law of Mortgages § 8, at 19 (2d ed. 1970); Carey, Brabner-Smith, & Sullivan, Studies in Foreclosures in Cook County: II. Foreclosure Methods and Redemption, 27 Ill. L. Rev. 595, 615 (1933); Durfee & Doddridge, Redemption From Foreclosure Sale--The Uniform Mortgage Act, 23 Mich. L. Rev. 825, 841 n.51 (1925) (Redemption "certainly caps the wall we have built to keep the public away from the public sale. The best market for land is found among those who desire it for immediate use, and to them, obviously, the redemption feature is prohibitive."); Madway & Pearlman, A Mortgage Foreclosure Primer: Part III Proposals for Change, 8 Clearinghouse Rev. 473, 478-79 (1975) ("Protecting the title of the bid purchaser and eliminating post-sale redemption rights . . . would meet one of the major objections of mortgagees because these practices tend to depress foreclosure sale prices significantly."); Murray, Statutory Redemption: The Enemy of Home Financing, 28 Wash. L. Rev. 39, 40 (1953) ("A person's desire for a particular piece of property would have to be very strong to cause him to bid for it, as he knows he is buying a mere expectation."); Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 848 (1964) (The

demption thus makes "sacrifice" sales even more sacrificial. There are, no doubt, exceptional cases in which the purchase price is unreasonably low and in which the debtor manages to obtain the money necessary to save the property. The Commission has concluded, however, that whatever protection is afforded debtors by the right to redeem in these exceptional cases does not justify the detrimental effect in the vast majority of cases of the right to redeem. Accordingly, the proposed law would eliminate the statutory right of redemption from judicial sales. This change would not affect the equitable right of a debtor to redeem from a sale at a grossly inadequate price where the purchaser is guilty of unfairness or has taken undue advantage.¹²⁸

The Commission recognizes that a hurried, forced sale of real property may result in a depressed price even where the sale is absolute. Consequently, a 120-day grace period would be provided between the time when notice of a levy on the property is given¹²⁹ and the time when notice of sale is first given.¹³⁰ This 120-day period is analogous

"conditional title is not attractive to investors."). It is interesting to note that the commentary following the redemption provisions in the Field Code, which served as the model for the California statute, questions whether redemption affords any benefit to the debtor. New York Commissioners on Practice and Pleading, *The Code of Civil Procedure of the State of New-York* 359 (1850).

128. See, e.g., *Odell v. Cox*, 151 Cal. 70, 90 P. 194 (1907); *Smith v. Kessler*, 43 Cal. App.3d 26, 31-32, 117 Cal. Rptr. 470, 473-74 (1974).
129. Under the proposed law, notice of levy is required in every case. Under existing law, no levy is required where a foreclosure judgment is being enforced. See Section 684; *Southern Cal. Lumber Co. v. Ocean Beach Hotel Co.*, 94 Cal. 217, 222-24, 29 P. 627, 629 (1892). See the discussions under "General Rules Governing Levy" supra and "Judgments for Sale of Real or Personal Property" infra.
130. At least 20 days' notice of sales of real property is required by subdivision 3 of Section 692. Hence, under this proposal, the property could not be sold sooner than 140 days after notice of levy is given to the judgment debtor.

to the three-month period before notice of sale afforded a mortgagor or trustor for the purpose of curing the default under a mortgage or deed of trust containing a power of sale.¹³¹ During this time, the judgment debtor may refinance the property in order to pay off the lien under which it would otherwise be sold, sell the property privately subject to valid liens in order to realize a higher price than would be obtained at a forced sale, or acquiesce in the judicial sale but seek potential buyers by advertising and personal contact.

The provision for delay of sale would not apply to leasehold estates with less than two years' unexpired term at the time of levy. This exception is consistent with existing law which provides that sales of such interests are absolute, that is, not subject to redemption.¹³²

The proposed scheme should accomplish more effectively the main purposes of the redemption statute--to obtain a higher price at execution and foreclosure sales and to provide the debtor with an opportunity to retain the property.¹³³ Junior lienholders may protect their interests by redeeming from the superior lien before the property is sold and thus being subrogated to the benefits of the superior lien.¹³⁴ The

131. Civil Code §§ 2924, 2924f.

132. See Section 700a.

133. The proposed law would also improve the chances of obtaining a fair price by permitting credit bids (see the discussion under "Manner of payment" supra) and providing more extensive notice of levy and notice of sale (see the discussions under "General Rules Governing Levy" supra and "Notice of Sale" supra).

134. The pre-sale right of subrogation upon redemption from a superior lien is provided by Civil Code Section 2904:

2904. One who has a lien inferior to another, upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and,

2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

The Commission does not propose to alter this right.

proposal would also eliminate the speculative aspect of the existing law which results from the fluctuation in land values during a year's time. It would achieve a more equitable balance between the interests of the debtor and the creditor and would have the added virtues of simplicity and ease of administration.¹³⁵

The Commission has considered several other alternatives to statutory redemption--the most important being: requiring court confirmation of sale,¹³⁶ fixing an upset price,¹³⁷ allowing advance bidding,¹³⁸ and extending antideficiency legislation to cover execution sales.¹³⁹

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135. Indiana recently enacted a statute providing a six-month delay of execution sales coupled with an upset price of two-thirds the appraised value of the property. Ind. Code Ann. § 34-1-37-1, T.R. 69(a) (Burns 1973). One commentator suggested in 1938 that California substitute a grace period of a year for the one-year redemption period. King, The Enforcement of Money Judgments in California, 11 So. Cal. L. Rev. 224, 228-29 (1938). For reasons given in the text, the Commission believes that its proposal is preferable to these alternatives.
136. Court confirmation, in the absence of an upset price feature, would be intended to protect against unreasonably low sale prices. It does not appear that any state provides for court confirmation of execution sales without combining it with an upset price or advance bid procedure. In California, Section 568.5 provides for court confirmation of sales by receivers and there is no right of redemption after a sale by a receiver.
137. Five states have a procedure for appraising the property and setting an upset price, usually two-thirds of the appraised value. E.g., Ohio Rev. Code Ann. §§ 2329.17, 2329.20 (Page 1954). California law provides an upset price of 90 percent of the appraised value in private probate sales by an executor or administrator. Prob. Code § 784. Appraisals are a matter of course in probate for tax purposes but would be an additional expense in execution and foreclosure sales.
138. Only North and South Carolina provide for continuing an execution sale so that the judgment debtor may find a buyer who will pay a specified amount over the last bid. N.C. Gen. Stat. §§ 1-339.64 to 1-339.68 (repl. vol. 1969); S.C. Code § 10-1770 (1962). California law provides for advance bids at private partition and probate sales. Code Civ. Proc. §§ 873.730, 873.740; Prob. Code § 785.
139. Pennsylvania requires the judgment creditor to petition the court within six months of an execution sale to fix the fair market value of the property if the price obtained at the sale is insufficient to satisfy the judgment. Satisfaction is granted to the extent of the fair market value of the property. If a petition is not timely filed, the debtor is released from liability. Pa. Stat. Ann. tit. 12, §§ 2621.1-2621.10 (1967). Kansas also permits the court to credit the fair market value of property on the judgment. Kan. Stat. § 60-2415(b) (1976). California's antideficiency legislation applies only to foreclosures under mortgages and deeds of trust. Sections 580b, 580d, 726.

Although some of these options may be preferable to statutory redemption as it exists in California, they have their own drawbacks that are avoided in the proposed statute. Generally speaking, these alternatives would require a court hearing in every case, thereby increasing the expenditure of time and resources by the parties and the judicial system. The Commission is mindful of the fact that the costs incurred in such additional proceedings would be borne by the judgment debtor, to the extent that the debtor is solvent, and ultimately by borrowers and consumers in general. The proposed law is most likely to forward the interests of both debtors and creditors in this area.

Judgment Liens

Under existing law, the abstract of a money judgment may be recorded with the county recorder to create a judgment lien on the real property owned by the judgment debtor in the county or thereafter acquired.¹⁴⁰ The judgment lien is one of the simplest and most effective means by which a judgment creditor may seek to secure payment of the judgment and establish a priority over other judgment creditors and is among the least disruptive enforcement remedies because it results only in a lien. Generally, the lien is enforced by levy and sale under a writ of execution.¹⁴¹

Courts Which May Issue Judgments as Basis for Lien

Any judgment, order, or decree for the payment of money which is enforceable in California may provide the basis for a judgment lien. Existing law specifically refers to judgments and decrees of courts of this state, judgments entered in this state on the basis of sister state

140. See Sections 674, 674.5, 674.7. Section 674 refers to judgments, but only money judgments may create judgment liens. See Laubisch v. Roberdo, 43 Cal.2d 702, 707-08, 277 P.2d 9, ___ (1954); 4 B. Witkin, California Procedure Judgment § 139, at 3286 (2d ed. 1971).

141. See the discussion under "Execution" supra. After the death of the judgment debtor, a claim may be made against the estate or the judgment lien may be foreclosed. See Prob. Code §§ 716, 732; Corporation of America v. Marks, 10 Cal.2d 218, 220-222, 73 P.2d 1215, ___ (1937).

judgments, judgments of small claims courts, judgments of "any court of record of the United States," and orders for the reimbursement to a county for legal services, probation supervision, or support in a county institution, provided to wards and dependent children.¹⁴² The proposed law would continue the substance of existing law except that the misleading language pertaining to judgments of federal courts would be eliminated. A federal money judgment may be recorded to create a judgment lien pursuant to federal law if it is rendered in California or is registered in a federal court sitting in California.¹⁴³ An abstract may be recorded to create a judgment lien when enforcement of the judgment is stayed, unless it is stayed on appeal.¹⁴⁴

Property Subject to Judgment Lien

Under existing law, the judgment lien attaches to all of the real property owned by the judgment debtor in the county.¹⁴⁵ This provision has been strictly construed with the effect that the lien does not reach

142. See Section 674(a). Orders for reimbursement to a county issuable under Welfare and Institutions Code Section 908 are referred to in Section 674(b). A judgment may be entered in California on the basis of a sister state money judgment pursuant to Sections 1710.10-1710.65 and is enforceable as if originally entered in California. Section 1710.35. A sister state support order may be registered in California and enforced as a support order issued in California. Section 1699. A foreign nation money judgment may be recognized and enforced as provided in Sections 1713-1713.8.

143. 28 U.S.C. §§ 1962 (judgment lien of federal judgment), 1963 (registration of judgment of one federal district court in another district).

144. Section 674(a); *Industrial Idem. Co. v. Levine*, 49 Cal. App.3d 698, 699, 122 Cal. Rptr. 712, ____ (1975). The proposed law would continue this aspect of existing law except that it would preclude creation of a judgment lien pursuant to a judgment entered in California based on a sister state judgment only if the sister state judgment is stayed on appeal. Section 674(a) precludes creation of such a judgment lien if enforcement of the sister state judgment is stayed for any reason specified in Section 1710.50.

145. Section 674(a).

estates for years,¹⁴⁶ equitable interests,¹⁴⁷ or naked title.¹⁴⁸ The proposed law would continue the substance of existing law in this regard except that the judgment lien would attach to leasehold interests with an unexpired term of two years or more at the time of recording.¹⁴⁹

Duration of Judgment Lien

Under existing law, a judgment lien continues for 10 years from the date of entry of judgment, excluding the time enforcement is stayed on appeal, unless earlier satisfied.¹⁵⁰ The lien may be extended in effect by bringing an action on the judgment and obtaining a judgment lien under the second judgment while the judgment lien of the first judgment is still in effect.¹⁵¹

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146. See *Summerville v. Stockton Milling Co.*, 142 Cal. 529, 537, 76 P. 243, ___ (1904); *Arnett v. Peterson*, 15 Cal. App.3d 170, 173, 92 Cal. Rptr. 913, ___ (1971) (90 years remaining of a 99-year lease). It has been asserted, however, that a lease for an indefinite term would be real property subject to a judgment lien. See 2 A. Bowman, *Ogden's Revised California Real Property Law* § 19.19 (1975).
147. See *Helvey v. Bank of America*, 43 Cal. App.2d 532, 535, 111 P.2d 390, ___ (1941) (right of redemption of tax deeded property). *Poindexter v. Los Angeles Stone Co.*, 60 Cal. App. 686, 687, 214 P. 241, ___ (1923) (interest of beneficiary of trust in land); *Belieu v. Power*, 54 Cal. App. 244, 246, 201 P. 620, ___ (1921) (interest under executory contract of purchaser in possession).
148. See *Iknoian v. Winter*, 94 Cal. App. 223, 225, 270 P. 999, ___ (1928) (lien did not apply against fully paid vendor under installment land contract who neglected to give deed). See also *Majewsky v. Empire Constr. Co.*, 2 Cal.3d 478, ___, 467 P.2d 547, ___, 85 Cal. Rptr. 819, ___ (1970); *Parsons v. Robinson*, 206 Cal. 378, 379, 274 P. 528, ___ (1929).
149. The treatment of leases with an unexpired term of two years or more is consistent with the extent of the right of redemption under existing law (see Section 700a(a)) and the proposed provisions for delay of sale of real property. See the discussion under "Statutory Redemption From Judicial Sales" supra.
150. Section 674(a). For a discussion of special rules applicable to installment judgments, see "Judgment Liens Under Installment Judgments" infra.
151. See *Provisor v. Nelson*, 234 Cal. App.2d Supp. 876, 879-80, 44 Cal. Rptr. 894, ___ (1964).

Under the proposed law, a judgment lien exists for as long as the judgment is enforceable--20 years, exclusive of the time during which enforcement of the judgment is stayed.¹⁵²

Judgment Lien on After-Acquired Property

A judgment lien on real property acquired by the judgment debtor in the county after the creation of the lien attaches at the time the property is acquired.¹⁵³ Thus, if there are two or more judgment liens in effect in that county against property of the judgment debtor, they attach with equal status to the newly acquired property, regardless of the order in which the liens were created. However, under existing law, the judgment creditor who first levies upon and sells the after-acquired property is permitted to do so free of the other equal liens.¹⁵⁴ Under existing law, the non-executing equal lienholders would in effect become subordinate lienholders and would have the right to redeem the real property from the execution sale under the lien of the executing judgment creditor in order to protect their security.¹⁵⁵ The proposed law

152. See the discussion under "Time for Enforcement of Judgments" supra. From 1851 until 1923, the judgment lien lasted two years although a writ of execution could be issued without prior court approval for five years after entry of judgment. See 1851 Cal. Stats. ch. 123, § 204. In 1923 the duration of the judgment lien was increased to five years, consistent with the period for automatic issuance of a writ of execution. See 1923 Cal. Stats. ch. 368, § 2. In 1955, the duration of the judgment lien and the period for automatic issuance of a writ of execution were raised to 10 years. See 1955 Cal. Stats. ch. 781, § 1; ch. 754, § 1. The 10-year periods do not necessarily run concurrently under existing law because the time during which enforcement is stayed other than on appeal is excluded from the time during which execution may automatically issue but not from the running of the judgment lien. Compare Section 674 with Section 681. The proposed law eliminates this purposeless inconsistency.

153. See Section 674(a); *Hertweck v. Fearon*, 180 Cal. 71, ___, 179 P. 190, ___ (1919).

154. *Hertweck v. Fearon*, 180 Cal. 71, ___, 179 P. 190, ___ (1919).

155. See Section 701; 4 B. Witkin, *California Procedure Judgment* § 146, at 3292 (2d ed. 1971).

would repeal this right of redemption,¹⁵⁶ so it is necessary to prorate equal liens to avoid an unfair advantage to the creditor who first happens to obtain a levy of execution.

Judgment Liens Under Installment Judgments

Until it was changed by statute, the rule was that a money judgment payable in installments for an indefinite period could not create a judgment lien because the total amount was uncertain.¹⁵⁷ In the case of child or spousal support judgments¹⁵⁸ and certain medical malpractice judgments,¹⁵⁹ this rule was changed to permit recordation of the abstract of judgment to create a judgment lien in the amount of installments as they become due. Whether a judgment for a certain amount payable in installments may create a judgment lien under existing law is unclear.¹⁶⁰

The proposed law provides general rules governing judgment liens under installment judgments depending upon whether the total amount of the judgment is certain or uncertain. If the total amount to be paid is uncertain, as in the case of child or spousal support judgments and

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156. See the discussion under "Repeal of Statutory Redemption From Judicial Sales" supra.
157. See *Moniz v. Moniz*, 142 Cal. App.2d 641, 646, 299 P.2d 329, ___ (1956); *Bird v. Murphy*, 82 Cal. App. 691, 694-95, 256 P. 258, ___ (1927); 2 A. Freeman, *Law of Judgments* § 932, at 1965 (5th ed. 1925). Under this rule, the judgment creditor could obtain a judgment lien only for installments that had fallen due and remained unpaid, thus requiring repeated filings over a period of time.
158. See Section 674.5 (enacted in 1959).
159. See Section 674.7 (enacted in 1975).
160. Such judgments may be issued pursuant to Code Civ. Proc. § 85 (installment payment of judgments of municipal or justice courts), Lab. Code § 5801 (installment payment of worker's compensation award), and Veh. Code § 16380 (installment payment of vehicle accident damage award).

certain worker's compensation awards,¹⁶¹ recording the abstract of judgment would create a lien on installments that are due and would be increased for additional installments as they fall due, as under existing law. However, the proposed law provides that the priority of the judgment lien attaching to the debtor's property for installments falling due after the abstract is recorded relates back to the date of recordation. This provision would permit the judgment creditor to maintain a priority over judgment creditors who later obtain judgment liens or other liens. This feature is added in recognition of the preferred nature of support judgments and worker's compensation awards. A judgment lien would be of little value in such cases if an intervening creditor could establish a lien for a lump sum which would have priority in the debtor's real property despite the earlier recording by the installment judgment creditor, just because the intervening creditor recorded an abstract prior to default on an installment. This protection of the installment judgment creditor is limited, however, because if the property subject to the lien is sold voluntarily or pursuant to execution by another creditor only the lien for the amount of due installments will be satisfied or continued in the property. Once the property is transferred, the lien for future installments falling due and remaining unpaid will not attach to the property because it is no longer owned by the judgment debtor.

If the total amount of a judgment to be paid in installments is certain, the proposed law provides that recording the abstract of judgment would create a judgment lien for the entire amount, but enforcement of the lien for installments not yet due is precluded. The installment judgment creditor would be entitled to complete satisfaction, however, if the judgment debtor transfers real property with an excess value over prior liens and encumbrances and, in the case of a dwelling, any exempt amount.¹⁶² This proposal preserves the benefit to the judgment debtor

161. Worker's compensation awards may be in a fixed amount or may be ordered to be paid in weekly installments during the continuance of the disability. Lab. Code § 5801.

162. See the discussion under "Dwelling Exemption" infra.

of the installment judgment until such time as the judgment debtor voluntarily sells the property or is forced to sell it by another creditor. An exception to this provision would apply in the case of a judgment for future damages against a health care provider because in such cases the court may order installment payment only if the judgment debtor is adequately insured or posts adequate security. In this case, the additional security provided by a judgment lien for the full amount of the judgment is unnecessary and would be in conflict with the legislative policy of avoiding a windfall to the survivors of an injured plaintiff who dies soon after judgment.¹⁶³

Procedures for Discharge of Judgment Liens

A serious defect of the existing law pertaining to judgment liens on dwellings is eliminated in the proposed law. Under existing law, if a homestead declaration has been recorded by the judgment debtor, the recording of an abstract of judgment will not create a judgment lien on the debtor's home, even if there is an excess value.¹⁶⁴ However, if the judgment lien is recorded prior to a homestead declaration, the declaration is useless, and until very recently, the debtor was left without any homestead protection.¹⁶⁵ At the present time, the judgment debtor is afforded a limited protection by way of the automatic dwelling exemption which requires the judgment creditor to apply to the court in the county where the dwelling is located for an order for issuance of a writ of execution against the dwelling.¹⁶⁶ But if the judgment debtor attempts to sell the dwelling, the judgment lien will remain on the property to the extent it is not satisfied¹⁶⁷ and, if the property can be

163. See Section 667.7(f).

164. See Section 674(a); *Boggs v. Dunn*, 160 Cal. 283, 285-87, 116 P. 743, ___ (1911).

165. See Civil Code § 1241 (homestead subject to liens on premises before homestead declaration filed).

166. See Section 690.31.

167. See Section 674(c) (judgment lien attaches notwithstanding dwelling exemption provided by Section 690.31).

sold at all, the purchaser of the dwelling will deduct the amount of the lien from the purchase price. Hence, if the judgment lien is a significant amount, the debtor either loses the homestead protection or is trapped in the home.¹⁶⁸

The protection afforded by the dwelling exemption should not depend upon whether the judgment debtor has been foresighted enough to file a homestead declaration or finds it necessary or convenient to change dwellings. The proposed law provides a procedure which would permit the judgment debtor to obtain a determination of the excess value of the dwelling over the exempt amount, and any liens and encumbrances superior to the judgment lien, if any, and a discharge of the lien so that the property may be freely transferred without the loss of the dwelling exemption.¹⁶⁹ If the judgment debtor has executed an agreement for the sale of the dwelling, a notice would be mailed to the judgment creditor and filed with the court stating the value of the dwelling, the amount of liens and encumbrances thereon, and the amount of the applicable exemption. The judgment creditor would be afforded 30 days within which to contest the assertions of the judgment debtor. If the notice is contested, a hearing would be held at which the court would determine whether there is an excess value subject to the judgment lien. If there is no excess value, the lien would be discharged and the property sold free of the judgment lien. If there is an excess value, the judgment debtor would be afforded 30 days within which to deposit the amount of the excess with the court,¹⁷⁰ whereupon the lien would be discharged. The judgment creditor would be paid the amount deposited by the judgment

168. See Adams, Homestead Legislation in California, 9 Pac. L.J. 723, 738, 749-50 (1978).

169. This procedure is based on the "inverse execution" procedure recently enacted in Oregon. See Or. Rev. Stat. §§ 23.280-23.300 (1977); Lacy, Homestead Exemption--Oregon Law: Still More, 8 Willamette L.J. 327 (1972).

170. The funds needed to discharge the judgment lien could be furnished by either the judgment debtor or the prospective purchaser depending upon the agreement between them.

debtor upon the filing with the court of a certificate discharging the judgment lien on the dwelling.

The proposed law would also make this procedure available for the discharge of a judgment lien on real property that is not a dwelling. The judgment debtor would be able to force the judgment creditor to accept the present value of the property over prior liens and encumbrances, thus facilitating its transfer.¹⁷¹

Existing law provides a means for removing the judgment lien of an installment judgment for child or spousal support payments or malpractice awards pursuant to which the judgment debtor may record a certificate that all installments due have been paid.¹⁷² This certificate is prima facie evidence of payment, and is conclusive in favor of persons dealing in good faith and for a valuable consideration with the judgment debtor. The proposed law would continue the substance of this procedure and make it applicable to all installment judgments.

Special Procedures for the Enforcement of Money Judgments

Introduction

Levy under a writ of execution is not a complete remedy for enforcement of a money judgment. It may be ineffective where the judgment debtor conceals or disposes of assets which are subject to execution or where a third person refuses to cooperate with the levy. In addition, there are types of property which for historical or practical reasons cannot be reached by execution. Other procedures have been developed to deal with these special situations, first by the courts of equity, and later by statute.

The Commission recommends that the various special procedures be revised and expanded to provide a greater variety of remedies to the judgment creditor consistent with fair treatment of the interests of the judgment debtor.

171. See Lacy, Homestead Exemption--Oregon Law: Still More, 8 Willamette L.J. 327, 334 (1972).

172. See Sections 674.5, 674.7.

Examination Proceedings

Examination proceedings¹⁷³---frequently called proceedings in aid of execution or supplementary proceedings--permit the judgment creditor to examine the judgment debtor or a third person who has property of, or is indebted to, the judgment debtor in order to discover property and apply it toward the satisfaction of the judgment. Examination proceedings are initiated by application for an order that the judgment debtor or third person appear and answer concerning the judgment debtor's property.

A judgment debtor may be examined once every four months¹⁷⁴ or more frequently where a writ of execution has been issued and the judgment creditor shows that there is property which the judgment debtor "unjustly refuses" to apply toward the satisfaction of the judgment.¹⁷⁵

The four-month limitation should be retained since it is designed to prevent harrassment of the judgment debtor.¹⁷⁶ However, the requirements that, in order to obtain a more frequent examination, the judgment creditor must (1) obtain issuance of a writ of execution and (2) show that the judgment debtor's refusal to apply property has been "unjust," should be eliminated.¹⁷⁷

173. See Sections 714-723.

174. Section 714.

175. Section 715.

176. For the sake of precision, it is recommended that the four-month period be changed to 120 days.

177. Originally, California adopted the system provided in the Field draft of a Code of Civil Procedure for New York under which issuance of a writ and its return unsatisfied were required before the judgment debtor could be examined, but only issuance was required where the proceedings were aimed at the application of particular property which the judgment debtor unjustly refused to apply. See 1851 Cal. Stats. ch. 5, §§ 238, 239; S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 283-84 (2d ed. 1975). It was not until 1957 that the four-month limitation was added to the California provision for judgment debtor examinations where no special showing is made. See 1957 Cal. Stats. ch. 1194, § 1. A 1955 amendment of Section 714 eliminated the requirement that a writ be issued and returned unsatisfied, and substituted therefor the requirement that a writ be "issuable"---in effect, a test of whether the judgment is currently enforceable. See 1955 Cal. Stats. ch. 1191, § 1. This amendment recognized that the former requirement was an outgrowth of the time when the courts of equity and law were separate and when equity would not act unless the legal remedies

Examinations of third persons are more circumscribed. The order to appear may be issued only if a writ of execution has been issued or returned and the judgment creditor must show that the third person has property of the judgment debtor or is indebted in an amount exceeding \$50. The prerequisite of the issuance or return of a writ of execution should be eliminated as an outmoded historical relic.¹⁷⁸ The judgment creditor should be free to select the most appropriate means of reaching the property held or controlled by the third person. The \$50 requirement, dating from 1851,¹⁷⁹ should be increased to \$250 to compensate for the change in the value of the dollar. The proposed law would require that notice of the examination of the third person be given the judgment debtor since the judgment debtor is an interested party.

Because examination is a summary proceeding, a third person who denies the debt or possession of the property, or who claims an interest adverse to the judgment debtor, may not be ordered to apply the property toward the satisfaction of the judgment.¹⁸⁰ The judgment creditor must then resort to a creditor's suit in which the interest of the third person may be determined.¹⁸¹ This restriction on examination of third

had been exhausted, and that the return of a writ unsatisfied creates no presumption that the legal remedy is inadequate since the levying officer may not have been instructed to levy under the writ. See S. Riesenfeld, supra at 283.

The requirement that the judgment debtor's refusal to apply property under Section 715 be alleged to be unjust serves no apparent purpose. If it means that the judgment debtor has nonexempt property, as opposed to exempt property or property of third persons which may properly not be applied to the judgment, then the language is unneeded because the proposed law elsewhere makes clear which property may be applied toward the satisfaction of a judgment. If it is designed to make sure the judgment creditor first attempts to reach property by levy under a writ of execution, it should be eliminated, consistent with the 1955 amendment of Section 714 and the policy of the proposed law to expunge the exhaustion of legal remedies doctrine and permit the judgment creditor to pursue whichever remedy is thought to be most effective in given circumstances.

178. See note [177] supra.

179. 1851 Cal. Stats. ch. 5, § 241.

180. See Section 719. The third person is entitled to a determination of the respective interests in the property or debt in an independent action. *Takahashi v. Kunishima*, 34 Cal. App.2d 367, 373, 93 P.2d 645, 648 (1939).

181. See Section 720 and the discussion under "Creditors' Suits" infra.

persons should be retained in order to protect the interests of persons who are not parties. If the judgment creditor is unable to obtain an order against the third person in examination proceedings, the third person may be enjoined from transferring property to the judgment debtor or from paying any debt to the judgment debtor until a creditor's suit can be brought.¹⁸²

The proposed law codifies the case law concerning the lien created by service of an order of examination.¹⁸³ Service on the judgment debtor creates a lien on the judgment debtor's property which is subject to the enforcement of a money judgment. Service on a third person creates a lien on the property in the third person's possession in which the judgment debtor has an interest and on any debt owing to the judgment debtor if the property or debt is eventually ordered to be applied to the satisfaction of the judgment.¹⁸⁴

The proposed law would make several other changes in the existing examination procedure. The provision of existing law permitting the arrest of the judgment debtor on ex parte application of the judgment creditor where it appears that there is a danger that the judgment debtor will abscond and providing for the imprisonment of the judgment debtor unless an undertaking is given¹⁸⁵ should be repealed since they are in conflict with the policies supporting the repeal of the civil arrest provisions.¹⁸⁶ The provision of existing law which grants a privilege to the spouse of the judgment debtor not to testify at an

182. See Section 720 and the discussion under "Creditors' Suits" infra.

183. See *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 28-30, 87 P.2d 830, 844 (1939); *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242, 245 (1909).

184. See the discussion under "Effect of Liens" supra.

185. Section 715.

186. See Recommendation and Study Relating to Civil Arrest, 11 Cal. L. Revision Comm'n Reports 1 (1973).

examination of a third person¹⁸⁷ should also apply to examinations of the judgment debtor. Mileage fees for third persons attending examination proceedings should be the same as for witnesses generally.¹⁸⁸ The proposed law would also permit the judgment creditor to recover reasonable attorney's fees incurred in an examination proceeding where the judgment debtor has been served with an order to appear at an examination by a person authorized to serve the order¹⁸⁹ but fails to appear. The proposed law provides that a corporation, partnership, association, or trust is to appear at an examination through an officer, director, managing agent, or other person familiar with its property and debts.¹⁹⁰ Existing law provides that a referee appointed to conduct examinations in a county with a population of one million or more must have been licensed to practice law for five years.¹⁹¹ The proposed law would require that all referees be members of the State Bar of California.

Creditors' Suits

Under existing law, the judgment creditor may bring an action against a third person who has property in which the judgment debtor has an interest, or who is indebted to the judgment debtor, for the application of the property or debt toward the satisfaction of the money judgment.¹⁹² The remedy of the creditor's suit developed when the types of property reachable by the writs which were predecessors of the writ of execution were fairly limited.¹⁹³ Although the reach of the writ of

187. Section 717.

188. Section 717.1 provides mileage fees for third persons to be examined in the amount of \$0.15 per mile one way. Government Code Section 68093 was amended in 1970 to raise the fee for witnesses to \$0.20 per mile one way. 1970 Cal. Stats. ch. 1061, § 2.

189. Sections 714 and 717 provide that service be made by a sheriff, constable, marshal, some person specially appointed by the court, or a registered process server as a condition to bringing the judgment debtor before the court.

190. This provision is derived from Rule 30(b)(6) of the Federal Rules of Civil Procedure.

191. Section 723.

192. See Section 720; 5 B. Witkin, California Procedure Enforcement of Judgment § 143, at 3506-07 (2d ed. 1971).

193. See generally, G. Gilbert, The Law of Executions 1-58 (1763); R. Millar, Civil Procedure of the Trial Court in Historical Perspective 419-26, 437-42 (1952); Riesenfeld, Collection of Money Judgments in American Law--A Historical Inventory and a Prospectus, 42 Iowa L. Rev. 155, 160-63 (1957).

execution has been considerably expanded,¹⁹⁴ the creditor's suit has persisted and is continued in the proposed law in order to reach types of property which still cannot be reached by execution, or only inefficiently so, and to enforce the liability of a recalcitrant third person holding property of, or owing debts to, the judgment debtor.¹⁹⁵

Creditors' suits, as a creation of the courts of equity, are subject to the doctrine requiring exhaustion of legal remedies before the action can be commenced.¹⁹⁶ Consistent with the policy of providing flexibility to the judgment creditor in the selection of the appropriate remedy, the proposed law does not require the exhaustion of any other remedies. Costs in the creditor's suit would, however, be recoverable only against the third person and only if reasonably necessary.¹⁹⁷ Unlike existing law,¹⁹⁸ the proposed law would require that the judgment debtor be joined in the creditor's suit although the judgment debtor would not be considered an indispensable party, nor would the judgment debtor's residence be considered in the determination of proper venue unless otherwise provided by contract between the judgment debtor and the third person.

194. Section 688(a) provides (somewhat overinclusively):

All goods, chattels, moneys or other property, both real and personal, or any interest therein, of the judgment debtor, not exempt by law, and all property and rights of property levied upon under attachment in the action, are subject to execution.

195. A creditor's suit and an examination proceeding against third persons may reach the same types of property (examination proceedings being an outgrowth of the creditor's suit), but a creditor's suit is necessary where the third person claims an adverse interest or denies the debt in an examination proceeding. See the discussion under "Examination Proceedings" supra. This discussion is not concerned with another aspect of creditors' suits--the action to set aside a fraudulent conveyance--from which the action to set aside under the Uniform Fraudulent Conveyance Act was derived. See Civil Code § 3439.09; 5 B. Witkin, California Procedure Enforcement of Judgment §§ 152-153, at 3516-18 (2d ed. 1971).

196. See Farmers' & Merchants' Bank v. Bank of Italy, 216 Cal. 452, 455-58, 14 P.2d 527, 528-29 (1932) (resort to examination proceedings required); Bond v. Bulgheroni, 215 Cal. 7, 10-11, 8 P.2d 130, 132 (1932) (resort to examination proceedings not required where inadequate or futile).

197. The general procedure for recovering costs would be applicable. See Section 1033.7.

198. Cf. Coffee v. Haynes, 124 Cal. 561, 564-565, 57 P. 482, ___ (1899) (notice to judgment debtor not required in examination proceedings

Under existing law, it appears that the creditor's suit is subject to the general four-year statute of limitations¹⁹⁹ and, at least in certain circumstances, that the time begins to run from the return of the writ of execution unsatisfied.²⁰⁰ Under the proposed law, the creditor's suit could be commenced at any time when the judgment debtor may bring an action against the third person concerning the property or debt or, if a lien is created on the property or debt within such time, at a later time extending for one year from the creation of the lien. This provision would have the effect of extending the liability of the third person for up to an additional year after the judgment debtor could no longer sue, in order to prevent the third person from avoiding liability by delaying tactics. Once commenced, the creditor's suit could be pursued to judgment, even though the judgment creditor could no longer enforce the original judgment against the judgment debtor.²⁰¹ The judgment in the creditor's suit would be independently enforceable against the third person.²⁰² The existing case law to the effect that service of summons in a creditor's suit creates a lien on the property that is the subject of the action is codified in the proposed law.²⁰³

under Sections 717 and 719); *Blanc v. Paymaster Mining Co.*, 95 Cal. 524, 528-29, 30 P. 765, ___ (1892) (fraudulent transferor a proper but not necessary party in action to set aside); *High v. Bank of Commerce*, 95 Cal. 386, 387-88, 30 P. 556, ___ (1892) (notice to judgment debtor not required when court authorizes creditor's suit pursuant to Section 720).

199. See Section 343 (four-year statute of limitations where no specific provision); *Sherman v. S.K.D. Oil Co.*, 185 Cal. 534, 538, 545, 197 P. 799, 801, ___ (1921).

200. See *Spencer v. Anderson*, 193 Cal. 1, 5, 222 P. 355, ___ (1924); *Sherman v. S.K.D. Oil Co.*, 185 Cal. 534, 538, 197 P. 799, 801 (1921). There is, however, no requirement that a writ be returned unsatisfied as a precondition to bringing a creditor's suit. Even if exhaustion of the remedy of examination proceedings is required, only issuance of a writ is necessary pursuant to Section 717.

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

202. Where it is determined that the third person owes a debt to the judgment debtor, the judgment in the creditor's suit will be, in effect, a money judgment against the third person. Where it is determined that the third person has property of the judgment debtor, the judgment creditor may apply only that property, or if it cannot be found, its value, to the satisfaction of the judgment against the judgment debtor. Any money collected from the third person goes toward the satisfaction of both the judgment in the creditor's suit and the original money judgment.

203. See *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 28-30, 87

Under existing law, if a third person in an examination proceeding claims an interest in property adverse to the judgment debtor or denies the debt, an order applying the property toward the satisfaction of the judgment may not be issued, but the court may forbid a transfer or other disposition of the property or debt until a creditor's suit can be commenced and prosecuted to judgment.²⁰⁴ The proposed law continues this injunctive remedy in a modified form. The judgment creditor would be able to apply for an order in any situation where a creditor's suit is contemplated, not just where a third person has resisted examination proceedings. The order would be limited to a reasonable time, not to exceed 60 days,²⁰⁵ but could be extended if a creditor's suit is commenced within the time allowed. Under the proposed law, the order would restrain only a transfer to the judgment debtor since a more sweeping order issuable without notice and without bond and directed to a third person who is not a formal party is constitutionally suspect.²⁰⁶

Interrogatories to the Judgment Debtor

Existing law permits a judgment creditor to serve interrogatories upon the judgment debtor if the debtor is represented by counsel.²⁰⁷ The form of, answer to, and enforcement of the interrogatories is the same as that provided for interrogatories in a civil action.²⁰⁸ The proposed law would continue this procedure but would make clear that, in order to prevent harrassment, interrogatories may not be served if, within the preceding 120 days, interrogatories have been served or an

P.2d 830, 844 (1939); Nordstrom v. Corona City Water Co., 155 Cal. 206, 212-13, 100 P. 242, 245 (1909).

204. Section 720.

205. In Pioneer Inv. & Trust Co. v. Muncey, 33 Cal. App. 740, 743, 166 P. 591, 592 (1917), it was held that the order should be vacated if the judgment creditor does not "seasonably" commence the creditor's suit.

206. Cf. North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601, 606-08 (1975); Randone v. Appellate Dep't, 5 Cal.3d 536, 547-52, 488 P.2d 13, 20-23, 96 Cal. Rptr. 709, 716-19 (1971).

207. Section 714.5.

208. See Sections 714.5, 2030.

examination has been conducted.²⁰⁹ Under this provision, judgment creditors would be able to use the order obtainable in an examination proceeding to apply property that is described in the answer to the interrogatories toward the satisfaction of the judgment. Service of interrogatories would not have the effect of creating a lien on property of the judgment debtor, as does service of an order of examination.²¹⁰

Charging Orders

A charging order²¹¹ is the proper means to reach the judgment debtor's interest in a partnership²¹² and apply it to the satisfaction of a money judgment.²¹³ This procedure, which provides an orderly means of reaching a partner's interest without destroying the partnership, is continued in the proposed law. Existing law recognizes that a lien arises from a charging order but is unclear as to the time of its creation and its effect.²¹⁴ The proposed law provides for creation of the lien at the time the notice of motion for a charging order is served on the judgment debtor.²¹⁵

209. Section 714.5 provides that interrogatories may be used "cumulative to" and "in conjunction with" examination proceedings under Section 714 and also that the judgment debtor may not be required to respond to interrogatories more frequently than once in any four-month period or within any four-month period during which an examination has been conducted pursuant to Section 714. The effect on the right to examine the judgment debtor of using interrogatories is not specified in Section 714.5, nor is the relation between interrogatories and an examination under Section 715 indicated.

210. See the discussion under "Examination Proceedings" supra.

211. See Corp. Code §§ 15028 (charging order under Uniform Partnership Act), 15522 (charging order under Uniform Limited Partnership Act); 5 B. Witkin, California Procedure Enforcement of Judgment § 142, at 3504-06, Supp. at 29-30 (2d ed. 1971 & Supp. 1977).

212. A general partner's interest in the partnership which may be reached by a judgment creditor are the rights in specific partnership property and the interest in the partnership as such. See Corp. Code § 15024. A limited partner's interest in the partnership which may be reached by a judgment creditor is a share of the profits but not an interest in specific partnership property. See Corp. Code § 15510(2); *Evans v. Galardi*, 16 Cal.3d 300, 307-10, 546 P.2d 313, ___, 128 Cal. Rptr. 25, ___ (1976).

213. The charging order procedure is a special case of the creditor's suit.

214. See *Taylor v. S & M Lamp Co.*, 190 Cal. App.2d 700, 707-12, 12 Cal. Rptr. 323, 329-31 (1961).

215. The lien provision in the proposed law is analogous to that provided in examination proceedings. See the discussions under "Examination Proceedings" supra and "Effect of Liens" supra.

Receivers

Existing law permits the appointment of a receiver in aid of execution where the writ of execution has been returned unsatisfied or where the judgment debtor refuses to apply property toward the satisfaction of the judgment.²¹⁶ Appointment of a receiver may also enable the judgment creditor to reach and apply forms of property which cannot be reached by levy under a writ of execution.²¹⁷ Generally, receivers are appointed in examination proceedings where the requisite showing is made,²¹⁸ but a receiver may be appointed in proceedings on noticed motion.²¹⁹ Receivership is considered a drastic remedy, and the courts are reluctant to appoint a receiver unless it is shown that other remedies are inadequate.²²⁰

Under the proposed law, the appointment of a receiver to enforce a money judgment would continue to be a remedy requiring a special showing. The judgment creditor should be able to obtain the appointment of a receiver upon a showing that, considering the interests of both the judgment creditor and the judgment debtor, it is a reasonable method to achieve the fair and orderly satisfaction of the judgment. The existing statutory requirement that the writ be returned unsatisfied should be eliminated since it is an empty formality which results in a delay of at least 10 days in the attempt to reach the judgment debtor's assets and

216. Section 564, subd. 4.

217. See *Habenicht v. Lissak*, 78 Cal. 351, ___, 20 P. 874, 877 (1889) (seat on stock exchange); *Pacific Bank v. Robinson*, 57 Cal. 520, ___ (1881) (patent); *Medical Fin. Ass'n v. Short*, 36 Cal. App.2d Supp. 745, 747, 92 P.2d 961, ___ (1935) (federal wages).

218. See *Tucker v. Fontes*, 70 Cal. App.2d 768, 771, 161 P.2d 697, ___ (1945); *Bruton v. Tearle*, 7 Cal.2d 48, 53, 59 P.2d 953, ___ (1936).

219. *Olsan v. Comora*, 73 Cal. App.3d 642, 647-49, ___ Cal. Rptr. ___, ___ (1977).

220. *Jackson v. Jackson*, 253 Cal. App.2d 1026, 1040-41, 62 Cal. Rptr. 121 (19__); *Olsan v. Comora*, 73 Cal. App.3d 642, 646-47, ___ Cal. Rptr. ___, ___ (1977).

merely increases the costs of collection.²²¹ The law concerning the appointment, qualification, powers, and duties of receivers should remain unchanged.²²² Existing law is unclear as to the effect of the appointment and enforcement activities of a receiver. The proposed law provides for a receiver's lien which arises when a copy of the order appointing the receiver is served in the manner provided for levy under a writ or for service of other process that creates a lien.²²³ The proposed law also specifically provides for the appointment of a receiver to transfer a liquor license which, under existing law, may not be reached to satisfy a money judgment.²²⁴

221. The 10-day delay is the result of Section 683 which provides that the writ is returnable not less than 10 nor more than 60 days after its receipt by the levying officer. The cost of issuance of a writ is recoverable pursuant to Section 1033.7(c). It may be argued that the provision that the writ be returned nulla bona (no goods) before a receiver may be appointed is no longer the law since a receiver may be appointed in examination proceedings under Section 714 which, since 1955, has not required the return of the writ unsatisfied. See 1955 Cal. Stats. ch. 1191, § 1. Levying officers no longer make an independent search for property subject to execution, but instead act at the instructions of the judgment creditor. See 1 A. Freeman, Law of Executions § 107, at 395-98 (3d ed. 1900) (former practice); Cal. State Sheriffs' Ass'n, Civil Procedural Manual 4.05 (1978). If so instructed, the levying officer will return the writ unsatisfied and will not attempt to levy under the writ. Obviously, this procedure should not result in a presumption that there is no property subject to levy and sale.

222. See Sections 564-571.

223. See the discussion under "Effect of Liens" supra.

224. Section 688(f) has, since 1959, precluded the use of any enforcement process against licenses, including liquor licenses. See 37 Op. Cal. Att'y Gen. 4 (1961). The use of a receiver permits application of the proceeds to the set of priorities spelled out in Business and Professions Code Section 24074. See Grover Escrow Corp. v. Gole, 71 Cal.2d 61, 65, 453, P.2d 461, 463, 77 Cal. Rptr. 21, 23 (1969) (statutory priorities are mandatory and exclusive). The proposed law will not permit appointment of a receiver to sell a liquor license if the probable sale price of the license does not exceed the amount necessary to satisfy the claims of creditors with priority over the judgment creditor who is seeking the appointment of a receiver.

Liens on Causes of Action and Judgments

Existing law precludes levy upon or sale of a cause of action or judgment "as such."²²⁵ The judgment creditor may, however, seek to establish a priority over other creditors in the eventual recovery by the judgment debtor in the action against a third person by applying on noticed motion for an order granting a lien on the cause of action and judgment.²²⁶ The general rule is that the priority of the lien is determined as of the time the lien is granted²²⁷ but the equitable rule granting priority to the one who first applies for the lien has also been invoked.²²⁸ The proposed law provides that the lien is created at the time it is granted by the court, but that it relates back to the time of the application for the order creating the lien.²²⁹

Existing law is silent concerning the manner of enforcing the lien. It has been suggested that the judgment creditor would have to bring an action to foreclose the lien in order to reach the amount represented by the judgment.²³⁰ Such a remedy is needlessly formal and restrictive. There is no reason why a debt of a third person represented by a judgment cannot be applied to the satisfaction of the judgment against the judgment debtor in the same manner as other debts are applied. Enforcement against a debt that has been reduced to judgment requires fewer safeguards because the existence of the debt and the amount due are certain so that enforcement is less likely to result in a windfall to the judgment creditor or to a purchaser at a sale should the judgment be

225. Section 688(f).

226. Section 688.1(a). The court may also permit the judgment creditor to intervene in the action.

227. See *Takehara v. H.C. Muddox Co.*, 8 Cal.3d 168, 170, 501 P.2d 913, ___, 104 Cal. Rptr. 345, ___ (1972); Civil Code § 2897 (priority based on time of creation of lien, other things being equal).

228. See *Del Conte Masonry Co. v. Lewis*, 16 Cal. App.3d 678, 681, 94 Cal. Rptr. 439, ___ (1971).

229. The proposed law does not specify any duration of the lien, but it would not be enforceable after expiration of the time for enforcement of the judgment creditor's judgment. See discussions under "Time for Enforcement of Judgments" supra and "Effect of Liens" supra.

230. See *Roseburg Loggers, Inc. v. Plywood-Champion Papers, Inc.*, 14 Cal.3d 742, 748, 537 P.2d 399, ___, 122 Cal. Rptr. 567, ___ (1975) (dictum); Work of the 1941 California Legislature, 15 So. Cal. L. Rev. 1, 18 (1941).

sold. Under the proposed law, the judgment creditor may select the most effective means to collect the judgment subject to the lien, such as by levy under a writ of execution and sale or collection, by appointment of a receiver to collect the judgment, by application for an assignment order, or by the procedures for collection from a public entity owing money to the judgment debtor.

Existing law provides that no compromise, settlement, or satisfaction of the claim or judgment may be entered into on behalf of the judgment debtor without the consent of the judgment creditor.²³¹ This prohibition should be modified to permit compromise, settlement, or satisfaction with the approval of the court where the action is pending or judgment was entered in order to prevent the judgment creditor from forcing the judgment debtor to proceed with the action in circumstances where it is advisable to settle.

Existing law does not specify the type of judgments upon which a lien may be granted. The proposed law permits the granting of a lien on money judgments and also on judgments for the possession or sale of property. Where the lien is on a money judgment, the judgment creditor would be able to proceed against the third person as if the third person were the judgment creditor's judgment debtor. Where the lien is on a judgment for the sale of property, such as where the judgment debtor has foreclosed a mortgage, the judgment creditor would be able to proceed only against the property which is the subject of the judgment debtor's action against the the third person and have it sold in satisfaction of the judgment creditor's money judgment. Similarly, where the lien is on a judgment for the possession of property, the judgment creditor would be able to proceed only against the property which is the subject of the judgment for possession. In this case, the judgment creditor would be entitled to have the property applied to the satisfaction of the judgment creditor's money judgment, but would not have the right to possession of the property.

Existing law provides that an assignee by operation of law of a party to a personal injury action may not acquire a lien on money recovered for general damages.²³² This provision should not be continued

231. Section 688.1(a).

232. Section 688.1(b).

because it has been held to be in conflict with the Bankruptcy Act.²³³

Orders to Assign Rights to Future Payments

The proposed law would permit the judgment creditor to apply to the court on noticed motion for an order requiring the judgment debtor to assign all or part of a right to future payments to the judgment creditor or a receiver.²³⁴ The terms of the assignment would be subject to the court's discretion, but the judgment creditor would not be permitted to receive amounts in excess of that needed to satisfy the judgment. The terms of the order would be subject to later modification to take account of changed circumstances. Service of the assignment order on the judgment debtor would create a lien on the right assigned or to be assigned.²³⁵

The assignment order remedy is designed to be used to reach forms of property that cannot be reached by levy under a writ of execution,²³⁶

233. See In re Kanter, 505 F.2d 228, ___ (9th Cir. 1974), aff'g 345 F. Supp. 1151 (C.D. Cal. 1972).

234. This procedure is derived from cases involving examination proceedings or creditors' suits where property was ordered to be assigned or delivered to a receiver. See Habenicht v. Lissak, 78 Cal. 351, ___, 20 P. 874, 877 (1889); Pacific Bank v. Robinson, 57 Cal. 520, ___ (1881); Hathaway v. Brady, 26 Cal. 581, ___ (1864); Tucker v. Fontes, 70 Cal. App.2d 768, ___ 161 P.2d 697, 701 (1945). See also N.Y. Civ. Prac. Law & R. § 5226 (order requiring judgment debtor to make specified installment payments where shown that debtor will be receiving money).

235. See the discussion under "Effect of Liens" supra.

236. The law is not especially clear in delineating the conditions making a debt subject to garnishment. Compare Philbrook v. Mercantile Trust Co., 84 Cal. App. 187, ___, 257 P. 882, ___ (1927) (existing debt fixed in amount but payable in the future subject to garnishment), Brainard v. Rogers, 74 Cal. App. 247, ___, 239 P. 1095, ___ (1925) (fire insurance policy after fire but before adjustment subject to garnishment), Meacham v. Meacham, 262 Cal. App.2d 248, 252, 68 Cal. Rptr. 746, ___ (1968) (contract for royalties from marketing invention subject to garnishment), and Section 682.3 (continuing levy on future earnings) with Early v. Redwood City, 57 Cal. 193, 195 (1881) (garnishment did not reach money due only after completion of work under contract), Hustead v. Superior Court, 2 Cal. App.3d 780, 785-88, 83 Cal. Rptr. 26, ___ (1969) (future rent not subject to garnishment), and Dawson v. Bank of America, 100 Cal. App.2d 305, 309-10, 223 P.2d 280, ___ (1950) (escrow not subject to garnishment where amount not certain and conditions necessary to establish proper claimant not fulfilled).

such as rights to payment dependent on future developments,²³⁷ rent,²³⁸ surplus amounts from a spendthrift trust,²³⁹ and wages due from the federal government.²⁴⁰ This remedy would also be available to reach and apply royalties and commissions, and payments falling due on accounts receivable, chattel paper, choses in action, judgments, and negotiable instruments--forms of property that are subject to levy and either sale or collection.²⁴¹ By restricting the assignment of payments to the amount necessary to satisfy the judgment, the assignment order procedure, in conjunction with the proposed restrictions on the sale of certain obligations, should severely limit cases where valuable or potentially valuable obligations are purchased by the judgment creditor on a speculative basis, perhaps resulting in a large windfall to the judgment creditor.²⁴²

237. See Dawson v. Bank of America, 100 Cal. App.2d 305, 309-10, 223 P.2d 280, ___ (1950).

238. See Husted v. Superior Court, 2 Cal. App.3d 780, 785-88, 83 Cal. Rptr. 26, ___ (1969).

239. Under existing law surplus income from a spendthrift trust may be reached by a creditor's suit or an order in examination proceedings where it is shown that there is no valid direction in the trust instrument for the accumulation of surplus income and that the income is not all necessary for the beneficiary's education and support. See Civil Code § 859; Canfield v. Security First Nat'l Bank, 13 Cal.2d 1, ___, 87 P.2d 830, ___ (1939); Estate of Lawrence, 267 Cal. App.2d 77, ___, 72 Cal. Rptr. 851, ___ (1968). Under the proposed law, such property could still be reached in this manner, but would also be reachable by way of an assignment order.

240. As a function of the principle of sovereign immunity, wages in the hands of the federal government are not subject to garnishment without the consent of the government. However, wages may be reached by an order obtained in examination proceedings directed to the judgment debtor to endorse and deliver paychecks to a receiver. See Sheridan v. Sheridan, 33 Cal. App.3d 917, ___, 109 Cal. Rptr. 466, ___ (1972). Pursuant to 42 U.S.C. § 659 (Supp. V 1975), the wages of federal employees may be garnished for the enforcement of child support and alimony payments as if the United States were a private person. See also Standard Oil Div., American Oil Co. v. Starks, 528 F.2d 201, 203-04 (7th Cir. 1975) (employees of U.S. Postal Service not immune from garnishment).

241. See the discussion under "Sale and Collection" supra.

242. See, e.g., Meacham v. Meacham, 262 Cal. App.2d 248, 253 n.2, 68 Cal. Rptr. 746, ___ n.2 (1968), where it was asserted that a \$13,000 windfall would result from the sale of a right to royalties from the marketing of an invention in satisfaction of judgment for plaintiff's attorney's fees.

Collection Where Judgment Debtor Is Creditor of Public Entity

Existing law provides an exclusive procedure for reaching money, other than wages, owed to the judgment debtor by a public entity.²⁴³ Under this procedure, the judgment creditor files with the state agency or local public entity an abstract or transcript of the judgment and an affidavit stating the amount owing on the judgment. Filing in this manner is the equivalent of levy under a writ of execution and the priorities between creditors is determined as of the time of filing with the public entity.²⁴⁴ The public entity is required to pay the money into court and the court then pays the nonexempt portion of the money to the judgment creditor.

This scheme is generally continued in the proposed law;²⁴⁵ however, several revisions are called for. Under existing law, the relation between provisions for obtaining a lien on a pending cause of action and any eventual judgment²⁴⁶ and the procedure for reaching money owed the judgment debtor by a public entity is unclear. The proposed law provides that the motion procedure for obtaining a lien must be followed when the obligation is the subject of a pending cause of action. Under existing law, the general procedure for determining exemptions from execution by Section 690.50 is incorporated with the provision that the court is to be considered the levying officer.²⁴⁷ This exemption procedure is inadequate. The judgment debtor is not required to be given notice of the filing, the payment into court, or the payment to the

243. See Sections 710, 710a. As provided in Section 710(h), earnings are withheld pursuant to Section 682.3.

244. See Department of Water & Power v. Inyo Chem. Co., 16 Cal.2d 744, ___, 108 P.2d 410, ___ (1940); Ott Hardware Co. v. Davis, 165 Cal. 795, 800, 134 P.2d 973, ___ (1913). This principle is codified in the proposed law.

245. Several minor and technical changes are recommended. For example, the provision for setting off amounts owed by, or advanced to, the judgment debtor applies only to the state under Section 710(a), para. 2; this provision should also apply to local public entities.

246. See discussion under "Liens on Causes of Action and Judgments" supra.

247. Section 710(c).

judgment creditor, although the statute assumes that exemptions will be claimed and determined.²⁴⁸ The judgment creditor should give notice of the filing to the judgment debtor, just as a judgment debtor is given notice of levy under a writ of execution. The court clerk should give the judgment debtor notice when the court receives the payment from the public entity and the judgment debtor should be afforded 10 days from the mailing of the notice of payment within which to make a claim of exemption on noticed motion before the court pays over to the judgment creditor.

Existing law provides a special procedure where the money owed to the judgment debtor by a public entity is an award in a condemnation proceeding brought by the public entity. It is provided that the money may be paid into the court in which the condemnation proceeding was tried and that the clerk then sends notice to "all parties interested in said award" of the hearing to determine conflicting claims to the award.²⁴⁹ The court is directed to determine the conflicting claims and order the distribution of the money accordingly. This special procedure is unnecessary;²⁵⁰ the general procedures under the proposed law for

248. The purpose of this special procedure is "to shift to the court the burden of adjudicating any claims of exemption which may arise and to insulate the governmental units from liability for wrongful payments to garnishing creditors." *McDaniel v. City & County of San Francisco*, 259 Cal. App.2d 356, 363, 66 Cal. Rptr. 384, ___ (1968).

249. Section 710(d). It is not clear under this provision whether the judgment creditor is to receive notice.

250. The existing procedure is also inadequate in several respects and is not consistent with the relevant provisions of the Eminent Domain Law. For example, the reference to the hearing where conflicting claims to the award are to be determined is ambiguous, and the provision that the court order the distribution of the money deposited conflicts with the Eminent Domain Law. The value of divided interests in property acquired by eminent domain are determined in the condemnation proceeding itself pursuant to Section 1260.220. If an amount of probable compensation is deposited, it may be withdrawn on application pursuant to Section 1255.210. If the amount of compensation has been determined, the defendant may apply for withdrawal of the deposit pursuant to Section 1268.140. There is no reason for the judgment creditor to be involved in the condemnation proceeding at the time the interests of the condemnation defendants are determined; the creditor should be involved only when payment is to be made to the judgment debtor, at which time the issue is whether the award is exempt, such as where it represents the homestead exemption or is composed of relocation benefits.

reaching money owed to the judgment debtor by a public entity afford an adequate remedy. Before final judgment in the condemnation proceeding, the judgment creditor would be able, by motion, to obtain a lien on any amounts eventually awarded.²⁵¹ If the judgment is final and the public entity has not paid the award or previously deposited the award with the court,²⁵² the judgment creditor could follow the general procedure for reaching money owed to the judgment debtor by a public entity. If the public entity has deposited the amount of the award with the court where the condemnation proceeding is held and the creditor has not obtained a lien before final judgment, the creditor could use some other appropriate procedure, such as garnishment or motion.²⁵³

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.²⁵⁴ These exemptions are among the most generous in the United States.²⁵⁵ In general, exemption laws are intended to reserve an amount of property sufficient to support the debtor and the debtor's family and to facili-

251. See the discussion under "Liens on Causes of Action and Judgments" supra.

252. See Sections 1255.010 (deposit of probable compensation), 1268.010 (payment directly to defendant), 1268.110 (deposit of full amount of award).

253. See, e.g., *Kimball v. Richardson-Kimball Co.*, 111 Cal. 386, 394, 43 P. 1111, ____ (1896) (levy of attachment); *Phoenix v. Kovacevich*, 246 Cal. App.2d 774, 778-79, 55 Cal. Rptr. 135, ____ (1966) (permission to levy by court order); *Credit Bureau of San Diego v. Getty*, 61 Cal. App.2d Supp. 823, 826-29, 142 P.2d 105, ____ (1943) (affidavit procedure for former Section 710 not effective where court deposited money with county); *Colver v. W.B. Scarborough*, 73 Cal. App. 455, 457-59, 238 P. 1110, ____ (1925) (levy of execution).

254. 1851 Cal. Stats. ch. 123, § 219.

255. 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).

tate the financial rehabilitation of the debtor.²⁵⁶ They also serve to shift the cost of social welfare from the community to creditors.²⁵⁷

The substantive exemptions were extensively revised in 1970 in response to a 1967 report by the State Bar Committee on Debtor and Creditor.²⁵⁸ Both the substantive exemptions and the procedural provisions are in need of further revision. Important factors prompting the proposals in this recommendation include the dramatic inflation occurring over the past several years, the enactment of the Bankruptcy Reform Act of 1978 containing new exemption provisions²⁵⁹ 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

256. *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).

257. 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.*

258. See Committee on Debtor and Creditor of State Bar of California, Modernization of Statutory Exemptions, 42 Cal. St. B.J. 869 (1967).

259. See Pub. L. No. 95-____, ____ Stat. ____ (to be codified in 11 U.S.C. § 522); 259. See also Report of the Commission on the Bankruptcy Laws of the United States, House Doc. No. 93-137, Part I, 93d Cong., 1st Sess. (1973).

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 dwelling, 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).²⁶⁰ 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 administer. The Commission's recommendations are also tempered with the knowledge that exemption laws are highly controversial.²⁶¹

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.²⁶² Some property is exempt without making a claim²⁶³ and other property must be claimed as exempt or the exemption

260. 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).

261. 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).

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

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

is waived.²⁶⁴ 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.²⁶⁵ In the proposed law, property which is described as not subject to the enforcement of a money judgment should be readily identifiable.²⁶⁶

The following material discusses the major statutory exemptions of existing law and the more important revisions proposed by the Commission.²⁶⁷

Dwelling Exemption

California law provides a substantial dwelling exemption for the purpose of promoting the security of the home and protecting it from the consequences of the owner's economic misfortune.²⁶⁸ Under existing law,

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264. E.g., Sections 690.1 (household furnishings, etc.), 690.2 (motor vehicle), 690.9 (life insurance benefits).
265. 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).
266. 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 "Receivers to Enforce Judgments" supra.
267. The more technical revisions are discussed in the Comments sections in the Proposed Legislation infra and in the Comments to the repealed sections in the Appendix infra.
268. Schoenfeld v. Norberg, 267 Cal. App.2d 496, 498; 72 Cal. Rptr. 924, 926 (1968). The California Constitution requires the Legislature to provide for the protection of a portion of the homesteads of heads of families. Cal. Const. art. 20, § 1.5. For a discussion of the development of the homestead provisions, see Taylor v. Madigan, 53 Cal. App.3d 943, 955-61, 126 Cal. Rptr. 376, 384-88 (1975).

a dwelling exemption may be asserted under one of three distinct procedures, depending on the nature of the dwelling and the stage of the enforcement proceedings: by recording a homestead declaration,²⁶⁹ by appearing in opposition to a judgment creditor's application for issuance of a writ of execution against a dwelling house,²⁷⁰ or by claiming an exemption after levy upon a mobilehome or vessel.²⁷¹ These procedures are needlessly complicated and contain unnecessary substantive and procedural differences.²⁷² The proposed law would simplify the dwelling exemption and provide a more consistent statutory scheme.

Nature of property subject to exemption. Under existing law, the judgment debtor may obtain the exemption of any of the following types of property: a dwelling house (together with the outbuildings and the land upon which they are situated), a condominium, a planned development, a stock cooperative, a community apartment project, a mobilehome (together with the outbuildings and the land upon which they are situated), or a waterborne vessel.²⁷³ The proposed law would continue this aspect of existing law, but also contains general language to permit the exemption of any other form of property in which the judgment debtor or the judgment debtor's family actually resides.²⁷⁴

269. See Civil Code §§ 1237-1304.

270. See Section 690.31.

271. See Sections 690.3, 690.50.

272. See, e.g., Krause v. Superior Court, 78 Cal. App.3d 499, 144 Cal. Rptr. 194 (1978) (enactment of Section 690.31 did not impliedly repeal procedures of Civil Code §§ 1245-1259 for reaching excess value of declared homestead); see also 3 H. Miller & M. Starr, Current Law of California Real Estate § 16:50 (rev. ed. 1977) (discussing problems with Section 690.31).

273. See Civil Code §§ 1237; Code Civ. Proc. §§ 690.3(a), 690.31(a).

274. The term "dwelling house" has been liberally construed to permit the exemption of an entire building only part of which is used for residential purposes. See, e.g., Phelps v. Loop, 64 Cal. App.2d 332, 333-34, 148 P.2d 674, 675-76 (1944) (18-unit apartment building, one apartment occupied by debtor); 3 H. Miller & M. Starr, Current Law of California Real Estate § 16:10 (rev. ed. 1977).

Nature of interest subject to exemption. To qualify for an exemption under existing law, the judgment debtor must have "freehold title, interest, or estate which vests . . . the immediate right of possession" in a dwelling house or hold it under a long-term lease of at least 30 years,²⁷⁵ have "ownership rights" (including a leasehold or subleasehold) in a condominium, planned development, stock cooperative, or community apartment project,²⁷⁶ or have a leviab²⁷⁷le interest in a mobile-home or vessel.²⁷⁷ The interest of the judgment debtor need not be exclusive.²⁷⁸ The proposed law would expand the protection of the dwelling exemption by eliminating the long-term lease restriction²⁷⁹ and by making clear that any interest in a dwelling that the judgment creditor may seek to apply to the satisfaction of a money judgment may be protected. There is no apparent reason why, for example, short term leasehold interests in condominiums should be protected, but not such interests in single family dwellings.

275. See Civil Code §§ 1237, 1238.

276. See Civil Code § 1238.

277. See Sections 690.3(a), 690.31(a)(2).

278. See Civil Code § 1238; Estate of Kachigan, 20 Cal.2d 787, 790-91, 128 P.2d 865, 867 (1942) (joint tenancy); Bradley v. Scully, 255 Cal. App.2d 101, 105, 62 Cal. Rptr 834, 837 (1967) (tenancy in common); Alexander v. Jackson, 92 Cal. 514, 519, 28 P. 593, 594 (1891) (equitable title, vendee in possession under contract of sale).

279. This proposal would return the law to its pre-1929 state. A homestead could be declared on a mere tenancy until 1929 when the word "property" was defined as "freehold title, interest, or estate." See Brooks v. Hyde, 37 Cal. 366, ___ (1869); 1929 Cal. Stats. ch. 184, § 1. From 1929 until 1970, homesteads could not be declared on leasehold interests. The long-term lease restriction and the provisions concerning homesteads in condominiums, etc., were added in 1970. See 1970 Cal. Stats. ch. 687, §§ 1, 2. It appears that at least 18 states permit homestead rights in leases, even in oral month-to-month tenancies. See Annot., 89 A.L.R. 555 (1934); Annot., 74 A.L.R.2d 1378 (1960).

Amount of exemption. Existing law provides a \$40,000 exemption for a head of a family and for a person 65 years of age or older and a \$25,000-exemption for all other persons.²⁸⁰ The proposed law would increase the larger exemption to \$50,000 and would permit a husband and wife actually residing in different dwellings to claim applicable exemptions as to both dwellings, regardless of whether they are legally separated or find it necessary or convenient to maintain two dwellings for some other purpose such as proximity to places of employment. Married judgment debtors would not, however, be permitted to claim more than a \$50,000 exemption in one dwelling.

Declared homestead procedure. Under the declared homestead procedure, the judgment debtor may obtain the exemption of a real property dwelling by filing a homestead declaration with the county recorder.²⁸¹ The declaration is ineffective, however, if the judgment creditor has earlier obtained a judgment lien.²⁸² Under this procedure prior to 1975, debtors who were lacking in procedural sophistication, who were neglectful in the early stages of collection proceedings, or who failed to act because they did not know of the entry of a default judgment, were denied the protection of the exemption.²⁸³ The important policy of protecting the security of the home could be defeated by a race to the

280. Civil Code § 1260; Code Civ. Proc. §§ 690.3(a), 690.31(a). "Head of a family" is defined by Civil Code Section 1261 to include the husband or wife when the claimant is married and persons who care for certain relatives or relatives of a deceased spouse in the dwelling.

281. See Civil Code §§ 1262-1265.

282. See Civil Code § 1241. A homestead declaration may relate back to the time of an earlier declaration, however, as provided in Civil Code Section 1265a.

283. In 1975, Code of Civil Procedure Section 690.235 was enacted in an attempt to remedy this default feature of the declared homestead by permitting the debtor to claim an exemption pursuant to Section 690.50 within 20 days after levy. See 1974 Cal. Stats. ch. 1251, § 2.5. Section 690.235 was replaced by Section 690.31 in 1977. See 1976 Cal. Stats. ch. 1000, § 4. See the discussion under "Automatic Dwelling Exemption Procedure" infra.

recorder's office. Under this system, however, if the judgment debtor first records the homestead declaration, any attachment liens are dissolved²⁸⁴ and a judgment lien thereafter recorded will not attach to the property, even if it has an excess value.²⁸⁵ While this aspect of the declared homestead procedure is beneficial to debtors, it is unfair to creditors because they are prevented from securing payment of the judgment by means of the relatively benign judgment lien on the excess value of the property over the exempt amount. If several judgment creditors are attempting to reach the excess value of the homestead property, the debtor will also suffer because the judgment creditors will rush to execution, appraisal, and sale in order to reach the excess value, since the creditor who first levies obtains a priority.²⁸⁶ The declared homestead procedure is inefficient because it permits the recording of a declaration at a time when it is not needed for protection against the claim of creditors. The declaration, administratively filed as of record, may in fact be invalid because, for example, the debtor was not living in the homestead at the time of the declaration, the debtor had not abandoned a prior declaration, the debtor has changed dwellings, the

284. See Becker v. Lindsay, 16 Cal.2d 188, ___, 545 P.2d 260, ___ (1976).

285. See Boggs v. Dunn, 160 Cal. 283, 285-87, 116 P. 743, 744-75 (1911); Swearingen v. Byrne, 67 Cal. App.3d 580, 585, 136 Cal. Rptr. 736, 739 (1977).

286. See Adams, Homestead Legislation in California, 9 Pac. L.J. 723, 728 (1978). The procedure for reaching the excess value over the exempt amount and liens and encumbrances required to be satisfied requires a levy of execution and a petition for appointment of appraisers within 60 days thereafter. Civil Code §§ 1245-1248. With 90 days after the petition, a hearing is held at which the court is to appoint three disinterested residents of the county to appraise the value of the homestead. Civil Code §§ 1248-1249. The appraisers are to file their report within 15 days after their appointment, after which the court determines whether the land should be divided or sold or is exempt. Civil Code §§ 1251-1254.

property was not of the appropriate type, or the declarant was not yet married in the case of a marital homestead.²⁸⁷ Accordingly, the declared homestead system does not provide a reliable indication of the actual existence of an exemption.

Automatic dwelling exemption procedure. In recognition of the unfairness to the debtor of the declared homestead exemption procedure, a recently enacted statute requires the judgment creditor to seek an order for issuance of a writ of execution against a dwelling by applying to a court in the county where the dwelling is located.²⁸⁸ This procedure is applicable if the judgment debtor has not recorded an effective homestead declaration pertaining to the dwelling sought to be levied upon. The procedure benefits the judgment debtor by eliminating the default aspect of the declared homestead procedure and by providing for notice of the proceedings on issuance of the writ of execution.²⁸⁹ The judgment creditor is also protected because a judgment lien may be obtained on the dwelling in order to preserve the creditor's priority, even though the property may later be found to be exempt.²⁹⁰ This automatic dwelling exemption procedure is preferable to the declared homestead because it comes into play only when the exemption is needed, that is, when the judgment creditor seeks to apply the property to the satisfaction of the judgment. This procedure is defective, however,

287. See generally, 1 A. Bowman, Ogden's Revised California Real Property Law §§ 9.5, 9.6, 9.16 (1974).

288. Section 690.31. This provision applies to property that could be selected as a homestead pursuant to Civil Code Sections 1237-1304 and also to mobilehomes as defined in Health and Safety Code Section 18008 (designed to be used without a permanent foundation and in excess of 8 X 40 feet).

289. If the debtor does not appear at the hearing on issuance of the writ, the debtor may obtain a second hearing by filing at least five days before the scheduled date of sale a statement that the earlier failure to appear was due to mistake, inadvertence, surprise, or excusable neglect. Section 690.31(g), (h).

290. See Section 674(c).

because the judgment lien for the full amount of the judgment remains on the property when it is sold voluntarily, even if it has no excess value; and the purchase price will be reduced accordingly.²⁹¹

Mobilehome and vessel exemption procedure. Under existing law, the judgment debtor may claim an exemption for a housetrailer, mobilehome, houseboat, boat, or other waterborne vessel pursuant to the general procedure for claiming exemptions for personal property levied upon under execution.²⁹² The exemption claim must be made within 10 days after the property is levied upon,²⁹³ but may not be made if the debtor has a declared homestead or has obtained a determination of a dwelling house exemption.²⁹⁴

Exemption procedure under proposed law. The proposed law would unify these varying procedures and make them consistent to the extent practicable. The declared homestead procedure would be eliminated as being unduly rigid and cumbersome. Under the proposed law, the applicable procedure would depend upon whether the judgment debtor's interest in the dwelling is levied upon (1) as personal property (that is, whether it is a mobilehome not affixed to land or is a vessel) or is a leasehold estate with an unexpired term of less than two years at the time of levy or (2) as an interest in real property other than a leasehold estate with an unexpired term of less than two years at the time of levy. If the dwelling is in the first category, the general procedure for claiming exemptions for personal property would apply and the judgment debtor would be required to file a claim of exemption with the levying officer

291. See the discussion under "Judgment Liens" supra.

292. Section 690.3.

293. Section 690.50(a). See the discussion under "Procedure for Claiming Exemptions After Levy" infra.

294. Section 690.3(b).

not later than 10 days after notice of levy is mailed or delivered.²⁹⁵ If the dwelling is in the second category a procedure patterned after the existing automatic dwelling exemption would apply, subject to the following important differences:

(1) As under existing law, the proposed law would require the judgment creditor to initiate court proceedings to determine whether the property is exempt or whether it has an excess value. However, the existing procedure requiring the judgment creditor to apply to the court for a writ of execution in the county where the dwelling is located would be replaced by a procedure pursuant to which the judgment creditor may have the property levied upon under a writ issued out of the county in which the judgment was rendered and must then apply to the court in the county where the dwelling is located within 10 days after the levy for an order permitting sale of the property. The proposed law thus avoids the issuance of writs of execution for different purposes and out of different courts for the enforcement of the same judgment.

(2) Existing law does not provide any special limitations on the time when the order for issuance of a writ of execution against a dwelling may be sought. Under the proposed law, however, the judgment creditor must apply to the court for an order permitting sale of the dwelling within 10 days after the levy. This provision is intended to provide a resolution of the exemption question early in the 120-day period during which the sale of real property is delayed under the proposed law.²⁹⁶ Of course, the judgment creditor decides when the levy is to occur, subject to the general provisions on the time during which a judgment may be enforced.

295. This continues the aspect of existing law that requires the debtor to initiate exemption proceedings as to personal property. It eliminates the overlap between Sections 690.3 and 690.31 insofar as certain mobilehomes are concerned.

296. See the discussion under "Repeal of Statutory Redemption From Judicial Sales" supra.

(3) Under existing law, if the judgment creditor alleges that the dwelling has a value in excess of prior liens and encumbrances the exempt amount, the court is required to determine the existence of the excess as provided in the declared homestead procedures.²⁹⁷ The proposed law dispenses with these cumbersome appraisal procedures and makes clear that the court need only determine that the property has an excess value as a prerequisite to issuing the order permitting sale. If it is determined that there is no excess value, the order would be denied and the proceedings against the dwelling would end. If the court determines that there is an excess value, the proceedings would continue but the dwelling could eventually be sold only if the amount bid exceeded the total of liens and encumbrances required to be satisfied and the exempt amount.²⁹⁸

(4) Existing law precludes further applications by "a judgment creditor" within 12 months after denial of an order for a writ of execution unless a material change in circumstances is shown.²⁹⁹ The proposed law makes clear that this provision applies only to the judgment creditor who made the earlier application, since only that creditor should be bound by the proceedings.

297. Section 690.31(c). There is some doubt, however, whether this reference in Section 690.31(c) requires the appointment of appraisers pursuant to Civil Code Sections 1248-1249 and incorporates other procedural provisions of Civil Code Sections 1245-1254. See 3 H. Miller & M. Starr, Current Law of California Real Estate § 16:50, at 95 (rev. ed. 1977).

298. See Civil Code § 1255; see also the discussion under "Minimum Bids" supra.

299. Section 690.31(f). It has been stated that this provision may preclude subsequent applications by any creditor unless a material change in circumstances is shown. See 3 H. Miller & M. Starr, Current Law of California Real Estate § 16:50, at 98 n.14 (rev. ed. 1977).

Protection of exempt proceeds. Under existing law, if the dwelling is sold on execution, the amount of the proceeds representing the dwelling exemption is exempt for six months from the date the proceeds are received.³⁰⁰ The proposed law would continue this protection and would extend it to cover the proceeds of a voluntary sale, for six months from the date of sale, and the proceeds of insurance or other indemnification for the damage or destruction of the dwelling, for six months from the date of receipt of the proceeds.

Treatment of liens and encumbrances superior to judgment creditor's lien. Existing law requires the satisfaction of liens and encumbrances superior to the judgment creditor's lien when homestead property is sold on execution³⁰¹ and precludes the sale of the property unless the bid exceeds the amount of the homestead exemption plus such liens and encumbrances.³⁰² The proposed law does not require the satisfaction of liens and encumbrances superior to the judgment creditor's lien when real property is sold on execution. Superior lienors and encumbrancers do not lose their liens when the property is sold, as do subordinate lienors and encumbrancers; they may continue to look to the real property in the hands of the execution purchaser. Requiring satisfaction of superior liens and encumbrances also acts to impede competitive bidding at an execution sale because the potential purchaser, including the judgment creditor, is required to pay the amount of superior liens and encumbrances plus the amount of any homestead exemption in cash.³⁰³ If the statute does not require satisfaction of superior liens and encumbrances, only the exempt amount need be paid in cash. A lender with a mortgage or deed of trust having priority over the judgment creditor's lien would

300. Civil Code § 1257; Code Civ. Proc. § 690.31(k). Code of Civil Procedure Section 690.3 (mobilehomes and vessels) omits this provision.

301. See Civil Code §§ 1246, 1254-1256; Code Civ. Proc. § 690.31(j).

302. Civil Code § 1255.

303. See the discussion under "Manner of Payment" supra.

have the right to invoke a contractual clause accelerating the obligation upon levy or sale if it shows that exercise of the clause is reasonably necessary to protect against impairment of security or a risk of default by the execution purchaser.³⁰⁴

Treatment of voluntary encumbrances subordinate to judgment creditor's lien. The treatment of voluntary encumbrances subordinate to the judgment creditor's lien, including such preferred encumbrances as mechanic's and contractor's liens, is unclear under existing law. Existing law grants an exemption "over and above all liens and encumbrances"³⁰⁵ and provides for distribution of proceeds first to the "discharge of all liens and encumbrances"³⁰⁶ with no distinction being made between those that are superior to the judgment creditor's lien and those that are inferior. The judgment debtor should clearly not be able to defeat the collection efforts of the judgment creditor by further encumbering the property after the judgment creditor has obtained a judgment lien or execution lien on the property.³⁰⁷ Under the proposed

304. Cf. *Wellenkamp v. Bank of America*, 21 Cal.3d 943, ___ P.2d ___, 148 Cal Rptr. 379 (1978) (holding due on sale clauses in promissory notes or deeds of trust unenforceable when property sold outright unless institutional lender shows enforcement necessary to protect against impairment of security or risk of default).

305. Civil Code §§ 1246, 1254 (emphasis added).

306. Civil Code § 1256; Code Civ. Proc. § 690.31(j) (emphasis added).

307. The relevant sections were amended in 1945 to require satisfaction of all liens and encumbrances. Pre-1945 cases indicate that the lien of the judgment creditor had priority over subsequent liens and encumbrances. See *Marelli v. Keating*, 208 Cal. 528, 530, 282 P. 793, 794 (1929) (dictum); *Lean v. Givens*, 146 Cal. 739, 743, 81 P. 128, 129 (1905). In practice, the language requiring satisfaction of all liens and encumbrances appears to be ignored. See 3 H. Miller & M. Starr, *Current Law of California Real Estate* § 16:32, at 61 n.19 (rev. ed. 1977). There is no provision in existing law requiring the satisfaction of liens and encumbrances on non-homestead property, except where the judgment creditor has satisfied the claim of a conditional seller or chattel mortgagee, in which case the proceeds go first to compensate the subrogated creditor. See Section 689c.

law, voluntary liens and encumbrances subordinate to the judgment creditor's lien would be satisfied out of the proceeds representing the dwelling exemption.³⁰⁸ If such proceeds are insufficient, subordinate voluntary liens and encumbrances would be satisfied along with subordinate involuntary liens in their order or priority out of any surplus remaining after satisfaction of the judgment creditor's lien.

Application of dwelling exemption to spouses' joint tenancy property. Under existing law, the creditors of one spouse may not reach the spouse's interest in homestead property held in joint tenancy or tenancy in common with the other spouse unless the value of the debtor spouse's half interest in the homestead exceeds the total of encumbrances on the entire property and the entire marital homestead exemption.³⁰⁹ If the homestead is community property, however, it could be sold on execution if its entire value--not just the interest of the debtor spouse--exceeds encumbrances on the property and the homestead exemption.³¹⁰ Such

308. This provision is consistent with the principle that exemptions are ineffective against judgments for the purchase price of exempt property or against judgments foreclosing a mortgage or other lien on the property. See Section 690.52.

309. *Schoenfeld v. Norberg*, 11 Cal. App.3d 755, 762-67, 90 Cal. Rptr. 47, ___ (1970). The holding in *Schoenfeld* is the result of the application of two rules: (1) that a joint encumbrance burdens both cotenants' interests to the full amount and must be satisfied in an execution sale of either interest and (2) that either spouse may claim the entire exemption as to his or her interest. In *Schoenfeld*, the husband's interest in the homestead (half of approximately \$35,000) could not be sold because it did not exceed the total of the joint encumbrance (approximately \$9,000) and the applicable homestead exemption (\$12,500 for a head of a family).

310. In the *Schoenfeld* situation, the property could have been sold on execution if it had been community property (or if both spouses had been debtors) since the total value (approximately \$35,000) exceeded the total of the joint encumbrance (approximately \$9,000) and the homestead exemption (\$12,500).

varying results, injurious of the rights of some creditors and irrationally favoring some debtors, should not flow from the manner in which title to a dwelling happens to be held by married persons.³¹¹ The proposed law provides a partial solution by eliminating the rule that liens and encumbrances on the dwelling must be satisfied before it can be sold on execution,³¹² but the debtor spouse would still be able to apply the entire exemption to his or her interest in the property.³¹³

Collateral effects of homestead declaration. Besides shielding the home from general creditors, the declaration of a homestead under existing law prevents the conveyance or encumbrance of the homestead property without the acknowledged written consent of both spouses and creates a right of survivorship in certain cases that vests title to the homestead in the surviving spouse despite the will of the deceased spouse.³¹⁴ Under the proposed law, the declared homestead system would be repealed, thereby eliminating the traditional mechanism for achieving these results. [For staff proposals in this regard, see Memorandum 79-1.]

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311. It should also be noted that it is not necessarily easy to determine whether property is community property or is held in joint tenancy or as a tenancy in common. See, e.g., *Schoenfeld v. Norberg*, 11 Cal. App.3d 755, 760, 90 Cal. Rptr. 47, ___ (1970).
312. The purchaser at the execution sale of the debtor spouse's interest in the dwelling would be a tenant in common with the nondebtor spouse. The purchaser would in theory bid an amount exceeding the amount of the homestead exemption but not exceeding the value of the debtor spouse's half interest reduced by half of the encumbrance on the entire property. If an agreement could not be reached, the purchaser could then resort to a partition action and the entire property would be sold. The encumbrance would either be satisfied equally out of the equal shares of the nondebtor spouse and the execution purchaser or preserved on the property, with the nondebtor spouse and the execution purchaser sharing equally in the proceeds.
313. The problem of applying exemptions to married debtors' property is currently under study by a Commission consultant. See the discussion under "Exemption Rights of Married Debtors" infra.
314. See Civil Code §§ 1242, 1257, 1265.

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.³¹⁵ Under this provision, the courts have applied a station-in-life test resulting in the exemption of substantial amounts of personal property.³¹⁶

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.³¹⁷ In most cases, a debtor will have few if any items of personal property which will bring at least \$500 at an execution sale.³¹⁸ To prevent abuse by debtors investing in valuable

315. Section 690.1.

316. 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).

317. Section 8(a) of the Uniform Exemptions Act (1976) provides a similar exemption.

318. 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 superior to the judgment creditor's lien that are required to be satisfied. 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.³¹⁹ 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 \$500.³²⁰ 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.³²¹ 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.

319. 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.

320. Section 690.2. Section 690.4 also provides an exemption for a commercial motor vehicle used in the debtor's trade, calling, or profession.

321. 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.³²² The proposed law continues this exemption and includes building materials for which existing law provides a separate exemption in the amount of \$1,000.³²³ 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.³²⁴

Health Aids

Existing law provides an exemption for prosthetic and orthopedic appliances personally used by the debtor.³²⁵ This exemption is too narrow³²⁶ 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.³²⁷ 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.

322. Section 690.4.

323. Section 690.17.

324. 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.

325. Section 690.5.

326. "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.

327. 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 account³²⁸ and \$1,500 in a credit union account.³²⁹ 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.³³⁰ There is no specific exemption for savings or checking accounts in banks.³³¹

There is no justifiable reason for distinguishing between deposit accounts in different banking institutions.³³² Under the proposed law, a deposit account in any financial institution and money³³³ are exempt

328. Section 690.7.

329. Fin. Code § 15406.

330. 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.

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

332. 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).

333. 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.

in 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.³³⁴

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.³³⁵ Certain types of group life insurance are completely exempt.³³⁶ Death benefits from a public entity or a private retirement plan are also exempt.³³⁷ The life insurance exemption shields benefits from the reach of creditors of the insured and of the beneficiary.³³⁸ The exemption also protects a beneficiary under a credit insurance policy.³³⁹

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

334. See the Comment to proposed Section 707.570 infra.

335. 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).

336. 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).

337. Section 690.18.

338. *Holmes v. Marshall*, 145 Cal. 777, 779-82, 79 P.2d 534, ___ (1905).

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

policy to the extent it exceeds \$5,000.³⁴⁰ 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.³⁴¹ 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.³⁴² 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.³⁴³

340. 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.

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

342. 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).

343. 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.³⁴⁴ The exemption does not apply, however, against a judgment for child or spousal support.³⁴⁵ 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.³⁴⁶ Money of a fraternal organization used to pay sick benefits to members of the organization is exempt in the amount of \$500.³⁴⁷ Money paid by a fraternal benefit society is exempt before and after payment.³⁴⁸ Disability benefits under a retirement plan are exempt to the same extent as other retirement benefits.³⁴⁹

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.

344. 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.

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

346. 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.

347. Section 690.13.

348. Section 690.14.

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

Damages for Personal Injury

Existing law provides an exemption for insurance benefits for injury³⁵⁰ or death³⁵¹ 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.³⁵² 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.³⁵³

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.³⁵⁴ After payment, these benefits are exempt if a claim is made.³⁵⁵ 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.

350. Section 690.11 (disability and health insurance).

351. Sections 690.9 (life insurance), 690.10 (group life insurance).

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

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

354. 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).

355. See Sections 690.13, 690.175.

Aid

Existing law provides a complete exemption for aid given under a public assistance program³⁵⁶ and for aid from a fraternal benefit society.³⁵⁷ 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.³⁵⁸ 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.³⁵⁹ The proposed exemption provision incorporates a definition of "plot" which includes graves, crypts, vaults, and niches,³⁶⁰ 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 plot³⁶¹ from enforcement of a money judgment. Land which is held for the purpose of sale as cemetery plots would be nonexempt as under existing law.³⁶² The five-acre limitation on the

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

357. Section 690.14. This exemption must be claimed.

358. Section 690.8a.

359. Section 690.24.

360. See Health & Safety Code § 7022.

361. For provisions concerning family plots, see Health & Safety Code §§ 8650-8653.

362. 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.

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.³⁶³ The proposed law does not continue this exemption because it is obsolete, the practice of member ownership of pews having generally ceased.³⁶⁴

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.³⁶⁵ 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.³⁶⁶

363. Section 690.25.

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

365. 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(i) 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."

366. 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 property³⁶⁷ (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. Grodzins³⁶⁸ 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.³⁶⁹ 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 exemption of property does not arise until the creditor seeks to reach the property and apply it toward the satisfaction of a judgment.³⁷⁰

367. 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).

368. 139 Cal. App. 240, 34 P.2d 193 (1934).

369. 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.

370. 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.

Retroactive Application of Exemptions

Decisions of state and federal courts in California have consistently held that the grant of a new or increased exemption for property sought to be applied to the satisfaction of a contractual obligation incurred before the change in the exemption would violate the Contract Clause of Article I, Section 10, of the United States Constitution and of Article I, Section 9, of the California Constitution.³⁷¹ This rule is also applied in bankruptcy cases with the result that the debtor is restricted to the exemptions in effect at the time of the earliest of the scheduled debts.³⁷²

Decisions in this area during the last forty years have almost completely ignored the gradual erosion of the rigid application of the Contract Clause by the United States Supreme Court.³⁷³ California decisions concerning the retroactive application of statutory provisions in other areas of the law, such as community property and sovereign immunity, have engaged in a modern and more sophisticated analysis of the constitutional issues and found no constitutional impediment to retroactive application.³⁷⁴ Recent decisions in at least two other states

371. See In re Rauer's Collection Co., 87 Cal. App.2d 248, 253-54, 196 P.2d 803, ___ (1948) (increase in homestead exemption); Daylin Medical & Surgical Supply, Inc. v. Thomas, 69 Cal. App.3d Supp. 37, 41-42, 137 Cal. Rptr. 826, ___ (1977) (extension of time for claiming homestead exemption); Smith v. Hume, 29 Cal. App.2d Supp. 747, 749, 74 P.2d 566, ___ (1937) (new motor vehicle exemption); Medical Fin. Ass'n v. Wood, 20 Cal. App.2d Supp. 749, 751, 63 P.2d 1219, ___ (1936) (new motor vehicle exemption); In re Fox, 16 F. Supp. 320, ___ (S.D. Cal. 1936) (motor vehicle exemption); The Queen 93 F. 834, ___ (N.D. Cal. 1899) (seamen's earnings exemption).

372. See England v. Sanderson, 236 F.2d 641, 643 (9th Cir. 1956), rev'g In re Sanderson, 134 F. Supp. 484, 485 (N.D. Cal. 1955); In re Towers, 146 F. Supp. 882, 885-86, aff'd sub nom. Towers v. Curry, 247 F.2d 738, 739 (9th Cir. 1957).

373. See Home Building & Loan Ass'n v. Blaisdell, 290 U.S. 398, ___ (1934) (upholding the Minnesota Mortgage Moratorium Law); City of El Paso v. Simmons, 379 U.S. 497, ___ (1965).

374. See, e.g., Robertson v. Willis, 77 Cal. App.3d 358, 367-69, ___ Cal. Rptr. ___, ___ (1978) (community property); In re Marriage of Bouquet, 16 Cal.3d 583, ___ 546 P.2d 1371, ___, 128 Cal. Rptr. 427, ___ (1976) (community property); Flournoy v. State, 230 Cal. App.2d 520, 530-37, 41 Cal. Rptr. 190, ___ (1964) (sovereign immunity). These cases have applied a balancing approach, relying heavily on the analysis developed in Hochman, The Supreme Court and the Constitutionality of Retroactive Legislation, 73 Harv. L. Rev. 692 (1960). See also Reppy, Retroactivity of the 1975 California Community Property Reforms, 48 So. Cal. L. Rev. 977 (1975).

have recognized the erosion of the Contract Clause and upheld retroactive application of increased exemption to preexisting debts.³⁷⁵ Most commentators also urge the views set forth in these recent decisions.³⁷⁶

The proposed law would determine an exemption under the law in effect at the time the exemption is claimed.³⁷⁷ This principle furthers the policy of the exemption laws--to provide the debtor with sufficient assets to remain self supporting and to avoid making the debtor a charge upon the state. Increased or new exemptions are generally enacted to take account of inflation or to recognize the importance of new forms of assets. This intention is defeated if the fortuity of the time of contract or tort liability determines the applicable exemption. Tort creditors clearly do not have any reliance interest in exemptions in effect at the time liability arises. It is highly doubtful that general contract creditors have a significant vested interest in exemptions in effect when the contract is executed. The debtor's financial status at the time a contract is executed is certainly an important consideration to the creditor, but there is no guarantee that the assets listed in the statement will not be transferred or exhausted before a default occurs. The creditor may also be protected by insisting on security for the obligation.

375. See Wilkinson v. Carpenter, 277 Or. 557, ___, 561 P.2d 607, ___ (1977) (application of homestead exemption in effect at time of sale); Hooter v. Wilson, 273 So.2d 516, 521-22 (La. 1973) (wage garnishment exemption); Ouachita Nat'l Bank v. Rowan, 345 So.2d 1014, ___ (La. Ct. App. 1977) (homestead exemption); Natchitoches Collections, Inc. v. Gorum, 274 So.2d 449, ___ (La. Ct. App. 1973) (homestead exemption).

376. See, e.g., Countryman, For a New Exemption Policy in Bankruptcy, 14 Rutgers L. Rev. 678, 726-32 (1960); Reppy, Retroactivity of the 1975 California Community Property Reforms, 48 So. Cal. L. Rev. 977, 1120 n.470 (1975); Comment, The Contract Clause and the Constitutionality of Retroactive Application of Exemption Statutes: A Reconsideration, 9 Pac. L.J. 889 (1978); Note, Bankruptcy Exemptions: Critique and Suggestions, 68 Yale L.J. 1459, 1471-72 (1959); Comment, Contract Clause Prevents Exemption Change, 1 Stan. L. Rev. 350 (1949). Similarly, Section 23(b) of the Uniform Exemptions Act (1976) would apply exemptions retroactively. See also In re Towers, 146 F. Supp. 882, 885 n.2 (N.D. Cal. 1956).

377. The proposed law would also provide that contracts are made in recognition of the power of the state to alter or make additions to exemptions. See Wilkinson v. Carpenter, 277 Or. 557, ___, 561 P.2d 607, 610-11 (1977); Hooter v. Wilson 273, So.2d 516, 521-22 (La. 1973).

The incremental increase of the amount of exemptions is necessary to take account of inflation.³⁷⁸ Under current economic conditions, inflation is much more a certainty than the expectation that the debtor will have nonexempt assets that were listed in a financial statement. To the extent that exemptions are increased to take account of inflation, creditors should not be heard to complain that vested rights are being abrogated so long as the remedies for enforcement of judgments remain in force and debtors as a class may not protect any significantly different proportion of their assets.

Exception for Judgments for Spousal or Child Support

Under existing law, the standard exemptions of earnings³⁷⁹ and retirement benefits³⁸⁰ 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.³⁸¹ 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.³⁸²

378. See the discussion under "Automatic Adjustment of Exempt Dollar Amounts" infra.

379. 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).

380. Section 690.18.

381. 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.

382. This codifies the holding in *Rankins v. Rankins*, 52 Cal. App.2d 231, 234-35, 126 P.2d 125, ___ (1942).

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 of creditors generally.³⁸³ This exception to the standard exemptions is not continued in the proposed law because it is constitutionally suspect under the equal protection clause.³⁸⁴

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. Thus, if the judgment debtor is a joint tenant, only the interest of the judgment debtor may be reached.³⁸⁵ However, if one spouse is a judgment debtor, the community property, in which the spouses have equal interests,³⁸⁶ is generally liable for the satisfaction of the judgment³⁸⁷ and, if the debt was

383. 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.

384. 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).

385. 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).

386. Civil Code § 5105.

387. 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,

incurred for necessities of life after marriage, the separate property of the nondebtor spouse may also be reached.³⁸⁸

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.³⁸⁹ 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.³⁹⁰

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.³⁹¹ It is clear that, if only one spouse is the debtor, the spouses may reduce the amount of property available to satisfy the

Cases and Materials on California Community Property 396-97, 401 (3d ed. 1977); Comment, The Implications of the New Community Property Laws for Creditors' Remedies and Bankruptcy, 63 Calif. L. Rev. 1610, 1628-34 (1975).

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

389. 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).

390. 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.

391. 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.³⁹² 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 \$40,000 in value, whereas any other person under 65 years of age may select a homestead of only \$25,000 in value.³⁹³

(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."³⁹⁴ 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.

392. 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).

393. 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.

394. Section 690.1.

(3) The exemption of earnings from garnishment depends in part on amounts withheld pursuant to the tax withholding laws³⁹⁵ 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.³⁹⁶ 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."³⁹⁷ 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.³⁹⁸

(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.³⁹⁹

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

395. 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).

396. 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).

397. Section 690.6(b).

398. Section 690.9(b).

399. Section 690.30(a).

the property be separate or community."⁴⁰⁰ 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,⁴⁰¹ apparently without regard to the nature of title.⁴⁰²

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.⁴⁰³ The proposed law contains a general provision which

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

401. Section 690.2(d).

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

403. 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.⁴⁰⁴ Consistent with the general burden on the debtor to claim exemptions,⁴⁰⁵ the debtor would have the burden of tracing the exempt amount. Tracing would be accomplished by the lowest intermediate balance principle⁴⁰⁶ unless the judgment debtor could show that some other method would be more appropriate under the circumstances of the case.

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.⁴⁰⁷ For example, the exemption for an account in a savings and loan association⁴⁰⁸ was set at \$1,000 in 1901.⁴⁰⁹ The dollar was worth approximately seven times as much in 1901 as it is now,⁴¹⁰ yet the amount of the exemption remains unchanged. The credit union account exemption⁴¹¹ was

404. 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.

405. See Section 690.50(i).

406. See *Republic Supply Co. v. Richfield Oil Co.*, 79 F.2d 375, 379 (9th Cir. 1935) (determination of lowest intermediate balance).

407. 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).

408. Section 690.7.

409. 1901 Cal. Stats. ch. 28, § 1 (then building and loan associations).

410. 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].

411. Fin. Code § 15406.

raised to \$1,500 in 1939⁴¹² when the dollar was worth approximately four times as much.⁴¹³ The life insurance exemption⁴¹⁴ was set at the amount of benefits represented by a \$500 annual premium in 1868⁴¹⁵ when the dollar was worth approximately six times what it is today.⁴¹⁶ 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 1935.⁴¹⁷ 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.⁴¹⁸

The proposed law provides for the automatic adjustment of the dollar amount of exemptions based upon changes in the consumer price index.⁴¹⁹ The change would be made at two-year intervals if the increase or decrease in the consumer price index over that time was at 412. 1939 Cal. Stats. ch. 965, § 2.

413. See Historical Statistics, supra note 410, Table E-135, at 210; Statistical Abstract, supra note 410, Table No. 708, at 439.

414. Section 690.9.

415. 1868 Cal. Stats. ch. 404, § 1.

416. Historical Statistics, supra note 410, Table E-183, at 212; Statistical Abstract, supra note 410, Table No. 708, at 439.

417. 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.

418. Statistical Abstract, supra note 410, Table No. 709, at 440.

419. 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 Gov't 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(i) (aged, blind, and disabled payments).

least 10 percent of the index on the operative date of the proposed law.⁴²⁰ 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.⁴²¹ 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.⁴²² 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

420. For examples of the operation of this section, see the Comment to Section 707.200 in the Proposed Legislation infra.

421. 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).

422. 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.⁴²³ Since the debtor may not receive notice of levy for some time after levy has occurred,⁴²⁴ 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.⁴²⁵ 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.

423. For minor and technical revisions, see the Comments to the sections in the Proposed Legislation infra and to the repealed sections in the Appendix infra.

424. 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).

425. 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.⁴²⁶

THIRD-PARTY CLAIMS AND RELATED PROCEDURES

Existing Law

Third-Party Claims Procedure

Sections 689 and 689b provide summary special proceedings permitting a person other than the judgment creditor or the judgment debtor to claim certain interests in personal property⁴²⁷ that has been levied

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

427. The usual remedy where real property is wrongfully sold on execution is an action to quiet title. See *First Nat'l Bank v. Kinslow*, 8 Cal.2d 339, 345, 65 P.2d 796, 799 (1937). The existing third-party claims procedure derives from Section 218 of the Practice Act, enacted in 1851, under which the sheriff could summon a jury of six persons in the county to determine the validity of a third-party claim. The purpose of this procedure was to aid the sheriff, although he remained liable for a wrongful levy or for improperly releasing the property despite the determination of the jury which was held not to be conclusive against the parties. See *Perkins v. Thornburgh*, 10 Cal. 189 (1858); see generally 2 A. Freeman, *Law of Executions* § 276 (3d ed. 1900); G. Gilbert, *The Law of Executions* § 1 (1763); Curtis, *A Legal Headache*, 9 Cal. St. B.J. 167 (1934). In 1891, the statute was amended to substitute a provision for an undertaking in favor of the sheriff for the provision for a sheriff's jury. 1891 Cal. Stats. ch. 32, § 1. In light of this history, it has frequently been stated by the courts that a primary purpose of the procedure is to protect the levying officer from liability for taking, holding, and selling the property. See, e.g., *Sunset Realty Co. v. Dadmun*, 34 Cal. App.2d Supp. 733, 736, 88 P.2d 947, 949 (1939). Section 689 has provided since 1929 that the undertaking is in favor of the third person and, since 1933, that the levying officer is not liable if he complies therewith. 1929 Cal. Stats. ch. 341, § 1; 1933 Cal. Stats. ch. 744, § 135.

upon.⁴²⁸ Section 689 applies where the third person claims title and the right to possession of the property. Section 689b applies where the third person claims a security interest based on a conditional sale or chattel mortgage. In general, these procedures are parallel, but there are some significant differences.

Under both procedures, once property has been levied upon but before it has been sold or otherwise disposed of,⁴²⁹ the third person may file a claim with the levying officer who then serves a copy of the claim on the judgment creditor by certified or registered mail. If the judgment creditor does not respond within five days after receipt⁴³⁰ of the claim and the demand for an undertaking, the property is released from the levy.

If the third person claims title and right to possession under Section 689, the judgment creditor may maintain the levy by posting with

428. The third-party claims procedure also applies to the determination of adverse claims in attachment (see Section 488.090) and claim and delivery (see Section 514.050). In at least one case, Section 689 was applied in an unspecified manner to a dispute between an innkeeper asserting a lien on a violin and the owner even though there was no levy and no levying officer was involved. See Rudolph Wurlitzer Co. v. Farb, 120 Cal. App. Supp. 773, 774, 6 P.2d 358, 358 (1932).

429. Sections 689 and 689b refer only to disposition by sale under the writ but, inasmuch as these provisions specifically apply to garnishment of intangibles and to claim and delivery proceedings (see Section 514.050), they must be read broadly to include collection and payment and to delivery of possession to the judgment creditor. Cf. National Bank v. Finn, 81 Cal. App. 317, 337, 253 P. 757, 766 (1927) (third-party claim must be made before it has become impossible for sheriff to deliver property to claimant or to obtain undertaking from creditor).

430. Section 689 requires an undertaking "within five days after written demand . . . made by registered or certified mail," whereas Section 689b requires the undertaking or deposit "[w]ithin five days after receipt by the plaintiff or his attorney of such officer's demand." It appears that the practice is to allow five days after the date of receipt of the demand as shown by the return receipt. See Marshal's Manual of Procedure §§ 533.2, 542.2 (n.d.).

the levying officer an undertaking in twice the value of the property⁴³¹ which indemnifies the third person for any loss caused by the levy.⁴³²

Under Section 689b, a third person's claim under a conditional sale or chattel mortgage is required to include a demand for payment of all sums due or to accrue under the agreement, plus interest to date of tender. In order to maintain the levy, the judgment creditor must either deposit with the levying officer the amount demanded or file with the levying officer an undertaking and a verified statement contesting the validity of the third person's contract or mortgage. Whichever course is chosen, the property is sold free and clear of any claim or lien of the third person.⁴³³

The judgment creditor can initiate this procedure by serving a demand on the secured party that a claim be made and, if the secured party does not make a claim within 30 days after being served with the demand, the property may be sold free of any claim or lien of the third person.⁴³⁴

431. The procedures for objecting to the sufficiency of sureties and for the justification of sureties in attachment proceedings are incorporated by the third paragraph of Section 689 and the second paragraph of subdivision (9) of Section 689b. The fourth and fifth paragraphs of Section 689 also provide an appraisal procedure for determining an objection to the amount of an undertaking to indemnify an unsecured third-party claimant. Subdivision (9) of Section 689b gives the levying officer discretion to determine the value of the property for the purpose of setting the amount of the undertaking required to maintain the levy against a claim by a secured party.

432. Under the second paragraph of Section 689, there is no liability on the undertaking if the property is required by law to be registered or recorded in the name of the owner and, at the time of levy, the judgment debtor was the registered or recorded owner, so long as the judgment creditor relied in good faith on the registered or recorded ownership in making the levy.

433. Sections 689b(9), 689c.

434. Section 689b(8).

Within 15 days after the third-party claim is filed with the levying officer, either the judgment creditor or the third person may petition for a hearing to determine the validity of the claim.⁴³⁵ This may be done whether or not an undertaking is filed in response to a claim under Section 689, or an undertaking is filed or a deposit is made under Section 689b. The court may order the sale of perishable property and may stay the sale, transfer, or other disposition of the property while the proceedings are pending. The hearing is required to be held within 20 days from the filing of the petition unless a continuance is granted. Ten days' notice must be given the levying officer and the judgment creditor or third person, whichever one is not the petitioner. The judgment debtor is not required to be given notice.⁴³⁶ The third person has the burden of proof at the hearing. At the conclusion of the hearing, the court gives judgment determining the validity of the claim, which is conclusive between the third person and the judgment creditor.

Undertaking to Release Property

Where the property has been levied upon under a writ of execution issued to enforce a money judgment, a third person claiming ownership may obtain the release of the property by posting an undertaking in twice the value of the property (but not more than twice the amount for which execution was levied) on condition that, if the property is determined to belong to the judgment debtor, the third person will pay a sum equal to the estimated value of the property subjected to levy.⁴³⁷ This procedure may be used whether or not the third person has filed a third-party claim and may accomplish the release of the property even though the judgment creditor has given an undertaking in response to a claim.⁴³⁸

435. Sections 689, para. 8, 689b(10).

436. See Rubin v. Barasch, 275 Cal. App.2d 835, 837, 80 Cal. Rptr. 337, ___ (1969).

437. See Sections 689, para. 7, 710b to 713-1/2.

438. See Sections 689, para. 7, 710b; Mazuran v. Finn, 53 Cal. App. 656, 657-58, 200 P. 769, 770 (1921).

Proposed Revisions

The Commission has concluded that the third-party claims procedures have operated in a generally satisfactory manner, but that several modifications should be made to clarify the existing procedures and to promote their more efficient operation.

Nature of Interests Which May Be Claimed

Any third person who claims an interest in personal property levied upon which is superior to the judgment creditor's lien should be permitted to assert that interest through the third-party claims procedure. Existing law is limited to persons claiming title and right to possession or claiming under a conditional sales agreement or chattel mortgage.

Scope of Summary Procedure

A third person may resort to the procedures provided by Sections 689 and 689b when personal property is levied upon under a writ of attachment,⁴³⁹ a writ of execution,⁴⁴⁰ a prejudgment writ of possession issued in claim and delivery proceedings,⁴⁴¹ or a writ issued to enforce a judgment for sale of property.⁴⁴² Under the proposed law, this summary remedy would also be available where property is levied upon under a postjudgment writ of possession.

A third person claiming title to property levied upon to collect certain state taxes may take advantage of the summary procedure provided by Section 689.⁴⁴³ There is no reason to permit the summary determina-

439. Section 488.090.

440. Sections 689, 689b.

441. Section 514.050.

442. See *Lawler v. Solus*, 101 Cal. App.2d 816, 818, 226 P.2d 348, ___ (1951) (judgment foreclosing a chattel mortgage).

443. Section 689d applies to notices of levy and warrants and notices of levy issued pursuant to Unemployment Insurance Code Sections 1755 and 1785 and Revenue and Taxation Code Sections 6776, 7881, 9001, 10111, 18906, 26191, 30341, and 32365. Revenue and Taxation Code Section 6799 also provides for the determination of third-party claims of an interest in or lien on property seized for the purpose of sale to collect the sales and use tax, but does not incorporate Section 689 or 689b.

tion of claims of title but not of the claims of secured parties. Accordingly, the proposed law applies the third-party claim procedure uniformly to procedures for the collection of any state or local tax. Where the tax is collected by means of a levy by a levying officer, the normal procedure would be applicable except that, since public entities are not required to file undertakings,⁴⁴⁴ the proposed law requires the agency collecting the tax to file a notice with the levying officer in order to maintain the lien on the property. Where the property is reached by a notice of levy served by agency personnel⁴⁴⁵ or through seizure provisions,⁴⁴⁶ the agency itself will perform the duties of the levying officer.⁴⁴⁷

Notice of Hearing Given to Judgment Debtor

The judgment debtor should be given notice of a hearing on the third-party claim since the judgment debtor is vitally interested in the disposition of the property. Participation of the judgment debtor will guard against an incorrect determination of the respective interests of the parties and a misallocation of the property or its proceeds.⁴⁴⁸

Burden of Proof

Under existing law, the burden of proof in the hearing on the third-party claim is on the third person.⁴⁴⁹ The proposed law continues this provision with regard to claims of title, right to possession, or any other interest that is not a security interest, but places the burden of proof on the judgment creditor in a case where the third person claims a security interest. This change is made in recognition

444. Section 1058.

445. See, e.g., Unemp. Ins. Code § 1755.

446. See, e.g., Rev. & Tax. Code § 6796.

447. This is consistent with the procedure developed under Unemployment Insurance Code Section 1755.

448. See, e.g., Rubin v. Barasch, 275 Cal. App.2d 835, 80 Cal. Rptr. 337 (1969).

449. See Section 689b(10), incorporating the hearing provisions of Section 689.

of the fact that security interests are afforded a general presumption of validity.⁴⁵⁰

Additional Changes

For the sake of uniformity, the general provisions pertaining to objections to undertakings and to the release of property should be incorporated by the third-party claims procedure.⁴⁵¹ Notices mailed by the levying officer should be sent by first-class rather than registered or certified mail, because first-class mail is more likely to be received expeditiously.

ENFORCEMENT OF NONMONEY JUDGMENTS

Introduction

Existing law contains a few scattered references to enforcement of judgments other than money judgments--i.e., judgments for the sale or possession of property or requiring the performance of some other act. The extent to which the provisions concerning enforcement of money judgments govern the enforcement of these other types of judgments is not clear. The proposed law is designed to make clear which aspects of the law relating to the enforcement of money judgments apply to other judgments and to make enforcement procedures uniform to the extent practicable.

Another source of confusion under existing statutory and case law derives from the variety of names given the writs or other process used in the course of enforcing nonmoney judgments. The writ used to enforce a judgment for possession of personal property has been termed a writ of

450. See Com. Code § 9201.

451. See Sections 489.040-489.100, 1056 (general provisions relating to undertakings). The provision in Section 689.5 to the effect that, if the judgment debtor cannot be found, the property should be released to the third-party claimant should be retained as an exception to the general rules pertaining to release. Ordinarily property is released to the person from whom it was taken. Additional technical revisions are explained in the Comments to the relevant sections in the Proposed Legislation infra and in the Appendix infra.

possession⁴⁵² or a writ of execution.⁴⁵³ The writ used to enforce a judgment for possession of real property has been termed a writ of possession,⁴⁵⁴ a writ of restitution,⁴⁵⁵ a writ of execution,⁴⁵⁶ a writ of assistance,⁴⁵⁷ or a writ of enforcement.⁴⁵⁸ The process used to enforce a judgment for the sale of property has been termed a writ of enforcement⁴⁵⁹ or an order of sale.⁴⁶⁰ Under the proposed law, money judgments would be enforceable by a writ of execution, judgments for the possession of property would be enforceable by a writ of possession, and judgments for the sale of property would be enforceable by a writ of sale.

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452. See E. Jackson, California Debt Collection Practice § 17.39 (Cal. Cont. Ed. Bar 1968). It may also be called a writ for delivery of the possession of property. Id., at 391.
453. See Sections 682, para. 4, 684. The form approved by the Judicial Council is entitled "writ of execution" and boxes are to be checked to indicate that it applies to possession of personal property.
454. See Section 1166a.
455. See Section 1174(d).
456. See Sections 682, para. 4, 684. The form approved by the Judicial Council is entitled "writ of execution" and boxes are to be checked to indicate that it authorizes taking possession of real property.
457. See Rafferty v. Kirkpatrick, 29 Cal. App.2d 503, 505, 85 P.2d 147, ___ (1938). The writ of assistance has been used to put the purchaser at a foreclosure sale of real property into possession where the defendant refuses to surrender possession. The writ of assistance derives from equity practice. See I A. Freeman, Law of Executions § 37d, at 155 (3d ed. 1900); Dinkelspiel, Enforcement of Judgments, in California Remedies for Unsecured Creditors § 16, at 140 (Cal. Cont. Ed. Bar 1957).
458. See Hamilton v. Waters, 93 Cal. App.2d 866, 868, 210 P.2d 67, ___ (1949).
459. See Laubisch v. Roberdo, 43 Cal.2d 702, 712, 277 P.2d 9, ___ (1954). Section 684 refers to a writ used to enforce a judgment for sale as a "writ reciting such judgment."
460. Id. In Knapp v. Rose, 32 Cal.2d 530, 534, 197 P.2d 7, ___ (1948), the court said that it was immaterial whether the writ used to sell real property was entitled a writ of enforcement, writ of execution, or order of sale if it was sufficient in substance. See also Gov't Code § 26829 (fee for issuing order of sale).

Uniform Procedures

Under the proposed law, provisions concerning the time within which judgments may be enforced, stays of enforcement, and other procedural provisions⁴⁶¹ would apply to enforcement of judgments for sale and for possession, as well as to money judgments. Technical requirements concerning issuance, leviability, and return would be the same for writs of execution, possession, and sale.⁴⁶² The proposed law would continue the substance of existing law except as noted below.

Judgments for Possession of Personal Property

Upon entry of a judgment for possession of personal property, such as in an action for specific recovery of personal property,⁴⁶³ the judgment creditor is entitled to issuance of a writ of possession of personal property. The levying officer, pursuant to the judgment creditor's instructions, attempts to take possession of the property, if it is not already in the levying officer's custody under a prejudgment writ of possession.⁴⁶⁴ The proposed law incorporates the manner of levy

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461. See the discussion under "General Provisions" supra.
462. See the discussion under "Issuance and Return of Writ of Execution" supra. Under existing law, it has been held that a writ of restitution remains in force beyond the 60-day period provided by Section 683 insofar as the writ directed the restitution of the premises although it had expired insofar as it directed the levying officer to levy on property to satisfy damages awarded in the judgment. See Magnaud v. Traeger, 66 Cal. App. 526, 530-31, 226 P. 990, ___ (1924).
463. See generally 3 B. Witkin, California Procedure Pleading §§ 554-63, at 2194-203 (2d ed. 1971). The action for specific recovery is frequently referred to as a claim and delivery action, and a distinction is sometimes made between replevin, where the original taking was wrongful, and detinue, where the original taking was lawful. Id. § 554, at 2195-96.
464. See Section 684.1. Possession may be obtained prior to judgment by way of the provisional remedy of claim and delivery. See Sections 511.010-516.050. Under the proposed law, if the property is already in the custody of the levying officer, delivery of the post-judgment writ of possession constitutes a paper levy. See the discussion under "Paper Levy" supra.

under a writ of execution (except that a keeper would not be required to be installed for two days in the case of a levy upon a going business, as under execution).⁴⁶⁵ This would permit the levying officer to serve a writ of possession on a third person who is neither a party to the action nor an agent of the judgment debtor, whereas under existing law property may not be sought in the hands of a third person, making it necessary to join the third person in the action or sue the third person afresh.⁴⁶⁶ If the third person resists the levy, the judgment creditor would be able to bring an action against the third person for the recovery of the property. The third person could comply with the levy and rely upon the third-party claims procedure for a determination of title as between the third person and the judgment creditor.⁴⁶⁷

If property cannot be taken into custody, whether it is lost, destroyed, hidden, or in the hands of a third person, the judgment creditor is entitled to satisfy the judgment out of the property of the judgment debtor that is not exempt from execution for the value of the property as determined in the judgment for possession.⁴⁶⁸ For this purpose, the writ of possession is treated as a writ of execution. Whether or not the property awarded the judgment creditor can be found, the writ of possession is treated as a writ of execution for the purpose of satisfying costs and damages awarded in the judgment and costs and

465. See the discussion under "Levy Under Writs of Execution" supra.

466. See Section 684.1 (incorporating Section 514.010); E. Jackson, California Debt Collection Practice §§ 10.15-10.18 (Cal. Cont. Ed. Bar 1968).

467. See the discussion under "Third-Party Claims" supra.

468. See Sections 627, 667, 682, para. 4, 682.2. It is not necessary to determine the value of the property if it has already been taken into the custody of the levying officer pursuant to claim and delivery proceedings. See Section 627; Webster v. Mountain Monarch Gold Mining Co., 6 Cal. App.2d 450, 454-55, 44 P.2d 646, _____ (1935).

interest accruing thereafter.⁴⁶⁹ The proposed law also makes clear that the judgment creditor is entitled to resort to all of the remedies available for the enforcement of a money judgment, such as an examination proceeding, a creditor's bill, or an assignment order,⁴⁷⁰ for the purpose of collecting costs, interest, damages, and the value of the property if possession cannot be obtained.

The proposed law would permit the judgment creditor to seek an order, enforceable by the power to punish for contempt, requiring the judgment debtor to turn the property over to the judgment creditor directly. This order is the same as that available in claim and delivery proceedings prior to judgment.⁴⁷¹

The proposed law would also permit the appointment of a receiver to enforce the judgment in an appropriate case.⁴⁷²

Judgments for Possession of Real Property

Upon entry of a judgment for possession of real property, such as in an action for unlawful detainer, forceable entry, ejectment, or quiet title,⁴⁷³ the judgment creditor is entitled to a writ of possession of real property. Under the proposed law, the levying officer would execute the writ of possession of real property in the manner provided by existing law for enforcement in unlawful detainer cases.⁴⁷⁴

469. See Section 682, para. 4.

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

471. See Section 512.070.

472. Existing law does not specifically authorize appointment of a receiver to enforce a judgment for possession of personal property although Section 564, para. 3, authorizes appointment of a receiver "[a]fter judgment, to carry the judgment into effect." See the discussion under "Receivers" supra.

473. See generally 3 B. Witkin, California Procedure Pleading §§ 506-16, at 2164-70 (unlawful detainer), §§ 517-21, at 2170-72 (forceable entry), §§ 522-34, at 2173-83 (ejectment and quiet title) (2d ed. 1971).

474. See Section 1174(c)-(d). The proposed law also incorporates the procedure for disposition of personal property remaining on the premises provided by Section 1174(e)-(m).

Like the writ of possession of personal property, the writ of possession of real property may be treated as a writ of execution for the purpose of levying on other property of the judgment debtor in order to satisfy costs, interest, and damages awarded in the judgment and costs and interest accruing thereafter.⁴⁷⁵ The proposed law would make clear that the judgment creditor is entitled to resort to other remedies for collection of a money judgment in order to satisfy any monetary liability.⁴⁷⁶

The proposed law would also permit the appointment of a receiver to enforce a judgment for possession of real property in an appropriate case.⁴⁷⁷

Judgments for Sale of Real or Personal Property

Upon entry of a judgment for the sale of real or personal property, such as in an action to foreclose a mortgage or other lien or to enforce a security interest,⁴⁷⁸ the judgment creditor is entitled to issuance of a writ of sale. The proposed law would require a levy in the same manner as under execution, whereas existing law permits sale under an order of sale issued by the court and does not require an actual levy.⁴⁷⁹

475. See Section 682, para. 4, 682.2.

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

477. Existing law does not specifically authorize appointment of a receiver to enforce a judgment for possession of real property although Section 564, para. 3, authorizes appointment of a receiver "[a]fter judgment, to carry the judgment into effect." See the discussion under "Receivers" supra.

478. See generally 3 B. Witkin, California Procedure Pleading §§ 539-42, at 2185-88 (2d ed. 1971); Code Civ. Proc. § 726 (mortgage foreclosure); Com. Code § 9501(1) (foreclosure of security interest).

479. See, e.g., Knapp v. Rose, 32 Cal.2d 530, ___, 197 P.2d 7, ___ (1948); Southern Cal. Lumber Co. v. Ocean Beach Hotel Co., 94 Cal. 217, 222-24, 26 P. 627, ___ (1892).

The proposed law provides that the property is to be sold in the same manner as under execution,⁴⁸⁰ but the proceeds would be distributed in the manner provided in the judgment.⁴⁸¹

The writ of sale could be treated as a writ of execution for the purpose of collecting costs, interest, and damages, but the judgment creditor may be limited by the judgment to resort to proceeds of the property if it is designated as security for such amounts.⁴⁸²

The proposed law would permit the judgment creditor to obtain an order, enforceable by the power to punish for contempt, requiring the judgment debtor to transfer to the levying officer property to be sold and documentary evidence of title to the property. This order is similar to the turnover order which would be available under the proposed law for the enforcement of a money judgment.

The proposed law would also permit the appointment of a receiver to enforce a judgment for sale of real or personal property.⁴⁸³

Other Types of Judgments

Under the proposed law, as under existing law, other types of judgments requiring a person to perform some act other than the payment of money, the delivery of possession of property, or the sale of property, or requiring a person to refrain from performing an act,⁴⁸⁴ are

480. This continues a principle of existing law. See *Johnson v. Tyrell*, 77 Cal. App. 179, 182, 246 P. 140, ___ (1926) (foreclosure sale of real property); *Podrat v. Oberndorff*, 207 Cal. 457, 459-60, 278 P. 1035, ___ (1929) (foreclosure sale of personal property). It should be noted that the proposed law would revise the sale provisions, as discussed under "Sale Procedure" supra.

481. This continues existing law. See Sections 684, 726, 727.

482. This continues existing law. See Section 726.

483. Existing law does not specifically authorize appointment of a receiver to enforce a judgment for sale of property although Section 564, para. 3, authorizes appointment of a receiver "[a]fter judgment, to carry the judgment into effect." See the discussion under "Receivers" supra. A receiver may be appointed at the commencement of a foreclosure action and continued in possession until sale of the property. See *Boyd v. Benneyan*, 204 Cal. 23, 25, 266 P. 278, ___ (1928).

484. Many types of judgments are self-executing and do not require enforcement, such as, for example, declaratory judgments, marital dissolutions, and corporate dissolutions.

enforceable by the power to punish for contempt.⁴⁸⁵ The provision of existing law requiring service of a certified copy of the judgment on the person against whom the judgment is rendered⁴⁸⁶ is not continued in the proposed law. A court may exercise its contempt power when the person against whom the judgment was rendered has notice or knowledge of the judgment and has the ability to comply but wilfully refuses to do so.⁴⁸⁷

485. See Sections 1209-1222.

486. See Section 684.

487. See Phillips v. Superior Court, 22 Cal.2d 256, 257-58, 137 P.2d 838, ___ (1943) (person must have notice, actual knowledge, or have been present in court); Mossman v. Superior Court, 22 Cal. App.3d 706, 711-12, 99 Cal. Rptr. 638, ___ (1972) (knowledge of attorney imputable to contemnor); In re Moulton, 100 Cal. App.2d 559, 562, 224 P.2d 76, ___ (1950) (inability to comply).

TITLE 9. ENFORCEMENT OF JUDGMENTS LAW

CHAPTER 1. SHORT TITLE; DEFINITIONS

§ 701.110. Short title

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

10/358

§ 701.120. Application of definitions

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

Comment. Section 701.120 is a standard provision found in the definitional portion of several California codes and laws. E.g., Code Civ. Proc. §§ 481.010, 1235.110; Evid. Code § 100; Veh. Code § 100. The definitions provided in this chapter prevail over definitions of the same terms provided by Section 17.

27855

§ 701.130. Chattel paper

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

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

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

Since the conditional sales contract is a security agreement relating to specific equipment the conditional sales contract is now the type of collateral called "chattel paper". In this transaction between the dealer and his bank, the bank is the "secured party", the dealer is the "debtor", and the farmer is the "account debtor".

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

See also Sections 703.190 (collection of payments under chattel paper), 703.400 (manner of levy on chattel paper), 703.610 (sale of chattel paper), 705.610 (assignment of right to payment under chattel paper).

31502

§ 701.140. Costs

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

Comment. Section 701.140 defines costs to include all costs of collection. As used in this title, the term may in some cases be limited, such as in Section 702.620 (costs of levying officer).

31520

§ 701.150. Court

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

Comment. Section 701.150, which defines "court" to mean the court where the judgment was entered, may in some cases be inapplicable. See, e.g., Sections 703.460 (court where estate is administered), 705.150 (court of similar jurisdiction in another county) 707.850 (court in county where dwelling is located). See also Section 701.120 (application of definitions).

27857

§ 701.160. Deposit account

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

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

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

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

(d) For the purposes of the exemption provided by Section 707.580, an inmate's trust account or similar account in which are deposited the funds of a person confined in any prison or facility under the jurisdiction of the Department of Corrections or the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility.

Comment. Subdivisions (a), (b), and (c) of Section 701.160 are based on Section 481.080 (attachment). Subdivision (d) is derived from former Section 690.21 and has the effect of treating an inmate's trust account in the same manner as deposit accounts and money for purposes of the exemption provided by Section 707.560. See also Sections 703.430 (manner of levy on deposit account), 703.440 (manner of levy on deposit account not standing solely in name of judgment debtor).

27858

§ 701.170. Document of title

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

Comment. Section 701.170 is new. A negotiable document is levied upon in the same manner as a negotiable instrument (Section 703.410), and goods subject to a negotiable document may not be levied upon. See Section 703.330(c). On the other hand, goods subject to a nonnegotiable document may be levied upon pursuant to Section 703.330.

38025

§ 701.180. Financial institution

701.180. "Financial institution" means a bank, trust company, savings and loan association, credit union, or other similar institution and, for the purpose of Sections 703.430 and 703.440, includes a corporation engaged in a safe deposit business.

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

38886

§ 701.190. Judgment

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

Comment. Section 701.190 is new. See the Comment to Section 702.110.

10/907

§ 701.200. Judgment creditor

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

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

10/908

§ 701.210. Judgment debtor

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

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

10/913

§ 701.220. Levying officer

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

Comment. Section 701.220 is new. In certain situations, other persons will be authorized to perform the duties of levying officers. See, e.g., Civil Code § 726 (commissioner or elisor selling property pursuant to a judgment foreclosing a mortgage); Code Civ. Proc. §§ 262.8-262.10 (elisor to perform certain duties when sheriff and coroner are parties to action), 703.260 (garnishment by registered process server); Gov't Code § 27469 (coroner to discharge duties of sheriff where sheriff is party to action or proceeding).

27860

§ 701.230. Motor vehicle

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

Comment. Section 701.230 is new. Section 415 of the Vehicle Code provides: "A 'motor vehicle' is vehicle which is self-propelled." This

definition includes not only cars, trucks, and buses but all sorts of heavy equipment and miscellaneous vehicles, e.g., golf carts, snowmobiles, forklifts, and farm equipment. See also Sections 703.320, 703.330, 703.350, 703.360, 703.370, 703.380 (manners of levy on motor vehicle).

27861

§ 701.240. Negotiable instrument

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

Comment. Section 701.240 is the same as Section 481.160 (attachment). See also Sections 703.190 (collection on negotiable instrument), 703.410 (manner of levy on negotiable instrument), 703.610 (sale of negotiable instrument), 705.610 (assignment of right to payment on negotiable instrument).

10/917

§ 701.250. Person

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

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

405/193

§ 701.260. Property

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

Comment. Section 701.260 is new.

27862

§ 701.270. Security

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

Comment. Section 701.270 is the same as Section 481.210 (attachment). See also Section 703.420 (manner of levy on a security).

27863

§ 701.280. Vessel

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

Comment. Section 701.280 defines "vessel" by incorporating the definition in the Vehicle Code. This definition is broader than the definition of "vessel" in Section 481.230 (attachment), which is restricted to "numbered vessels." See also Sections 703.320, 703.330, 703.350, 703.360, 703.370, 703.380 (manners of levy on vessel).

67/708

§ 701.290. Writ

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

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

CHAPTER 2. PROVISIONS OF GENERAL APPLICATION

Article 1. General Provisions§ 702.110. Provisions for enforcing judgments

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

(a) A money judgment shall be enforced as provided in Chapters 3 (commencing with Section 703.110), 4 (commencing with Section 704.110), and 5 (commencing with Section 705.110).

(b) A judgment for possession of personal property shall be enforced as provided in Chapter 8 (commencing with Section 708.110).

(c) A judgment for possession of real property shall be enforced as provided in Chapter 9 (commencing with Section 709.110).

(d) A judgment for sale of real or personal property shall be enforced as provided in Chapter 10 (commencing with Section 710.110).

(e) A judgment requiring performance of an act not described in subdivisions (a) through (d) or requiring forbearance from performing an act shall be enforced as provided in Chapter 11 (commencing with Section 711.110).

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

043/175

§ 702.120. Enforcement of money judgment against public entity

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

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

29/325

§ 702.130. Remedies of state tax agency

702.130. If a warrant may properly be issued by a state agency to enforce a lien, the state agency may use the remedies available to judgment creditors under this title. Where jurisdiction of a court is required for the enforcement of such remedies, jurisdiction is conferred upon the proper court of the county where the person against whom enforcement is sought resides or the property against which enforcement is sought is situated, or if the person does not reside in this state, in any county of this state.

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

29/645

§ 702.140. Stay of enforcement without bond

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

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

(2) Notwithstanding paragraph (1), if a motion for a new trial or for judgment notwithstanding the verdict is pending, enforcement may be stayed for not more than 10 days after the determination of the motion.

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

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

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

If a judgment debtor appeals from a judgment, a stay of enforcement may be obtained pending appeal pursuant to Sections 916-923. See also Sections 117.7 (automatic stay of small claims court judgment), 1174(c) (mandatory five-day stay under certain circumstances in unlawful detainer proceedings).

29/648

§ 702.150. Contribution among judgment debtors

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

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

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

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

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

Comment. Subdivision (a) of Section 702.150 continues the substance of the first sentence of former Section 709. Subdivision (a)

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

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

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

29/329

§ 702.160. Rules for practice and procedure; forms

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

(b) The Judicial Council may prescribe the form of the applications, notices, orders, writs, and other documents under this title [and such forms shall supersede the corresponding forms provided in Chapter 12 (commencing with Section 712.110)].

Comment. Section 702.160 is new. Under subdivision (b), the Judicial Council may adopt and revise forms consistent with the provisions of this title.

968/673

Article 2. Time for Enforcement

§ 702.210. Time for enforcement of judgment

702.210. (a) Except as provided in subdivision (b) and in Section 702.220, upon the expiration of 20 years after the date of entry of a money judgment or a judgment for possession or sale of property, the judgment may not be enforced, all enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease, and any lien created by an enforcement procedure is extinguished.

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

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

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

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

968/675

§ 702.220. Time for enforcement of installment judgment

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

Comment. Section 702.220 codifies case law concerning the time within which installment judgments may be enforced. See, e.g., *Wolfe v. Wolfe*, 30 Cal.2d 1, 4, 180 P.2d 345, ___ (1947); *Lohman v. Lohman*, 29 Cal.2d 144, 150, 173 P.2d 657, ___ (1946); *DeUprey v. DeUprey*, 23 Cal. 352, 353 (1863). The most common form of installment judgments are for spousal or child support. See Civil Code §§ 4700 (child support) and 4801 (spousal support). See also Code Civ. Proc. §§ 85 (municipal or justice court may order installment payment of money judgment), 667.7

(periodic payment of future damages in action against provider of health care services); Labor Code § 5801 (installment payment of worker's compensation award); Veh. Code § 16380 (installment payment of vehicle accident damage judgment).

968/677

§ 702.230. Enforceability of judgment in action upon judgment

702.230. The period of enforceability of a judgment in an action on a money judgment or on a judgment for possession or sale of property shall be reduced by the period during which the original judgment was enforceable.

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

968/682

Article 3. Liens

§ 702.310. Relation back of liens

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

Comment. Section 702.310 states the general rule regarding the relation back of liens which preserves the judgment creditor's priority as of the creation of the first in a series of overlapping liens on the same property. This principle continues former law. See former Section 700 (title of execution purchaser of real property relates back to attachment or judgment lien); *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242, ___ (1909); *Riley v. Nance*, 97 Cal. 203, 205, 31 P. 1126, ___ (1893); *Bagley v. Ward*, 37 Cal. 121, 131 (1869) (dictum); *Durkin v. Durkin*, 133 Cal. App.2d 283, 294, 284 P.2d 185, ___ (1955); *Balzano v. Traeger*, 93 Cal. App. 640, 643-44, 270 P. 249, ___ (1928).

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

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

Various liens are provided by this title. See Sections 703.200 (execution lien), 704. (lien of earnings withholding order), 705.120(d) (lien of order for examination of judgment debtor), 705.130(c) (lien of order for examination of judgment debtor's debtor), 705.250 (lien of creditor's suit), 705.340 (receiver's lien), 705.420 (lien of charging order), 705.450 (judgment lien), 705.510 (lien on cause of action and nonfinal judgment), 705.620 (lien of assignment order), 705.780 (lien on money owed judgment debtor by public entity).

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

405/884

§ 702.320. Effect of lien against subsequent transferee

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

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

29649

§ 702.330. Duration of liens

702.330. [Except to the extent expressly limited by statute,] a lien created pursuant to this title is effective during the period of enforceability of the judgment pursuant to which it is created.

Comment. Section 702.330 is new. For the period of enforceability of a judgment, see Article 2 (commencing with Section 702.210). [The introductory portion of Section 702.330 recognizes that a particular lien may be limited in duration. See, e.g., Section 703.200 (lien of execution for one year).]

10012

§ 702.340. Extinction of liens

702.340. If a lien created pursuant to this title is extinguished:

(a) Property held pursuant to the lien shall be released.

(b) Any duty imposed with respect to property subject to the lien ceases.

Comment. Section 702.340 is new. See also Section 703.240 (release of property).

29/646

Article 4. Enforcement After Death of Party

§ 702.410. Enforcement after death of judgment creditor

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

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

29/647

§ 702.420. Enforcement after death of judgment debtor

702.420. After the death of the judgment debtor:

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

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

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

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

Article 5. Procedural Provisions§ 702.510. Manner of mailing notice; personal delivery

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

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

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

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

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

045/125

§ 702.520. Person upon whom service may be made

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

(b) Service of a writ, notice, or order upon a bank, savings and loan association, credit union, title insurance company or underwritten title company (as defined in Section 12402 of the Insurance Code), or industrial loan company (as defined in Section 18003 of the Financial Code) shall be made at the office or branch thereof that has actual possession of the property or carries the deposit account that is levied upon or is otherwise sought to be applied to the satisfaction of the judgment. Service shall be made upon the officer, manager, or other person in charge of such office or branch at the time of service.

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

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

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

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

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

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

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

Comment. Section 702.530 supersedes the first paragraph of former Section 682. This section but does not apply only to writs of execution as did the former provision. See Section 701.290 ("writ" defined). See also Sections 703.120, 708.110, 709.110, 710.110 (writs issued by court clerk), and 167 (clerk's duties performed by judge if no clerk). Paragraph (1) of subdivision (a) makes clear that only costs that have been properly determined, along with the fee for issuance of the writ if it is issued by the clerk, may be entered on the writ.

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

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

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

Article 6. Levying Officers

§ 702.610. Instructions to levying officer

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

Comment. Section 702.610 is new. It is based on subdivision (a) of Section 488.010 (attachment) and on parts of subdivisions 2 and 3 of former Section 692 (sale of personal and real property). See also Sections 262 (levying officer not liable for carrying out signed instructions of plaintiff), 703.140 (writ of execution), 708.130 (writ of possession of personal property), 709.130 (writ of possession of real property), 710.130 (writ of sale).

29/339

§ 702.620. Deposit of costs prior to performance of duty

702.620. Except as otherwise provided by law:

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

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

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

08/947

§ 702.630. Execution of certain commercial paper by levying officer

702.630. (a) When a check, draft, money order, or other order for the withdrawal of money from a financial institution, the United States,

any state, or any public entity within any state, payable to the judgment debtor on demand, comes into the possession of a levying officer pursuant to this title, the levying officer shall promptly endorse and present it for payment.

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

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

Comment. Section 702.630 continues the substance of subdivision (g) of former Section 688 (which incorporated Section 488.520 in the Attachment Law by reference) except that this section is not limited to situations where commercial paper comes into the possession of a levying officer or a receiver pursuant to a writ of execution. See also Section 701.180 ("financial institution" defined).

09046

§ 702.640. Manner of custody

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

Comment. Section 702.640 continues the substance of the second sentence of subdivision (c) of former Section 688 except that this section is not limited to custody under a writ of execution. The introductory clause recognizes exceptions to this general rule. See Sections 703.370 (tangible personal property of a going business), 703.380 (keeper for personal property used as dwelling).

405/202

§ 702.650. Liability of levying officer

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

Comment. Section 702.650 is new. This general protection afforded levying officers who perform their duties in accordance with this title supersedes the second sentence of the sixth paragraph of former Section 689, the fourth sentence of former Section 689b(9), former Section 697, and the third sentence of Section 488.370(b) (attachment of accounts receivable and choses in action) insofar as it was incorporated by former Section 688(b). For other provisions concerning the levying officer's liability, see Sections 703.220(b) (quick sale of perishable property), 703.240(e) (release), 703.370(a) (payment by check in keeper levy), 703.650 (sale without notice).

CHAPTER 3. EXECUTION

Article 1. General Provisions§ 703.110. Property subject to execution

703.110. (a) Except as otherwise provided in subdivision (b), property that is subject to enforcement of a money judgment pursuant to Section 707.120 is subject to levy under a writ of execution.

(b) The following types of property are not subject to enforcement of a money judgment by levy under a writ of execution but are subject to enforcement by other procedures:

(1) An alcoholic beverage license that is transferable under Article 5 (commencing with Business and Professions Code Section 24070) of Chapter 6 of the Alcoholic Beverage Control Act.

(2) The interest of a partner in a partnership where the partner, but not the partnership, is the judgment debtor.

(3) A cause of action that is the subject of a pending action or special proceeding.

(4) A judgment in favor of the judgment debtor, prior to the expiration of the time for appeal from such judgment, or if an appeal is filed, prior to the final determination of the appeal.

(5) A right to future payments which is dependent on future developments other than the passage of time.

(6) Money (other than earnings) owing and unpaid by a public entity to the judgment debtor.

Comment. Section 703.110 supersedes provisions of former law which purported to prescribe the property subject to execution. See subdivision 1 of former Section 682 (personal property, earnings, real property, and real property subject to judgment lien) and former Section 688(a) ("All goods, chattels, moneys or other property, both real and personal, or any interest therein, of the judgment debtor, not exempt by law, and all property and rights of property levied upon under attachment in the action, are subject to execution."). See also Section 701.260 ("property" defined).

As subdivision (a) recognizes, the types of property which may be reached by levy under a writ of execution are circumscribed by the general principles determining the classes of property that may be applied toward the satisfaction of a money judgment by any means. Many of these principles are uncodified. See Section 707.120 (property subject to enforcement of money judgment), 707.130 (property not subject to enforcement of money judgment), and the Comments thereto.

The general class of property described in subdivision (a) is subject to the exceptions provided in subdivision (b). Property which

is not subject to enforcement of a money judgment under Chapter 7 is not, of course, subject to levy of execution. See Section 707.130 (property not subject to enforcement). Property which is exempt only if a claim is made therefor under Chapter 7 is subject to execution until it is shown to be exempt. See Article 3 (commencing with Section 703.310) for methods of levy on particular types of property, and Chapter 4 (commencing with Section 704.110) for the method of levy on wages.

Subdivision (b) describes certain types of property which are not subject to execution. They are, however, subject to enforcement of a money judgment through some other procedure in Chapter 5. See Section 705.320 (receiver to transfer alcoholic beverage license), Article 4 (commencing with Section 705.410) (charging orders against interest of debtor-partner in partnership property), Article 5 (commencing with Section 705.450) (judgment liens), Article 6 (commencing with Section 705.510) (lien on cause of action and judgment), Article 7 (commencing with Section 705.610) (rights to future payments dependent on future developments other than the passage of time, including payments and wages due from the federal government, rents, commissions, royalties, surplus amount of spendthrift trusts, payments due from patent or copyright), Article 8 (commencing with Section 705.710) (money, other than wages, owing and unpaid by a public entity to the judgment debtor).

By precluding the levy under a writ of execution on a right to future payments which is dependent on future developments other than the passage of time, paragraph (5) of subdivision (b) overrules *Meacham v. Meacham*, 262 Cal. App.2d 248, 68 Cal. Rptr. 746 (1968), insofar as that decision permitted the levy upon and outright sale of the debtor's right to royalties from the marketing of an invention.

29/330

§ 703.120. Issuance of writ of execution

703.120. (a) Except as provided in subdivision (c), after the entry of a money judgment, a writ of execution may be issued by the attorney for the judgment creditor as an officer of the court or shall be issued by the clerk of the court upon application of the judgment creditor and directed to the levying officer in each county where property sought to be levied upon is located.

(b) Writs of execution may be issued successively until the judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 90 days after the issuance of a prior writ for that county unless the prior writ was earlier returned.

(c) Where the judgment creditor seeks a writ of execution to enforce a judgment for the support of a child or spouse, the judgment creditor shall apply to the court ex parte, or on noticed motion if the court so orders, for an order directing issuance of a writ of execution.

Comment. Subdivision (a) of Section 703.120 supersedes portions of the first sentences of former Sections 681 and 682 pertaining to issuance of writs of execution, and continues the substance of the first and last sentences of former Section 687. Unlike prior law, however, this section permits the judgment creditor's attorney to issue writs as an officer of the court. The time during which writs may be issued under subdivision (a) is determined under Section 702.210. Where writs of execution are issued for two or more counties, the judgment creditor has a special duty to see that an excessive levy is not made. Cf. White Lighting Co. v. Wolfson, 68 Cal.2d 336, 347-50, 438 P.2d 345, ___, 66 Cal. Rptr. 697, ___ (1968) (excessive attachment as abuse of process).

Subdivision (b) supersedes prior law under which no more than one writ could be outstanding in one county for the enforcement of the same judgment. See former Section 683, para. 2; 32 Ops. Cal. Att'y Gen. 22 (1958). Subdivision (b) permits the issuance of a writ of execution for a particular county once every 90 days and Section 703.140(c) provides a 90-day period during which property may be levied upon under the writ. Hence, only one writ at a time provides authority for levy in a given county although several writs might be outstanding. This arrangement provides the judgment creditor with needed flexibility; one writ may be retained by the levying officer for the purpose of completing a sale while another writ may be issued to reach newly discovered property. This is particularly important in a case where there is a need to levy upon other property in a county where real property has been levied upon since Section 703.640(h) delays the sale of real property for at least 140 days after levy.

Subdivision (c) codifies the practice developed pursuant to Civil Code Section 4380 which gives the courts discretion in determining the manner of enforcing judgments for support. See Messenger v. Messenger, 46 Cal.2d 619, 630, 297 P.2d 988, ___ (1956); Jackson v. Jackson, 51 Cal. App.3d 363, 124 Cal. Rptr. 101 (1975); Slevats v. Feustal, 213 Cal. App.2d 113, 28 Cal. Rptr. 517 (1963). It appears that the usual practice has been to apply ex parte to the court for an order directing the issuance of the writ of execution. See 5 B. Witkin, California Procedure Enforcement of Judgment § 9, at 3394 (2d ed. 1971); Simonet v. Simonet, 263 Cal. App.2d 612, 616, 69 Cal. Rptr. 806, ___ (1968)). However, some courts have indicated a preference for application on noticed motion. See Martin v. Martin, 5 Cal. App.3d 749, 755, 85 Cal. Rptr. 339, ___ (1970); Cochrane v. Cochrane, 57 Cal. App.2d 937, 939, 135 P.2d 714, ___ (1943).

The provisions of this section are subject to limitations provided elsewhere. See, e.g., Sections 702.210-702.220 (time for enforcement), 702.140 (stay of enforcement), 702.420 (enforcement after death of judgment debtor).

29/331

§ 703.130. Contents of writ of execution

703.130. The writ of execution shall state the date of issuance, the amount of the judgment, and the amount actually due thereon, and shall require the levying officer to whom it is directed to satisfy the judgment.

Comment. Section 703.130 prescribes the essential elements of a writ of execution. It supersedes a portion of the introductory paragraph and subdivision 1 of former Section 682 and a portion of former Section 682.2. See also Section 703.140 (execution of writ). The writ of execution is directed to the levying officer and provides the basis for the levying officer's authority under this chapter.

The technical requirements for the writ provided in former Sections 682 and 682.1 have not been continued in Section 703.130. The Judicial Council may prescribe the form of the writ. See Section 702.160(b). The requirement that the writ state the kind of money or currency in which the judgment is payable is not continued; Section 667 has been revised to require all money judgments to be made payable in United States currency. The reference to earnings has been deleted. Levy on earnings of an employee is accomplished pursuant to Chapter 4 (commencing with Section 704.110). The statute no longer requires levy upon personal property first. The judgment creditor is permitted to designate the order of levy in the instructions to the levying officer. See Sections 702.610 (instructions to levying officer) and 703.140 (delivery of writ and instructions to levying officer). Former law required satisfaction of the judgment first out of property previously attached before judgment in the action, then out of personalty, and finally out of realty. See subdivision 1 of former Section 682 and former Section 684.2. See also Section 703.230 (order requiring attached property to be released or applied to judgment).

29/336

§ 703.140. Delivery and execution of writ

703.140. (a) The judgment creditor shall deliver the writ of execution to the levying officer to whom the writ is directed, together with written instructions containing a description of the property to be levied upon and a designation of persons to be served.

(b) The levying officer shall execute the writ by levying upon sufficient property subject to execution to satisfy the judgment and any accrued costs, interest, and levying officer's costs entered on the writ.

(c) The levying officer may not levy upon any property under the writ after the expiration of 90 days from the date the writ was issued.

Comment. Subdivision (a) of Section 703.140 continues the practice under former law, i.e., that the levying officer will not act until the judgment creditor delivers the writ of execution and written instructions to levy upon specific property. See Sections 262 (instructions of a party or the party's attorney not an excuse from liability unless in writing), 702.610 (instructions to levying officer). The judgment creditor's instructions may designate the order of levy. The mandatory order of levy provided in subdivision 1 of former Section 682 and former Section 684.2 is not continued. See the Comment to Section 703.130. See also Sections 702.530 (entry of accrued costs, interest, and levying officer's costs on writ), 702.620 (deposit of costs), 703.110 (property subject to levy of execution).

Subdivision (b) continues the substance of the first portion of the first sentence of former Section 691. See also Section 488.030(b) (execution of writ of attachment).

Subdivision (c) prescribes the time within which property may be levied upon under a writ of execution. The 90-day period runs from the date of issuance of the writ, whereas under the first paragraph of former Section 683 the writ was to be returned within 60 days after its delivery to the levying officer. No levy may take place under a writ after the expiration of the 20-year period of enforceability prescribed by Sections 702.210 and 702.220.

29209

§ 703.150. Contents of notice of levy

703.150. The notice of levy required by Article 3 (commencing with Section 703.310) shall inform the person notified of all of the following:

(a) The capacity in which the person is notified.

(b) The property which is levied upon. If real property which stands upon the records of the county in the name of a person other than the judgment debtor is sought to be levied upon, the notice of levy shall identify such person. If growing crops or timber to be cut which is located on real property standing upon the records of the county in the name of a person other than the judgment debtor is sought to be levied upon, the notice of levy shall identify such person.

(c) The person's rights under the levy, including the right to make a third-party claim pursuant to Chapter 6 (commencing with Section 706.110) and the right to claim an exemption pursuant to Chapter 7 (commencing with Section 707.110).

(d) The person's duties under the levy.

Comment. Section 703.150 prescribes the contents of the notice of levy. The Judicial Council may prescribe the form of the notice of levy. See Section 702.160(b). The notice of levy of execution is similar to the notice of attachment provided by Section 488.020. Under prior law, the notice of levy was recognized by Section 688(b), but there was no provision for an official form of the notice. Instead, the form of the notice of levy was determined by the levying officers. See, e.g., Marshal's Manual §§ 302.1, 344.1 (rev. Jan. 1, 1977); Cal. State Sheriffs' Association, Civil Procedural Manual 4.10-4.11, 4.19-4.20, 4.23-4.24 (1978). The notice of levy is directed to the person being notified whereas the writ of execution is directed to the levying officer. See Sections 703.120 (writ directed to levying officer) and 703.130 (contents of writ of execution). The judgment creditor must supply written instructions to the levying officer which provide sufficient information to complete the notice of levy. See Sections 702.610 (instructions to levying officer), 703.140 (delivery of instructions to levying officer).

§ 703.160. Effect of failure to give notice of levy

703.160. In any case where, pursuant to a levy, a copy of the writ of execution and a notice of levy are required to be posted or mailed to the judgment debtor or other person by Article 3 (commencing with Section 703.310), failure to post or mail the copy of the writ and the notice does not affect the lien created by the levy.

Comment. Section 703.160 is analogous to portions of Sections 488.310-488.430 (method of levy in attachment) which were incorporated by former Section 688.

29/337

§ 703.170. Levy on property in private place

703.170. If property sought to be levied upon is located in a private place of the judgment debtor, the judgment creditor may apply to the court ex parte, or on noticed motion if the court so directs, for an order directing the levying officer to seize the property in such place. The application for the order shall describe both the property sought to be levied upon and the place where it is to be found with particularity according to the best knowledge, information, and belief of the judgment creditor. The court may not issue the order unless the judgment creditor establishes that there is probable cause to believe that property subject to levy under a writ of execution is located in the place described.

Comment. Section 703.170 is based on comparable provisions relating to claim and delivery. See Sections 512.010, 512.060, 512.080, 514.010, and the Comments thereto. If the levying officer gains entrance into a private place pursuant to an order issued under this section, the levying officer's authority to levy upon property is restricted by the terms of the order.

10914

§ 703.180. Payment by debtor of judgment debtor

703.180. At any time after delivery of a writ of execution to a levying officer and before its return, a person indebted to the judgment debtor may pay to the levying officer the amount of the debt or so much thereof as is necessary to satisfy the judgment. The levying officer's receipt is a discharge for the amount paid.

Comment. Section 703.180 continues the substance of former Section 716 except that this section provides for discharge only where the debt is voluntarily paid to the levying officer after the writ of execution has been delivered, not after it has been issued but not delivered.

§ 703.190. Duties and liability of garnishee

703.190. (a) Except as otherwise provided by statute, at the time of levy under a writ of execution by service on a third person of a copy of the writ and a notice of levy, or promptly thereafter:

(1) If the third person does not claim a right of possession of the property, the third person shall deliver to the levying officer any tangible personal property levied upon which is subject to execution and in which the judgment debtor has an interest.

(2) To the extent that the third person does not deny the debt, the third person shall pay to the levying officer any debt levied upon which is subject to execution and is due and owing to the judgment debtor and shall make further payments to the levying officer of amounts which come due during the period of the lien of execution.

(b) When a transfer or payment is made, the third person shall execute any documents necessary to effect the transfer or payment.

(c) At the time of levy, the levying officer shall request the third person to give the levying officer a memorandum which the third person shall mail to the levying officer within 10 days after levy. The memorandum shall be executed under oath and shall contain the following information:

(1) A description of any tangible personal property levied upon and the judgment debtor's interest therein.

(2) A statement of the amount and the terms of any debt levied upon.

(3) If the third person possesses property of the judgment debtor which is not delivered to the levying officer, or owes a debt to the judgment debtor which is not paid to the levying officer, a description of the property and a statement of the amount and terms of the debt and a statement of the reasons for not delivering or paying.

(4) A description of any superior claims or rights of other persons in the tangible property or debt.

(d) Upon receipt of the memorandum, the levying officer shall promptly mail a copy thereof to the judgment creditor.

(e) If the third person fails to comply with subdivision (a), (b), or (c), the levying officer shall so state at the time the writ is

returned and the third person may, in the court's discretion, be required to pay the costs of any proceedings taken for the purpose of obtaining possession of the property levied upon or payment of the debt levied upon, execution of documents necessary to effect transfer or payment, or the information required by this section.

Comment. Subdivision (a) of Section 703.190 is new. Service of the copy of the writ of execution and notice of levy creates a lien on any property or debt that is subject to levy of execution even if the garnishee refuses to turn the property over or pay the debt to the levying officer. See Section 703.200; Nordstrom v. Corona City Water Co., 155 Cal. 206, 212, 100 P. 242, ___ (1909). Only so much of the debt need be paid as is necessary to satisfy the amount stated in the writ. See Section 703.140(b) (levy on property sufficient to satisfy the judgment, accrued costs, interest, and levying officer's costs). Payment under subdivision (a)(2) is to continue while the execution lien is in force. See Sections 702.330 (duration of liens in general), 703.200 (lien of execution), 703.240 (release extinguishes liens), 703.250 (return of writ), 703.750 (extinction of lien upon sale).

The memorandum required by subdivision (c) is more extensive than the memorandum required by Section 488.080(b) (attachment), which was incorporated by former Section 688(b) and, where cooperation is forthcoming, provides an inexpensive alternative to examination proceedings under Section 705.130. It is intended to provide the judgment creditor with the information needed to be able to select the proper manner of enforcing the judgment. The levy does not create a lien on property described in the memorandum that is not subject to execution. The garnishee is not precluded from supplying information in addition to that required in the memorandum.

Subdivision (d) is new.

Subdivision (e) supersedes the last sentence of Section 488.080(b) (attachment), which was incorporated by former Section 688(b). See also Sections 705.130 (examination of third person indebted to judgment debtor), 705.170 (order directing application of debt to satisfaction of judgment creditor's judgment), 705.210-705.270 (creditor's suit).

29/344

§ 703.200. Lien of execution

703.200. (a) Except as provided in subdivision (b), levy under a writ of execution creates a lien on the property levied upon for a period of one year from the date of issuance of the writ.

(b) A lien upon an interest of an heir, devisee, or legatee in personal property in the estate of a decedent continues for a period of one year after the decree distributing the interest has become final.

(c) Property is not affected by issuance of a writ or its delivery to the levying officer and a lien does not attach to property until levy.

Comment. Subdivision (a) of Section 703.200 continues the substance of the first portion of former Section 688(e). The running of the lien is not tolled during a stay of enforcement. An execution lien on real property is useful only if there is no judgment lien in favor of the judgment creditor on that property. See Article 5 (commencing with Section 705.450) of Chapter 5. However, levy of execution is generally required in order to realize on the judgment lien.

Subdivision (b) supersedes the last portion of the first sentence of former Section 688(e). For provisions relating to personal property levied upon while in estate administration, see Section 703.460.

Subdivision (c) continues the substance of former Section 688(d).

13/600

§ 703.210. Turnover order in aid of execution

703.210. (a) If a writ of execution is issued, the judgment creditor may apply to the court ex parte, or on noticed motion if the court so directs, for an order directing the judgment debtor to transfer to the levying officer:

(1) Possession of the property sought to be levied upon where the prescribed method of levy is by taking the property into custody.

(2) Possession of documentary evidence of title to property of or a debt owed to the judgment debtor which is sought to be levied upon. An order pursuant to this paragraph may be served when the property or debt is levied upon or thereafter.

(b) The order shall be personally served upon the judgment debtor and shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court.

Comment. Section 703.210 is analogous to Section 482.080 (providing for turnover orders when a writ of attachment is issued), except that subdivision (a) specifies that the application for a turnover order is to be made ex parte unless the court directs otherwise. In the case of a turnover order in attachment proceedings, the plaintiff is normally already before the court and the nature of those proceedings determine whether the application will be heard ex parte or on notice.

29210

§ 703.220. Sale of or receiver for perishable property

703.220. (a) Upon noticed motion by the judgment creditor, the judgment debtor, or a person who has filed a third-party claim pursuant to Chapter 6 (commencing with Section 706.110), and a showing that property levied upon is perishable or will greatly deteriorate or greatly depreciate in value or that for some other reason the interests of the parties will be best served thereby, the court may order the property to be sold or may appoint a receiver or direct the levying

officer to take any action necessary to preserve the value of the property or to sell the property.

(b) If the levying officer determines that property levied upon is extremely perishable or will greatly deteriorate or greatly depreciate in value before a court order pursuant to subdivision (a) could be obtained, the levying officer may take any action necessary to preserve the value of the property or may sell the property. The levying officer is not liable for a determination made in good faith under this subdivision.

(c) A sale of property pursuant to this section shall be made in the manner provided by Article 3 (commencing with Section 703.610) and the proceeds shall be applied toward the satisfaction of the judgment in the manner provided by Article 4 (commencing with Section 703.810).

(d) If a receiver is appointed, the court shall fix the daily fee of the receiver and may order the judgment creditor to pay the fees and expenses of the receiver in advance or may direct that the whole or any part of the fees and expenses be paid from the proceeds of any sale of the property.

(e) Except as otherwise provided in this section, the provisions of Chapter 5 (commencing with Section 564) and Chapter 5a (commencing with Section 571) of Title 7 govern the appointment, qualifications, powers, rights, and duties of a receiver appointed under this section.

Comment. Section 703.220 is analogous to Section 488.530 (attachment) and supersedes provisions relating to disposition of perishable property in former Sections 689 (third-party claims proceedings) and 690.50(g) (exemption proceedings).

29/338

§ 703.230. Satisfaction from or release of attached property

703.230. If property of the judgment debtor is subject to a lien of attachment, the judgment debtor may apply to the court upon noticed motion and the court may order the property either to be levied upon under a writ of execution and applied toward the satisfaction of the judgment or to be released.

Comment. Section 703.230 supersedes former Section 684.2. It is designed to avoid a problem that could otherwise result from the elimination of a fixed order of levy on different types of property. See also Sections 702.610 (instructions to levying officer), 703.140 (delivery of writ and instructions to levying officer). Under former law, a

judgment was satisfied first out of property previously attached before judgment in the action, then out of personalty, and finally out of realty. See subdivision 1 of former Section 682 and former Section 684.2. To avoid the danger that the judgment creditor might hold attached property for extended periods while searching for other property, Section 703.230 provides a means by which the judgment debtor can compel either the application of the attached property to the satisfaction of the judgment or its release. The lien of attachment continues after judgment until it expires on its own terms or is merged in a judgment lien, execution lien, or the lien of some other postjudgment enforcement procedure. See Sections 488.510 (duration of attachment lien), 702.310 (relation back of liens); Bagley v. Ward, 37 Cal. 121, 131 (1869); Balzano v. Traeger, 93 Cal. App. 640, 643-44, 270 P. 249, ___ (1928).

968/709

§ 703.240. Release of property from lien and custody

703.240. (a) The levying officer shall release property or proceeds thereof upon the receipt of a written direction from the judgment creditor or a certified copy of a court order for release or when otherwise required by this title to release the property. Release extinguishes any liens created by the enforcement process.

(b) If the property to be released has been taken into custody, it shall be released to the person from whom it was taken unless otherwise ordered by the court. If the person cannot be found within the county where the property was levied upon, the levying officer shall retain custody of the property and shall mail a notice of where possession of the property may be secured to the person's last known address. If the person does not claim the property within 30 days after the notice is sent, the levying officer shall sell the property, other than cash and its equivalents, in the manner provided by Article 3 (commencing with Section 703.610). The levying officer shall deposit the proceeds of sale and cash and its equivalents, after first deducting the levying officer's costs, with the county treasurer of the county where the property is located, payable to the order of the person.

(c) If the property to be released has not been taken into custody, the levying officer shall release the property by issuing a written release and mailing notice of release to the person upon whom process was served to create the lien at the person's last known address.

(d) If the property to be released was levied upon by recording or filing a copy of the writ and a notice of levy, the levying officer shall record or file a written notice of release in the same office.

(e) The levying officer is not liable for releasing property in accordance with this section nor is any other person liable for acting in conformity with the release.

Comment. Section 703.240 supersedes the portion of subdivision (b) of former Section 688 that incorporated the manner of release of attachment. Section 703.240 is generally similar to Section 488.560 (release of attachment). Subdivision (b), however, provides for property to be sold and the proceeds deposited in the county treasury where the person to whom property is to be released does not appear. See also Section 702.510 (manner of mailing notice).

29/343

§ 703.250. Return of writ of execution

703.250. (a) Except as otherwise provided in subdivision (b), the levying officer to whom the writ of execution is delivered shall return the writ to the court, together with a report of the levying officer's actions and an accounting, at the earliest of the following times:

(1) One year from the date of issuance of the writ or, in the case of a levy upon an interest of an heir, devisee, or legatee in personal property in the estate of a decedent, one year after the date the decree distributing the interest has become final.

(2) Promptly after all of the duties under the writ are performed.

(3) When return is requested in writing by the judgment creditor.

(4) If no levy takes place under the writ within 90 days after its issuance, promptly after the expiration of the 90-day period.

(5) Upon expiration of the time for enforcement of the judgment.

(b) If an earnings withholding order has been issued and served upon the employer as provided in Chapter 4 (commencing with Section 704.110) within 90 days after issuance of a writ, the writ shall be returned as provided in Section 704.____.

Comment. Section 703.250 supersedes the first, third, and fourth paragraphs of former Section 683. Under Section 703.250, the period at the end of which the writ must be returned runs from the date of issuance of the writ rather than from the date the writ was delivered to the levying officer. The provision of former Section 683 that the writ could not be returned before the expiration of 10 days is not continued. If a levy takes place under the writ, any sale of property or collection of a debt under the writ must be completed before the expiration of a year from the date of issuance of the writ under which levy took place except in the case of an interest in a decedent's estate. See subdivision (a)(1) and Sections 703.190(a)(2) (collection), 703.610 (sale). See also Section 703.200 (duration of lien of execution). Ultimately,

return must be made before the expiration of the period of enforceability of a judgment provided by Sections 702.210 and 702.220. Redelivery of the writ, alias writs, and alias returns are not authorized. See former Sections 683, 688(e).

The provisions of this section are incorporated for the purpose of returns of writs of possession and writs of sale. See Sections 708.160, 709.150, 710.140.

404/196

§ 703.260. Garnishment by registered process server

703.260. (a) Levy under a writ of execution on property of a judgment debtor in the possession of a third person or owed by a third person to the judgment debtor may be accomplished by a registered process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code, if the property is not to be taken into custody or sold. The registered process server shall serve a copy of the writ and a notice of levy on the third person, shall mail copies of the writ and notices of levy to other persons as required by Article 2 (commencing with Section 703.310), and shall request the third person to give the levying officer the memorandum provided by Section 703.190.

(b) At the time of levy or promptly thereafter, the writ of execution and a copy of the notice of levy, together with proof of mailing of notice to other persons required by Article 2 (commencing with Section 703.310) and a statement of the activities of the registered process server, shall be mailed to the levying officer.

(c) The levying officer shall perform all other duties under the writ as if the levying officer had served the writ and shall return the writ to the court upon receipt of the fee provided by Section 26725 of the Government Code.

Comment. Subdivision (a) of Section 703.260 continues the substance of former Section 687(b) and provides additional procedural detail. A registered process server may not levy upon property such as chattel paper, negotiable instruments, or securities because the process server is precluded by subdivision (a) from levying in a situation where custody must be obtained. See Sections 703.400 (chattel paper), 703.410 (negotiable instruments), 703.420 (securities).

Subdivision (b) is new, and is intended to provide the levying officer with information necessary to perform the remaining duties under the execution.

Subdivision (c) continues the substance of former Section 687(c). See also Section 702.510 (mailing includes personal delivery).

Article 2. Method of Levy§ 703.310. Interest in real property

703.310. (a) To levy upon real property or a leasehold or other interest therein, the levying officer shall record a copy of the writ of execution and a notice of levy with the recorder of the county where the real property is located.

(b) If the notice of levy identifies a third person in whose name the real property stands upon the records of the county, the recorder shall index the copy of the writ and the notice of levy in the names of both the judgment debtor and the third person.

(c) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to all of the following:

(1) The judgment debtor.

(2) A third person identified in the writ in whose name the real property stands upon the records of the county. Notice shall be mailed to the person at the address shown by the records of the office of the tax assessor of the county where the real property is located.

(3) A person holding an interest in the property acquired by an instrument sufficient to impart constructive notice of the interest if the instrument is recorded in the office of the county recorder so as to impart constructive notice prior to the date of levy on the property. Notice shall be mailed to the person at the address used by the county recorder for the return of the instrument after recording.

(d) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy on one occupant of the real property. Service on the occupant shall be made by leaving the copy of the writ and the notice of levy with the occupant personally or, in the occupant's absence, with any person of suitable age and discretion found upon the real property at the time service is attempted and who is either an employee or agent of the occupant or a member of the occupant's family or household. If the levying officer is unable to serve an occupant, at the time service is attempted the levying officer shall post a copy of the writ and a notice of levy in a conspicuous place on the real property. If the real property described in the writ

consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lie with relation to any of the others so as to form a continuous tract, only one service or posting need be made under this subdivision as to the continuous tract.

Comment. Section 703.310 is comparable to Section 488.310 (manner of levy upon interests in real property pursuant to the Attachment Law) which was incorporated by former Section 688(b). Any legal or equitable interest in land which is subject to the enforcement of a money judgment is subject to levy under a writ of execution unless some other exclusive method of enforcement is specified, such as in the case of a partner's interest in partnership real property which is reachable only by way of a charging order pursuant to Section 705.410 where the partnership is not included as a judgment debtor. See Sections 703.110 (property subject to execution), 707.120 (property subject to enforcement of money judgment); *Lynch v. Cunningham*, 131 Cal. App. 164, 173-75, 21 P.2d 154, 21 P.2d 973, ___ (1933).

Subdivision (a) of Section 703.310 makes clear that leasehold interests are subject to execution in the same manner as real property. Under former law, it was the practice to treat some leases as personal property and some as real property for purposes of levy. See *Marshal's Manual of Procedure* § 300.3 (rev. 1977).

Former law did not require recordation of the writ of execution and notice of levy if there was an existing judgment lien on the property. See *Lehnhardt v. Jennings*, 119 Cal. 192, 195-97, 48 P. 56, 51 P. 195, ___ (1897) (no levy required where judgment is lien). However, the practice has been to levy in every case. See *Marshal's Manual of Procedure* § 303.2 (rev. 1977); *Cal. State Sheriffs' Association, Civil Procedural Manual* 4.10 (1978). Subdivision (a) continues existing practice by requiring a complete levy to be made regardless of whether there is a prior judgment lien or attachment lien on the property in favor of the judgment creditor.

The provisions concerning the notice of levy are new. See Section 703.150 (contents of notice of levy). Notice is required to be given to the persons described in paragraph (3) of subdivision (c) in order to afford early notice that the real property is likely to be sold. Paragraph (3) is derived from Civil Code Section 2924b(3)(a).

27807

§ 703.320. Tangible personal property in possession of judgment debtor

703.320. (a) Except as otherwise provided by this article, to levy upon tangible personal property in the possession of the judgment debtor, the levying officer shall take the property into custody.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ of execution and a notice of levy to the judgment debtor.

Comment. Subdivision (a) of Section 703.320 prescribes the general rule governing levy on tangible personal property in the possession of

the judgment debtor. It continues the substance of the first sentence of subdivision (c) of former Section 688. For a general provision concerning the manner of taking custody, see Section 702.640. The introductory phrase of subdivision (a) recognizes that the general rule does not apply where another section of this article is applicable to a particular type of property.

Subdivision (b) continues the requirement of former Section 682.1 and of the second sentence of subdivision (b) of former Section 688 that a copy of the writ be served on the judgment debtor, and adds the requirement that a notice of levy also be served. See also Section 702.510 (mailing includes personal delivery). The judgment creditor has the responsibility of furnishing the levying officer with the information necessary to comply with this provision. See Section 702.610. See also Sections 703.130 (contents of writ of execution), 703.150 (contents of notice of levy).

27808

§ 703.330. Tangible personal property in possession of third person

703.330. (a) Except as otherwise provided in this article, to levy upon tangible personal property in the possession of a third person, the levying officer shall serve a copy of the writ of execution and a notice of levy on the third person.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the judgment debtor.

(c) If goods are covered by a negotiable document, the goods may not be levied upon but the negotiable document may be levied upon in the manner provided by Section 703.410.

Comment. Subdivision (a) of Section 703.330 continues the substance of a portion of the last sentence of subdivision (b) of former Section 688. It prescribes the general rule governing levy on tangible personal property in which the judgment debtor has an interest but which is in the possession of a third person. This general rule is subject to exceptions, such as that provided in subdivision (c).

Subdivision (b) continues the requirement of former Section 682.1 and of the second sentence of subdivision (b) of former Section 688 that a copy of the writ be served on the judgment debtor, and adds the requirement that a notice of levy also be served. See Section 702.510 (mailing includes personal delivery). The judgment creditor has the responsibility of furnishing the levying officer with the information necessary to comply with this provision. See Section 702.610.

Subdivision (c) corresponds to subdivision (d) of Section 488.330 (attachment), which was incorporated by former Section 688(b).

For special provisions applicable to a levy upon the contents of a safe deposit box, see Sections 703.430 and 703.440. The duties of the garnishee are specified by Section 703.190.

§ 703.340. Debts

703.340. (a) Except as otherwise provided in this article, to levy upon a debt owed to the judgment debtor, the levying officer shall serve a copy of the writ of execution and a notice of levy on the person owing the debt.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the judgment debtor and to any other person identified as an obligee in a memorandum under Section 703.190.

Comment. Subdivision (a) of Section 703.340 continues the substance of a portion of the last sentence of subdivision (b) of former Section 688. It prescribes the general rule governing levy on debts, including accounts receivable and choses in action, but recognizes that the general rule is inapplicable where another section of this article governs the manner of levy on a particular type of property.

Subdivision (b) continues the requirement of former Section 682.1 and of the second sentence of subdivision (b) of former Section 688 that a copy of the writ be served on the judgment debtor, and adds the requirement that a notice of levy also be served. See Section 702.510 (mailing includes personal delivery).

The judgment creditor has the responsibility of furnishing the levying officer with the information necessary to comply with this provision. See Section 702.610.

12/326

§ 703.350. Tangible personal property in custody of levying officer

703.350. (a) To levy upon tangible personal property in the custody of a levying officer:

(1) If the writ of execution is directed to the levying officer having custody of the property, the judgment creditor shall deliver the writ to the levying officer.

(2) If the writ of execution is directed to a levying officer other than the levying officer having custody of the property, the levying officer to whom the writ is directed shall serve a copy of the writ and a notice of levy on the levying officer having custody.

(b) At the time of levy or promptly thereafter, the levying officer to whom the writ is directed shall mail a copy of the writ and a notice of levy to the judgment debtor.

Comment. Section 703.350 is new. Paragraph (1) of subdivision (a) codifies case law concerning a "paper levy" involving only one levying

officer. See, e.g., O'Connor v. Blake, 29 Cal. 312, 315 (1865); Colver v. W.B. Scarborough Co., 73 Cal. App. 441, 443, 238 P. 1104, _____ (1925). Paragraph (1) makes clear that the lien of execution arises at the time the writ is delivered to the levying officer. See also Section 703.200 (lien of execution). Paragraph (1) applies in cases where the judgment creditor is seeking to have property sold on execution which has been previously attached by the creditor and also in cases where a judgment creditor seeks to reach property which has already been taken into custody on attachment or execution at the behest of another creditor. Paragraph (2) is a new provision governing levies involving two levying officers.

27810

§ 703.360. Motor vehicles and vessels required to be registered

703.360. (a) Except as provided in subdivision (b), promptly after levy upon a motor vehicle or a vessel required to be registered with the Department of Motor Vehicles, the levying officer shall determine from the department the name and address of the legal owner of the vehicle or vessel and, if the legal owner is a person other than the judgment debtor or a third person in possession, the levying officer shall mail a copy of the writ of execution and a notice of levy to the legal owner.

(b) If a motor vehicle or vessel is levied upon pursuant to Section 703.370 or 703.380, the copy of the writ and the notice of levy need not be mailed to the legal owner pursuant to subdivision (a) until the levying officer takes exclusive custody of the motor vehicle or vessel.

Comment. Section 703.360 supersedes subdivision (1) of former Section 689b. Former law required notice to be given the legal owner if different from the registered owner. Subdivision (a) of Section 703.360 is worded so as to avoid duplicate notice in any case where the legal owner has already received notice in the course of the levy. See Sections 703.320, 703.330, 703.370, 703.380.

Subdivision (b) is new. The levying officer is not required to send notice to the legal owner when a keeper levy is made under Section 703.370(a) or 703.380(a), but only when the levying officer takes exclusive custody of the vehicle or vessel under Section 703.370(c) or 703.380(c).

27811

§ 703.370. Tangible personal property of a going business

703.370. (a) To levy upon tangible personal property of a going business (other than money or a vehicle required to be registered under the Vehicle Code), the levying officer shall, if the judgment debtor consents, place a keeper in charge of the property, at the judgment creditor's expense, for two days or for a longer period agreed upon by

the judgment creditor and the judgment debtor. During this period, the judgment debtor may continue to operate in the ordinary course of business at the judgment debtor's expense provided that all sales are final and are for cash or the equivalent of cash. For the purpose of this subdivision, payment by check is the equivalent of cash payment. The levying officer is not liable for accepting payment in the form of a cash equivalent. The proceeds from all sales shall be given to the keeper for the purposes of the levy unless otherwise authorized by the judgment creditor.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ of execution and a notice of levy to the judgment debtor.

(c) At the conclusion of the period during which the business continues to operate under subdivision (a), the levying officer shall take the tangible personal property into exclusive custody unless some other disposition is made by the court or agreed upon by the judgment creditor and the judgment debtor.

Comment. Section 703.370 provides a special method of levy on a going business which permits the business to operate for at least two days after levy subject to the custody of a keeper. Subdivision (a) continues the substance of the fifth through the ninth sentences of subdivision (c) of former Section 688.

Subdivision (b) makes clear that the judgment debtor is to be given notice of the levy just as in any other case of a levy on tangible personal property in the possession of the judgment debtor. See Section 702.510 (mailing includes personal delivery). See also Section 703.360 (notice to legal owner of motor vehicle or vessel required to be registered).

Subdivision (c) continues the substance of the tenth sentence of subdivision (c) of former Section 688.

27812

§ 703.380. Personal property used as dwelling

703.380. (a) To levy upon personal property used as a dwelling, such as a housetrailer, mobilehome, or vessel, the levying officer shall place a keeper in charge of the property, at the judgment creditor's expense, for two days or for a longer period agreed upon by the judgment creditor and the judgment debtor.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ of execution and a notice of levy to the judgment debtor.

(c) At the conclusion of the period during which the property is in the custody of the keeper pursuant to subdivision (a), the levying officer shall remove the occupants and take the personal property used as a dwelling into exclusive custody unless some other disposition is made by the court or agreed upon by the judgment creditor and the judgment debtor.

Comment. Subdivision (a) of Section 703.380 continues the substance of the third sentence of subdivision (c) of former Section 688. Subdivision (b) makes clear that the judgment debtor is to be given notice of the levy just as in any other case of a levy on tangible personal property in the possession of the judgment debtor. See Section 702.510 (mailing includes personal delivery). See also Section 703.360 (notice to legal owner of motor vehicle or vessel required to be registered).

Subdivision (c) continues the substance of the fourth sentence of subdivision (c) of former Section 688.

27813

§ 703.390. Growing crops and standing timber

703.390. (a) To levy upon growing crops or timber to be cut, the levying officer shall record a copy of the writ of execution and a notice of levy with the recorder of the county where the real property on which the crops are growing or on which the timber is standing is located.

(b) If the notice of levy identifies a third person in whose name the real property stands upon the records of the county, the recorder shall index the copy of the writ and the notice of levy in the names of both the judgment debtor and the third person.

(c) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the judgment debtor and to any other person identified in the notice of levy in whose name the real property stands upon the records of the county at the address of the third person shown by the records of the office of the tax assessor of the county where the real property is located.

(d) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy on one occupant of the real property. Service on the occupant shall be made by leaving a copy of the writ and a notice of levy with the occupant personally or, in the occupant's absence, with any person of suitable age and discretion found upon the real property at the time service is attempted and

who is either an employee or agent of the occupant or a member of the occupant's family or household. If there is no occupant on the real property at the time service is attempted, the levying officer shall post a copy of the writ and a notice of levy in a conspicuous place on the real property. If the real property described in the notice of levy consists of more than one distinct lot, parcel, or governmental subdivision and any of such lots, parcels, or governmental subdivisions lie with relation to any of the others so as to form one or more continuous, unbroken tracts, only one service or posting need be made under this subdivision as to each such continuous, unbroken tract.

Comment. Section 703.390 is derived from a portion of Section 488.360(c) (prescribing the manner of attachment of growing crops and timber to be cut), which was incorporated by former Section 688(b), and from paragraphs 1a and 2a of former Section 542 (repealed by 1974 Cal. Stats. ch. 1516, § 12, operative January 1, 1977). Once the crops are harvested or the timber is cut, such property may be levied upon in the manner provided for levy upon tangible personal property generally. See Sections 703.320, 703.330, 703.350. The levying officer or a receiver may, pursuant to court order, cultivate, care for, harvest, pack, and sell the property if necessary. See Section 703.220.

27814

§ 703.400. Chattel paper

703.400. (a) To levy upon chattel paper, the levying officer shall:

(1) If the chattel paper is in the possession of a third person, serve a copy of the writ of execution and a notice of levy on the third person.

(2) If the chattel paper is in the possession of the judgment debtor, take the chattel paper into custody.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the judgment debtor.

(c) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the person obligated on the chattel paper. Until notification, the levy does not affect the rights and duties of the obligor. After notification, the obligor shall make payments required under the chattel paper to the levying officer.

(d) If payments required by the chattel paper are made after levy to the person in possession of the chattel paper, the payments shall be delivered by the person to the levying officer to be held pursuant to the levy.

Comment. Section 703.400 is analogous to Section 488.380 (method of attachment of chattel paper), which was incorporated by former Section 688(b). See also Section 701.130 ("chattel paper" defined).

27815

§ 703.410. Negotiable instruments; negotiable documents; money

703.410. (a) To levy upon a negotiable instrument, a negotiable document, or money not in a deposit account, the levying officer shall:

(1) If the negotiable instrument, negotiable document, or money is in the possession of a third person, serve a copy of the writ of execution and a notice of levy on the third person.

(2) If the property is in the possession of the judgment debtor, take the negotiable instrument, negotiable document, or money into custody.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the judgment debtor.

(c) At the time of levy upon a negotiable instrument or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the person obligated under the negotiable instrument. Until notification, payments made in good faith by the obligor to the prior holder of the instrument shall be applied to discharge the obligation of the obligor.

Comment. Section 703.410 is analogous to Section 488.400 (method of attachment of negotiable instruments, negotiable documents, and money), which was incorporated by former Section 688(b). See also Sections 701.170 ("document" defined), 701.240 ("negotiable instrument" defined).

27816

§ 703.420. Securities

703.420. (a) To levy upon a security in the possession of the judgment debtor, the levying officer shall take the security into custody. At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ of execution and a notice of levy to the judgment debtor.

(b) To levy upon a security which is held in escrow pursuant to the provisions of the Corporate Securities Law or has been surrendered to the issuer, the levying officer shall serve a copy of the writ and a notice of levy on the person in possession of the security. At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the judgment debtor.

(c) In cases not provided for by subdivisions (a) and (b), the judgment creditor's relief is governed by subdivision (2) of Section 8317 of the Commercial Code.

Comment. Section 703.420 is analogous to Section 488.410 (method of attachment of securities), which was incorporated by former Section 688(b). See also Section 701.270 ("security" defined).

27818

§ 703.430. Deposit accounts and safe deposit boxes

703.430. (a) Except where a deposit account is represented by a negotiable instrument, to levy upon a deposit account or property in a safe deposit box maintained by a financial institution, the levying officer shall serve a copy of the writ of execution and a notice of levy on the financial institution.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the judgment debtor and to any other person in whose name the deposit account or safe deposit box stands.

(c) While the lien created by the levy is in effect, the financial institution is not liable to any person by reason of any of the following:

- (1) Compliance with the levy.
- (2) Nonpayment of any check or other order for the payment of money drawn or presented against the deposit account.
- (3) Refusal to pay any withdrawal from the deposit account.
- (4) Refusal to permit access to the safe deposit box by the renter thereof.

(d) Before permitting access to a safe deposit box, the financial institution may demand payment of the cost of opening the safe deposit box and of the cost of repairing any damage caused by the opening.

Comment. Subdivisions (a) through (c) of Section 703.430 are analogous to Section 488.390 (method of attachment of deposit accounts),

which was incorporated by former Section 688(b). The reference to safe deposit boxes is new.

Subdivision (d) continues a portion of former Section 682a. See also Sections 701.160 ("deposit account" defined), 701.180 ("financial institution" defined). For special provisions applicable in the case of a levy upon a joint account or safe deposit box, see Section 703.440 and in the case of a levy upon a deposit account into which social security payments are directly deposited, see Section 707.570.

27864

§ 703.440. Deposit accounts and safe deposit boxes not exclusively
in name of judgment debtor

703.440. (a) The provisions of this section apply in addition to the provisions of Section 703.430 where any of the following property is levied upon:

(1) A deposit account, or interest therein, standing in the name of a person other than the judgment debtor, or in the name of the judgment debtor and a person other than the judgment debtor.

(2) Property in a safe deposit box rented to a person other than the judgment debtor, or to both the judgment debtor and a person other than the judgment debtor.

(b) The judgment creditor shall provide, and the levying officer shall deliver to the financial institution, a bond in an amount not less than twice the amount of the judgment or, if a lesser amount is sought to be levied upon, not less than twice such amount. The bond shall indemnify any person (other than the judgment debtor whose interest is sought to be levied upon) rightfully entitled to the property against actual damage by reason of the levy on the property and shall assure to the person the return of the property upon proof of the person's right thereto. The bond need not name the person specifically but may refer to the person generally in the same manner as in this subdivision.

(c) Upon delivery of the bond to the financial institution, the financial institution shall immediately mail notice of the levy and the delivery of the bond to the person (other than the judgment debtor) in whose name the deposit account stands or to whom the safe deposit box is rented, addressed to the person's last address known to the financial institution. The financial institution shall deliver the bond as directed by the person.

(d) From the time of levy and the delivery of the bond to the financial institution until 15 days after the mailing of notice under

subdivision (c), if no proceedings excepting to the sufficiency of the sureties have been commenced or, if such proceedings have been commenced, when the sureties have justified, the financial institution may not honor a check or other order for the payment of money drawn against, or any withdrawals from, the deposit account that would reduce the deposit account to less than the amount levied upon, and shall not permit the removal of any of the contents of the safe deposit box levied upon. The financial institution is not liable to any person by reason of the nonpayment of any check or other order for the payment of money drawn against the deposit account levied upon that is presented during the period prescribed in this subdivision, the refusal to pay any withdrawal from the deposit account, or the refusal of the financial institution to permit access to the safe deposit box by the renter thereof.

(e) Upon the expiration of the period prescribed in subdivision (d), the financial institution shall comply with the levy. The financial institution is not liable to any person by reason of its compliance or by reason of the removal of any of the contents of the safe deposit box pursuant to the levy.

(f) The bond described in subdivision (b) shall be executed, exceptions to the sufficiency of the sureties may be taken by any person claiming to be the rightful owner of the property levied upon, and the sureties, when excepted to, shall justify in the manner provided by Article 1 (commencing with Section 489.010) of Chapter 9 of Title 6.5.

(g) A purported levy that does not comply with this section is ineffectual and shall be disregarded.

Comment. Subdivision (a) of Section 703.440 continues the substance of the first portion of the first sentence of former Section 682a. See also Section 701.160 ("deposit account" defined).

Subdivision (b) continues the substance of the second sentence of former Section 682a. See also Section 701.180 ("financial institution" defined).

Subdivision (c) continues the third and eighth sentences of former Section 682a.

Subdivision (d) continues the substance of the fourth sentence of former Section 682a except that subdivision (d) recognizes the former practice of holding only so much of the account as is necessary to satisfy the levy.

Subdivisions (e) and (f) continue the substance of the fifth, sixth, and seventh sentences of former Section 682a. See also Sections 1054a (deposit of money or bearer bonds or notes instead of undertaking), 1056 (single corporate surety may execute bond in place of two or more personal sureties).

Subdivision (g) continues the last portion of the first sentence of former Section 682a.

The requirements of this section are an exception to the requirements of Section 703.190 (duties and liabilities of garnishee).

27819

§ 703.450. Judgments owing to judgment debtor

703.450. (a) To levy upon a judgment owing to the judgment debtor, the levying officer shall file in the action or special proceeding in which the judgment was entered a copy of the writ of execution and a notice of levy, and serve a copy of the writ and a notice of levy upon the judgment debtor in the action or special proceeding.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the judgment debtor.

(c) A judgment owing to the judgment debtor may not be levied upon until after its entry as a final judgment and the time for appeal from the judgment has expired or, if an appeal is filed, until the appeal is finally determined.

Comment. Section 703.450 is analogous to Section 488.420 (method of attachment of judgments owing to a defendant), which was incorporated by former Section 688(b). A judgment which is not final within the terms of subdivision (c) may be reached only through the procedure for obtaining a lien on a cause of action and judgment set forth in Sections 705.510-705.530. This section does not apply where a public entity is the judgment debtor's judgment debtor. See Article 8 (commencing with Section 705.710) of Chapter 5.

27821

§ 703.460. Interest in personal property of estate of decedent

703.460. (a) To levy upon the interest of the judgment debtor in personal property in the estate of a decedent, whether by testate or intestate succession, the levying officer shall file a copy of the writ of execution and a notice of levy in the office of the clerk of the court in which the estate is being administered, and serve the personal representative of the decedent with a copy of the writ and a notice of levy.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the judgment debtor.

(c) The personal representative shall report the levy to the court in which the estate is being administered when any petition for distribution is filed.

(d) The levy does not impair the powers of the representative over the property for the purposes of administration.

(e) If a decree orders distribution to the judgment debtor, the property shall be ordered to be delivered to the levying officer subject to the claim of the judgment debtor or any person claiming under the judgment debtor. The property may not be delivered to the levying officer until the decree distributing the property has become final.

Comment. Section 703.460 is analogous to Section 488.430 (method of attachment of an interest in personal property of a decedent's estate), which was incorporated by former Section 688(b). See also Sections 703.200(b) (lien of execution on interest in personal property in estate of decedent), 703.250(a)(1) (return of writ).

404/114

Article 3. Sale

§ 703.610. Sale of property levied upon

703.610. (a) Subject to subdivision (b), the levying officer shall sell the following property during the period of the lien of execution:

(1) Real property that has been levied upon.

(2) Personal property (other than cash or the equivalent of cash) that has been levied upon and is in the custody of the levying officer.

(b) The following types of property may be sold only pursuant to court order issued on noticed motion, and only on terms and conditions, specified in the order, designed to ensure that fair consideration is obtained at the sale:

(1) Chattel paper.

(2) Debts.

(3) Judgments.

(4) Negotiable instruments which are not of a type customarily transferred in an established market or which represent an obligation arising out of the sale or lease of property, a license to use property, the furnishing of services, or the loan of money where the property sold or leased, or licensed for use, the services furnished, or the money loaned was used by an individual primarily for personal, family, or household purposes.

(c) Where property described in subdivision (b) is not ordered to be sold, the person owing the debt to the judgment debtor shall make

payments to the levying officer of amounts which become due during the period of the lien of execution as provided in Section 703.190.

Comment. Subdivision (a) of Section 703.610 continues the general authority of the levying officer to sell property after a levy under a writ of execution issued to enforce a money judgment. See former Section 691. After sale, the proceeds are applied in the manner provided by Section 703.810. See also Section 703.200 (lien of execution).

Subdivision (b) provides exceptions to the general rule stated in subdivision (a) applicable to types of property peculiarly susceptible to sacrifice and speculative sales. Former law did not contain such an exception although former Section 691 did direct the levying officer to collect or sell things in action. Subdivision (b) provides the court with broad authority to specify terms of sale designed to obtain a fair price. Some circumstances, such as a lack of interested buyers, may require that no sale be permitted. In other situations, the court may choose to set a minimum price or require court confirmation of sale. Sales pursuant to subdivision (b) may be conducted in the same manner as other execution sales or may be conducted in some other manner, e.g., a negotiated private sale through a broker or other commercial channel.

Subdivision (b)(3) clarifies the manner of applying a judgment in favor of the judgment debtor to the satisfaction of the judgment creditor's money judgment. Prior law provided for the attachment of final judgments (see subdivision 5 of former Section 542, superseded by Section 488.420), but appeared to forbid levy and sale under execution (see former Section 688(e)). Although the judgment creditor might obtain a lien on a cause of action and judgment under former Section 688.1 (superseded by Sections 705.510-705.530), the manner of enforcing the lien was not clear, nor did former law explicitly provide the manner of reaching a final judgment that was not subject to a lien before it became final.

Subdivision (b)(4) is intended to permit the sale without court order of negotiable instruments that are regularly transferred on established markets so long as the instruments are not consumer paper.

Subdivision (c) makes clear that, if a sale is not permitted, the judgment creditor is entitled to have the obligation collected as it becomes payable. See Section 703.190(a)(2) (payment of amounts as they become due to levying officer during period of execution lien). See also Sections 705.110-705.190 (examination proceedings), 705.210-705.270 (creditor's suit), 705.310-705.340 (receiver), 705.410-705.420 (charging order), 705.610-705.630 (assignment order).

30150

§ 703.620. Notice of sale generally

703.620. (a) Before property levied upon may be sold, the levying officer shall give notice of sale as provided in Sections 703.630 (personal property) and 703.640 (real property).

(b) The notice of sale shall be in writing, shall describe the property to be sold, and shall state the time and place of sale.

(c) Failure to give notice as required by this section does not invalidate the sale.

(d) In addition to the required notice, the judgment creditor may advertise the sale in the classified or other advertising section of a newspaper of general circulation or other periodical publication, and may recover reasonable costs of such advertising.

Comment. Subdivision (a) and (b) of Section 703.620 continue the substance of portions of former Section 692. The judgment creditor is responsible for supplying the information to the levying officer that is needed to comply with the notice provisions. See Section 702.610.

Subdivision (c) codifies existing law. *Smith v. Randall*, 6 Cal. 47, 50 (1856); *Hamilton v. Carpenter*, 52 Cal. App.2d 447, 448, 126 P.2d 395, ___ (1942). See also Section 703.760 (all sales absolute) and the Comment thereto. Damages occasioned by the failure to give the prescribed notice are recoverable pursuant to Section 703.650.

Subdivision (d) is new. Notice under this provision would be particularly appropriate where certain types of property with a specialized market are to be sold, such as stamps, coins, and rare books. Reasonable expenses of advertising in this manner are a recoverable cost under Section 1033.7. Subdivision (d) is permissive, not restrictive. The judgment debtor may also desire to advertise the sale.

15109

§ 703.630. Notice of sale of personal property

703.630. (a) Not less than 10 days before a sale of personal property, notice of sale shall be posted and shall be mailed to the judgment debtor and to any person who has requested notice pursuant to Section 702.540.

(b) Notwithstanding subdivision (a), if personal property to be sold is perishable, the notice of sale shall be posted and mailed at reasonable time before the sale, considering the character and condition of the property.

(c) Posting under this section shall be in three public places in the city in which the property is to be sold, if it is to be sold in a city or, if not, then in three public places in the judicial district in which the property is to be sold.

(d) A sale of personal property of an individual may not take place until the expiration of 10 days after the date notice of levy on the property to be sold was mailed to the judgment debtor.

Comment. Subdivisions (a) through (c) of Section 703.630 continue the substance of paragraphs 1 and 2 of former Section 692. See Section 703.220 (sale of perishable property). See also Section 703.620 and the Comment thereto.

Subdivision (d) is new. It is intended to provide an individual with an opportunity to claim any available exemptions. See Section

707.320 (exemption claim must be made within 10 days after notice of levy is mailed or delivered). See also Section 702.510 (mailing includes personal delivery).

§ 703.640. Notice of sale of real property

703.640. (a) A notice of sale of an interest in real property shall describe the real property by giving a legal description of the property and its street address or other common designation, if any. The validity of the notice is not affected by the fact that the street address or other common designation given is erroneous. If the property has no street address or other common designation, the notice of sale shall contain a statement that directions may be obtained from the levying officer upon oral or written request. Directions are sufficient if information as to the location of the property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road.

(b) Notice of sale of an interest in real property shall be given not less than 20 days before the sale.

(c) Notice shall be mailed to all of the following:

(1) The judgment debtor.

(2) A person holding an interest in the property acquired by an instrument sufficient to impart constructive notice of the interest if the instrument is recorded in the office of the county recorder so as to impart constructive notice prior to the date of levy on the property. Notice shall be mailed to the person at the address used by the county recorder for the return of the instrument after recording.

(d) Notice shall be served on one occupant of the real property. Service on the occupant shall be made by leaving the notice with the occupant personally or, in the occupant's absence, with any person of suitable age and discretion found upon the real property at the time service is attempted and who is either an employee or agent of the occupant or a member of the occupant's family or household.

(e) Notice shall be posted in the following places:

(1) One public place in the city in which the interest in the real property is to be sold, if it is to be sold in a city, or, if not, one public place in the judicial district in which the interest in the real property is to be sold.

(2) A conspicuous place on the real property.

(f) If the property described in the notice consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lie with relation to any of the others so as to form a continuous tract, only one service pursuant to subdivision (d) or posting pursuant to paragraph (2) of subdivision (e) need be made as to the continuous tract.

(g) Notice shall be published once a week from the time notice is mailed to the judgment debtor until the time of the sale in a newspaper of general circulation published in the city in which the real property or a part thereof is situated, if any part thereof is situated in a city, or, if not, in a newspaper of general circulation published in the judicial district in which the real property or a part thereof is situated. If no newspaper of general circulation is published in the city or judicial district, a copy of the notice shall be published for such time in the county in which the real property or a part thereof is situated. As used in this subdivision, the term "newspaper of general circulation" has the meaning provided in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code.

(h) Notice of sale of an interest in real property, other than a leasehold estate with an unexpired term of less than two years at the time of levy, may not be given pursuant to this section until the expiration of 120 days after the date notice of levy on the interest in real property was mailed to the judgment debtor.

Comment. Section 703.640 supersedes paragraph 3 of former Section 692. Subdivision (a) requires both a legal description and a street address, common designation, or directions, whereas former law permitted the omission of the street address if a legal description was given. The responsibility of the levying officer to give directions to the location of property that has no street address or other common designation is derived from the former provision for giving directions by the beneficiary of a deed of trust.

Subdivision (b) continues a portion of paragraph 3 of former Section 692.

Subdivision (c) requires more extensive notice than did former law. Subdivision (c)(1), along with Section 702.510 (mailing includes personal delivery), continues former law except that notices are sent by first class rather than certified mail. Subdivision (c)(2) is new; it is based on Civil Code Section 2924b(3)(a) (notice of default under mortgage or deed of trust).

Subdivision (d) is new and is the same as Section 703.310(d) (notice of levy).

Subdivisions (e) and (g) continue the substance of portions of paragraph 3 of former Section 692.

Subdivision (f) is the same as a portion of Section 703.310(d).

Subdivision (h) is new. This provision delays the giving of notice of a sale of real property for at least 120 days after the notice of levy is mailed to the judgment debtor in order to provide the judgment debtor with an opportunity to redeem the property from the judgment creditor's lien before the sale or to seek potential purchasers. The statutory right of redemption from judicial sales of real property has been repealed. See Section 703.760 (sales absolute).

15/111

§ 703.650. Liability for sale without notice

703.650. A levying officer who sells property without giving the required notice is liable to the judgment creditor and the judgment debtor, for the actual damages caused by the failure to give the notice.

Comment. Section 703.650 continues the levying officer's liability for actual damages for failure to give proper notice of sale provided by former Section 693. Former Section 693 provided for liability to the "aggrieved party." See *Sheehy v. Graves*, 58 Cal. 449, ___ (1881) (judgment creditor as aggrieved party); *Bellmer v. Blessington*, 136 Cal. 3, ___, 68 P. 111, ___ (1902) (judgment debtor as aggrieved party); *Kelley v. Desmond*, 63 Cal. 517, ___ (1883) (purchaser at execution sale not aggrieved party). The forfeiture of \$100 by the levying officer to the aggrieved party under former Section 693 is not continued. A sale is not invalidated by a failure to give notice. See Section 703.620(c). See also Section 703.760 (sales absolute) and the Comment thereto.

15/112

§ 703.660. Place, time, and manner of sale

703.660. (a) A sale of property shall be held in the county where the property or some part thereof is situated.

(b) The sale shall be made to the highest bidder at an auction held between the hours of nine in the morning and five in the afternoon.

(c) If personal property capable of manual delivery is to be sold, it shall be within the view of those who attend the sale unless, upon application of the judgment creditor or the judgment debtor, the court orders otherwise.

(d) Property shall be sold separately or in such groups or lots as are likely to bring the highest price. The judgment debtor may request the property to be sold separately or together and may request the property to be sold in a particular order. If the judgment debtor is

not present at the sale, the request may be made in writing. The levying officer shall honor the request if it is likely that the requested manner of sale will yield an amount at least equal to any other manner of sale.

(e) After sufficient property has been sold to satisfy the judgment, no more may be sold.

Comment. Subdivisions (a) and (b) of Section 703.660 continue the substance of the first sentence of former Section 694.

Subdivision (c) supersedes a portion of the first sentence of former Section 694 which required personal property to be in the view of the persons attending the sale.

Subdivision (d) supersedes a portion of the fourth sentence and the fifth sentence of former Section 694. Although former Section 694 appeared to require that real property be sold in separate parcels, the cases interpreting that section suggest that sale en masse constitutes at most an irregularity and that the true test is whether separate sale would produce a higher price. See 5 B. Witkin, California Procedure Enforcement of Judgment § 80, at 3451 (2d ed. 1971). Subdivision (d) also permits the judgment debtor to make reasonable requests concerning the manner of sale, but makes clear that the levying officer must sell the property in a different manner if it is likely to result in a higher price. Under former Section 694, the judgment debtor appeared to have absolute control over the order and lots in which the property was sold. The authority for the judgment debtor to make a request in writing when not present at the sale is new.

Subdivision (e) continues the second sentence of former Section 694.

15/113

§ 703.670. Postponement of sale

703.670. (a) The judgment debtor and judgment creditor together may request in writing that a sale be postponed to an agreed day and hour. The request shall be delivered to the levying officer conducting the sale, and the levying officer shall, by public declaration at the time and place originally fixed for the sale, postpone the sale to the day and hour fixed in the request.

(b) Notice of any additional postponements shall be given by public declaration by the levying officer at the time and place last appointed for the sale. No other notice of postponed sale need be given.

Comment. Section 703.670 continues the substance of the second paragraph of former Section 694.

§ 703.680. Manner of payment

703.680. (a) Except as provided in subdivisions (b) and (c), the purchaser at a sale shall pay in cash or by certified check or cashier's check.

(b) The levying officer conducting the sale shall accept the amount of a bid by the judgment creditor as a credit on the judgment except that the expenses of the levying officer and the amount of preferred labor claims, exempt proceeds, and any other superior claim which is required to be satisfied, shall be paid in cash or by certified check or cashier's check.

(c) If the high bid is in excess of five thousand dollars (\$5,000), the high bidder may elect to treat the sale as a credit transaction by paying five thousand dollars (\$5,000) or 10 percent of the amount bid, whichever is the greater, in cash or by certified check or cashier's check, and paying the balance and additional accruing costs within 30 days from the date of the sale in cash or by certified check or cashier's check.

Comment. Section 703.680 is new. Subdivisions (a) and (b) codify the practice under former law. See *Kelley v. Barnet*, 24 Cal. App. 119, 121, 140 P. 605, ___ (1914); *Marshal's Manual of Procedure* § 423.4 (n.d.); *Cal. State Sheriffs' Ass'n, Civil Procedural Manual* 6.10-6.11, 6.20 (1978).

Under subdivision (b), if the judgment creditor bids at the auction, the judgment creditor may use the judgment as a credit to pay all or a portion of the bid instead of cash. However, the judgment creditor must pay in cash the costs of the officer conducting the sale, preferred labor claims, and exempt sale proceeds. See Sections 703.810 (distribution of proceeds), 707.510 (proceeds of motor vehicle), 707.550 (proceeds of tools of trade), 707.850 (proceeds of dwelling), 1206 (preferred labor claims). Subdivision (b) recognizes that a transfer of cash back and forth between the judgment creditor and the levying officer generally can be dispensed with. Under former law, the levying officer apparently had the discretion to refuse the judgment as a credit and to require cash payment. See *Mitchell v. Alpha Hardware & Supply Co.*, 7 Cal. App.2d 52, 60-61, 45 P.2d 442, ___ (1935); *Kelley v. Barnet*, *supra* at 122, 140 P. at ___.

Subdivision (c) is a new provision derived from Revenue and Taxation Code Section 3693.1 (sales of tax deeded property to private persons). If additional costs accrue after the sale, such as keeper or storage fees, the credit bidder must satisfy them.

§ 703.690. Defaulting bidder

703.690. (a) If the highest bidder does not pay the amount bid for property struck off to the bidder at the sale in the manner provided by

Section 703.680, the levying officer shall, at the request of the judgment creditor, sell the property either immediately to the next highest bidder at the next highest amount bid or to a bidder at a new sale.

(b) If a bidder does not pay the amount bid for property struck off to the bidder at a sale, the levying officer may, in the levying officer's discretion, reject any subsequent bid of the bidder.

(c) If the bidder fails to complete the purchase within the time allowed, the amount paid shall be applied toward the satisfaction of the judgment and any excess remaining thereafter shall be returned to the bidder.

(d) If the highest bidder does not pay the amount due, the bidder is liable to the judgment creditor and the judgment debtor for the following amounts:

(1) The amount bid, less the amount obtained from a resale of the property and any amount forfeited pursuant to subdivision (c).

(2) The amount of any costs of custody and resale incurred after the first sale.

(3) Costs and attorney's fees incurred in the action against the defaulting bidder.

(e) Sale to the next highest bidder or to a bidder at a new sale is a prerequisite to recovery under subdivision (d).

(f) The amount recovered pursuant to paragraph (1) of subdivision (d) shall be distributed in the manner provided by Section 703.810.

Comment. Subdivision (a) of Section 703.690 supersedes the first portion of former Section 695. See *Bell v. Redwine*, 98 Cal. App. 784, 787, 277 P. 1050, ___ (1929) (officer must resell property). If a new sale is held, it must satisfy the requirements of notice, time, place, and manner of sale provided by this article.

Subdivision (b) continues the substance of former Section 696.

Subdivision (c) is a new provision designed to handle situations where there is a default by a bidder who elects to treat the sale as a credit transaction pursuant to Section 703.680(c).

Subdivision (d) supersedes the latter portion of former Section 695. This subdivision authorizes the judgment creditor and the judgment debtor to sue the defaulting bidder whereas former Section 695 provided that the officer could recover the amount of the loss, with costs. However, case law under former Section 695 permitted the judgment debtor to recover from the defaulting bidder. See *Meherin v. Saunders*, 131 Cal. 681, 689-91, 63 P. 1084, ___ (1901). Paragraph (1) of subdivision (d) codifies the case law rule that the amount of the loss is the difference between the unpaid bid and a lower price obtained at a later

sale. See *Johns v. Trick*, 22 Cal. 511, 513 (1863); *Meherin v. Saunders*, 131 Cal. 681, 687-88, 63 P. 1084, ___ (1901) (dictum). The provisions for recovery of costs of custody and resale and of attorney's fees are new.

Subdivision (e) is new.

Subdivision (f) is new. It should be noted that different rules govern the distribution of amounts forfeited pursuant to subdivision (c) and of amounts recovered pursuant to subdivision (d). The excess of a forfeited deposit made pursuant to Section 703.680 goes to the defaulting bidder in order to prevent a windfall, since the property is not sold. However, sale of the property being a prerequisite to recovery under subdivision (d), any proceeds remaining after the judgment and costs are satisfied, go to the judgment debtor pursuant to Section 703.810.

15/115

§ 703.700. Persons ineligible to purchase

703.700. The levying officer may not be a purchaser or have an interest in any purchase at a sale.

Comment. Section 703.700 continues the substance of the third sentence of former Section 694. See also Section 701.220 ("levying officer" includes deputy).

15/119

§ 703.710. Certificate of sale of personal property

703.710. (a) When the purchaser of personal property pays the amount due, the levying officer conducting the sale shall do all of the following:

- (1) Execute and deliver a certificate of sale to the purchaser.
- (2) Deliver property capable of manual delivery to the purchaser.
- (3) If authorized by court order, assist the purchaser in obtaining possession of personal property not capable of manual delivery.

(b) The certificate of sale conveys to the purchaser the interest of the judgment debtor in the personal property on, or at any time after, the effective date of the lien under which the property was sold.

Comment. Section 703.710 supersedes former Sections 698 and 699. Unlike former Section 698, Section 703.720 codifies existing practice by requiring the levying officer to deliver a certificate of sale whether or not the purchaser so requests. For the contents of the certificate of sale, see Section 703.730. See also Section 702.310 (relation back of liens).

15/120

§ 703.720. Certificate of sale of real property

703.720. (a) When the purchaser of an interest in real property pays the amount due, the levying officer conducting the sale shall do all of the following:

- (1) Execute and deliver a certificate of sale to the purchaser.
- (2) Record a duplicate of the certificate in the office of the county recorder.

(b) The certificate of sale conveys to the purchaser the interest of the judgment debtor in the real property on, or at any time after, the effective date of the lien under which the property was sold.

Comment. Subdivision (a) of Section 703.720 continues a portion of the third sentence of subdivision (a) of former Section 700a. For the contents of the certificate of sale, see Section 703.730.

Subdivision (b) continues the substance of the portion of former Section 700 applicable to sales of real property to satisfy money judgments. Subdivision (b) makes clear that the sale on execution conveys the interest which the judgment debtor has on the date of levy or the date that the judgment became a lien on the property and any interest that the judgment debtor thereafter acquires up to the date of sale, assuming that the lien has been maintained throughout such period. See Section 702.310 (relation back of liens); *Kenyon v. Quinn*, 41 Cal. 325, 329-30 (1871); *Frink v. Roe*, 70 Cal. 296, 305, 11 P. 820, ___ (1886).

15/121

§ 703.730. Contents of certificate of sale

703.730. The certificate of sale shall contain all of the following:

- (a) Identification of the judgment under which the sale was made.
- (b) A description of the property sold.
- (c) The price paid for the property. If the property is sold in groups or lots, the price paid for the entire group or lot may be stated. If the property is not sold in groups or lots, the price paid for each item or parcel of property shall be separately stated.

Comment. Section 703.730 makes general the requirements for the certificate of sale provided by subdivision (a) of former Section 700a (certificate of sale of real property). The provisions of former Section 700a requiring a statement of the price of property subject to redemption and a notice of the right of redemption are not continued. See Section 703.760 (all sales absolute).

10/906

§ 703.740. Minimum bid

703.740. Property may not be sold unless the amount bid exceeds the sum of the following:

- (a) The amount of a claim, lien, or other interest of a third person, which is superior to the judgment creditor's lien and is required to be satisfied, including the amount of a deposit made pursuant to Section 706.350, with interest from the date of the deposit.

(b) The amount of any applicable exemption of proceeds.

(c) In the case of property described in Section 707.520, five hundred dollars (\$500).

Comment. Section 703.740 is new. See also Sections 703.810 (distribution of proceeds of sale or collection), 707.510 (motor vehicle proceeds exemption), 707.520 (household goods value limitation), 707.550 (tools of trade proceeds exemption), 707.850 (dwelling proceeds exemption).

10/909

§ 703.750. Extinction of liens upon sale

703.750. When property is sold pursuant to this article, the lien under which it is sold and liens subordinate thereto are extinguished.

Comment. Section 703.750 is new. See Civil Code § 2910.

12/758

§ 703.760. Sales absolute

703.760. A sale of property pursuant to this article is absolute.

Comment. Section 703.760 supersedes the first sentence of subdivision (a) of former Section 700a which made absolute only sales of personal property and of leasehold estates with unexpired terms of less than two years. Section 703.760 reflects the repeal of the statutory right of redemption from execution and foreclosure sales. See former Sections 700a-707. Sales of interests in real property (except leasehold estates with less than two years' unexpired term at the time of levy) are delayed at least 140 days, however, in order to provide an opportunity for the judgment debtor to redeem the property from the judgment creditor's lien before sale or to advertise the sale and give notice to potential buyers. See Civil Code § 2903; Code Civ. Proc. § 703.640(h).

This provision does not affect the equitable right to redeem from a defective execution or foreclosure sale. See, e.g., *Odell v. Cox*, 151 Cal. 70, ___, 90 P. 194, ___ (1907) (grossly inadequate price and excusable ignorance of levy and sale); *Smith v. Kessler*, 43 Cal. App.3d 26, 31-32, 117 Cal. Rptr. 470, 473-74 (1974) (grossly inadequate price and manifest unfairness).

The elimination of the statutory right to redeem after a sale pursuant to this article does not affect rights to redeem afforded by other law. See, e.g., Harb. & Nav. Code § 504 (20-day redemption period after sale of vessel on lien for repairs); Rev. & Tax. Code § 4101 (redemption of tax-deeded real property); Sts. & Hwys. Code § 6530 (12-month redemption period after sale by treasurer to collect assessments under Improvement Act of 1911); I.R.C. § 6337 (120-day redemption period after sale of real property to collect federal taxes).

15/123

§ 703.770. Sale set aside

703.770. (a) As used in this section, "purchaser" includes a successor in interest of the purchaser.

(b) If a sale is set aside because the judgment on which it was based is reversed or discharged, the purchaser may recover the price paid, with interest, from the judgment creditor. A judgment for this purpose may be entered by the court against the judgment creditor and in favor of the purchaser on motion of the purchaser and after notice to the judgment creditor.

(c) If a sale is set aside because of irregularities in the proceedings concerning the sale or because the property sold was not subject to levy under a writ of execution and sale, the purchaser may recover the price paid, with interest, from either the judgment creditor or the judgment debtor. If the purchaser recovers from the judgment creditor, the judgment creditor may have the judgment revived as provided in subdivision (d) to recover from the judgment debtor the amount paid to the purchaser, with interest. To recover from the judgment debtor, the purchaser may have the judgment revived in the purchaser's name as provided in subdivision (d).

(d) After notice to the parties to the action, and on motion of a person authorized by subdivision (c), the court shall revive the original judgment in the name of the person for the amount the person is entitled to recover from the judgment debtor. The revived judgment has the same force and effect as would an original judgment entered on the date of revival.

Comment. Section 703.770 supersedes former Section 708. Subdivision (b) applies where real or personal property is sold, whereas the first sentence of former Section 708 referred only to sales of real property.

Under former Section 708, a person who purchased at an execution sale which was later set aside (for example, because the property attempted to be sold was exempt or belonged to a person other than the judgment debtor) was authorized to seek recovery only against the judgment debtor. Since the judgment debtor may be unable to satisfy the judgment, subdivision (c) permits the purchaser to recover from either the judgment debtor or the judgment creditor.

Subdivision (d) makes clear that recovery from the judgment creditor restores the original parties to their relative positions before the execution sale, and the judgment creditor is therefore authorized to seek recovery against the judgment debtor afresh. The time for enforcing a judgment under this section is governed by Section 702.210 and runs from the time the new judgment is entered, not from the time the original judgment was entered.

Article 4. Distribution of Proceeds of
Sale or Collection

§ 703.810. Distribution of proceeds of sale or collection

703.810. Except as otherwise provided by statute or court order, the levying officer shall distribute the proceeds of sale or collection in the following order:

(a) To persons having a claim, lien, or other interest which is superior to the judgment creditor's lien and is required to be satisfied, in the amount required to be satisfied, or if a deposit has been made pursuant to Section 706.350, to the judgment creditor, in the amount of the deposit, with interest from the date of the deposit, in the order of their respective priority.

(b) To the judgment debtor in the amount of any applicable exemption of proceeds, except that such proceeds shall be used to satisfy any voluntary encumbrances subordinate to the judgment creditor's lien in the order of their respective priority.

(c) To the levying officer for the reimbursement of the levying officer's costs for which an advance has not been made.

(d) To the judgment creditor to satisfy the following:

(1) First, advances to the levying officer for costs accruing after issuance of the writ and interest accruing after issuance of the writ.

(2) Second, costs and interest accruing after entry of the judgment but before issuance of the writ pursuant to which the sale or collection is conducted, in the amount remaining unsatisfied, and the fee for issuance of the writ.

(3) Third, the judgment as entered, in the amount remaining unsatisfied.

(e) To any other judgment creditors who have delivered a writ to the levying officer before the sale or collection, accompanied by instructions to levy upon the same property, or are otherwise entitled to a share of the proceeds of sale, in the manner prescribed by subdivision (d) and in the order of their respective priority.

(f) To the judgment debtor, in the amount remaining.

Comment. Section 703.810 supersedes former Sections 689c and 690.2(c), a portion of former Section 690.2(d), former Section 690.31(j), a portion of former Section 691, and former Civil Code Section 1256.

See also former Sections 682.1 and 682.2. Section 703.810 applies to the distribution of the proceeds of a sale or collection pursuant to the enforcement of a money judgment and, by way of incorporation, to cases where levy takes place under a writ of possession for the recovery of costs and damages or the value of the property, or under a writ of sale for the recovery of costs and damages. See Sections 708.130, 709.130, 710.130.

Subdivision (a) does not determine which interests are required to be satisfied; it recognizes that such interests may be required by other statutes or court order to be paid off. See, e.g., Section 1206 (preferred labor claim). The provisions of former Civil Code Section 1256 and of former Code of Civil Procedure Section 690.31(j) requiring the discharge of "all liens and encumbrances" on homestead property or exempt dwellings are not continued. Subdivision (a) treats the judgment creditor as a third person with a superior interest to the extent that the judgment creditor is subrogated to the rights of a secured party pursuant to Section 706.350(b).

In certain circumstances, the judgment debtor will be entitled to receive a portion of the proceeds as provided by subdivision (b). See Sections 707.510 (motor vehicle), 707.550 (tools of a trade), 707.850 (dwelling). The provision for satisfaction of subordinate voluntary encumbrances out of exempt proceeds is new.

As a general rule, the costs of the levying officer are required to be prepaid. See Section 702.620. However, in some instances, costs are not prepaid, such as where a governmental agency is the creditor. See, e.g., Labor Code § 101. Subdivision (c) provides for the reimbursement of such costs before any payments are made to the creditor. See also Section 701.140 ("costs" defined).

Subdivision (d) sets forth the order in which proceeds are allocated to the judgment creditor and is based on former Sections 682.1 and 682.2. This subdivision codifies the existing practice of satisfying new costs and interest first, then costs incurred and interest accruing before the writ is issued, and finally the principle amount of the judgment. New costs are entered on the writ by the levying officer. See Sections 702.530(b), 703.140(b). The interest accruing after issuance of the writ is computed on a daily basis as provided by Section 702.530(a)(3). Costs accruing after judgment but before issuance of the latest writ may be collected only if a memorandum of costs has been filed pursuant to Section 1033.7. See Section 702.530(a)(1). Interest accruing after judgment but before issuance of the latest writ is entered on the face of the writ if an affidavit has been filed pursuant to Section 702.530(a)(2).

Subdivision (e) is based on the rule in *Mitchell v. Alpha Hardware & Supply Co.*, 7 Cal. App.2d 52, 57, 45 P.2d 442, ___ (1935). Cf. *Caito v. United California Bank*, 20 Cal.3d 684, 701, 576 P.2d 466, ___, 144 Cal. Rptr. 751, ___ (1978); *Nomellini Constr. Co. v. Modesto Sav. & Loan Ass'n*, 275 Cal. App.2d 114, 118, 79 Cal. Rptr. 717, ___ (1969).

10/905

§ 703.820. Time for distribution of proceeds of collection

703.820. If the judgment debtor is an individual, the proceeds of collection may not be distributed until the expiration of 10 days after the date notice of levy was mailed to the judgment debtor.

Comment. Section 703.820 is new. It is intended to provide an individual with an opportunity to claim any available exemption for amounts collected. See Section 707.320 (exemption claim must be made within 10 days after notice of levy is mailed or delivered). See also Sections 702.510 (mailing includes personal delivery), 703.630(d) (sale of personal property of individual no sooner than 10 days after notice of levy is mailed or delivered), 703.640(h) (notice of sale of real property given not sooner than 120 days after notice of levy mailed or delivered).

CHAPTER 4. WAGE GARNISHMENT

Note. The Employees' Earnings Protection Law (§§ 723.010-723.154) was enacted on Commission recommendation by 1978 Cal. Stats. ch. 1133, and will eventually comprise Chapter 4 (commencing with Section 704.110).

CHAPTER 5. SPECIAL PROCEDURES FOR THE
ENFORCEMENT OF A MONEY JUDGMENT

Article 1. Interrogatories and Examination Proceedings

§ 705.110. Written interrogatories to judgment debtor

705.110. (a) The judgment creditor may propound written interrogatories to the judgment debtor in the manner set forth in Section 2030 if the judgment debtor is represented by counsel. The judgment debtor shall answer the interrogatories in the same manner and within the same time as provided by Section 2030.

(b) If, within the preceding 120 days, the judgment creditor has served interrogatories on the judgment debtor or the judgment debtor has been examined pursuant to this article, the judgment creditor may not serve the interrogatories and the judgment debtor is not required to respond to any interrogatories served.

(c) Interrogatories served pursuant to this section may be enforced, to the extent practicable, in the same manner as interrogatories in a civil action.

Comment. Subdivision (a) of Section 705.110 is the same in substance as the first sentence of former Section 714.5. Unlike service of an order of examination pursuant to Section 705.120, service of interrogatories does not create a lien. The interrogatories are informational only.

Subdivision (b) makes clear that the interrogatory procedure may not be used if interrogatories have been served or an examination under Section 705.120 held within the preceding 120 days. See also Section 705.120(b)(1) (examination may be ordered within 120 days after service of interrogatories). Subdivision (b) thus resolves the apparent conflict between the last two sentences of former Section 714.5 which provided that the interrogatory procedure could be used "in conjunction with" the examination procedure and also that the judgment debtor could not be required to respond to interrogatories "more frequently than once in any four-month period or within any four-month period during which he has been subject to an examination." The former four-month period has been changed to 120 days which is approximately the same length of time but is more precise.

Subdivision (c) continues the substance of the third sentence of former Section 714.5.

045/200

§ 705.120. Examination of judgment debtor

705.120. (a) The judgment creditor may apply for an order from the court requiring the judgment debtor to appear before the court at a time

and place specified in the order and answer concerning the judgment debtor's property.

(b) The court shall issue the order if either of the following conditions is satisfied:

(1) The judgment creditor has not caused the judgment debtor to be examined concerning the judgment debtor's property during the preceding 120 days.

(2) The judgment creditor shows by affidavit or otherwise to the satisfaction of the court that the judgment debtor has property which is not exempt and which the judgment debtor refuses to apply toward the satisfaction of the judgment. The affidavit in support of this showing may be based on the affiant's information and belief.

(c) The judgment creditor shall serve a copy of the order on the judgment debtor not less than 10 days prior to the date set for the examination.

(d) Service of the order creates a lien on the property of the judgment debtor.

(e) The order shall contain the following statement in boldface type: "Failure to appear may subject the party served to arrest and punishment for contempt of court."

Comment. Section 705.120 supersedes former Sections 714 and 715. The judgment creditor may apply for an order for examination at any time that the requirements of subdivision (b) can be satisfied, so long as the period of enforceability of the judgment has not expired. See Sections 702.210, 702.220. The provision of former Section 715 that required a writ of execution to be issued before applying for an order based on the judgment debtor's refusal to apply property to the satisfaction of the judgment and that apparently limited the scope of the examination to such property is not continued.

Although Section 705.120 no longer specifically so provides, an order requiring a judgment debtor to appear for an examination may be issued against any one or more of several judgment debtors. See Section 17 (singular includes plural). Section 705.200 continues the authority of the court to appoint a referee to conduct the examination provided in former Sections 714 and 715.

Subdivision (b) makes clear that the order for an examination of the judgment debtor may be obtained every 120 days, or more frequently if there is a showing that the judgment debtor has nonexempt property that the judgment debtor refuses to apply to the satisfaction of the judgment. The requirement that the property be nonexempt replaces the requirement of former Section 715 that the judgment debtor has unjustly refused to apply the property to the satisfaction of the judgment. Of course, the property must also be subject to enforcement of a money judgment. See Section 707.120. Service of written interrogatories on the judgment debtor pursuant to Section 705.110 does not preclude an

examination within the 120-day period. The scope of an examination may be the same whether the order is issued on the grounds stated in subdivision (b)(1) or (b)(2). The provision for giving an affidavit on information and belief codifies case law. See *Collins v. Angell*, 72 Cal. 513, 515, 14 P. 135, 136 (1887); *Tucker v. Fontes*, 70 Cal. App.2d 768, 771, 161 P.2d 697, 699 (1945).

Subdivision (c) is new. Prior law did not prescribe the time within which the judgment debtor was to receive notice.

Subdivision (d) codifies the rule in *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 28-30, 87 P.2d 830, 844 (1939), and *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242, 245 (1909). No duration is specified for the lien; however, it may not be enforced beyond the time for enforcement of the judgment under Sections 702.210 and 702.220. See also Sections 702.310 (relation back of liens), 702.320 (effect of liens).

Subdivision (e) continues the substance of the third paragraph of former Section 714.

045/202

§ 705.130. Examination of third person

705.130. (a) Upon proof by the judgment creditor by affidavit or otherwise to the satisfaction of the court that a third person has property in which the judgment debtor has an interest or is indebted to the judgment debtor in an amount not less than two hundred fifty dollars (\$250), if the property is not exempt, the court may order the third person to appear before the court at a time and place specified in the order and answer concerning the property or indebtedness. The affidavit in support of this showing may be based on the affiant's information and belief.

(b) A copy of the order shall be served on the third person not less than 10 days prior to the date set for the examination. Notice of the time and place of the examination shall be mailed to the judgment debtor.

(c) Service of the order on the third person creates a lien on the property in the third person's possession in which the judgment debtor has an interest and on any debt owing by the third person to the judgment debtor which property or debt is ordered to be applied to the satisfaction of the judgment.

(d) An order made pursuant to subdivision (a) shall contain the following statement in boldface type: "Failure to appear may subject the party served to arrest and punishment for contempt of court."

(e) An order made pursuant to subdivision (a) is not effective unless, at the time it is served on the third person, the person serving

the order tenders to the third person mileage fees in the amount of twenty cents (\$0.20) per mile necessary to be traveled, one way, from the third person's residence to the place of examination.

Comment. Subdivision (a) of Section 705.130 supersedes the first sentence of the first paragraph of former Section 717. It provides for the issuance of an order for the examination of the debtor of a judgment debtor or a person holding property of the judgment debtor. The minimum amount of indebtedness required before an examination order may issue has been raised from \$50 to \$250 to compensate for the change in the value of the dollar since this procedure was originally enacted. The requirement of the first sentence of former Section 717 that a writ of execution be first issued against the property of the judgment debtor has not been continued. The third person may not be ordered to appear where the property has been determined to be exempt nor, of course, where the property is not subject to enforcement of a money judgment. See Section 707.120. An order may be sought under this section whenever the judgment is enforceable. See Sections 702.210, 702.220. The provision for an affidavit based on information and belief codifies the result in *Tucker v. Fontes*, 70 Cal. App.2d 768, 771, 161 P.2d 697, 699 (1945). Although subdivision (a) does not specifically refer to referees, the proceedings authorized by this article may be conducted by such officers. See Section 705.200 and Comment thereto.

Subdivision (b) is new. Prior law did not prescribe the time within which the debtor of the judgment debtor was to be served and did not provide for any notice to the judgment debtor. The requirement that the judgment debtor be given notice changes the rule announced in *High v. Bank of Commerce*, 95 Cal. 386, 388, 30 P. 556, ___ (1892).

Subdivision (c) corresponds to subdivision (d) of Section 705.120.

Subdivision (d) continues the substance of the third paragraph of former Section 717. Subdivision (e) continues the provisions of the second paragraph of former Section 717.1; however, the amount of the mileage fee has been made consistent with that for witnesses generally. See Govt. Code § 68093. Mileage fees are recoverable costs under Sections 1032.6 and 1033.7.

The manner of appearance where a corporation is indebted to or holds property of a judgment debtor is prescribed in Section 705.190. Where the debtor of the judgment debtor is a public entity, the judgment creditor must follow the procedures set forth in Article 8 (commencing with Section 705.710).

404/336

§ 705.140. Witnesses

705.140. Witnesses may be required to appear and testify before the court in an examination proceeding under this article in the same manner as upon the trial of an issue.

Comment. Section 705.140 continues the substance of former Section 718. For the authority of referees, see Section 705.200 and the Comment thereto.

§ 705.150. Privilege of spouse of judgment debtor

705.150. The spouse of the judgment debtor, to the extent provided by Sections 970 and 971 of the Evidence Code, may not be required to testify pursuant to this article if there has not been a waiver of the privilege in the action giving rise to the judgment.

Comment. Section 705.150 continues the substance of the second sentence of the first paragraph of former Section 717 which was applicable to examinations of third persons. Section 705.150 also makes this privilege applicable where the spouse is called as a witness in an examination of the judgment debtor.

968/993

§ 705.160. Attendance at examination outside county of residence or place of business; examinations in other counties

705.160. (a) A person sought to be examined may not be required to attend an examination before a court located outside the county in which the person resides or has a place of business unless the distance from the person's place of residence or place of business to the place of examination is less than 150 miles.

(b) If a person sought to be examined does not reside or have a place of business in the county where the judgment roll is filed, or where the judgment is entered in the docket in the justice court, the judgment creditor may apply to a court of similar jurisdiction in the county where the person resides or has a place of business for an order for an examination. If there is no court of similar jurisdiction in the county, application shall be made to a court of higher jurisdiction. In addition to satisfying the requirements of Section 705.120 or 705.130, the judgment creditor shall file with the court clerk in such county an abstract of judgment in the form prescribed by Section 674 and an affidavit showing the place of residence or place of business of the person sought to be examined and the filing of the abstract of judgment.

Comment. Subdivision (a) of Section 705.160 continues the substance of the first paragraph of former Section 717.1. Subdivision (b) continues the substance of the first sentence of former Section 722.

405/439

§ 705.170. Order applying property to satisfaction of judgment

705.170. (a) Except as provided in subdivision (b), after an examination pursuant to this article, the court may order property of

the judgment debtor in the possession or under the control of the judgment debtor or a third person or a debt owed by a third person to the judgment debtor to be applied toward the satisfaction of the judgment, if the property is not exempt.

(b) If a third person alleged to have property in which the judgment debtor has an interest or to be indebted to the judgment debtor claims an interest in the property adverse to the judgment debtor or denies the debt, the court may not order that the property or debt be applied toward the satisfaction of the judgment, but may forbid transfer or payment to the judgment debtor pursuant to Section 705.240.

(c) The court shall determine any exemption claim made in the examination proceedings.

Comment. Subdivision (a) of Section 705.170 continues the broad authority provided by former Section 719 for the court to order any non-exempt property or debt to be applied toward the satisfaction of the judgment. See also the last portion of the first sentence of former Section 715. Under subdivision (a), the person examined--whether the judgment debtor or a third person--may be ordered to deliver property or funds to the levying officer. See *Lewis v. Neblett*, 188 Cal. App.2d 290, ___, 10 Cal. Rptr. 441, 444 (1961) (funds in hands of administrator of estate). The person examined may also be ordered to pay the judgment creditor directly. See *Hustead v. Superior Court*, 2 Cal. App.3d 780, 783-87, 83 Cal. Rptr. 26, 27-30 (1969) (sublessee of judgment debtor ordered to pay rent to judgment creditor, order held invalid on other grounds). A receiver may be appointed with the powers ordered by the court, and the judgment debtor may be ordered to make any necessary assignments or deliveries to the receiver for the purpose of sale or collection. See *Habenicht v. Lissak*, 78 Cal. 351, ___, 20 P. 874, 877 (1889) (seat on stock exchange); *Pacific Bank v. Robinson*, 57 Cal. 520, ___ (1881) (patent rights); *Hathaway v. Brady*, 26 Cal. 581, ___ (1864) (note); *Tucker v. Fontes*, 70 Cal. App.2d 768, ___, 161 P.2d 697, 701 (1945) (business assets). The court may order execution to be issued to collect the amount due. See *William Deering & Co. v. Richardson-Kimball Co.*, 109 Cal. 73, 41 P. 801-02 (1895) (funds in bank). If property is to be sold pursuant to the court's order under subdivision (a), it will be sold either by a levying officer, in which case there must be a valid writ of execution outstanding, or by a receiver appointed by the court. Orders made in examination proceedings are enforceable by contempt.

Subdivision (b) continues from former Section 719 the exception to the power of the court to order the application of the property or debt to the satisfaction of the judgment in a case where a third person claims an interest in the property adverse to the judgment debtor or denies the debt. The third person is entitled to a determination of the respective interests in the property or debt in an independent action. See former Section 719; *Takahashi v. Kunishima*, 34 Cal. App.2d 367, 373, 93 P.2d 645, 648 (1939). Hence, issues of ownership by the third person, the existence of superior liens on the property, or a right of setoff are not determined in the examination proceeding. Pending the

conclusion of a creditor's suit, the judgment creditor may obtain an order forbidding the transfer of the property or payment of the debt by the third person to the judgment debtor. See Section 705.240.

Subdivision (c) makes explicit a principle that was implicit in a provision of former Section 719 for the application of property "not exempt from execution" toward the satisfaction of the judgment. This necessarily involves a determination of the existence of exemptions prefatory to issuing an order applying the property toward the satisfaction of the judgment. See Section 707.140(a) (exemptions apply to all procedures for enforcement of money judgments).

The court may also determine in the examination proceedings that the property sought to be reached may properly be applied to the satisfaction of the judgment through an order in examination proceedings. Cf. *Pacific Bank v. Robinson*, 57 Cal. 520, ___ (1881) (supplementary proceedings appropriate to reach patent rights).

For the extent of the duty of a third person to protect the exemption rights of the debtor, see *Bowie v. Union Bank*, 11 Cal. App.3d 807, 815-16, 90 Cal. Rptr. 103, ___ (1970); *Agnew v. Cronin*, 148 Cal. App.2d 117, 126-29, 306 P.2d 527, 533-34 (1957); *Hing v. Lee*, 37 Cal. App. 313, 316-18, 174 P. 356, 358-59 (1918).

998/991

§ 705.180. Arrest of person ordered to appear

705.180. (a) If a person ordered to appear for an examination fails to appear, the court may, pursuant to a warrant, have the person brought before the court to answer for the failure to appear only if the order requiring the person's appearance was served by a levying officer, some person specially appointed by the court in the order, or a registered process server.

(b) If the judgment debtor has been served with an order to appear for an examination by a person authorized to serve the order pursuant to subdivision (a) and fails to appear, the judgment creditor may recover reasonable attorney's fees incurred in the examination proceeding.

(c) A person who willfully makes an improper service of an order for an examination which subsequently results in the arrest pursuant to subdivision (a) of the person who fails to appear is guilty of a misdemeanor.

Comment. Subdivision (a) of Section 705.180 continues the substance of the second paragraph of former Section 714 and the second paragraph of former Section 717.

Subdivision (b), providing for the award of reasonable attorney's fees against a judgment debtor who fails to appear for an examination, is new. Subdivision (b) does not affect any right to attorney's fees the parties may have under a contract or statute.

Subdivision (c) continues the substance of the last paragraphs of former Sections 714 and 717. The authority provided by former Section

715 for arresting the judgment debtor where there is a danger of the debtor absconding and for imprisoning the judgment debtor for failure to give an undertaking when ordered to do so is not continued. This section is not intended to limit in any way the contempt power of the court under Sections 1209-1222.

405/184

§ 705.190. Appearance at examination by representatives of organizations

705.190. Where a corporation, partnership, association, trust, or other organization is to be examined, it shall designate to appear and be examined one or more officers, directors, managing agents, or other persons who are familiar with its property and debts.

Comment. Section 705.190 is new. It is derived from Rule 30(b)(6) of the Federal Rules of Civil Procedure. Former Section 717 provided for the appearance of a "corporation, or any officer or member thereof."

968/611

§ 705.200. Powers and qualifications of referee

705.200. (a) The examination proceedings authorized by this article may be conducted by a referee appointed by the court. The referee may issue, modify, or vacate an order authorized by Section 705.170 or issue a warrant authorized by Section 705.180 and has the same powers as the court to grant adjournments, to preserve order, and to subpoena witnesses to attend the examination, but only the court that ordered the reference has power to punish for contempt for disobeying an order of the referee.

(b) Only a member of the State Bar of California is eligible for appointment as a referee pursuant to this article.

Comment. Subdivision (a) of Section 705.200 continues the authority of a referee appointed by the court provided in former Sections 714-715, 717-721, and 723. The authority to modify and vacate orders is generalized from former Section 720. The authority to compel the appearance of a person at the examination and to control the proceeding generalizes the authority of a referee appointed by a superior court formerly provided by Section 723. The limitation on the power to punish for contempt provided in subdivision (a) continues the substance of former Section 721.

Subdivision (b) supersedes the portion of former Section 723, applicable to referees appointed by a superior court in a county or city and county having a population of one million or more, which required referees to have been members of the State Bar for five years.

Article 2. Creditor's Suit

Comment. Article 2 (commencing with Section 705.210) authorizes the judgment creditor to bring suit against third persons indebted to or in possession of property of the judgment debtor. It is anticipated, however, that the less expensive and less cumbersome enforcement procedures will be used in the normal case and that the creditor's suit will be used where the third person has failed to perform the duties under Section 703.190 (duties of garnishee under levy of execution), where the third person has denied the interest or debt in an answer to interrogatories under Section 705.110 or in an examination proceeding under Section 705.130, or where for some other reason the judgment creditor believes that the third person will not cooperate or will claim an adverse interest. Costs will not be awarded against a defendant in a creditor's suit if the defendant has not disputed the judgment debtor's interest in the property or the indebtedness to the judgment debtor. Section 705.270. Disputes concerning the interests of a third person and a judgment debtor in personal property may also be resolved through the third-party claims procedure. See Chapter 6 (commencing with Section 706.110).

968/680

§ 705.210. Creditor's suit

705.210. A judgment creditor may bring an action against a third person who has property in which the judgment debtor has an interest or who is indebted to the judgment debtor for the application of the interest or debt to the satisfaction of the judgment creditor's judgment against the judgment debtor.

Comment. Subdivision (a) of Section 705.210 supersedes the first portion of the first sentence of former Section 720. An action may be brought under this article without the necessity of first levying under a writ of execution, examining the third person, or resorting to any other procedure for the satisfaction of the judgment. The normal rule under former law requiring the exhaustion of remedies at law before the equitable remedy of the creditor's suit could be employed is not continued. For the former rule, see *Farmers' & Merchants' Bank v. Bank of Italy*, 216 Cal. 452, 455-58, 14 P.2d 527, 528-29 (1932) (resort to supplementary proceedings required); *Bond v. Bulgheroni*, 215 Cal. 7, 10-11, 8 P.2d 130, 132 (1932) (resort to supplementary proceedings not required if inadequate or futile).

4438

§ 705.220. Joinder of judgment debtor

705.220. The judgment debtor shall be joined in an action brought pursuant to this article but is not an indispensable party. The residence of the judgment debtor may not be considered in the determination of proper venue unless otherwise provided by contract between the judgment debtor and the third person.

Comment. Section 705.220 is new. If the judgment debtor cannot be joined, the creditor's suit should proceed, the judgment debtor not being an indispensable party. See Section 389(b).

968/694

§ 705.230. Time for bringing creditor's suit

705.230. An action may be brought pursuant to this article:

(a) At any time when the judgment debtor may bring an action against the third person concerning the property or debt.

(b) If a lien is created on the property or debt pursuant to this title within the time specified in subdivision (a), not later than one year after creation of the lien.

Comment. Section 705.230 is new. It provides a statute of limitations for bringing a creditor's suit, subject to the general rules concerning the period of enforceability of judgments provided by Sections 702.210 and 702.220. Under prior law, the general four-year statute of limitations was applicable and began to run from the return of the writ of execution unsatisfied. See Sherman v. S.K.D. Oil Co., 185 Cal. 534, 538, 545, 197 P. 799, 801, ___ (1921). However, the statute of limitations is no longer tied to the return of the writ unsatisfied or the failure of examination proceedings because the judgment creditor is not required to exhaust these remedies before resorting to a creditor's suit. See Section 705.220 and the Comment thereto.

Subdivision (a) places the judgment creditor in the same position as the judgment debtor. The judgment creditor must therefore commence the creditor's suit at a time when the judgment debtor could bring an action against the third person.

Subdivision (b) provides a one-year extension of the limitation period, but does not extend the enforceability of the judgment beyond the 20-year period provided by Sections 702.210 and 702.220.

A creditor's suit commenced within the periods prescribed by this section may be pursued to judgment after the judgment is no longer enforceable against the original judgment debtor notwithstanding Sections 702.210 and 702.220. The judgment in the creditor's suit may then be enforced as provided in Section 705.260, and the 20-year period of enforceability provided by Sections 702.210 and 702.220 applies to the judgment in the creditor's suit.

968/676

§ 705.240. Order forbidding transfer or payment to judgment debtor

705.240. (a) Upon application of the judgment creditor, made ex parte or, if the court so orders, upon noticed motion the court may issue an order forbidding transfer to the judgment debtor of the property in which the judgment debtor is claimed to have an interest or payment to the judgment debtor of the alleged debt for a reasonable time not to exceed 60 days until an action against the third person can be

commenced under this article. If an action is commenced within the time allowed in the order, the order may be extended until the action can be prosecuted to judgment.

(b) An order issued under subdivision (a) may be modified or vacated by the court which issued it or the court in which the action under this article is brought. The court, in its discretion, may modify or vacate the order at any time, with or without a hearing, upon such terms as are just.

Comment. Subdivision (a) of Section 705.240 supersedes the last portion of the first sentence of former Section 720; however, an application under Section 705.240 is not limited as under former law to situations where the third person has denied the debt or claimed an adverse interest in the property at an examination proceeding. The judgment creditor may apply for an order forbidding transfer or payment to the judgment debtor at any time after judgment in the main action when it is thought necessary to preserve the status quo between the judgment debtor and the third person, such as where the third person has denied the debt or the judgment debtor's interest in property in a garnishee's memorandum under Section 703.190, where the third person makes a denial at examination proceedings under Section 705.170(b), or where the judgment creditor otherwise believes that the third person is likely to make such a denial. An order issued under subdivision (a) is good for not more than 60 days unless an action is commenced within the time allowed, in which case the order may be extended until judgment in the creditor's suit. Former law did not prescribe any absolute time limits. See *Pioneer Inv. & Trust Co. v. Muncey*, 33 Cal. App. 740, 743, 166 P. 591, 592 (1917) (order vacated if creditor does not seasonably commence creditor's suit).

The scope of the order issuable under this section is more limited than that provided under former Section 720. Under this section, the order restrains only a transfer to the judgment debtor, whereas under former Section 720, the order restrained any transfer of the property or debt. Such a sweeping order, issuable without a hearing and without bond and directed to a person who is not a formal party, is constitutionally suspect. Cf. *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 606-08 (1975); *Randone v. Appellate Dep't*, 5 Cal.3d 536, 547-52, 488 P.2d 13, 20-23, 96 Cal. Rptr. 709, 716-19 (1971).

Subdivision (b) continues the substance of the last sentence of former Section 720.

A referee may issue an order under this section. See Section 705.200.

968/692

§ 705.250. Lien of creditor's suit

705.250. Service of summons on the third person creates a lien on the property that is the subject of an action under this article.

Comment. Section 705.250 codifies case law. See *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 28-30, 87 P.2d 830, 844 (1939);

Nordstrom v. Corona City Water Co., 155 Cal. 206, 212-13, 100 P. 242, 245 (1909); cf. Seymour v. McAvoy, 121 Cal. 438, 441, 53 P. 946, 947 (1898) (filing bill in equity creates equitable lien). The lien may not be enforced beyond the time for enforcement of the judgment provided by Sections 702.210 and 702.220. See Section 702.330 (duration of liens). See also Sections 702.310 (relation back of liens), 702.320 (effect of liens).

045/207

§ 705.260. Judgment in creditor's suit

705.260. (a) If the judgment creditor establishes that the third person has property in which the judgment debtor has an interest or is indebted to the judgment debtor, the court shall render judgment accordingly. The property or debt may be applied to the satisfaction of the judgment creditor's judgment against the judgment debtor as ordered by the court.

(b) If the court determines that the third person has property in which the judgment debtor has an interest, the court may order the third person not to transfer the property until it can be levied upon or otherwise applied to the satisfaction of the judgment.

(c) If the court determines that the third person has transferred property which was subject to the lien created by service of summons, the court shall render judgment against the third person in an amount equal to the value of the judgment debtor's interest in the property.

(d) The court shall determine any exemption claim made in the action.

Comment. Section 705.260 is new. At the conclusion of a creditor's suit, the property may be applied toward the satisfaction of the judgment in a manner appropriate to the particular type of property. See the Comment to Section 705.170. Ordinarily the property or debt that has been determined in the creditor's suit to belong to or to be owing to the judgment debtor will be levied upon under a writ of execution. If the judgment creditor does not have a valid writ of execution, the judgment creditor may apply for an order under subdivision (b) preventing the third person from transferring the property until it can be applied to the satisfaction of the judgment. If the property cannot be levied upon, some other manner of enforcement will be necessary. Where a money judgment has been rendered against the third person as provided in subdivision (c), the judgment creditor may be left free to select the manner of enforcement.

Subdivision (d) recognizes that only nonexempt property may be applied to the satisfaction of the judgment. See Section 707.140(a) (exemptions apply to all procedures for enforcement of money judgments).

§ 705.270. Costs

705.270. Costs in an action under this article may be awarded in the manner provided by Section 1033.7 and only against the third person.

Comment. Section 705.270 supersedes the portion of former Section 720 that permitted use of a creditor's suit only where the third person denied the debt or the judgment debtor's interest. The intent of this section is to encourage judgment creditors to use the creditor's suit as a last resort since, under Section 1033.7, only reasonably necessary costs may be awarded.

999/321

Article 3. Receiver to Enforce Judgment§ 705.310. Application of general provisions

705.310. The provisions of Chapter 5 (commencing with Section 564) and Chapter 5a (commencing with Section 571) of Title 7 govern the appointment, qualifications, powers, rights, and duties of a receiver appointed under this article.

Comment. Section 705.310 makes clear that the general receiver provisions continue to apply to receivers for enforcement of judgments. The appointment of a receiver is subject to the general rules concerning the time within which judgments may be enforced. See Sections 702.210 and 702.220.

045/191

§ 705.320. Appointment of receiver

705.320. (a) The court may appoint a receiver to enforce the judgment where the judgment creditor shows that, considering the interests of both the judgment creditor and the judgment debtor, the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment.

Comment. Section 705.320 supersedes portions of Section 564 that authorized the appointment of a receiver to enforce a judgment. It eliminates as a prerequisite to the appointment of a receiver the showing that a writ of execution has been returned unsatisfied or that the judgment debtor refuses to apply property in satisfaction of the judgment as was formerly required by subdivision 4 of Section 564. See *Olsan v. Comora*, 73 Cal. App.3d 642, 647-49, 140 Cal. Rptr. 835, ___ (1977).

Under Section 705.320, a receiver may be appointed where a writ of execution would not reach certain property and other remedies appear inadequate. A receiver may also be appointed in examination proceedings under Article 1 (commencing with Section 705.110) where the requisite showing is made under this section. Cf. *Tucker v. Fontes*, 70 Cal.

App.2d 768, 771-72, 161 P.2d 697, 699 (1945); *Medical Finance Ass'n v. Short*, 36 Cal. App.2d Supp. 745, 747, 92 P.2d 961, 962 (1939) (appointment of receiver in supplementary proceedings under former law). A receiver may be appointed to enforce a charging order against a partnership under Corporations Code Section 15028 or 15522. See Section 705.510 (charging orders).

A receiver may also be appointed to enforce a judgment for the possession of personal property (see Section 708.180), for the possession of real property (see Section 709.160), or for the sale of real or personal property (see Section 710.160).

045/206

§ 705.330. Receiver to transfer alcoholic beverage license

705.330. (a) An alcoholic beverage license may be applied to the satisfaction of a judgment for the payment of money only as provided in this section.

(b) The court may appoint a receiver for the purpose of transferring an alcoholic beverage license held by the judgment debtor which is transferable under Article 5 (commencing with Section 24070 of the Business and Professions Code) of Chapter 6 of the Alcoholic Beverage Control Act, unless the judgment debtor shows that claims of creditors with priority over the judgment creditor as provided by Section 24074 of the Business and Professions Code exceed the probable sale price of the license.

(c) The receiver may exercise the powers of the licensee as necessary, and shall comply with the applicable provisions of Article 5 (commencing with Section 24070 of the Business and Professions Code) of Chapter 6 of the Alcoholic Beverage Control Act and applicable regulations of the Department of Alcoholic Beverage Control.

Comment. Section 705.330 supersedes a portion of former Section 688(f). After the amendment of former Section 688 in 1959 (1959 Cal. Stats. ch. 2140, § 1), alcoholic beverage licenses were not reachable by any state enforcement process. See 37 Ops. Cal. Att'y Gen. 4 (1961). Alcoholic beverage licenses are not subject to levy under a writ of execution. See Section 703.110(b)(1). The Alcoholic Beverage Control Act (commencing with Business and Professions Code Section 23000) provides detailed procedures for the sale of alcoholic beverage licenses which make use of a receiver appropriate. Cf. *Mollis v. Jiffy-Stitcher Co.*, 125 Cal. App.2d 236, 238, 270 P.2d 25, 26 (1954).

In order to prevent a situation where the judgment creditor forces the sale of the judgment debtor's license but does not receive any proceeds to be applied toward satisfaction of the judgment, subdivision (b) precludes transfer if the judgment debtor shows that it is unlikely that the sale of the license would yield any excess over the amount required to satisfy claims of creditors with priority over the judgment creditor

under Business and Professions Code Section 24074. The scheme of priorities set out in Section 24074 is "mandatory and exclusive." *Grover Escrow Corp. v. Cole*, 71 Cal.2d 61, 65, 453 P.2d 461, 463, 77 Cal. Rptr. 21, 23 (1969). See Bus. & Prof. Code § 24076.

Subdivision (c) enables the receiver to exercise the powers of the licensee as necessary to comply with the transfer provisions of the Alcoholic Beverage Control Act. The strict regulation of all aspects of alcoholic beverage licenses by the Alcoholic Beverage Control Act requires that the receiver comply with the procedures set out in Article 5 (commencing with Business and Professions Code Section 24074) of Chapter 6 of the act and the regulations of the Department of Alcoholic Beverage Control.

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§ 705.340. Receiver's lien

705.340. Service of a copy of the order appointing the receiver, if made in the manner provided for the levy under a writ or for the service of other process that creates a lien under this title, creates a lien on the judgment debtor's property subject to the receivership to the same extent and with the same duration as would be obtained by a levy under a writ or service of other process.

Comment. Section 705.340 provides for a receiver's lien in favor of the judgment creditor. Prior law was unclear as to the effect of the appointment and enforcement activities of the receiver. In *Pacific Bank v. Robinson*, 57 Cal. 520, 522 (1881), the court did not consider the precise question of what the receiver takes upon appointment and qualification but did decide that a court has the power in equity to compel the assignment of a patent right to a receiver appointed in supplementary proceedings. Accord, *Habenicht v. Lissak*, 78 Cal. 351, ___, 20 P. 874, 877 (1889) (seat on stock exchange). Section 705.340 is consistent with the result of these cases and varies from the principles of general law that held that the appointment and qualification of a receiver vested the property of the judgment debtor in the receiver. See 3 A. Freeman, *Law of Executions* § 419, at 2243-46 (3d ed. 1900). Pursuant to Section 702.310, the lien obtained by a receiver under the provisions of this section relates back to the creation of earlier liens, contrary to some early decisions in other jurisdictions. See id. at 2246. See also Section 702.320 (effect of lien).

For the manner provided for levy under a writ, see Sections 703.310-703.460. For the manner provided for the service of other process which creates a lien under this title, see Section 702.520. For the lien created by levy under a writ of execution, see Section 703.200. For liens created by the service of other process, see Sections 705.120 (examination of judgment debtor), 705.130 (examination of third person), 705.250 (creditor's suit), 705.420 (charging order), 705.510 (cause of action and nonfinal judgment), 705.620 (assignment order), 705.780 (lien where judgment debtor is creditor of public entity).

Article 4. Charging Orders§ 705.410. Charging orders

705.410. The judgment debtor's interest in a partnership may be applied toward the satisfaction of the judgment, other than a judgment against the partnership, only by an order charging the judgment debtor's interest pursuant to Section 15028 or 15522 of the Corporations Code.

Comment. Section 705.410 incorporates the charging order provisions of Corporations Code Sections 15028 and 15522. Where the existence of the partnership is not in dispute, the charging order is the exclusive manner for applying the interest of a partner in specific partnership property or the partnership to the satisfaction of a judgment against a judgment debtor who is a partner. See Section 703.110(b)(2) (property subject to execution); *Baum v. Baum*, 51 Cal.2d 610, 612-13, 335 P.2d 481, 483 (1959); *Evans v. Galardi*, 16 Cal.3d 300, 310, 546 P.2d 313, ___, 128 Cal. Rptr. 25, 33 (1976). Enforcement pursuant to this section is subject to the general rules concerning the time within which judgments may be enforced. See Sections 702.210, 702.220.

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§ 705.420. Lien of charging order

705.420. Service on the judgment debtor of notice of motion for a charging order creates a lien on the judgment debtor's interest in the partnership.

Comment. Section 705.420 is new. Former statutory law did not explicitly provide for a lien of a charging order; the lien of a charging order was recognized in the decisions, but the time of its creation and its effect were unclear. See *Taylor v. S & M Lamp Co.*, 190 Cal. App.2d 700, 707-12, 12 Cal. Rptr. 323, 329-31 (1961). Section 705.420 establishes the time of creation of the lien by reference to service of notice of motion for the charging order. Cf. *Ribero v. Callaway*, 87 Cal. App.2d 135, 138, 196 P.2d 109, ___ (1948) (charging orders issued on noticed motion). This provision is analogous to the creation of a lien in an examination proceeding under Article 1 (commencing with Section 705.110) by service of the order of examination. See Sections 705.120(d), 705.130(c). The lien is ineffective after the time for enforcement of the judgment has expired. See Sections 702.210, 702.220, 702.330.

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Article 5. Judgment Liens§ 705.450. Judgment lien

705.450 (a) Except as otherwise provided by law, recordation with a county recorder of an abstract of a money judgment, certified by the court where the judgment is entered, creates a judgment lien on all real

property owned by the judgment debtor in the county, including leasehold estates with an unexpired term of not less than two years.

(b) A judgment lien created pursuant to subdivision (a) attaches to property acquired after the creation of the lien when the property is acquired by the judgment debtor.

(c) A judgment lien may not be created during the time that enforcement of the money judgment is stayed on appeal.

Comment. Subdivision (a) of Section 705.450 supersedes a portion of the first sentence of former Section 674(a) and former Section 674(b). See also the first paragraphs of former Sections 674.5, 674.7. Only an abstract of a judgment for the payment of money may be filed to create a judgment lien. A judgment for money against an executor or administrator, however, may not create a judgment lien, but is to be paid in the administration of the estate. See Prob. Code § 730; Estate of Dow, 149 Cal. App.2d 47, 58, 308 P.2d 475, ___ (1957). A judgment rendered against a party who dies after submission of the case to the judge but before judgment may not create a judgment lien. See Section 669. The form of the abstract of judgment is prescribed by Section 674. The references in former Section 674(a) to decrees, and to judgments of small claims courts, courts of record of the United States, and courts of sister states entered in California pursuant to Chapter 1 (commencing with Section 1710.10) of Title 11 of Part 3, are omitted as unnecessary. The definition of "judgment" in Section 701.190 includes decrees and orders. The special reference to small claims court judgments is unnecessary because such judgments are within the definition of judgment in Section 701.190. Abstracts of money judgments of federal courts rendered in California or registered in federal courts in California pursuant to 28 U.S.C. § 1963 (1970) may be recorded to create a judgment lien pursuant to federal law. See 28 U.S.C. § 1962 (1970). Judgments entered on the basis of sister state judgments are given the same force and effect as if originally entered in California by Section 1710.35. The reference to orders under Welfare and Institutions Code Section 908 (orders to reimburse county for legal services, probation supervision, or support in county institutions, of wards and dependent children) in former Section 674(b) is unnecessary in light of the definition of judgment in Section 701.190.

Subdivision (a) permits the assertion of a judgment lien on leasehold estates with an unexpired term of two years or more and thus abolishes the former rule precluding judgment liens on estates for years. See *Summerville v. Stockton Milling Co.*, 142 Cal. 529, 537, 76 P. 243, ___ (1904); *Arnett v. Peterson*, 15 Cal. App.3d 170, 173, 92 Cal. Rptr. 913, ___ (1971). The judgment lien also attaches to real property used as a dwelling, even though it may later be found to be totally or partially exempt. Under the former law, a prior homestead declaration precluded attachment of the judgment lien to the dwelling. See former Civil Code § 1241; former Code Civ. Proc. § 674(a); *Boggs v. Dunn*, 160 Cal. 283, 285-287, 116 P. 743, ___ (1911).

Subdivision (b) continues former law. See former Section 674(a); *Hertweck v. Fearon*, 180 Cal. 71, ___, 179 P. 190, ___ (1919).

Subdivision (c) continues a portion of the first sentence of former Section 674(a), but does not preclude creation of a judgment lien pur-

suant to a judgment entered in California based on a sister state judgment unless the enforcement of the sister state judgment is stayed on appeal. Former Section 674(a) precluded creation of a judgment lien if enforcement was stayed under Section 1710.50 for any reason. A stay of enforcement for some other reason, such as pursuant to Section 702.140 (stay of enforcement without bond), does not preclude creation of a judgment lien. See the Comment to Section 702.140.

The duration of the judgment lien is governed by Section 702.330 which provides that the lien is effective for as long as the judgment is enforceable which may be as long as 20 years exclusive of stays. See also Sections 702.210, 702.220 (period of enforceability). The priority of the judgment lien may relate back to the commencement of an attachment lien. See Section 702.310.

8120

§ 705.460. Amount of judgment lien; application to installment judgments

705.460. (a) If the amount of the money judgment is certain, regardless of whether it is ordered to be paid in installments or is subject to modification, the judgment lien is for the whole amount of the judgment.

(b) If the amount of a money judgment to be paid in installments is certain, the judgment lien may not be enforced for installments not yet due, except pursuant to Section 705.470.

(c) If the amount of a money judgment to be paid in installments is not certain, the judgment lien is created or increased for the amount of the installments as they become due and relates back to the date of recordation pursuant to Section 705.450.

(d) A judgment lien under a judgment to be paid in installments pursuant to Section 667.7 is governed by subdivision (c) and not by subdivision (a).

Comment. Subdivision (a) of Section 705.460, insofar as it relates to money judgments not payable in installments, continues a portion of former Section 674(a). Subdivision (a) also permits a judgment creditor to secure the whole amount of a judgment payable in installments, if the amount of the judgment is certain. For provisions concerning installment judgments in a certain amount, see Code Civ. Proc. § 85 (judgments in municipal and justice courts), 667.7 (judgments against health care provider); Lab. Code § 5801 (worker's compensation awards); Veh. Code § 16380 (vehicle accident damage awards). Although the judgment creditor may not enforce a judgment lien for installments not yet due, except as provided in subdivision (b), the judgment creditor's priority is preserved as against junior judgment liens. The benefit to the judgment debtor of the installment judgment is preserved by subdivision (b) which prevents enforcement of the judgment lien for amounts not yet due, unless the real property is to be sold. The lien for the full

amount will follow the property into the hands of the purchaser unless it is first satisfied or unless the property is a dwelling subject to proceedings under Section 705.470.

Subdivision (c) supersedes portions of the first paragraphs of former Sections 674.5 (spousal or child support) and 674.7 (certain judgments against health care providers) and applies to any installment judgment the total amount of which is uncertain. See, e.g., Lab. Code § 5801 (worker's compensation). Unlike such liens under former law, the priority of the judgment lien under subdivision (c) relates back to the date of recordation.

Subdivision (d) provides an exception to the normal application of subdivisions (a) and (c) in the case of an installment judgment against a health care provider for future damages. Installment payment of such judgments may be ordered only where the debtor is adequately insured or provides security.

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§ 705.470. Discharge of judgment lien on real property

705.470. (a) As used in this section, "excess value" means the amount by which the fair market value of the real property exceeds the total of any applicable dwelling exemption and liens and encumbrances on the real property that are superior to the judgment lien.

(b) If an agreement to transfer ownership of the judgment debtor's real property has been executed, the judgment debtor may seek the determination of the amount of a judgment lien on the property and its discharge as provided in this section.

(c) The judgment debtor shall mail a notice of application for discharge of the judgment lien to the judgment creditor at the judgment creditor's last known address and shall file a copy of the notice, together with proof of mailing, with the court in the county where the property subject to the judgment lien is located. The notice of application to discharge the judgment lien shall be executed under oath and shall include all of the following:

(1) The date of entry of the judgment and the amount of the judgment remaining unsatisfied.

(2) The names of the judgment debtor and the judgment creditor.

(3) A description of the real property that is subject to the judgment lien.

(4) A statement that the judgment debtor intends to transfer the real property and that the judgment debtor desires to discharge the judgment lien thereon.

(5) A statement of the fair market value of the real property on the date the notice is mailed.

(6) A description of the nature and amount of any other lien or encumbrance on the dwelling, a statement of the date it attached to the real property, and a statement of the name of the lienor or encumbrancer.

(7) If the property is a dwelling, a statement of the amount of the exemption applicable to the dwelling, and a statement that the dwelling is completely exempt from the judgment lien or, if the dwelling has an excess value, that the amount of the excess value or the amount of the judgment remaining unsatisfied, whichever is less, has been or will be deposited with the court in the name of the judgment creditor.

(8) If the real property is not a dwelling, a statement that the amount of any excess value or the amount of the judgment remaining unsatisfied, whichever is less, has been or will be deposited with the court in the name of the judgment creditor.

(9) A statement that the real property will be discharged from the judgment lien unless the judgment creditor files a notice of opposition to discharge of the judgment lien with the court not later than 30 days after the notice of application for discharge of the judgment lien is mailed.

(c) The judgment creditor may file a notice of opposition to discharge of the judgment lien with the court not later than 30 days after the notice of application for discharge of the judgment lien is mailed and request a hearing on the matter. The hearing shall be held not later than 15 days after the notice of opposition to discharge of the judgment lien is filed. The judgment creditor shall mail a copy of the notice of opposition and a notice of hearing to the judgment debtor not less than 10 days before the date set for the hearing, and shall file proof of mailing with the court. The notice of opposition to discharge of the judgment lien shall be executed under oath and shall include all of the following:

(1) The date of entry of the judgment and the amount of the judgment remaining unsatisfied.

(2) The names of the judgment debtor and the judgment creditor.

(3) If the real property is a dwelling, a statement that the dwelling is not exempt and the reasons therefor, or a statement that the dwelling has an excess value and the amount of the excess value.

(4) If the real property is not a dwelling, a statement that the real property has an excess value and the amount of the excess value.

(d) At a hearing under this section, the judgment creditor has the burden of proof on the issue of the current value of the real property and the judgment debtor has the burden of proof on the issue of entitlement to a dwelling exemption.

(e) At the hearing, the court shall determine by order whether the real property is an exempt dwelling, the amount of any dwelling exemption, and the amount of the excess value, if any. If the real property has no excess value or if an amount deposited with the court to discharge the judgment lien equals or exceeds the excess value determined at the hearing, the court shall issue an order discharging the judgment lien. If no deposit has been made with the court to discharge the judgment lien, or if the deposit is less than the excess value determined at the hearing, the court shall order that the judgment lien be discharged upon the deposit with the court of the amount of the excess value or of the difference between the amount deposited and the excess value within 30 days after the order is issued.

(f) The clerk of court shall pay the amount deposited to discharge the judgment lien to the judgment creditor upon the delivery to the clerk of the judgment creditor's certificate discharging the judgment lien.

(g) If a notice of opposition to discharge of the judgment lien is not filed within the time prescribed by subdivision (c), the judgment debtor may apply to the court for an ex parte order that the judgment lien on the real property be discharged. The court shall issue an order discharging the judgment lien if it is satisfied that the real property will be transferred, that the notice of discharge of the judgment lien was mailed to the judgment creditor, and that any deposit required to discharge the judgment lien was made.

Comment. Section 705.470 is new. This procedure for determining and discharging judgment liens on real property is derived from Oregon law. See Or. Rev. Stat. §§ 23.280-23.300 (1977). Section 705.470 is particularly useful where the judgment debtor desires to transfer a dwelling which would be exempt to some extent if the judgment creditor had attempted to levy upon and sell it. Without resort to this procedure, the entire amount of the judgment lien remains on the property in the hands of the purchaser even though the judgment creditor would have only been able to reach the excess value over superior liens and encumbrances and the amount of the dwelling exemption if the dwelling had been levied upon. See Sections 703.310 (levy on real property), 703.810 (distribution of proceeds), 707.810-707.850 (dwelling exemption). Resort to this procedure has the effect of compelling execution.

8124

§ 705.480. Certificate of satisfaction of matured installments

705.480. (a) If the total amount of a judgment to be paid in installments is uncertain, the judgment debtor may record a certificate executed under oath that all amounts due under the judgment have been satisfied as of the date of the certificate. When acknowledged and

recorded, the certificate is prima facie evidence of satisfaction as of the date of the certificate and is conclusive in favor of a person dealing in good faith and for a valuable consideration with the judgment debtor.

(b) If the judgment is for child support and has been directed to be made to an officer designated by the court pursuant to Section 4702 of the Civil Code or any other provision of law and set forth in the copy of the recorded judgment or in a recorded certified copy of an amended or supplemental order, the certificate of the judgment debtor is ineffective unless it is approved in writing by the officer.

Comment. Subdivision (a) of Section 705.480 is a general provision based on portions of the second paragraphs of former Sections 674.5 (spousal or child support) and 674.7 (certain judgments against health care providers).

Subdivision (b) continues the substance of a portion of the second paragraph of former Section 674.5.

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§ 705.490. Judgment liens of equal rank

705.490. The proceeds from the sale of property subject to judgment liens of equal rank shall be prorated among the judgment lienors.

Comment. Section 705.490 is new. Under former law, judgment liens of equal rank, typically on property acquired by the debtor in the county where two or more abstracts of judgment had been recorded (see Section 705.450(b)), were granted the same priority, but the creditor who acted first by levying and selling the property under execution was permitted to do so free of other liens. See *Hertweck v. Fearon*, 180 Cal. 71, ___, 179 P. 190, ___ (1919). Under former law the nonexecuting equal lienor had a right to redeem the property from the execution sale. See former Civil Code § 701.

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Article 6. Liens on Causes of Action and Judgments

§ 705.510. Lien on cause of action and judgment

705.510. (a) The judgment creditor of a party to an action or special proceeding may apply to the court in which the action or special proceeding is pending, upon written notice to all parties, for a lien upon the cause of action and upon any judgment subsequently procured in the action or special proceeding in favor of the judgment debtor.

(b) The court may, in its discretion, grant the lien in favor of the judgment creditor and, during the pendency of the action or special proceeding, may permit the judgment creditor to intervene therein.

(c) The lien shall be in the amount of the judgment creditor's judgment remaining unsatisfied and shall be upon the money or other property recovered or ordered to be sold in the action or special proceeding. The lien is created at the time it is granted and is effective from the date of application therefor.

Comment. Section 705.510 continues the substance of the first sentence and the first portion of the second sentence of former Section 688.1, and extends the coverage of the lien to judgments for the recovery of property. The lien obtained pursuant to this section is subject to any prior liens of the same type or another type, such as an attorney's charging lien. See *Roseburg Loggers, Inc. v. U.S. Plywood-Champion Papers, Inc.*, 14 Cal.3d 742, 748-51, 537 P.2d 399, ___, 122 Cal. Rptr. 567, 571-73 (1975); cf. *Haupt v. Charlie's Kosher Mkt.*, 17 Cal.2d 843, 846, 121 P.2d 627, ___ (1941) (attorney's lien prevails over subsequent attachment lien under former statute). The principle of subdivision (c) that the lien is created when granted but relates back to the time the application for the lien is made codifies existing law. See Civil Code § 2897; *Del Conte Masonry Co. v. Lewis*, 16 Cal. App.3d 678, ___, 94 Cal. Rptr. 439, ___ (1971) (application of equitable rule granting priority to first assertion of claim); *Takehara v. H. C. Muddox Co.*, 8 Cal.3d 168, ___, 501 P.2d 913, ___, 104 Cal. Rptr. 345, ___ (1972) (application of general rule granting priority to first in time of creation). The lien is ineffective after the time for enforcement of the original judgment has expired. See Sections 702.210, 702.220, 702.330.

The purpose of this lien is to establish and preserve the judgment creditor's priority until the judgment is final and nonappealable. At that time, the judgment creditor may seek to reach the judgment which has been subjected to the lien by some other enforcement procedure, such as, for example, levy under a writ of execution and sale or collection (see Sections 703.450, 703.610), appointment of a receiver to collect the judgment (see Section 705.320), application for an assignment order (see Section 705.610), and collection from a public entity owing money to the judgment debtor (see Sections 705.710-705.795). The judgment creditor is not required to bring an equitable action to foreclose the lien. Under former law, it appeared that where the judgment debtor of the judgment debtor did not voluntarily pay the judgment creditor to discharge the lien and the judgment debtor took no steps to enforce the judgment, the judgment creditor had to bring an action to foreclose the lien in order to reach the amount represented by the judgment. See *Roseburg Loggers, Inc. v. Plywood-Champion Papers, Inc.*, 14 Cal.3d 742, 748, 537 P.2d 399, ___, 122 Cal. Rptr. 561, 571 (1975) (dictum).

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§ 705.520. Endorsement of lien on judgment and abstract

705.520. (a) If the court grants a lien pursuant to this article, the clerk shall endorse upon the judgment recovered in the action or special proceeding a statement of the existence of the lien, the date of entry of the order creating the lien, and the place where entered.

(b) Any abstract issued upon the judgment shall contain, in addition to the matters set forth in Section 674, a statement of the lien in favor of the judgment creditor.

Comment. Section 705.520 continues the substance of the third sentence of former Section 688.1.

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§ 705.530. Compromise, settlement, satisfaction of judgment

705.530. No compromise, settlement, or satisfaction may be entered into by or on behalf of the judgment debtor without either the consent of the judgment creditor, or the approval of the court where the action or special proceeding is pending, or the judgment in favor of the judgment debtor is entered, obtained at a hearing on noticed motion, unless the lien is first satisfied or discharged.

Comment. Section 705.530 supersedes a portion of the second sentence of former Section 688.1. The provision permitting compromise, settlement, or satisfaction pursuant to court order despite the opposition of the judgment creditor has been added to prevent the judgment creditor from forcing the judgment debtor to proceed with the action despite the judgment debtor's conviction that it is advisable to settle.

29/630

Article 7. Assignment Orders

§ 705.610. Order to assign right to future payments

705.610. (a) Except as otherwise provided by law, upon application of the judgment creditor on noticed motion, the court may order the judgment debtor to assign to the judgment creditor or to a receiver appointed pursuant to Article 3 (commencing with Section 705.310), to the extent necessary to satisfy the judgment, all or part of a right to future payments, whether or not the right is conditioned on future developments, including, but not limited to, the following types of payments:

- (1) Wages due from the federal government.
- (2) Rents.
- (3) Commissions.
- (4) Royalties.
- (5) Surplus amounts from a spendthrift trust liable pursuant to Civil Code Section 859.

(b) In determining whether to order an assignment or the amount of an assignment pursuant to subdivision (a), the court shall take into consideration the reasonable requirements of the judgment debtor and persons supported in whole or in part by the judgment debtor, any payments the judgment debtor is required to make or that are deducted from the money the judgment debtor would otherwise receive in satisfaction of other judgments and wage assignments, the amount remaining due on the judgment, and the amount being or to be received.

(c) The court shall determine any exemption claim made in the proceeding.

Comment. Section 705.610 provides a new procedure for reaching certain forms of property that cannot be reached by levy under a writ of execution. It also provides an optional procedure for reaching forms of property which are subject to levy, such as accounts receivable, chattel paper, choses in action, judgments, and negotiable instruments. A right to payment may be assigned under this section only to the extent necessary to satisfy the judgment. This section does not make any property assignable that is not already assignable. This remedy is in addition to other remedies provided in this title for reaching rights to payment, such as execution, orders in examination proceedings, creditors' suits, and receivership.

The introductory clause of subdivision (a) recognizes that certain rights to future payments, such as pension benefits, are protected by law from assignment. See, e.g., 5 U.S.C. § 8346 (1970) (federal government employees' retirement benefits); 45 U.S.C. § 231m (Supp. V 1975) (railroad employees' annuities).

Paragraph (1) of subdivision (a) provides a new means to reach federal employees' wages. Such wages generally may not be garnished but may be reached in examination proceedings by an order to the judgment debtor to endorse and deliver paychecks to a receiver. See Sheridan v. Sheridan, 33 Cal. App.3d 917, ___, 109 Cal. Rptr. 466, ___ (1972). However, pursuant to 42 U.S.C. § 659 (Supp. V 1975), the wages of federal employees may be garnished for the enforcement of child support and alimony payments "as if the United States were a private person."

Paragraph (2) permits issuance of an order for the assignment of the right to payment of rent. Under former law, it was held that future rental installments could not be reached by garnishment. See Hustead v. Superior Court, 2 Cal. App.2d 780, 786-87, 83 Cal. Rptr. 26, ___ (1969).

The assignment of a right to commissions or royalties pursuant to paragraphs (3) and (4) is a more appropriate manner for reaching such uncertain amounts than through levy and sale as permitted in Meacham v. Meacham, 262 Cal. App.2d 248, 252, 68 Cal. Rptr. 746, ___ (1968).

The surplus income from a spendthrift trust may still be reached, as under former law, by a creditor's suit (or by an order in examination proceedings) where it is shown that there is no valid direction in the trust instrument for accumulation of surplus income and that the income is not all necessary for the beneficiary's education and support. See Civil Code § 859; Canfield v. Security First Nat'l Bank, 13 Cal.2d 1, ___, 87 P.2d 830, ___ (1939); Estate of Lawrence, 267 Cal. App.2d 77, ___, 72 Cal. Rptr. 851, ___ (1968).

Subdivision (b) is based on the standard for fixing the amount of payments under the New York installment payment order procedure. See N.Y. Civ. Prac. Law & R. § 5226 (McKinney ____). The period of assignment may not extend beyond the 20-year period of enforceability provided by Sections 702.210 and 702.220.

Subdivision (c) recognizes that only nonexempt property may be assigned. See Section 707.140(a) (exemptions apply to all procedures for enforcement of money judgments).

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§ 705.620. Lien of assignment order

705.620. Service upon the judgment debtor of the order to assign the right to future payments creates a lien on the property assigned or to be assigned, lasting for the time specified in the order or when the judgment is satisfied.

Comment. Section 705.620 provides for the creation of a lien of an assignment order. The lien created pursuant to this article may not be enforced beyond the time for enforcement of the judgment. See Sections 702.210, 702.220, 702.330.

29/632

§ 705.630. Modifying or setting aside assignment order

705.630. Upon application of either party and after a noticed hearing and a showing that there has been a material change in circumstances since the time of the previous hearing on an assignment order, the court may modify or set aside the assignment order. An order modifying or setting aside the assignment order operates prospectively.

Comment. Section 705.630 is new.

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Article 8. Collection of Judgment Where Judgment Debtor Is Creditor of Public Entity

§ 705.710. Definitions

705.710. As used in this article:

(a) "Local public entity" means any public entity other than the state.

(b) "Public entity" means the state, a county, city, district, public authority, public agency, and any other political subdivision in the state.

(c) "State" means the State of California.

Comment. Section 705.710 defines several terms used in this article but makes no substantive change in former law. See former Section 710.

§ 705.720. Exclusive procedures

705.720. A money judgment against a person to whom money is owing and unpaid by a public entity may be enforced against the public entity only in the manner provided by this article, by Article 6 (commencing with Section 705.510), or by Chapter 4 (commencing with Section 704.110).

Comment. Section 705.720 makes clear what was implicit under former law.

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§ 705.730. Filing and notice generally

705.730. (a) Except as otherwise provided in Article 5 (commencing with Section 705.510) and by Chapter 4 (commencing with Section 704.110), to enforce a money judgment rendered against a person to whom money is owing and unpaid by a public entity, the judgment creditor may file, in the manner provided in this article, a duly authenticated abstract or transcript of the judgment, together with an affidavit which states that the judgment creditor desires the relief provided by this article and states the exact amount then due, owing, and unpaid on the judgment. The judgment creditor may state in the affidavit any fact tending to establish the identity of the judgment debtor.

(b) Promptly after filing the abstract or transcript and the affidavit with the public entity, the judgment creditor shall mail notice of the filing to the judgment debtor.

Comment. Subdivision (a) of Section 705.730 continues the substance of the introductory paragraph of subdivision (a) and the first sentence of subdivision (e) of former Section 710, but makes clear that, if the liability is the subject of a pending action, the procedures for obtaining a lien on a cause of action and judgment must be followed. See Sections 705.510-705.530. The introductory clause of subdivision (a) also recognizes that earnings of public officers and employees may be withheld only pursuant to Chapter 4 (commencing with Section 704.110).

Money is "owing and unpaid" under these provisions when there is an existing and unsatisfied legal liability on the part of the public entity. *McDaniel v. City & County of San Francisco*, 259 Cal. App.2d 356, 361, 66 Cal. Rptr. 384, 387 (1968); *Department of Water & Power v. Inyo Chem. Co.*, 16 Cal.2d 744, 751-53, 108 P.2d 410, ___ (1940).

Subdivision (b) is new. Former Section 710 did not provide for a notice of filing. See *McDaniel v. City & County of San Francisco*, 259 Cal. App.2d 356, 363, 66 Cal. Rptr. 384, ___ (1968). This notice is analogous to notice of levy under a writ of execution.

The procedure provided by this article also applies in cases where money is owed to the judgment debtor by reason of an award in a condemnation proceeding. Former Section 710(d) provided a distinct but similar procedure for reaching such awards. Under this title, the judgment

creditor may seek to apply such property toward the satisfaction of a money judgment through the procedures normally applicable, depending upon the status of the money at the time when it is sought to be reached. Hence, if a condemnation proceeding has been commenced, the judgment creditor may obtain a lien on the cause of action and judgment pursuant to Article 6 (commencing with Section 705.510). If the judgment is final and the public entity has not paid the award to the judgment debtor, the judgment creditor may file an abstract or transcript and an affidavit with the public entity pursuant to this article. If the public entity has deposited the amount of the award with the court where the condemnation proceeding was held and the judgment creditor has not obtained a lien under Article 6, the judgment creditor may use some other appropriate procedure, such as garnishment or motion. See, e.g., *Kimball v. Richardson-Kimball Co.*, 111 Cal. 396, 394, 43 P. 1111, ___ (1896) (levy of attachment); *Phoenix v. Kovacevich*, 246 Cal. App.2d 774, 778-79, 55 Cal. Rptr. 135, ___ (1966) (permission to levy by court order); *Credit Bureau of San Diego v. Getty*, 61 Cal. App.2d Supp. 823, 826-29, 142 P.2d 105, ___ (1943) (affidavit procedure of former Section 710 not effective where court deposited money with county); *Colver v. W.B. Scarborough Co.*, 73 Cal. App. 455, 457-59, 238 P. 1110, ___ (1925) (levy of execution).

30/192

§ 705.740. Collection where judgment debtor is creditor of state

705.740. (a) If money is owing and unpaid to the judgment debtor by the state, the judgment creditor shall file the abstract or transcript and the affidavit with the state department, board, office, or commission owing the money to the judgment debtor prior to the time the department, board, office, or commission presents the claim of the judgment debtor to the State Controller.

(b) The department, board, office, or commission in presenting the claim of the judgment debtor to the State Controller shall note the fact of the filing of the abstract or transcript and the affidavit, state the amount due, owing, and unpaid on the judgment as shown by the affidavit, and shall state any amounts advanced to the judgment debtor by, or owed by the judgment debtor to, the state by reason of advances for expenses or for any other purpose.

(c) The State Controller, to discharge the claim of the judgment debtor, shall deposit with the court which issued the abstract or transcript, by a warrant or check payable to the court, the whole or such portion of the amount due the judgment debtor on the claim, after deducting an amount sufficient to reimburse the department, board, office, or commission for any amounts advanced to the judgment debtor or owed by the judgment debtor to the state, as will satisfy in full or to the

greatest extent the amount unpaid on the money judgment and pay the balance thereof, if any, to the judgment debtor.

Comment. Section 705.740 continues the substance of paragraph 1 of subdivision (a) of former Section 710.

30/193

§ 705.750. Collection where judgment debtor is creditor of local public entity

705.750. (a) If money is owing and unpaid to the judgment debtor by a local public entity, the judgment creditor shall file the abstract or transcript and the affidavit with the auditor of the local public entity or, if there is no auditor, with the official whose duty corresponds to that of auditor.

(b) The auditor or other official, to discharge the debt to the judgment debtor, shall deposit with the court which issued the abstract or transcript, by a warrant or check payable to the court, the whole or such portion of the amount due the judgment debtor, after deducting an amount sufficient to reimburse the local public entity for any amounts advanced to the judgment debtor or owed by the judgment debtor to the public entity, as will satisfy in full or to the greatest extent the amount unpaid on the judgment and pay the balance thereof, if any, to the judgment debtor.

Comment. Section 705.750 continues the substance of paragraph 2 of subdivision (a) of former Section 710. The reference in subdivision (b) to deductions for advances to, or amounts owed by, the judgment debtor did not appear in the former law applicable to local public entities, but has been included in subdivision (b) to make it parallel to Section 705.740(c), applicable to the state.

30/195

§ 705.760. Collection of judgment where judgment debtor is contractor on public work; subordination to claims of laborers

705.760. (a) Where the judgment debtor named in an abstract or transcript filed pursuant to this article is a contractor upon a public work, the cost of which is to be paid out of public moneys voted, appropriated, or otherwise set apart for the purpose of paying therefor, only so much of the contract price shall be deemed owing and unpaid to the contractor, within the meaning of Section 705.740 or 705.750, as may remain payable under the terms of the contractor's contract, upon the completion thereof, after the sums severally due and to become due to all persons who perform labor upon such work or who bestow skill or

other necessary services or furnish materials, appliances, teams, or power used or consumed in the performance of such work have been ascertained and paid. In ascertaining the sums due or to become due to such persons, only claims which are filed against the moneys due or to become due to the judgment debtor in accordance with the provisions of Chapter 4 (commencing with Section 3179) of Title 15 of Part 4 of Division 3 of the Civil Code shall be considered.

(b) The controller, auditor, or other public disbursing officer whose duty it is to make payments under the provisions of the contract shall not deposit payments with the court which issued the abstract or transcript until the contract is completed and the payments specified in subdivision (a) are made and then only for the excess, if any, of the contract price over the aggregate of the sums so paid.

Comment. Section 705.760 continues the substance of former Section 710a.

30194

§ 705.770. Notice of deposit with court; exemption claim

705.770. (a) Promptly after deposit with the court by the public entity, the court clerk shall mail a notice of deposit to the judgment debtor.

(b) An exemption may be claimed by noticed motion made within 10 days after notice is mailed pursuant to subdivision (a).

Comment. Subdivision (a) of Section 705.770 requires the court clerk to mail notice of deposit pursuant to Section 705.740 or 705.750 to the judgment debtor. This notice enables the judgment debtor to make a claim of exemption before the money is paid over to the judgment creditor.

The limitation on the time for claiming an exemption provided by subdivision (b) is the same as the period applicable to exemption claims under a writ of execution. See Section 707.320.

30196

§ 705.775. Distribution of money

705.775. After the expiration of 10 days from the date notice of deposit with the court was mailed to the judgment debtor, the court shall pay the nonexempt portion of the money received to the judgment creditor and the balance thereof, if any, to the judgment debtor unless some other disposition is required by law.

Comment. Subdivision (a) of Section 705.775 continues the substance of former Section 710(c). This section recognizes that the judgment debtor may not be entitled to the excess, such as, for example, where a second judgment creditor has a lien subordinate to that of the first judgment creditor.

968/695

§ 705.780. Lien

705.780. Filing pursuant to this article creates a lien on the money owing and unpaid by the public entity to the judgment debtor, in an amount equal to that which may properly be applied toward the satisfaction of the judgment.

Comment. Section 705.780 provides for the creation of a lien as of the filing with the public entity by the judgment creditor under Sections 705.740 and 705.750. This principle is consistent with decisions under former law which equated filing with levy and determined priority as of the time of filing. See *Department of Water & Power v. Inyo Chem. Co.*, 16 Cal.2d 744, ___, 108 P.2d 410, ___ (1940); *Ott Hardware Co. v. Davis*, 165 Cal. 795, 800, 134 P. 973, ___ (1913). The lien is ineffective after the time for enforcement of the judgment has expired. See Sections 702.210, 702.220, 702.330.

30/197

§ 705.785. Filing fee; deposit of fees collected by state

705.785. (a) The judgment creditor upon filing the abstract or transcript and the affidavit shall pay a fee of six dollars (\$6) to the public entity with which it is filed.

(b) Fees received by a state agency under this article shall be deposited to the credit of the fund from which payments were, or would be, made on account of collection under this article.

Comment. Subdivision (a) of Section 705.785 continues the substance of subdivision (b) of former Section 710. Subdivision (b) continues the substance of subdivision (g) of former Section 710.

30/198

§ 705.790. Liability of public officer

705.790. No public officer or employee is liable for failure to perform a duty imposed by this article unless sufficient information is furnished by the abstract or transcript together with the affidavit to enable the officer or employee in the exercise of reasonable diligence to ascertain the identity of the judgment debtor therefrom and from the papers and records on file in the office in which the officer or employee works. The word "office" as used in this section does not include any branch or subordinate office located in a different city.

Comment. Section 705.790 continues the substance of the last two sentences of subdivision (e) of former Section 710. See Section 705.730(a) (judgment creditor may state additional information in affidavit to establish identity of judgment debtor).

30/199

§ 705.795. Limitations on procedure of this article

705.795. Nothing in this article authorizes the filing of an abstract or transcript and affidavit against an overpayment of tax, penalty, or interest, or interest allowable with respect to an overpayment, under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

Comment. Section 705.795 continues the substance of subdivision (f) of former Section 710.

CHAPTER 6. THIRD-PARTY CLAIMS

Article 1. General Provisions§ 706.110. Application of chapter

706.110. A third-party claim of an interest in personal property sought to be applied to the satisfaction of a judgment may be asserted and determined pursuant to this chapter where enforcement is sought by levy under or service of any of the following:

- (a) A writ of attachment.
- (b) A writ of execution.
- (c) A prejudgment or postjudgment writ of possession.
- (d) A writ of sale.

(e) Process issued by the state or a local public entity to enforce a tax liability.

Comment. Section 706.110 is new. Under former law, the third-party claims procedure was specifically made applicable to attachment (see Section 488.090), claim and delivery (see Section 514.050), execution (see Sections 689, 689b), and the enforcement of certain state tax liabilities by means of a notice of levy or warrant (see Section 689d). The procedure was also used to determine third-party claims to property seized to satisfy a judgment foreclosing a chattel mortgage. See *Lawler v. Solus*, 101 Cal. App.2d 816, 818, 226 P.2d 348, ___ (1951). Subdivision (c) of this section extends this remedy to claims regarding property levied upon to enforce a judgment for possession of personal property. Subdivision (e) extends this remedy to all cases of enforcement of a tax liability.

100/958

§ 706.120. Time for filing claim

706.120. A third person may file a third-party claim at any time after levy but before the levying officer has sold, delivered, or otherwise disposed of the property claimed.

Comment. Section 706.120 is new. Former law did not provide for the time within which a third-party claim must be filed, but in *Nat'l Bank of New Zealand v. Finn*, 81 Cal. App. 317, 337, 253 P. 757, 766 (1927), involving attachment of a check, it was stated that the claim must be made before the property was sold or otherwise subjected to the satisfaction of the plaintiff's demand.

100/959

§ 706.130. Third-party claims to property seized to satisfy tax liability

706.130. (a) Except as otherwise provided by statute, the provisions of this chapter apply to third-party claims regarding personal

property sought to be applied to the satisfaction of a tax liability. 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) Third-party claims under this section shall be heard and determined by the proper court in the county where the property claimed is located.

(c) If a levy is not made by a levying officer, the third-party claim shall be filed with the department or agency of the public entity in charge of enforcement of the tax liability.

(d) The public entity shall file a notice with the levying officer if an undertaking would otherwise be required pursuant to Article 2 (commencing with Section 706.210). The notice shall state that the public entity opposes the claim of the third person.

Comment. Section 706.130 supersedes former Section 689d, which made former Section 689 applicable to the determination of a third-party claim of title to property reached by a notice of levy or warrant issued to collect certain state taxes, and a portion of Revenue and Taxation Code Section 6799, which provided an independent procedure for determining third-party claims to property to be sold to satisfy a liability for state sales and use taxes. Section 706.130 applies the third-party claims procedure to all proceedings for the collection of state or local tax liabilities.

Subdivision (b) continues the substance of a portion of former Section 689d, but does not require claims to be heard in the superior court.

Subdivision (c) is a general provision which codifies the practice developed under former Section 689d and Unemployment Insurance Code Section 1755.

Subdivision (d) is new. It is based on the practice developed under existing law as a result of Section 1058 which provides that public entities are not required to file an undertaking. The public entity is required to file a verified statement pursuant to Article 3 (commencing with Section 706.310) as a condition to maintaining the lien on the property, so the notice provided by subdivision (d) is unnecessary in such proceedings.

100/960

§ 706.140. Duty to mail notice and copy of claim

706.140. The levying officer shall mail the notice and copy of the verified third-party claim to the judgment creditor pursuant to Section 706.220 or 706.320, notwithstanding any defect, informality, or insufficiency of the claim.

Comment. Section 706.140 supersedes the first sentence of the sixth paragraph of former Section 689 and the second sentence of subdivision (2) of former Section 689b. Section 706.140 requires the levying officer to mail the notice and claim whereas former law appeared to give the officer discretion.

101/145

§ 706.150. Objections to undertakings

706.150. (a) An undertaking given under this chapter shall satisfy the requirements of Sections 489.040, 489.050, and 1056.

(b) Objections to undertakings shall be made and determined as provided in Sections 489.070 to 489.100, inclusive.

Comment. Subdivision (a) of Section 706.150 supersedes a portion of the first paragraph of former Section 689.

Subdivision (b) supersedes the third, fourth, and fifth paragraphs of former Section 689, the second sentence of the second paragraph of subdivision (9) of former Section 689b, and former Sections 711-1/2 through 713-1/2.

101/155

Article 2. Third-Party Claim of Title, Right to Possession, or Interest Other Than Security Interest

§ 706.210. Claim of title, right to possession, or an interest other than a security interest

706.210. (a) A third person may claim title, the right to possession, or any other interest in personal property that is not a security interest, if the interest claimed is superior to the judgment creditor's lien on the property, by filing with the levying officer a verified written third-party claim, together with a copy thereof.

(b) The third-party claim shall contain all of the following:

(1) A description of the interest claimed, including a statement of the facts upon which the claim is based.

(2) A statement of the reasonable value of the interest claimed.

(3) The address in this state to which notice may be mailed to the third person.

Comment. Section 706.210 supersedes a portion of the first paragraph of former Section 689. Under former Section 689, the claimant was required to show title and right to possession. See *Palmquist v. Palmquist*, 228 Cal. App.2d 789, ___, 39 Cal. Rptr. 871, ___ (1964) (attaching creditor could not use third-party claims procedure). Section 706.210(a) also makes clear that the procedure under this article is not available unless the interest of the third person is superior to the lien of the judgment creditor.

§ 706.220. Notice to judgment creditor of third-party claim

706.220. Not later than five days after the third-party claim is filed with the levying officer, the levying officer shall mail to the judgment creditor both of the following:

(a) A copy of the third-party claim.

(b) A notice that the property will be released unless, within 10 days after the notice was mailed, the judgment creditor files with the levying officer an undertaking that satisfies the requirements of Section 706.250.

Comment. Section 706.220 supersedes a portion of the first paragraph of former Section 689. Under this section, a notice is sent by first-class mail, whereas under former Section 689, a demand was sent by registered or certified mail. See Section 702.510 (manner of mailing notice).

368/219

§ 706.230. Release for failure to file undertaking

706.230. (a) Subject to subdivision (b), if the judgment creditor does not, within 10 days after the levying officer mails notice pursuant to Section 706.220, file with the levying officer an undertaking that satisfies the requirements of Section 706.250, the levying officer shall release the property in the manner provided by Section 703.240, unless it is to be held under another lien or unless otherwise ordered by the court.

(b) If property which has been taken into custody is to be released to the judgment debtor and the judgment debtor has not claimed the property within 10 days after notice was mailed pursuant to Section 703.240, the levying officer shall release the property to the third person making the claim.

Comment. Subdivision (a) of Section 706.230 supersedes a portion of the first paragraph of former Section 689. This section affords the judgment creditor 10 days after the notice is mailed within which to file the undertaking, whereas former Section 689 provided a five-day period running from the time the demand for an undertaking was made.

Subdivision (b) supersedes former Section 689.5 and provides an exception to the general rules governing release of property. See Section 703.240.

404/085

§ 706.240. Delay of sale or delivery of possession; interest conveyed

706.240. (a) If a third-party claim is filed prior to sale, payment, or delivery of possession under the writ, the property described

in the claim may not be sold, paid, or delivered unless an undertaking is filed by the judgment creditor. If an undertaking is filed, the levying officer shall maintain the lien on the property and apply the property toward the satisfaction of the judgment in the manner provided by law unless enforcement is stayed or the third person files an undertaking to release the property pursuant to Article 6 (commencing with Section 706.710). Upon sale, payment, or delivery, the property is free of all liens or claims of the third person for which an undertaking is given.

(b) If no third-party claim is made before sale, payment, or delivery under the writ, the property remains subject to the interest of the third person.

Comment. Subdivision (a) of Section 706.240 supersedes the seventh paragraph of former Section 689. Under the last sentence of subdivision (a), the property may be sold free of all interests for which an undertaking is given. The third person may prevent a sale by obtaining a stay pursuant to Section 706.480 or, in the case of a money judgment or a judgment for the sale of personal property, by giving an undertaking to release pursuant to Section 706.710. Moreover, a third person need not press a claim immediately since, under subdivision (b), if no claim is presented before sale, the property remains subject to the third person's interest.

Section 706.240, unlike former law, refers to delivery of possession, recognizing that the third-party claims procedure applies to claim and delivery proceedings and the enforcement of a judgment for possession of personal property. See Sections 514.050, 706.110(c).

404/128

§ 706.250. Form of undertaking

706.250. (a) An undertaking given under this article shall be made in favor of the third person in an amount equal to twice the value of the interest claimed by the third person and shall indemnify the third person against any loss, liability, damages, costs, and attorney's fees, incurred by reason of the enforcement proceedings.

(b) If the property levied upon is required by law to be registered or recorded in the name of the owner and it appears at the time of the levy that the judgment debtor was the registered or record owner of the property and the judgment creditor caused the levy to be made and the lien maintained in good faith and in reliance upon such registered or recorded ownership, neither the judgment creditor, the judgment creditor's sureties, nor the levying officer is liable to the third person for the levy itself.

Comment. Section 706.250 continues the substance of a portion of the first and second paragraphs of former Section 689. Under subdivision (b), where a levy has been made based on a good faith reliance upon the registered or recorded ownership, there is no liability for the levy; but, after making a proper claim, the third person's interest must be recognized and a failure to deal properly with such interest may result in liability to the third person. For provisions relating to undertakings generally, see Section 706.150.

405/386

Article 3. Third-Party Claim of Security Interest

§ 706.310. Claim of security interest

706.310. (a) A secured party may claim a security interest in personal property, if the security interest claimed is superior to the judgment creditor's lien on the property, by filing with the levying officer a verified written third-party claim, together with a copy thereof.

(b) The third-party claim shall contain all of the following:

(1) A detailed description of the security interest claimed, including a statement of the facts upon which the security interest is based.

(2) A statement of the total amount of sums due or to accrue under the security agreement, above setoffs, with interest to date of tender, and the applicable rate of interest.

(3) The address in this state to which notice may be mailed to the secured party.

Comment. Section 706.310 supersedes the first sentence of subdivision (2) of former Section 689b. This article applies to claims by all secured parties, whereas former Section 689b governed only claims by conditional sellers and chattel mortgagees. See Division 9 (commencing with Section 9101) of the Commercial Code (secured transactions).

405/812

§ 706.320. Notice to judgment creditor of secured party claim

706.320. Not later than five days after the third-party claim is filed with the levying officer, the levying officer shall mail to the judgment creditor both of the following:

(a) A copy of the claim.

(b) A notice that the property will be released unless, within 10 days after the notice was mailed, the judgment creditor either files

with the levying officer an undertaking that satisfies the requirements of Section 706.360 and a verified statement under Section 706.370, or deposits with the levying officer the amount claimed.

Comment. Section 706.320 supersedes subdivision (3) and a portion of the first paragraph of subdivision (9) of former Section 689b. Under this section, a notice is sent by first-class mail, whereas under former Section 689, a demand was sent by registered or certified mail. See Section 702.510 (manner of mailing notice).

405/909

§ 706.330. Release for failure to make deposit or file undertaking and statement

706.330. (a) Subject to subdivision (b), if the judgment creditor does not, within 10 days after the levying officer mails notice pursuant to Section 706.320, file with the levying officer an undertaking that satisfies the requirements of Section 706.360 and a verified statement under Section 706.370, or deposit with the levying officer the amount claimed, the levying officer shall release the property in the manner provided by Section 703.240, unless it is to be held under another lien or unless otherwise ordered by the court.

(b) If property which has been taken into custody is to be released to the judgment debtor and the judgment debtor has not claimed the property within 10 days after notice was mailed pursuant to Section 703.240, the levying officer shall release the property to the secured party making the claim.

Comment. Subdivision (a) of Section 706.330 supersedes subdivision (4) and a portion of the first paragraph of subdivision (9) of former Section 689b. This section affords the judgment creditor 10 days after the notice is mailed within which to file the undertaking and verified statement or make a deposit whereas former Section 689b(4) provided a five-day period running from the receipt of the officer's demand.

Subdivision (b) supersedes former Section 689.5 and provides an exception to the general rules governing release of property. See Section 703.240.

405/910

§ 706.340. Delay of sale or delivery of possession; interest conveyed

706.340. (a) If a third-party claim is made prior to sale, payment, or delivery of possession under the writ, the property described in the claim may not be sold, paid, or delivered unless an undertaking and verified statement are filed or a deposit is made. If an undertaking and verified statement are filed or a deposit is made, the levying

officer shall maintain the lien on the property and apply the property toward the satisfaction of the judgment in the manner provided by law unless enforcement is stayed. Upon sale, payment, or delivery, the property is free of all liens or claims of the secured party for which an undertaking is given or a deposit is made.

(b) If no third-party claim is made before sale, payment, or delivery under the writ, the property remains subject to the interest of the secured party except as otherwise provided by Article 5 (commencing with Section 706.610).

Comment. Subdivision (a) of Section 706.340 supersedes parts of subdivisions (8) and (9) of former Section 689b. Under the last sentence of subdivision (a), the property may be sold free of all interests for which an undertaking is given or deposit is made. The secured party may prevent a sale by obtaining a stay pursuant to Section 706.480. Moreover, a secured party need not press a claim immediately since, under subdivision (b), if no claim is presented before sale, the property remains subject to the secured party's interest unless the judgment creditor has resorted to the procedure for demanding a claim which is set forth in Sections 706.610-706.630.

Section 706.340, unlike former law, refers to delivery of possession, recognizing that the third-party claims procedure applies to claim and delivery proceedings and enforcement of a judgment for possession of personal property. See Sections 514.050, 706.110(c).

406/002

§ 706.350. Payment to secured party

706.350. (a) If the levying officer receives a deposit from the judgment creditor, the levying officer shall promptly tender or pay it to the secured party unless the deposit is made by personal check, in which event the levying officer is allowed a reasonable time for the check to clear.

(b) Upon tender, the interest of the secured party in the property for which payment is made passes to the judgment creditor making the payment.

(c) If the tender is refused, the amount thereof shall be deposited with the county treasurer payable to the order of the secured party.

Comment. Section 706.350 continues the substance of subdivisions (5)-(7) of former Section 689b, except that the officer is required to tender or pay promptly rather than within five days.

406/253

§ 706.360. Form of undertaking

706.360. An undertaking given under this article shall be made in favor of the secured party in an amount equal to twice the amount claimed

by the secured party and shall indemnify the secured party against any loss, liability, damages, costs, and attorney's fees, incurred by reason of the enforcement proceedings.

Comment. Section 706.360 supersedes portions of the first and second paragraphs of subdivision (9) of former Section 689b.

406/254

§ 706.370. Verified statement concerning security interest

706.370. At the time the undertaking is filed with the levying officer in response to a third party claim by a secured party, the judgment creditor shall file with the levying officer a verified statement that the security interest is invalid, that the security interest is not entitled to priority over the judgment creditor's lien, or that the amount demanded in the claim exceeds the amount to which the secured party is entitled under the security agreement, for the reasons specified therein, and shall mail a copy of the verified statement to the secured party.

Comment. Section 706.370 supersedes a portion of the first paragraph of subdivision (9) of former Section 689b. This section permits the judgment creditor to resist the claim of the secured party on the grounds that the security interest is not entitled to priority or is excessive, whereas former law required a statement that the chattel mortgage or conditional sale was void or invalid. See Section 706.310 (third-party claim of superior interest); Com. Code § 9301 (priority of lien creditor over unperfected security interest).

406/255

Article 4. Hearing on Third-Party Claims

§ 706.410. Application for hearing

706.410. (a) Not later than 15 days after the third-party claim is filed with the levying officer, either the judgment creditor or the third person may petition the court from which the writ was issued for a hearing to determine the validity of the third-party claim and the proper disposition of the property that is the subject of the claim.

(b) A hearing may be held whether or not an undertaking has been filed, but not if a deposit has been made pursuant to Section 706.350.

(c) The matter shall be set for hearing within 20 days after the filing of the petition. The court may continue the matter for good cause shown.

Comment. Subdivisions (a) and (b) of Section 706.410 continue the substance of the first two sentences of the eighth paragraph of former Section 689 and the first sentence of subdivision (10) of former Section 689(b). Subdivision (c) continues the substance of the third and fifth sentences of the eighth paragraph of former Section 689 and the second and fourth sentences of subdivision (10) of former Section 689b.

968/618

§ 706.420. Notice of hearing

706.420. Not less than 10 days before the date set for the hearing, the petitioner shall mail notice of the time and place of the hearing to the judgment creditor or the third person (whichever person is not the petitioner) and to the judgment debtor and the levying officer. The notice shall state that the purpose of the hearing is to determine the validity of the third-party claim and the proper disposition of the property that is the subject of the third-party claim.

Comment. Section 706.420 supersedes the fourth sentence of the eighth paragraph of Section 689 and the second sentence of subdivision (10) of former Section 689b. See also Section 702.510 (manner of mailing notice). This section also requires notice to be sent to the judgment debtor to avoid the misapplication of funds that could occur under former law. See *Rubin v. Barash*, 275 Cal. App.2d 835, 80 Cal. Rptr. 337 (1969).

968/674

§ 706.430. Papers filed by levying officer

706.430. Promptly after receipt of the notice of the hearing on the third-party claim, the levying officer shall file the following papers with the court:

(a) The third-party claim which was filed with the levying officer pursuant to Section 706.210 or 706.310.

(b) The judgment creditor's verified statement, if the verified statement has been filed with the levying officer pursuant to Section 706.370.

Comment. Section 706.430 supersedes a portion of the eleventh sentence of the eighth paragraph of former Section 689. Former law did not require the levying officer to file the judgment creditor's verified statement with the court. See former Section 689b.

968/872

§ 706.440. Filing and service of verified statement

706.440. If the judgment creditor has not filed a verified statement with the levying officer pursuant to Section 706.370:

(a) In a case where the judgment creditor petitions for a hearing on the third-party claim, the judgment creditor shall file the verified statement with the court at the time the petition is filed and shall mail a copy thereof to the secured party at the time notice of the hearing is given pursuant to Section 706.420.

(b) In a case where the secured party has petitioned for a hearing on the third-party claim, the judgment creditor shall file the verified statement with the court and mail a copy thereof to the secured party not later than five days before the date set for the hearing.

Comment. Section 706.440 is new.

998/816

§ 706.450. Pleadings

706.450. (a) Subject to the power of the court to permit an amendment in the interest of justice:

(1) The third-party claim constitutes the pleading of the third person.

(2) The judgment creditor's verified statement constitutes the pleading of the judgment creditor.

(b) A third-party claim of title, right to possession, or any other interest that is not a security interest, shall be deemed controverted by the judgment creditor.

Comment. Subdivision (a)(1) of Section 706.450 continues the substance of a portion of the eleventh sentence of the eighth paragraph of former Section 689. Subdivision (a)(2) is new. Former Section 689b did not provide for the effect of the judgment creditor's verified statement.

Subdivision (b) continues the substance of a portion of the eleventh sentence of the eighth paragraph of former Section 689, but is limited to third-party claims of title, right to possession, or any other interest that is not a security interest, whereas the former provision applied to all claims under former Section 689 or 689b.

999/320

§ 706.460. Burden of proof

706.460. (a) At a hearing on a third-party claim of title, right to possession, or any other interest that is not a security interest, the third person has the burden of proof.

(b) At a hearing on a third-party claim of a security interest, the judgment creditor has the burden of proof.

Comment. Subdivision (a) a Section 706.460 continues the substance of the tenth sentence of the eighth paragraph of former Section 689. Subdivision (b) is new.

999/555

§ 706.470. Dismissal

706.470. If the third person has petitioned for a hearing, neither the petition nor the proceedings pursuant thereto may be dismissed without the consent of the judgment creditor.

Comment. Section 706.470 continues the substance of the sixth sentence of the eighth paragraph of former Section 689.

968/852

§ 706.480. Stay of sale during pendency of proceedings

706.480. (a) Notwithstanding Sections 706.240 and 706.340, upon application by the judgment creditor, the judgment debtor, or the third person, made ex parte or, if the court so orders, upon noticed motion, the court may stay the sale of the property under a writ, and enjoin any transfer or other disposition of the property, until proceedings under this chapter can be commenced and prosecuted to termination.

(b) The court may require such bond as it considers necessary as a condition for making the order.

(c) An order made pursuant to subdivision (a) may be modified or vacated by the court at any time prior to the termination of the proceedings upon such terms as are just.

Comment. Subdivisions (a) and (b) continue the substance of the eighth sentence of the eighth paragraph of former Section 689. Subdivision (a) clarifies the manner of application for such orders. Subdivision (c) continues the substance of the ninth sentence of the eighth paragraph of former Section 689. See Section 703.220 (disposition of perishable property).

968/976

§ 706.490. Determination of claim; disposition of property

706.490. At the conclusion of the hearing, the court shall give judgment determining the validity of the third-party claim and may order the disposition of the property, and the proceeds of any property, in accordance with the respective interests of the parties. The judgment is conclusive between the parties to the proceeding.

Comment. Section 706.490 continues the substance of a portion of the fourteenth and fifteenth sentences of the eighth paragraph of former Section 689 and the third sentence of subdivision (10) of former Section 689b.

§ 706.500. Findings

706.500. No findings are required in proceedings under this article.

Comment. Section 706.500 continues the thirteenth sentence of the eighth paragraph of former Section 689.

368/243

§ 706.510. Appeal

706.510. An appeal may be taken from a judgment given pursuant to Section 706.490 in the manner provided for appeals from the court in which the proceeding takes place.

Comment. Section 706.510 continues the seventeenth sentence of the eighth paragraph of former Section 689.

8397

§ 706.520. Relevy; additional writs

706.520. If property has been released pursuant to Section 706.230 or 706.330, it may be levied upon or otherwise sought to be applied to the satisfaction of the judgment only if it is determined in the hearing on the third-party claim that the judgment debtor has an interest in the property that may be applied to the satisfaction of the judgment.

Comment. Section 706.520 supersedes the sixteenth sentence of the eighth paragraph of former Section 689 and the second paragraph of subdivision (10) of former Section 689b. Former law referred only to relevy upon property that had been released, but this section recognizes that other enforcement procedures may also be employed. See, e.g., Chapter 5 (commencing with Section 705.110) (special procedures for enforcement of money judgments).

405/415

Article 5. Judgment Creditor's Demand for Third-Party
Claim by Secured Party

§ 706.610. Judgment creditor's demand for claim by secured party

706.610. (a) Upon receipt of the judgment creditor's written request therefor, the levying officer shall serve upon a designated secured party a written demand that the secured party file a claim pursuant to Article 3 (commencing with Section 706.310).

(b) The demand shall describe the property which has been levied upon.

(c) If the secured party does not file a claim with the levying officer within 30 days after service of the demand, the secured party

shall be deemed to have waived any superior interest the secured party may have in the property levied upon.

Comment. Section 706.610 supersedes a portion of subdivision (8) of former Section 689b. The secured party must claim the interest in the property even though there are no amounts currently due. Subdivision (a) clarifies prior law by providing that the levying officer serves the demand for the claim pursuant to the judgment creditor's request; under former law, the manner of initiating this procedure was unclear.

67707

§ 706.620. Prohibition of release, sale, or other disposition

706.620. Except as otherwise provided by this chapter or pursuant to court order, the levying officer may not release, sell, or otherwise dispose of the property described in the demand until the expiration of 30 days after the service of the demand on the secured party.

Comment. Section 706.620 is new. The introductory clause recognizes that the court may order sale of the property if it is perishable, that the property may be released pursuant to the claim of the secured party upon whom the demand was served or of some other third person.

405/416

§ 706.630. Service of demand for claim

706.630. (a) The demand for a claim shall be served in the manner provided for the service of summons and complaint by Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5. Service shall be attested by the certificate of the levying officer and the certificate shall be filed in the action promptly after service.

(b) The demand may be served by the levying officer or by any other levying officer whose office is closer to the place of service. The costs of the other levying officer shall be paid out of the prepaid costs in the possession of the levying officer.

Comment. The first sentence of subdivision (a) of Section 706.630 is new. The second sentence continues the substance of a portion of subdivision (8) of former Section 689b. Subdivision (b) continues the substance of the second sentence of subdivision (8) of former Section 689b. See also Section 701.160 ("costs" defined).

67716

Article 6. Third-Party Undertaking
to Release Property

§ 706.710. Third-party undertaking to obtain release of property

706.710. Where personal property has been levied upon under a writ of execution, a third person, who claims title or right to possession,

in whole or in part, may give an undertaking, as provided in this article, to obtain the release of the property.

Comment. Section 706.710 continues the substance of former Section 710b.

405/418

§ 706.720. Contents of undertaking

706.720. (a) The property claimed shall be described in the undertaking.

(b) The amount of the undertaking given pursuant to Section 706.610 shall be the lesser of the following amounts:

(1) Twice the value of the property sought to be released.

(2) Twice the amount of the judgment creditor's lien on the property sought to be released.

(c) The undertaking shall provide that, if the judgment debtor is finally adjudged to have an interest in the property levied upon, the third person shall pay in satisfaction of the judgment under which the writ of execution was issued a sum equal to the value of the judgment debtor's interest or the amount of the judgment remaining unsatisfied, whichever is the lesser.

Comment. Section 706.720 continues the substance of portions of former Section 710c except for subdivision (c) which recognizes that the judgment creditor is not entitled to resort to the undertaking in an amount exceeding the amount of the judgment remaining unsatisfied. See also Section 706.160 (general provisions relating to undertakings).

404/957

§ 706.730. Filing and service of undertaking

706.730. The third person shall:

(a) File the undertaking to release property in the action with the court.

(b) Serve on the judgment creditor a notice of the filing of the undertaking with the court pursuant to subdivision (a) and a copy of the undertaking.

(c) File with the levying officer a notice of the filing of the undertaking with the court, a copy of the undertaking, and proof of service on the judgment creditor pursuant to subdivision (b).

Comment. Subdivision (a) of Section 706.730 continues the substance of a portion of former Section 711. Subdivision (b) supersedes the remainder of former Section 711. Subdivision (c) is new. This provision has been added to prevent release of the property before the time for making an objection to the undertaking has expired. See Section 706.760.

67/717

§ 706.740. Effective date of undertaking

706.740. The third person's undertaking becomes effective when the property described therein is released pursuant to this article.

Comment. Section 706.740 supersedes former Section 713-1/2 which provided that the undertaking was effective 10 days after service on the judgment creditor or, if an objection to the undertaking was made, when a new undertaking was given. Under Section 706.740, the undertaking is effective when it achieves its purpose--the release of the property it describes--by which time the period for making an objection will have expired. See Section 706.750.

67/719

§ 706.750. Release of property pursuant to undertaking

706.750. Promptly after the expiration of 10 days from the date the notice of filing with the court and the copy of the undertaking were served on the judgment creditor pursuant to subdivision (b) of Section 706.730, the levying officer shall release the property described in the third person's undertaking in the manner provided by Section 706.230 except in the following cases:

- (a) Where the property described in the undertaking is to be held under another lien.
- (b) Where the court orders a different disposition of the property.
- (c) Where the judgment creditor makes an objection to the undertaking.

Comment. Section 706.750 supersedes a portion of the seventh paragraph of former Section 689 and a portion of former Section 713-1/2.

67/718

§ 706.760. Objection to undertaking

706.760. The judgment creditor may make an objection to the third person's undertaking not later than 10 days after the notice of the filing of the undertaking with the court and a copy of the undertaking

are served on the judgment creditor pursuant to subdivision (b) of Section 706.730.

Comment. Section 706.760 continues the substance of the first sentence of former Section 711-1/2. See also Section 706.160 (general provisions regarding undertaking).

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.

4265

§ 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 7 (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), 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), 705.450 (judgment lien), 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.

968/606

§ 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).

§ 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 supersedes 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)). In certain cases, if the funds used to acquire property for which an exemption may be claimed was obtained by fraud from the judgment creditor, the exemption may be denied. See *Kemp v. Enemark*, 194 Cal. 748, 753-55, 230 P. 441 (1924); *Shinn v. MacPherson*, 58 Cal. 596, 599 (1881); *Schoenfeld v. Norberg*, 267 Cal. App.2d 496, 498, 72 Cal. Rptr. 924, ___ (1968).

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

28766

§ 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 705.110-705.200) 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 Sections 705.160(c) (examination proceedings), 705.260(d) (creditor's suit), 705.610 (assignment orders), 705.770(b) (collection where public entity is debtor of judgment debtor).

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.

8396

§ 707.160. Time for determination of exemption; reserved power

707.160. (a) The determination of whether property is exempt or of the amount of an exemption shall be made pursuant to the exemption statutes in effect at the time the claim of exemption is made.

(b) All contracts shall be deemed to have been made in recognition of the power of the state to alter and to make additions to statutes providing exemptions from the enforcement of money judgments.

Comment. Section 707.160 is new. Subdivision (a) rejects the case law rule that the judgment debtor could take advantage of only the exemptions in effect at the time an obligation was incurred. See, e.g., In re Rauer's Collection Co., 87 Cal. App.2d 248, 253-54, 196 P.2d 803, ___ (1948); Daylin Medical & Surgical Supply, Inc. v. Thomas, 69 Cal. App.3d Supp. 37, 41-42, 137 Cal. Rptr. 826, ___ (1977); Smith v. Hume, 29 Cal. App.2d Supp. 747, 749, 74 P.2d 566, ___ (1937); Medical Fin. Ass'n v. Wood, 20 Cal. App.2d Supp. 749, 751, 63 P.2d 1219, ___ (1936).

Subdivision (b) reserves the power of the state to change and add to existing exemptions in line with recent decisions in other jurisdictions. See, e.g., Wilkinson v. Carpenter, 277 Or. 557, ___, 561 P.2d 607, 610-11 (1977); Hooter v. Wilson, 273 So.2d 516, 521-22 (La. 1973).

4443

§ 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 this chapter. 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.

32/236

§ 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 motor vehicle), 707.530 (proceeds from tools of trade), 707.580 (deposit accounts and money), 707.570 (deposit account into which Social Security benefits are paid), 707.580 (life insurance benefits), 707.590 (retirement benefits), 707.600 (unemployment benefits), 707.610 (disability and health benefits), 707.620 (damages for personal injury), 707.630 (damages for wrongful death), 707.640 (worker's compensation), 707.650 (aid), and 707.660 (relocation benefits), 707.850 (proceeds from dwelling). Proceeds from a dwelling, motor vehicle, or tools may be traced only during the applicable period. See Sections 707.510 (90 days in case of motor vehicle), 707.530 (90 days in case of tools), 707.850 (six months in case of dwelling).

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. See *Republic Supply Co. v. Richfield Oil Co.*, 79 F.2d 375, 379 (9th Cir. 1935), concerning the determination of the lowest intermediate balance.

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. Cf. former Section 690.31(1) (showing of changed circumstances under former dwelling exemption).

968/995

§ 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(i) (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).

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 707.560:

(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 by a public entity. 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. Application of article

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. (gar- nished earnings), 707.570 (deposit accounts consisting of Social Security benefits), 707.810-707.850 (dwellings). This continues the introduc- tory portion of former Section 690.50(a).

§ 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 707.510, 707.530, or 707.550, 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 707.560 or subdivision (b) of Section 707.580, 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. 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).

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.

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.

§ 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 707.560 or subdivision (b) of Section 707.580 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).

§ 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).

16/967

§ 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 or otherwise disposed of prior to the final determination except pursuant to an order of the court or pursuant to Section 703.220.

(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 make such 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 former Section 690.50(g), except that orders for the disposition of perishable property are governed by Section 703.220

See also Section 707.110 ("claimant" defined).

Article 3. Exempt Property§ 707.510. Motor vehicle; proceeds

707.510. (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 the receipt of 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 707.510 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 former 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 required to be satisfied and proceeds exemption).

15329

§ 707.520. Household furnishings, wearing apparel, personal effects

707.520. 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 does not exceed five hundred dollars (\$500) per item in value, exclusive of liens and encumbrances superior to the judgment creditor's lien.

Comment. Section 707.520 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 707.520 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

§ 707.530. Jewelry, heirlooms, works of art

707.530. 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 707.530 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 exemption of property under Section 707.530 depends upon 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

§ 707.540. Health aids

707.540. 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 707.540 supersedes former Section 690.5 which exempted prosthetic and orthopedic appliances used by the debtor. Section 707.540 is based on Section 5(2) of the Uniform Exemptions Act (1976). The requirement that health aids be reasonably necessary to

enable the individual to work or sustain health permits the exemption of such items as a wheel chair for a person unable to walk to work, an air conditioner for a person afflicted with asthma, or an elevator for a person unable to climb stairs, but does not permit the exemption of a swimming pool, sauna, bicycle, golf clubs, or gymnastic equipment merely because their use is conducive to maintaining good health.

045/222

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

707.550. (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 profession 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 707.550 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 707.510(b).

27/867

§ 707.560. Deposit accounts and money

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

Comment. Section 707.560 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 707.560 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 also Sections 707.200 (adjustment of dollar amounts of exemptions), 707.590 (exemption of deposit account into which social security payments are directly deposited).

32/239

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

707.570. (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 707.570 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 707.560 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

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

707.580. (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 707.580 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 unmaturing policy except to the extent provided by subdivision (b). Subdivision (a) prevents the judgment creditor from forcing the judgment debtor to surrender a life insurance policy for its cash value.

Subdivision (c) limits the exemption of benefits from a life insurance policy to the insured or a spouse or dependent of the insured who need the benefits for support. Under former law, the exemption was available to any person, including creditors of the judgment debtor and artificial persons. See *Jackson v. Fisher*, 56 Cal.2d 196, 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 Article 4 (commencing with Section 707.810) (dwelling exemption).

See also Section 707.200 (adjustment of dollar amounts of exemptions).

968/999

§ 707.590. Retirement benefits and contributions

707.590. (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 707.590, 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 707.580 and disability payments covered by Section 707.610) provided by former Section 690.18.

405/355

§ 707.600. Unemployment benefits and contributions; strike benefits

707.600. (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 707.600 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.

§ 707.610. Disability and health benefits and contributions

707.610. (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 707.610 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.

101/173

§ 707.620. Damages for personal injury

707.620. (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 707.620 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 6 (commencing with Section 705.510) of Chapter 5.

29215

§ 707.630. Damages for wrongful death

707.630. 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 707.630 is new. See the Comment to Section 707.620.

§ 707.640. Worker's compensation

707.640. 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 707.640 continues the substance of former Section 690.15.

§ 707.650. Aid

707.650. 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 707.650 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 707.650 also expands the category of nongovernmental aid that is exempt. Former Section 690.14 applied only to fraternal benefit societies.

§ 707.660. Relocation benefits

707.660. 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 707.660 supersedes Section 690.8a. The last sentence of this section 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.

§ 707.670. Public employee's vacation credits

707.670. Before payment, vacation credits accumulated by a public employee are not subject to the enforcement of a money judgment.

Comment. Section 707.670 continues the substance of a portion of former Section 690.18(b).

27/823

§ 707.680. Licenses

707.680. 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 707.680 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).

4457

§ 707.690. Cemetery plot

707.690. (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 707.690 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).

368/217

Article 4. Dwelling Exemption

§ 707.810. Dwelling

707.810. As used in this article, "dwelling" means the home in which the judgment debtor or the family of the judgment debtor actually resides, including, but not limited to, the following:

(a) A house together with the outbuildings and the land upon which they are situated.

(b) A mobilehome together with the outbuildings and the land upon which they are situated.

(c) A waterborne vessel.

(d) A condominium, as defined in Section 783 of the Civil Code.

(e) A planned development, as defined in Section 11003 of the Business and Professions Code.

(f) A stock cooperative, as defined in Section 11003.2 of the Business and Professions Code.

(g) A community apartment project, as defined in Section 11004 of the Business and Professions Code.

Comment. Section 707.810 supersedes the provisions of former law pertaining to the property that could be claimed to be exempt as a homestead or dwelling. See former Civil Code § 1237 (declared homestead); former Code Civ. Proc. §§ 690.3 (housetrailer, mobilehome, houseboat, boat, or other waterborne vessel), 690.31 (dwelling house). Section 707.810 is intended to include all forms of property for which an exemption could be claimed under former law and any other property in which the judgment debtor or the judgment debtor's family actually resides.

368/223

§ 707.820. Exempt interest in dwelling

707.820. (a) The interest of the judgment debtor in the dwelling is exempt from enforcement of a money judgment in the amount provided by this section, over and above liens and encumbrances superior to the judgment creditor's lien.

(b) The amount of the dwelling exemption is fifty thousand dollars (\$50,000) for any of the following:

- (1) A person who is living together with his or her spouse.
- (2) A person 65 years of age or older.
- (3) A person who is caring for or supporting a dependent in the dwelling.

(c) The amount of the dwelling exemption is twenty-five thousand dollars (\$25,000) for a person other than one described in subdivision (b).

(d) Notwithstanding subdivision (b), the aggregate exemption of a husband and wife in one dwelling may not exceed fifty thousand dollars (\$50,000).

(e) As used in paragraph (3) of subdivision (b), "dependent" means one of the following persons:

- (1) A minor child or minor grandchild of the judgment debtor or of the judgment debtor's deceased spouse.
- (2) The judgment debtor's brother or sister or a minor child of the judgment debtor's deceased brother or sister.
- (3) The father, mother, grandfather, or grandmother of the judgment debtor or of the judgment debtor's deceased spouse.
- (4) An unmarried relative described in this subdivision who has attained the age of majority and is unable to take care of or support himself or herself.

Comment. Subdivision (a) of Section 707.820 supersedes the provisions of former law that prescribed the nature of the judgment debtor's interest which could be claimed as exempt. See former Civil Code §§ 1237, 1237.5, 1238; former Code Civ. Proc. §§ 690.3, 690.31. An exemption may be claimed for any interest in a dwelling that the judgment creditor may seek to apply to the satisfaction of a money judgment. The provisions of former Civil Code Sections 1237 and 1238 that precluded the exemption of a lease with less than a 30-year term are not continued.

The provisions in subdivisions (b), (c), and (d) pertaining to the amount of the exemption supersede former Civil Code Section 1260 (declared homestead) and former Code of Civil Procedure Section 690.3(a) (mobilehome). See also former Section 690.31(a) (automatic dwelling exemption, incorporating former Civil Code § 1260). The maximum exemption has been increased from \$40,000 to \$50,000 in subdivision (b). See former Civil Code § 1260; former Code Civ. Proc. § 690.3. Paragraphs (1) and (3) of subdivision (b) supersede former Civil Code Sections 1260(1) (declared homestead) and 1261(1) (defining "head of family"), and former Code of Civil Procedure Section 690.3(a)(1) (mobile home). Paragraph (2) of subdivision (b) continues the substance of a portion of former Civil Code Section 1260(2) (declared homestead) and former Code of Civil Procedure Section 690.3(a)(2) (mobilehome). The coverage of

the exemptions provided in subdivision (b) is essentially the same as under former law except that "dependent" has been defined in subdivision (e) to include the minor grandchild of a deceased spouse, who was omitted by former law.

Subdivision (c) continues the substance of former Civil Code Section 1260(3) and former Code of Civil Procedure Section 690.3(a)(3).

Subdivision (d) provides a limitation on the aggregate exemption that may be claimed by a husband and wife in one dwelling. If a husband and wife actually reside in different dwellings (see Section 707.810 defining "dwelling"), each may claim the applicable exemption, regardless of whether they are legally separated or find it necessary or convenient to maintain two dwellings for some other purpose such as proximity to places of employment. If a husband and wife, one or both of whom are 65 years of age or older, are living together, subdivision (d) prevents them from claiming more than a \$50,000 exemption in the dwelling. If a husband or wife, both of whom are over 65, actually reside in separate dwellings, however, they would each be able to claim a \$50,000 exemption under subdivision (b)(2).

Subdivision (e) continues the substance of former Civil Code Section 1261(2) except that a judgment debtor who is caring for or supporting in the dwelling a minor grandchild of a deceased spouse may qualify for an exemption. See subdivision (b)(3). Such persons were excluded from former Civil Code Section 1261(2)(a) despite the inclusion of grandparents of a deceased spouse in former Civil Code Section 1261(2)(d).

38/882

§ 707.830. Exemption claim for personal property dwelling or lease with less than two years' term

707.830. If the judgment debtor's interest in a dwelling is levied upon as personal property pursuant to Section 703.380 or is a leasehold estate with an unexpired term of less than two years at the time of levy, an exemption claim shall be made and determined as provided in Article 2 (commencing with Section 707.310).

Comment. Section 707.830 incorporates the general procedure for claiming an exemption provided by Sections 707.310-707.410. This procedure applies where the property levied upon is not subject to the delay of sale provision of Section 703.640(h) (120-day delay of notice of sale of an interest in real property other than a leasehold estate with an unexpired term of less than two years). Under former law, a house trailer, mobilehome, houseboat, boat, or other waterborne vessel in which the judgment debtor or the judgment debtor's family actually resided could be claimed as exempt in a similar manner. See former Sections 690(a), 690.3, 690.50. This section also applies to claims of exemption for certain mobilehomes that under former law would have been determined as provided in former Section 690.31 (judgment creditor's application for writ of execution on dwelling, including a mobilehome as defined by Health & Saf. Code § 18008).

368/229

§ 707.840. Exemption procedure for real property dwelling

707.840. (a) If the judgment debtor's interest in a dwelling is levied upon pursuant to Section 703.310 as an interest in real property,

other than a leasehold estate with an unexpired term of less than two years at the time of levy, within 10 days after notice of levy is mailed to the judgment debtor the judgment creditor shall apply to the court for issuance of an order permitting sale of the dwelling. If the dwelling is located in a county other than the county where the money judgment was rendered, the judgment creditor shall apply to a court of similar jurisdiction in the other county or, if there is no court of similar jurisdiction, to a court of higher jurisdiction, and shall file an abstract of judgment in the form prescribed by Section 674 with the clerk of the court where the application is filed.

(b) The application shall be verified, shall describe the dwelling, and shall contain one or both of the following:

(1) A statement that the dwelling is not exempt and the reasons therefor.

(2) A statement that, if the dwelling is exempt, its current value exclusive of liens and encumbrances superior to the judgment creditor's lien, exceeds the amount of the applicable exemption, and a statement of the current value of the dwelling.

(c) The hearing on the judgment creditor's application shall be held not later than 20 days after the application is filed. Not later than 10 days before the time set for the hearing, the judgment creditor shall mail a copy of the application to the judgment debtor and shall serve a copy of the application on an occupant of the dwelling or, if there is no occupant present when service is attempted, leave a copy in a conspicuous place at the dwelling. The judgment creditor shall file proof of mailing and of service on an occupant with the court.

(d) At the hearing on the judgment creditor's application, the judgment creditor has the burden of proof on the issue of whether the current value of the dwelling exceeds the applicable exemption and the judgment debtor has the burden of proof on the issue of entitlement to the exemption.

(e) At the hearing the court shall determine by order whether the dwelling is exempt, the amount of the exemption, and, if the dwelling is exempt, whether its value exceeds the exempt amount and any liens and encumbrances superior to the judgment creditor's lien. If the dwelling may be sold, the court shall issue an order permitting sale. A copy of the order shall be sent to the levying officer to whom the writ of

execution is directed and to the clerk of the court that rendered the judgment if different from the court issuing the order permitting sale.

(f) If the order permitting sale is denied, the levying officer shall release the property from the lien of execution in the manner provided by Section 703.240.

(g) If the judgment creditor applies for an order permitting sale pursuant to this section within 12 months after the denial of an order permitting sale by such judgment creditor, the application shall include a statement under oath alleging that a material change of circumstances has affected the right to the exemption and shall set forth facts supporting the allegation.

(h) If the judgment creditor's application is filed in a county other than the county where the judgment is entered, the judgment creditor shall pay a filing fee of four dollars (\$4) to a justice court or six dollars (\$6) to a superior or municipal court.

(i) The provisions of Sections 707.390 and 707.400 apply to proceedings under this section.

Comment. Section 707.840 supersedes several provisions of former law for asserting and determining a homestead or dwelling exemption. See former Civil Code §§ 1244-1254, 1258-1259, 1261.1, 1262-1265, 1266-1269, 1300-1301, 1303-1304; former Code Civ. Proc. § 690.31(c)-(i), (1)-(p). This procedure applies where the sale of property levied upon is subject to the delay provided by Section 703.640(h) (120-day delay of notice of sale of an interest in real property other than a leasehold estate with an unexpired term of less than two years). The procedure for recording a homestead declaration formerly provided in Sections 1237-1304 of the Civil Code is not continued.

Subdivision (a) requires an application for an order permitting sale of a dwelling levied upon as an interest in real property (other than a leasehold estate with an unexpired term of less than two years), whereas former Section 690.31(c) required the judgment creditor to apply for issuance of a writ of execution. The provision concerning jurisdiction of courts in counties other than where the judgment was rendered supersedes the second sentence of former Section 690.31(c). The provision requiring the filing of an abstract of judgment if the application is made in a county other than the county where the judgment was entered continues the last paragraph of former Section 690.31(c).

Subdivision (b) is based on portions of former Section 690.31(c). Subdivision (b) does not, however, require the appointment of three appraisers as was required by former law. See former Section 690.31(c) (incorporating the provisions for determining value in former Civil Code §§ 1237-1304). Note that the dwelling may not be sold on execution, regardless of a determination by the court that its value exceeds the applicable exemption, if the amount bid at the sale is less than the total of any superior liens that are required to be satisfied and the amount of the applicable exemption of proceeds. See Sections 703.740

(minimum bid at execution sale), 707.850 (proceeds exemption). The purpose of the appraisal is to permit the early release of the dwelling from the lien of execution if it is determined that there is no excess value. See subdivision (f).

Subdivision (c) is new, but continues some features of the procedure in former Section 690.31.

Subdivision (d) supersedes former Section 690.31(e).

Subdivision (e) supersedes the first paragraph of former Section 690.31(f). Note that the court is not required to determine the appraised value of the property or the amount of any excess value, but only whether or not its value is in excess of the exempt amount.

Subdivision (f) continues a portion of former Section 690.31(m) (incorporating former Section 690.50(j)). Subdivision (g) continues the substance of former Section 690.31(i). Subdivision (h) continues the third paragraph of former Section 690.31(c).

Subdivision (i) incorporates the provisions in the general exemption procedure pertaining to extension of time (Section 707.390) and appeals (Section 707.400). This continues former Section 690.31(n) and a portion of former Section 690.31(m) (incorporating former Section 690.50(1)).

368/231

§ 707.850. Exemption of dwelling proceeds

707.850. If the dwelling is voluntarily or involuntarily sold or is damaged or destroyed, the proceeds of sale or of insurance or other indemnification are exempt in the amount provided by Section 707.820 for a period of six months after the sale, in the case of a voluntary sale, or six months after the receipt of proceeds in all other cases.

Comment. Section 707.850 supersedes former Section 1257 of the Civil Code and the first sentence of former Section 690.31(k) of the Code of Civil Procedure.

CHAPTER 8. ENFORCEMENT OF JUDGMENT FOR
POSSESSION OF PERSONAL PROPERTY§ 708.110. Issuance of writ of possession of personal property

708.110. (a) After the entry of a judgment for the possession of personal property, a writ of possession of personal property may be issued by the attorney for the judgment creditor as an officer of the court or shall be issued by the clerk of the court upon application of the judgment creditor and directed to the levying officer in each county where property sought to be levied upon is located.

(b) Writs of possession of personal property may be issued successively until the judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 90 days after the issuance of a prior writ for that county unless the prior writ was earlier returned.

Comment. Section 708.110 is analogous to Section 703.120 relating to writs of execution. It is based in part on former Sections 681 and 687 and supersedes a portion of former Section 684. Unlike prior law, however, this section permits the judgment creditor's attorney to issue writs as an officer of the court. See Section 703.120 and the Comment thereto. Subdivision (b), providing for successive writs of possession, is made necessary by the provisions of Section 708.160 concerning the return of the writ.

30/687

§ 708.120. Contents of writ of possession of personal property

708.120. The writ of possession of personal property shall state the date of issuance, shall describe the property to be levied upon, shall state its value, if specified in the judgment or a supplemental order, and shall require the levying officer to whom it is directed to enforce the judgment.

Comment. Section 708.120 prescribes the essential elements of a writ of possession issued to enforce a judgment for the possession of personal property. See also Sections 702.160(b) (Judicial Council authority to prescribe form of writs), 702.540 (notation on writ of request for notice of sale), 708.130 (execution of writ). The value of the property may not have been determined, such as where the property is already in the custody of the levying officer pursuant to claim and delivery proceedings. See Section 627; *Webster v. Mountain Monarch Gold Mining Co.*, 6 Cal. App.2d 450, 454-55, 44 P.2d 646, ___ (1935).

§ 708.130. Delivery and execution of writ of possession of personal property

708.130. (a) The judgment creditor shall deliver the writ of possession of personal property to the levying officer to whom the writ is directed, together with written instructions.

(b) The levying officer shall execute the writ by:

(1) Levying upon the property described in the writ and delivering it to the judgment creditor.

(2) Satisfying in the same manner as under a writ of execution the amount of costs and damages recovered in the judgment and accrued costs, interest, and the levying officer's costs entered on the writ.

(3) If the property cannot be taken into custody, complying with Section 708.150.

(c) The levying officer may not levy upon any property under the writ after the expiration of 90 days from the date the writ was issued.

Comment. Subdivision (a) of Section 708.130 continues the substance of prior law and is analogous to Section 703.140.

Subdivision (b) is derived from subdivision 4 of former Section 682 and former Sections 682.2 and 684.1. The manner of levy under subdivision (b)(1) is prescribed in Section 708.140. A judgment enforceable under this chapter is one that entitles the judgment creditor to specific property, i.e., the judgment creditor is not obligated to accept merely the value of the property. *Griffith v. Reddick*, 41 Cal. App. 458, 461-62, 182 P. 984, ___ (1919). The value of the property is substituted where delivery is impossible. See Section 667; *Drinkhouse v. Van Ness*, 202 Cal. 359, 374, 260 P. 869, ___ (1927). See also Section 708.150 (judgment for possession satisfied as if money judgment). The value of the property is generally alleged and determined in the action. See Sections 627, 667; 3 B. Witkin, *California Procedure Pleading* § 555, at 2197, § 563, at 2203-04 (2d ed. 1971); cf. Section 512.010 (allegation of value of property in claim and delivery proceedings). The items recoverable under subdivision (b)(2) may be satisfied from any property of the judgment debtor which is subject to enforcement of a money judgment. See Sections 707.120, 707.130, 707.150. The requirement of subdivision 4 of former Section 682 that costs and damages be satisfied first from personal property and only then from real property is not continued. "Damages" includes any rents and profits recovered in the judgment. The judgment creditor may also seek to satisfy costs and damages by wage garnishment pursuant to Chapter 4 (commencing with Section 704.110) or by the special procedures provided by Chapter 5 (commencing with Section 705.110). See Section 702.110(a). The exemptions provided by Chapter 7 (commencing with Section 707.110) apply to enforcement of the part of the judgment awarding costs and damages. Subdivision (c) is the same as Section 703.140(c) (execution).

§ 708.140. Manner of levy

708.140. (a) Except as provided in subdivision (b), property shall be levied upon under a writ of possession of personal property in the same manner as under a writ of execution.

(b) Where the property which is the subject of the judgment is levied upon:

(1) The notice of levy prescribed by Section 703.150 need not describe the property which is levied upon.

(2) The levying officer is not required to place a keeper in charge of tangible personal property of a going business.

Comment. Section 708.140 supersedes former Section 684.1 which incorporated the manner of levy under prejudgment writs of possession provided by Section 514.010. Through its incorporation of the manner of levy under a writ of execution, subdivision (a) of Section 708.140 continues the substance of much of prior law. See, e.g., Sections 703.170 (levy on property in private place), 703.320 (levy on tangible personal property in judgment debtor's possession), 703.350 (levy on tangible personal property in levying officer's custody), 703.380 (levy on personal property used as dwelling), and the Comments thereto. Subdivision (a) is a new provision permitting levy on property in the hands of a person who is not a party to the action and is not the agent of the judgment debtor.

Subdivision (b) provides exceptions to the general levy provisions applicable when the writ of possession is sought to be enforced by obtaining possession of the property that is the subject of the judgment. Paragraph (1) makes clear that the notice of levy need not describe the property to be seized because it is required to be described in the writ of possession. Where a levy for costs or damages or for the value of the property takes place under a writ of possession, however, the notice of levy must describe the property levied upon. See Section 703.150 (contents of notice of levy). Paragraph (2) permits the immediate seizure of tangible personal property of a going business which is the subject of the judgment. See Section 703.370 (keeper for business property levied upon under writ of execution).

30/680

§ 708.150. Writ of possession of personal property unsatisfied

708.150. (a) If the property described in the writ of possession of personal property cannot be taken into custody, the levying officer shall make a demand upon the judgment debtor for the property. If the property is not then obtained, the levying officer shall so state on the face of the writ. Thereafter the judgment for the possession of the property may be enforced in the same manner as a money judgment for the value of the property specified in the judgment or a supplemental order.

(b) The writ may, under the circumstances described in subdivision (a), be treated as a writ of execution.

Comment. Section 708.150 generally continues former law and practice. See Section 667 and subdivision 4 of former Section 682; Marshal's Manual of Procedure § 623.1 (n.d.); Cal. State Sheriffs' Ass'n, Civil Procedural Manual 8.30-8.34 (1978). The judgment creditor may instruct the levying officer to levy on property of the judgment debtor as if the writ of possession were a writ of execution issued pursuant to Chapter 3 (commencing with Section 703.110). The creditor may also seek to garnish the judgment debtor's wages pursuant to Chapter 4 (commencing with Section 704.110) or may employ appropriate special procedures pursuant to Chapter 5 (commencing with Section 705.110). See Section 702.110(a). The exemptions provided by Chapter 7 (commencing with Section 707.110) apply to enforcement for the value of the property or for costs and damages. The judgment creditor may obtain a writ of execution where the writ of possession has expired or been returned. A levy may be made under the writ of possession only during the first 90 days after its issuance. See Section 703.130(c).

30/679

§ 708.160. Return of writ of possession of personal property

708.160. The writ of possession of personal property is subject to the return provisions of Section 703.250 (return of writ of execution).

Comment. Section 708.160 is new. Prior statutory law did not explicitly provide for a return date in the case of a writ of possession of personal property. See former Section 683. This section differs from the rule in *Magnaud v. Traeger*, 66 Cal. App. 526, 530-31, 226 P. 990, ___ (1924), where it was held that a writ of possession of real property remained in force insofar as it directed the restitution of the premises although it had expired insofar as it directed the levying officer to levy on property to satisfy the part of the judgment awarding damages. Under Section 708.130(c), the levying officer is authorized to take the property to be delivered to the judgment creditor into custody and to levy for costs and damages only during the first 90 days after issuance.

30/678

§ 708.170. Issuance of order directing transfer

708.170. After entry of judgment for the possession of personal property, whether or not a writ of possession of personal property has been issued, the court may issue an order directing the judgment debtor to transfer possession of the property to the judgment creditor. The order shall be personally served upon the judgment debtor and shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court.

Comment. Section 708.170 is based on a comparable provision applicable before judgment. See Section 512.070. This section makes clear that the court has power to issue a "turnover" order directing the judgment debtor to transfer possession to the judgment creditor. The order may be issued in lieu of or in addition to a writ.

30/675

§ 708.180. Appointment of receiver

708.180. The court may appoint a receiver pursuant to Section 705.320 to enforce a judgment for the possession of personal property.

Comment. Section 708.180 is new. Former law did not specifically authorize appointment of a receiver to enforce a judgment for the possession of personal property. The appointment of a receiver is subject to the general rules concerning the time within which judgment may be enforced. See Section 702.210. Neither issuance nor return of a writ of possession is a prerequisite to appointment of a receiver.

27/644

CHAPTER 9. ENFORCEMENT OF JUDGMENT FOR
POSSESSION OF REAL PROPERTY

§ 709.110. Issuance of writ of possession of real property

709.110. (a) After the entry of a judgment for the possession of real property, a writ of possession of real property may be issued by the attorney for the judgment creditor as an officer of the court or shall be issued by the clerk of the court upon application of the judgment creditor and directed to the levying officer in each county where property sought to be levied upon is located.

(b) Writs of possession of real property may be issued successively until the judgment is satisfied except that a new writ may not be issued for a county until the expiration of 90 days after the issuance of a prior writ for that county unless the prior writ was earlier returned.

Comment. Section 709.110 is analogous to Section 703.120 relating to writs of execution. It is based in part on former Sections 681 and 687 and supersedes a portion of former Section 684. Unlike prior law, however, this section permits the judgment creditor's attorney to issue writs as an officer of the court. See Section 703.120 and the Comment thereto. Subdivision (a) authorizes issuance of writs of possession of real property to more than one county; it will be a rare case, however, in which a writ of possession of real property is needed in a county other than where the judgment is entered. Subdivision (b), providing for successive writs of possession, is made necessary by the provisions of Section 709.150 concerning the return of the writ.

§ 709.120. Contents of writ of possession of real property

709.120. (a) The writ of possession of real property shall state the date of issuance, shall describe the property to be levied upon, and shall require the levying officer to whom it is directed to enforce the judgment.

(b) The writ shall include statements that:

(1) If the property is not vacated within five days from the date of service of a copy of the writ on the occupant or, if the copy of the writ is posted, within five days from the date a copy of the writ is mailed, the levying officer will remove the judgment debtor from the property and place the judgment creditor in possession thereof.

(2) Personal property remaining on the real property after the judgment creditor has been placed in possession will be sold or otherwise disposed of in accordance with Section 1174 of the Code of Civil Procedure unless the judgment debtor or other owner pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the real property.

Comment. Section 709.120 prescribes the essential elements of a writ of possession issued to enforce a judgment for the possession of real property. See also Section 702.160(b) (Judicial Council authority to prescribe form of writs), 709.130 (execution of writ).

Paragraph (1) of subdivision (b) is derived from the substantive requirements formerly found in Section 1174(d) and is continued in Section 709.130. Paragraph (2) makes applicable to all writs of possession of real property a feature formerly applicable only to writs served on tenants in unlawful detainer actions pursuant to Section 1174(d). See Section 709.140 (disposition of personal property).

13/617

§ 709.130. Delivery and execution of writ of possession of real property

709.130. (a) The judgment creditor shall deliver the writ of possession of real property to the levying officer to whom the writ is directed, together with written instructions.

(b) The levying officer shall execute the writ by:

(1) Levying upon the property described in the writ and serving upon an occupant or posting a copy of the writ in the same manner as upon levy under a writ of execution pursuant to Section 703.310. If a

copy of the writ is posted, the levying officer shall mail a copy of the writ to the judgment debtor at the judgment debtor's business or residence address last known to the judgment creditor or, if no such address is known, to the address of the real property.

(2) Satisfying in the same manner as under a writ of execution the amount of costs and damages recovered in the judgment, and accrued costs, interest, and the levying officer's costs entered on the writ.

(c) If the judgment debtor does not vacate the real property within five days after the date of service of a copy of the writ on the occupant or, if a copy of the writ is posted, within five days after the date a copy of the writ is mailed, the levying officer shall remove the judgment debtor from the property and place the judgment creditor in possession.

(d) The levying officer may not levy upon any property under the writ after the expiration of 90 days from the date the writ was issued.

Comment. Subdivisions (a)-(c) of Section 709.130 are derived from provisions formerly contained in subdivision (d) of Section 1174 relating to writs of restitution to enforce a judgment in an unlawful detainer action after default in payment of rent. The authority to levy under the writ of possession of real property in the same manner as under a writ of execution to satisfy amounts awarded by the judgment and various costs continues portions of subdivision 4 of former Section 682 and former Section 682.2. The items recoverable under subdivision (b)(2) may be satisfied from any property of the judgment debtor which is subject to enforcement of a money judgment. See Sections 707.120, 707.130, 707.150. The requirement of subdivision 4 of former Section 682 that costs and damages be satisfied first from personal property and only then from real property is not continued. "Damages" includes any rents and profits recovered in the judgment. The judgment creditor may also seek to satisfy costs and damages by wage garnishment pursuant to Chapter 4 (commencing with Section 704.110) or by the special procedures provided by Chapter 5 (commencing with Section 705.110). See Section 702.110(a). The exemptions provided by Chapter 7 (commencing with Section 707.110) apply to enforcement of the part of the judgment awarding costs and damages.

Subdivision (d) is the same as Section 703.140(c) (execution).

13/618

§ 709.140. Disposition of personal property

709.140. Personal property remaining on the premises after the judgment creditor is placed in possession of the real property shall be disposed of in the manner provided by subdivisions (e) to (m), inclusive, of Section 1174. For this purpose, references in Section 1174 and provisions incorporated by Section 1174 to the "landlord" shall be

deemed to be references to the judgment creditor and references to the "tenant" shall be deemed to be references to the judgment debtor.

Comment. Section 709.140 is new. This section makes the procedure for disposition of personal property remaining on the premises where a tenant has vacated in an unlawful detainer action applicable to all situations where personal property remains on the premises after a judgment creditor has obtained possession of the real property pursuant to a writ of possession of real property.

15/341

§ 709.150. Return of writ of possession of real property

709.150. The writ of possession of real property is subject to the return provisions of Section 703.250 (return of writ of execution).

Comment. Section 709.150 is new. Prior statutory law did not explicitly provide for the return of a writ of possession or of restitution of real property. This section differs from the former rule that a writ for the restitution of real property remained in force beyond the 60-day limitation provided by former Section 683 insofar as it directed the restitution of the premises although it had expired insofar as it directed the levying officer to levy on property to satisfy the part of the judgment awarding damages. See *Magnaud v. Traeger*, 66 Cal. App. 526, 530-31, 226 P. 990, _____ (1924). Subdivision (a) of Section 709.150 makes the life of the writ of possession comparable to that of the writ of execution. See Section 703.250 (return of writ of execution). See also Section 708.160 (return of writ of possession of personal property). Under Section 709.130(d), the levying officer is authorized to levy upon real property for 90 days after issuance and place the judgment creditor in possession of the real property up to one year after its issuance before the writ must be returned.

12/823

§ 709.160. Appointment of receiver

709.160. The court may appoint a receiver as provided in Section 705.320 to enforce a judgment for the possession of real property.

Comment. Section 709.160 is new. Former law did not specifically authorize appointment of a receiver to enforce a judgment for the possession of real property. The appointment of a receiver is subject to the general rules concerning the time within which judgment may be enforced. See Section 702.210. Neither issuance nor return of a writ of possession is a prerequisite to appointment of a receiver.

CHAPTER 10. ENFORCEMENT OF JUDGMENT
FOR SALE OF PROPERTY§ 710.110. Issuance of writ of sale

710.110. (a) After the entry of a judgment for the sale of real or personal property, a writ of sale may be issued by the attorney for the judgment creditor as an officer of the court or shall be issued by the clerk of the court upon application of the judgment creditor and directed to the levying officer in each county where property sought to be levied upon is located.

(b) Writs of sale may be issued successively until the judgment is satisfied, except that a new writ of sale may not be issued for a county until the expiration of 90 days after the issuance of a prior writ for that county unless the prior writ was earlier returned.

Comment. Section 710.110 is analogous to Section 703.120 relating to writs of execution. It is based in part on former Sections 681, 684, and 687. Unlike prior law, however, this section permits the judgment creditor's attorney to issue writs as an officer of the court. See Section 703.120 and the Comment thereto. Subdivision (a) authorizes issuance of writs of sale to more than one county; it will be a rare case, however, in which a writ of sale for real property is needed in a county other than that where the judgment is entered.

Subdivision (b), providing for successive writs of sale, is made necessary by Section 703.250 (incorporated by Section 710.140) concerning the return of the writ.

Under this chapter, judgments for the sale of real or personal property are no longer enforced without resort to a writ of sale. The judgment is not enforced through an order of sale as was formerly the practice in some jurisdictions. See *Knapp v. Rose*, 32 Cal.2d 530, ___, 197 P.2d 7, ___ (1948). A levy is required in every case whereas under former law no levy was required since the property was directed to be sold by the judgment--a practice arising from distinctions between the manner of enforcing common law judgments and equitable decrees. See *Southern Cal. Lumber Co. v. Ocean Beach Hotel Co.*, 94 Cal. 217, 222-24, 26 P. 627, ___ (1892). The judgment may direct that a single parcel or contiguous parcels of real property situated in two or more counties be sold in one of the counties as if it were all situated therein. See Section 726.

09/733

§ 710.120. Contents of writ of sale

710.120. The writ of sale shall state the date of issuance and the material parts of the judgment for the sale of the real or personal property, shall describe the property to be levied upon and sold, and shall require the levying officer to whom it is directed to enforce the judgment.

Comment. Section 710.120 prescribes the essential elements of a writ of sale issued to enforce a judgment for the sale of real or personal property. See also Sections 702.160(b) (Judicial Council authority to prescribe form of writs), 710.130 (execution of writ). This section supersedes a portion of former Section 684. The writ of sale replaces the term "writ of enforcement"--a term frequently used by the courts although it did not appear in prior statutes. See, e.g., *Laubish v. Roberdo*, 43 Cal.2d 702, ___, 277 P.2d 9, ___ (1954); *Knapp v. Rose*, 32 Cal.2d 530, ___, 197 P.2d 7, ___ (1948).

09/747

§ 710.130. Delivery and execution of writ of sale

710.130. (a) The judgment creditor shall deliver the writ of sale to the levying officer to whom the writ is directed, together with written instructions.

(b) The levying officer shall execute the writ by:

(1) Levying upon the property described in the writ in the manner prescribed for levy under a writ of execution.

(2) Giving notice and selling the property levied upon in the manner prescribed for notice and sale under a writ of execution.

(3) Applying the proceeds of the sale in conformity with the judgment.

(4) Except as otherwise provided in the judgment, satisfying in the same manner as under a writ of execution the amount of costs, interest, and the levying officer's costs entered on the writ.

(c) The levying officer may not levy upon any property under the writ after the expiration of 90 days from the date the writ was issued.

Comment. Subdivisions (a) and (b) of Section 710.130 generally continue former law and practice regarding enforcement of a judgment for the sale of real or personal property. See former Section 684. Subdivision (a) is analogous to Section 703.140(a).

Paragraphs (1) and (2) of subdivision (b) of Section 710.130 incorporate the provisions for levy and sale under a writ of execution. See Sections 703.310-703.770. Under former law, the manner of sale appears to have been similar to that provided by subdivision (b). See Section 726 (foreclosure sale of real property by commissioner); *Johnson v. Tyrell*, 77 Cal. App. 179, 182, 246 P. 140, ___ (1926) (foreclosure sale of real property made in same manner as execution sales); *Podrat v. Oberndorff*, 207 Cal. 457, 459-60, 278 P. 1035, ___ (1929) (foreclosure sale of personal property under chattel mortgage made in same manner as execution sale; personal property capable of manual delivery must be in the possession of the officer to make a sale); *Marshal's Manual of Procedure* §§ 452.1, 452.2 (n.d.); *Cal. State Sheriffs' Ass'n, Civil Procedural Manual* 6.28 (1978). Section 710.130 changes the former practice under which the judgment debtor was requested to bring personal property to the sale and, if he refused, the judgment creditor had to

bring a claim and delivery action. See *Ely v. Williams*, 6 Cal. App. 455, 457-58, 92 P. 393, ___ (1907). Under paragraph (3), if the judgment so directs, court costs, expenses of levy and sale, and attorney's fees (where appropriate), are satisfied out of the proceeds of the sale if the property is security for such amounts. See, e.g., Section 726. Paragraph (4) is a new provision based on Sections 708.130(b)(2) and 709.130(b)(2), but recognizes that the property to be sold may by contract be security for costs, in which case costs are paid out of the proceeds of sale, and additional property may not be levied upon. See Section 726. In appropriate cases, the items recoverable under this paragraph may be satisfied from any property of the judgment debtor which is subject to enforcement of a money judgment. See Sections 707.120, 707.130, 707.150. The judgment creditor may also seek to garnish the judgment debtor's wages pursuant to Chapter 4 (commencing with Section 704.110) or employ special procedures provided by Chapter 5 (commencing with Section 705.110). See Section 702.110(a). The exemptions provided by Chapter 7 (commencing with Section 707.110) apply in such cases.

Subdivision (c) is the same as Section 703.140(c) (execution).

10/003

§ 710.140. Return of writ of sale

710.140. The writ of sale is subject to the return provisions of Section 703.250 (return of writ of execution).

Comment. Section 710.140 is new. Prior statutory law did not provide for the return of a writ directing sale of specific property.

10/006

§ 710.150. Order directing transfer of property or documents by defendant

710.150. (a) If a writ of sale is issued, the judgment creditor may apply to the court ex parte, or on noticed motion if the court so directs, for an order directing the judgment debtor to transfer to the levying officer:

(1) Possession of the property which is to be sold where such property is sought to be levied upon by taking it into custody.

(2) Possession of any documentary evidence of title to any property which is to be sold. An order for the transfer of possession of documentary evidence of title issued pursuant to this paragraph may be enforced by the levying officer when the property is taken into custody or at any time thereafter.

(b) The order shall be personally served upon the judgment debtor and shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court.

Comment. Section 710.150 is comparable to Section 703.210.

§ 710.160. Appointment of receiver

710.160. The court may appoint a receiver as provided in Section 705.320 to enforce a judgment for the sale of real or personal property.

Comment. Section 710.160 makes clear that a receiver may be appointed to enforce a judgment for the sale of real or personal property. See also Sections 564-571, 705.320. Under former law, receivers were not expressly authorized to enforce such judgments, i.e., to sell the property. Cf. Section 726 (appointment of elisor or commissioner to sell property at conclusion of foreclosure action); Ramsey v. Furlott, 14 Cal. App.2d 145, 148, 57 P.2d 1007, ____ (1936) (appointment of "receiver and commissioner" to gather property and sell it is in effect appointment of commissioner). Receivers have been appointed at the commencement of a foreclosure action and continued in possession until sale. Boyd v. Benneyan, 204 Cal. 23, 25, 266 P. 278, ____ (1928).

The appointment of a receiver is subject to the general rules concerning the time within which judgment may be enforced. See Section 702.210.

15/642

CHAPTER 11. ENFORCEMENT OF JUDGMENT BY CONTEMPT

§ 711.110. Enforcement by contempt

711.110. A judgment requiring a person to perform an act other than the payment of money, the delivery of possession of property, or the sale of property, or to refrain from performing an act, may be enforced by the power of the court to punish for contempt.

Comment. Section 711.110 supersedes a portion of former Section 684. See Sections 1209-1222 (contempt).