

#D-300

4/26/79

Memorandum 79-27

Subject: Study D-300 - Enforcement of Judgments (Transitional Provisions)

Attached to this memorandum is a staff draft of transitional provisions to be included as Chapter 13 of the Enforcement of Judgments Law. After approval and revision by the Commission, we plan to send these provisions to person who have submitted comments on the Tentative Recommendation which was distributed in March.

The draft provisions should be self-explanatory. You will find it useful to refer to your copy of the Tentative Recommendation as you review the draft transitional provisions.

Respectfully submitted,

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CHAPTER 13. TRANSITIONAL PROVISIONS

§ 713.110. Definitions

713.110. As used in this chapter:

(a) "Operative date" means January 1, [1982].

(b) "Prior law" means the applicable law in effect on December 31, [1981].

Comment. Section 713.110 is new.

10/002

§ 713.120. General rule concerning application of title

713.120. Except as otherwise provided in this chapter, this title upon its operative date applies to all proceedings commenced prior thereto unless in the opinion of the court application of a particular provision of this title would substantially interfere with the effective conduct of the proceedings or the rights of the parties or other interested persons, in which case the particular provision of this title does not apply and prior law applies.

Comment. Section 713.120 is new; it states the general rule governing the application of the Enforcement of Judgments Law to pending matters.

10/005

§ 713.130. Time for enforcement of judgments

713.130. (a) Except as provided in subdivision (b), the time for enforcement of a money judgment or a judgment for possession or sale of property entered prior to the operative date is governed on and after the operative date by Article 2 (commencing with Section 702.210) of Chapter 2.

(b) Notwithstanding Section 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 commenced prior to the operative date is not reduced by the period during which the original judgment was enforceable.

(c) For the purpose of this section, a judgment is enforceable whether or not a motion was made under former Section 685.

Comment. Subdivision (a) makes clear that the basic 20-year period of enforceability applies to judgments entered before the operative date of this title. Subdivision (b) permits a judgment creditor to bring an action to renew the judgment, thereby permitting an additional 20 years of enforcement. Subdivision (c) makes clear that the dormancy of a judgment entered under prior law is not relevant to the calculation of the 20-year period of enforceability applicable under subdivision (a).

10/007

§ 713.140. Execution and return of writs and orders

713.140. (a) Except as provided in subdivision (c), property levied upon or otherwise subjected to process for enforcement of a money judgment or a judgment for possession or sale of property prior to the operative date is subject to prior law relating to sale and delivery.

(b) The duties to be performed in the execution of writs and orders for the enforcement of a money judgment or a judgment for possession or sale of property which are levied or served prior to the operative date are governed by prior law.

(c) The manner of payment at a sale of property pursuant to a writ or order after the operative date is governed by Section 703.680.

Comment. Subdivisions (a) and (b) of Section 713.140 make clear that writs and orders levied or served prior to the operative date are governed by prior law rather than the Enforcement of Judgments Law, except that any sale is subject to the credit bid provision of Section 703.680.

10/009

§ 713.150. Redemption rights

713.150. (a) Except as provided in subdivision (b), property levied upon prior to the operative date which would have been sold subject to the right of redemption under prior law shall be sold subject to the right of redemption and may be redeemed as provided by prior law.

(b) If the judgment creditor and judgment debtor consent in writing, property described in subdivision (a) may be sold as provided in this title rather than subject to the right of redemption.

Comment. Section 713.150 preserves the right of redemption from execution and foreclosure sales for property levied upon prior to the operative date unless the parties consent in writing to application of the provisions of this title. See Section 703.640.

§ 713.160

10/010

§ 713.160. Creditors' suit

713.160. Notwithstanding Section 705.230, an action may be commenced pursuant to Section 705.210 within one year after the operative date if such an action could have been commenced under prior law within such time.

Comment. Section 713.160 provides a one-year grace period for bringing a creditor's suit that would otherwise be barred by Section 705.230.

10/011

§ 713.170. Judgment liens

713.170. (a) The duration of a judgment lien in effect on the operative date is governed by Section 702.330.

(b) If a judgment lien has expired prior to the operative date, another judgment lien may be created under the same judgment pursuant to Section 705.450.

Comment. Subdivision (a) of Section 713.170 codifies the rule that an increase in the duration of a judgment lien extends liens in effect when the increase becomes operative. See *Provisor v. Nelson*, 234 Cal. App.2d Supp. 876, 877, 44 Cal. Rptr. 894, ___ (1965). Subdivision (b) is consistent with Section 702.330 which makes the duration of judgment liens coextensive with the period of enforceability of the judgment. See also Section 713.130.

10/013

§ 713.180. Third-party proceedings

713.180. (a) A third-party claim filed prior to the operative date is governed by prior law.

(b) A demand for a third-party claim served on a secured party prior to the operative date is governed by prior law.

Comment. Section 713.180 provides exceptions to the general rule governing application of this title provided by Section 713.120.

10/014

§ 713.190. Exemptions

713.190. (a) The exemptions from enforcement of a money judgment provided by this title apply to claims made after the operative date unless prior to the operative date a lien has been obtained on the

property claimed to be exempt in which case the exemptions provided by prior law apply.

(b) For the purpose of this section, Section 702.310 pertaining to the relation back of liens does not apply.

Comment. Subdivision (a) of Section 713.190 facilitates the early application of Section 707.160(a) but recognizes that the judgment creditor may have a vested right in the application of the exemptions of prior law in a case where a lien has been obtained before the operative date. Subdivision (b) prevents the relation back rule from defeating the purpose of achieving full application of the exemption provisions of the Enforcement of Judgments Law. For example, if a judgment creditor has obtained an attachment lien on property prior to the operative date and levies under a writ of execution after the operative date, the new exemption provisions will apply under subdivision (a) because subdivision (b) precludes relation back to the earlier lien. Subdivision (b) has no effect on the priority of a creditor as against other creditors or third-person transferees of property subject to a lien.