

Memorandum 79-45

Subject: Study D-300 - Enforcement of Judgments (Chapter 7--Property Subject to Enforcement of Money Judgments and Exemptions)

This memorandum analyzes Chapter 7 of the tentative recommendation, with the exception of:

(1) The homestead exemption (which is analyzed in the First Supplement to this memorandum).

(2) The application of exemptions where the judgment is for support of a spouse or child (to be analyzed in a future memorandum).

Chapter 7 primarily contains provisions relating to exemptions; it also contains some provisions relating to property subject to enforcement of money judgments. These two categories of provisions are conceptually distinct, and the staff plans to separate them out and place them in different chapters. This should add to the clarity of the draft.

Although most of the comments received concerning exemptions were directed to particular provisions of the draft, there were two comments of a more general nature, both from Mr. Rick Schwartz (Exhibit 12, pp. 8-9). The new Bankruptcy Act provides a set of exemptions for the debtor in bankruptcy. The debtor may take advantage of either the bankruptcy exemptions or the state exemptions, unless the state by statute prohibits the debtor from using the bankruptcy exemptions. Mr. Schwartz suggests that California should exercise its option under the new act to preclude resort to the bankruptcy exemptions.

California exemptions are generally higher than the bankruptcy exemptions, with the important qualification that the Bankruptcy Act permits the debtor to exempt an additional \$7,500 worth of property to the extent that a dwelling exemption is not used. As a condition to preempting the federal exemptions and applying state exemptions in bankruptcy, Mr. Schwartz recommends that a \$5,000 blanket exemption be provided.

There is little chance that the Legislature would enact a \$5,000 blanket exemption available to any person who does not claim a homestead exemption. Moreover, a blanket exemption would create difficult problems in the context of a levy of execution. A blanket exemption can be

fairly easily applied in a bankruptcy proceeding because all of the debtor's property is being administered in the proceeding. However, when a judgment creditor levies execution on particular nonexempt property, it would be difficult to apply a blanket exemption; it would be necessary to develop a complex scheme for the application of the blanket exemption to all of the judgment debtor's property, and this would probably require some system for identifying and valuing all of the nonexempt property so that the exemption could be applied to specific identified property. We doubt that a statute which imposed on the courts the burden of administering such a system would find any support. Moreover, such a system would not give the judgment debtor the benefit of a discharge of debts as does a bankruptcy proceeding so the state system would not be a substitute for a bankruptcy proceeding.

The existing California law favors homeowners over renters through the homestead exemption; the federal bankruptcy law equalizes their position by giving the same \$7,500 exemption applicable either to a homestead or to personal property. One consequence of this disparity is that a judgment debtor who does not own a home will be inclined to undergo a voluntary bankruptcy to take advantage of the more liberal exemptions available there. The staff believes that as a matter of fairness the bankruptcy exemptions should remain available to the renter, and that California should not attempt to deny the bankruptcy exemptions by statute.

Mr. Schwartz also suggests that the proposed law should provide a statutory penalty for levy on exempt property or provide a set of minimum automatic exemptions that would not need to be claimed by the judgment debtor. The staff thinks that a statutory penalty is impracticable because of the difficulty in many cases of determining what property is exempt. In egregious cases, the common law abuse of process remedy is available. As for providing a set of automatic exemptions, the proposed law does this to some extent. Various types of property are described as not subject to enforcement of a money judgment, thereby eliminating the need to make an exemption claim. The staff plans to clarify this by providing that these types of property are "exempt without filing a claim," as under existing law.

§ 707.110. Claimant

While the exemptions are intended to protect only individual debtors and their families, and not organizations or corporate debtors, problems arise where a corporate debtor holds funds that are exempt. This may be the case where the corporation has a reserve from which to pay such items as retirement, disability, or health benefits, or is holding other funds which are exempt in a fiduciary capacity. For this reason, the staff recommends that Section 707.110 be revised to provide that the exemptions may be claimed by an individual judgment debtor or by a person holding funds that are set aside and held for the purpose of making payments that would be exempt if paid to the judgment debtor. Section 707.110 would read:

707.110. (a) The exemptions provided in this chapter apply only to property of an individual judgment debtor or set aside and held for the purpose of making payments to an individual judgment debtor or the surviving spouse or dependents of an individual judgment debtor.

(b) The exemptions provided in this chapter may be claimed by any of the following persons:

(1) The judgment debtor.

(2) In the case of property set aside and held for the purpose of making payments to an individual judgment debtor or the surviving spouse or dependents of an individual judgment debtor, the person holding the property.

The staff notes that this provision does not deal with the right of the spouse to claim an exemption on behalf of the judgment debtor, or on the spouse's own behalf. We defer this pending receipt of our consultant's study on the rights of spouses in creditors' remedies.

§ 707.120. Property subject to enforcement of money judgment

Subdivision (a)(1) of Section 707.120 specifies property of a judgment debtor subject to enforcement and subdivision (a)(2) specifies property of a married judgment debtor. Professor Riesenfeld (Exhibit 23, p. 4) notes that the subdivisions are overlapping. The staff does not plan to do anything about the overlap at the moment, other than to make paragraphs (1) and (2) into separate sections. Any other work on property of a married debtor subject to enforcement is premature pending receipt of our consultant's study on this matter.

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

Section 707.130 states that property that is not subject to enforcement "may not in any manner be applied" to satisfy a judgment. Professor Riesenfeld (Exhibit 23, p. 4) points out that read literally, this language would preclude a debtor from voluntarily applying exempt property to satisfy a judgment. This defect can be cured by phrasing the section in terms of "enforcement procedures" rather than in terms of "applied toward the satisfaction" of a money judgment. The staff will do this in the redraft of the exemption provisions to substitute "exempt without filing a claim" for "not subject to enforcement."

§ 707.140. Applicability of exemptions

Mr. Steven Kipperman states that the statute should make clear that exemptions apply only to "general money judgments." (Exhibit 1, p. 3.) He states that there is an ambiguity concerning whether exemptions apply to a judgment for specific performance or a judgment foreclosing an equitable lien. The staff believes the tentative recommendation is sufficiently clear. Section 707.140 provides that exemptions apply in all procedures for enforcement of a money judgment. In addition, the staff plans to reorganize the statute to place the exemptions in a division on enforcement of money judgments, separate from the division on enforcement of nonmoney judgments; this will further clarify the application of exemptions.

§ 707.150. Waiver of exemptions

Section 707.150 provides that exemptions are waived if not timely claimed. Professor Riesenfeld indicates that this provision is overbroad, since a person should not be permitted to waive exemptions in advance of enforcement. The staff agrees with this observation--waiver in advance should be against public policy. The staff would add the following provision:

A purported contractual or other waiver of the exemptions provided by this chapter or by any other statute, other than a waiver by failure to claim an exemption required to be claimed, is against public policy and void.

Comment. This section codifies existing case law. See, e.g., Industrial Loan & Inv. Co. v. Superior Court, 189 Cal. 546, 209 P. 360 (1922).

§ 707.160. Time for determination of exemption; reserved power

Four persons expressed opposition to Section 707.160 which would apply the exemptions in effect when an exemption claim is made and deems contracts to have been made in recognition of the power of the state to alter or add to exemptions. (See Exhibit 3, p. 1; Exhibit 10, p. 3; Exhibit 18, pp. 1-4; Exhibit 19, pp. 1-2.) See also the discussion under Section 707.380(d) infra. Mr. Raymond Mushrush asserts that the concept of this section is "unconstitutional, and illogical besides." He states that "previous attempts along these lines have not worked such as that under Section 688.1 CCP to exclude a Trustee in Bankruptcy from being a lien creditor for purposes of the section." (Exhibit 10, p. 3.) The purpose of this section is not to exclude trustees in bankruptcy; it has nothing to do with precluding liens. Its purpose is to give debtors the benefit of exemptions when they are needed.

Although it is frequently stated that creditors rely on exemptions in effect at the time of contract, the staff does not believe this tenet holds up under examination. If the creditor is truly interested in protecting his or her interest at the time the contract is made, the proper course is to obtain a security interest against which exemptions are ineffective. In the absence of a security interest, there is no guarantee that the debtor will have the same property when the contract is enforced that he or she had when the contract was made. The debtor has always been free to convert nonexempt assets into exempt assets before levy or bankruptcy. If this is not unconstitutional, then neither should it be unconstitutional for the Legislature to make reasonable adjustments in exemptions in light of inflation and changing needs without running afoul of the Contract Clause. The creditor's reliance on statutory exemption laws in effect at the time of the contract thus appears somewhat flimsy and unjustified. For additional discussion of this question, see the text of the tentative recommendation at 90-92.

Mr. Lynn Koller presents an argument against this section and suggests that if it is held unconstitutional the debtor may be left without any exemptions. (Exhibit 18, pp. 1-4.) He suggests that this section be modified to permit current application of exemptions "to the extent permissible by applicable law." The staff has some difficulty

with this proposal. One purpose of Section 707.160 is to force a judicial reexamination of the leading California case in this area, In re Rauer's Collection Co., 87 Cal. App.2d 248, 196 P.2d 803 (1948). This decision contains very little analysis of the constitutional issues, and the cases which have followed it in the creditor's remedies area have contained even less analysis, preferring to rely on In re Rauer's Collection Co. As the discussion in the text of the tentative recommendation demonstrates, the courts have reexamined older doctrine concerning retroactivity and the Contract Clause in other areas such as community property and sovereign immunity and upheld "retroactive" application. If the rationale supporting "retroactivity" in these areas is applied to exemptions, as it has been in Oregon and Louisiana, we think the California courts will eventually reject the rule in In re Rauer's Collection Co.

There is a need, however, to clarify the situation should Section 707.160(a) be held unconstitutional. While we doubt that the courts would find that the debtor is left without any exemptions, it would be better to provide a backup rule to avoid any question. The staff is divided on the proper course to take. We could provide that if the exemption scheme is held unconstitutional, the entire statute shall cease to apply and the law in effect immediately before is restored. This would put pressure on the court to uphold the scheme but would create many problems and raises the question whether our exemption scheme is so critical that the entire statute stands or falls with it. An alternative is simply to sever the unconstitutional provision and make available the exemptions in effect at the time the enforcement lien on the property was created. This would protect any "vested rights" of the creditor in the property. We note that Section 713.190 of the transitional provisions applies exemption law applicable at the time a lien on property was acquired if it was acquired before the operative date of the proposed law. Section 713.190 should also make clear that Section 707.160(b) concerning the reserve power of the state applies only to contracts made after the operative date.

Ms. Jane Fennelly states that creditors--"particularly those which take real property security" base the transaction on the equity at the time the loan is made. (Exhibit 19, pp. 1-2.) The exemption provisions

in Chapter 7 do not apply to the enforcement of secured obligations. See Section 707.140(b).

§ 707.170. Exemptions inapplicable against support judgment

The staff plans to prepare a separate memorandum for a future meeting concerning the application of exemptions when the judgment is based on a support obligation.

§ 707.190. Loss of exemption from change in circumstances

Section 707.190 requires the judgment creditor to apply on noticed motion and show a change in circumstances before levying upon property that has previously been determined to be exempt. Mr. Robert Sprague suggests that this provision should not apply to a deposit account because its nature may constantly change. The staff recommends that this section be deleted. Although it makes theoretical sense that property determined to be exempt should not be levied upon again unless the creditor meets the burden of showing that it is no longer exempt, it is practically speaking unenforceable. The requirement that the creditor apply on notice would permit the debtor to dispose of the property in the case of personal property. If a creditor persists in unreasonable levies on property already determined to be exempt, the debtor may have a remedy by way of an action for abuse of process.

§ 707.200. Adjustments of dollar amounts of exemptions

Three commentators objected to the automatic adjustment of dollar amounts of exemptions based on changes in the consumer price index. Mr. Robert Sprague stated that it would be confusing because the correct amounts would not be in the code. He suggests an alternative approach similar to Section 104 of the new Bankruptcy Act under which the Judicial Council would determine if a 10-percent change in the consumer price index had occurred and would submit a recommendation for adjustments to the Legislature. Section 104 of the new Bankruptcy Act provides:

The Judicial Conference of the United States shall transmit to the Congress and to the President before May 1, 1987, and before May 1 of every sixth year after May 1, 1987, a recommendation for the uniform percentage adjustment of each dollar amount in this title

Mr. Steven Kipperman stated that Section 707.200 makes no sense. (Exhibit 1, p. 2.) The State Bar Committee on Administration of Justice is

opposed because it would create an area of uncertainty. (Exhibit 22, p. 3.)

The staff doubts that the Legislature would approve Section 707.200. Assembly Bill 1613 was recently amended in committee to delete a provision for the automatic increase of the homestead exemption based on the consumer price index. The Legislature prefers to review and control the exemptions. Although the staff believes that automatic adjustment is probably the only way to ensure that exemptions keep pace with inflation (or deflation), in view of the likely rejection of this provision in the Legislature, the staff recommends that Section 707.200 be revised to provide a means of periodic review of the exemptions. This could be accomplished by the following provision:

(a) Five years following the operative date of this act and every five years thereafter the California Law Revision Commission shall examine the exempt amounts provided in this chapter in light of changes in the Consumer Price Index or other index represented by the Bureau of Labor Statistics of the United States Department of Labor as most accurately reflecting changes in the purchasing power of the dollar for consumers. The Commission shall recommend to the Governor and the Legislature any changes in the exempt amounts that appear proper.

(b) Nothing in this section precludes the Commission from making recommendations concerning exempt amounts more frequently than required by subdivision (a) or from making recommendations concerning any other aspect of this title, and the Commission is authorized to maintain a continuing review of and submit recommendations concerning enforcement of judgments.

§ 707.210. Exemptions from tax liability

Mr. David Paulsen approves of the codification of the procedure for processing exemption claims made in proceedings to collect taxes. (Exhibit 15, p. 2.) He suggests, however, that Section 707.210 be revised to make clear that the public entity performs the duties assigned to the levying officer if the property has been subjected to a lien without the participation of a levying officer. The staff recommends that this change be made.

§ 707.320. Claim of exemption

Under existing law, the debtor has 10 days from the date of levy in which to make an exemption claim and the judgment creditor has five days after receipt of the claim in which to contest the claim. The tentative recommendation would extend the time for making a claim to 10 days from

the date the debtor receives notice of the levy and the time for contesting to 10 days after the claim is mailed to the judgment creditor.

Mr. Rick Schwartz suggests that the time for claiming exemptions should be extended from 10 to 20 days after notice of levy. (Exhibit 12, p. 9.) The staff believes 10 days is sufficient and recommends no change except for a time extension where notice of levy is mailed to take account of the delay in mail delivery. Mr. Frederick Holden states that the increase of time limits in Sections 707.320-707.340 may be harmful to the debtor because property will be tied up longer even though it is found to be exempt. (Exhibit 13, pp. 26-27.) While this may be a problem in some cases, the staff believes it is better to take this risk than design a procedure with such short times for compliance that compliance will frequently be impossible. The staff suggests that the five-day limit for the creditor to oppose the claim be restored, but provide for an extension of time where the creditor is not personally served with the claim.

Mr. Holden also questions the propriety of the requirement in Section 707.320(b)(3) that the debtor describe other property of the same type as the property claimed to be exempt. This provision applies to motor vehicles, jewelry and works of art, tools of a trade, deposit accounts and money, and life insurance loan values. Its intent is to lessen the hide-and-seek aspect of levy and exemption claims where, for example, the creditor having found one motor vehicle loses it to an exemption claim even though the debtor has another vehicle that the creditor did not find. Mr. Holden suggests that this requirement may inhibit the debtor from claiming exemptions since he or she would be required to disclose other nonexempt property. He also suggests that it will in effect replace the examination order as a method of discovering assets. The staff believes this is a useful provision. It is limited to five categories of property and, therefore, is not nearly as broad in scope as an examination. We also do not see it as exacting too great a cost as a condition for claiming an exemption because, if the debtor has another motor vehicle and avoids claiming an exemption for the vehicle levied upon, the debtor has gotten what the statute intended--one motor vehicle. If a claim is made and the second vehicle is disclosed, the result is the same. Mr. David Paulsen approves of the disclosure requirements in Section 707.320(b)(3) and (4). (Exhibit 15, p. 2.) He

suggests that, if the information is not included in the claim, it should be provided at the hearing. If the claim is deficient, the court would surely have authority to require more information, but the staff has no problem with adding specific language to that effect in Section 707.380 (hearing on exemption claim). The staff plans to revise the information required in the financial statement to conform to the information contained in a wage garnishment financial statement.

One aspect of the financial statement that requires further consideration is the reporting of deposit accounts. Under Section 707.560 as drafted, deposit accounts aggregating \$2,000 are exempt. The debtor claiming an exemption must report all deposit accounts, and the deposit account levied upon is exempt only to the extent the total of all accounts does not exceed \$2,000. However, there is nothing to preclude the debtor from removing funds from the other deposit accounts, if any, and transforming them into other (possibly exempt) assets, and then reporting in the financial statement that there are no other accounts and \$2,000 in the account levied upon is exempt. One solution to this problem would be to require the financial statement to be made as of the time of levy. However, there may be a legitimate change of circumstances requiring expenditure of funds between the time of levy and the time of the claim of exemption. Perhaps the financial statement could be made as of the time of levy and the court can consider subsequent changes in circumstances at the time of the hearing. The staff has no completely satisfactory solution; what does the Commission wish to do?

§ 707.340. Opposition to exemption claim

Mr. Raymond Mushrush states that the procedure for opposing a claim of exemption is unnecessarily burdensome in that it requires a judgment creditor to file in two different places--a notice of opposition is filed with the levying officer and a notice of motion is filed with the court. (Exhibit 10, p. 3.) He suggests that both be filed with the court along with proof of service on the levying officer. This would eliminate the need to mail notice of the hearing on the motion to the levying officer, which is done to prevent the release of the property. The staff recommends that the substance of this suggestion be adopted. Section 707.340 should be revised as follows:

707.340. Within 10 days after ~~the date of the mailing~~ service of the notice of claim of exemption, a judgment creditor who opposes the claim of exemption shall file with the ~~levying officer court~~ levying officer a notice of opposition to the claim of exemption and ~~file with the court~~ file with the levying officer a notice of motion for an order determining the claim of exemption and serve on the levying officer a copy of the notice of opposition and notice of motion .

Conforming changes will have to be made in Sections 707.350, 707.360, and 707.370. The question of whether proof of service should be filed here and in the other cases where service is required to be made elsewhere in this chapter or in the enforcement of judgments title is under separate study by the staff.

§ 707.360. Notice of motion for hearing

The Sheriffs' Association Committee states that the creditor should deliver the notice of the hearing on an exemption claim not less than 10 days after the notice of opposition is filed with the levying officer rather than mail the notice of hearing not less than 10 days prior to the hearing. (Exhibit 8, p. 8.) Lieutenant Bernard Morgan notes the same general problem. (Exhibit 9, p. 6.) The Sheriffs' Association Committee is concerned that the levying officer will be required to release property under Section 707.370 before the notice of hearing is received. The suggested change to Section 707.340 supra will eliminate the need for a separate notice of hearing. The staff proposes to revise Section 707.360 consistent with Section 707.340 and may be able to eliminate the section altogether by moving parts to Section 707.340 and parts to Section 707.370.

§ 707.380(d). Determination of exemptions under circumstances existing at time of hearing

Mr. Raymond Mushrush and Mr. David Paulsen state that the exemption should be determined as of the time the creditor obtained a lien on the property in question, rather than at the time of the hearing. (Exhibit 10, p. 3; Exhibit 15, p. 3.) The alternative suggested by Mr. Mushrush was one of several considered when this policy decision was made. Section 707.380(d) attempts to further the policy of the exemption laws so that the debtor's needs at the time of the hearing are considered, and to avoid the effect of the fortuity of the time when a lien was created which may be a substantial time before the exemption claim because of the relation back of liens. Two related but distinct issues

are covered by Sections 707.160 and 707.380(d). Section 707.160 determines the body of exemption law that governs the debtor's exemption claims. Section 707.380(d) determines the time as of which the body of exemptions is to be applied to the facts of the case. This is discussed in the Comment to Section 707.380(d). As a general rule, circumstances existing at the time of the hearing will not be important, except where the exemption is based on need of the judgment debtor and family and except in the case of the bank account exemption, which is dependent upon amounts in other accounts not levied upon. See discussion under Section 707.320. The staff recommends that this provision be revised to apply exemptions at the time of levy, but to permit the court to take into consideration changes in circumstances since then.

§ 707.410. Disposition of property during pendency of proceedings

In response to a comment by the Sheriffs' Association Committee (Exhibit 8, p. 9), subdivision (a) of Section 707.410 should be prefaced with a reference to the exceptions provided in Sections 702.620 and 706.750. This will cover situations where the officer is permitted to release property when the creditor fails to deposit funds needed to continue a lien or is required to release property pursuant to an undertaking to release. As noted by Mr. David Paulsen, the officer would also release property if instructed to do so by the creditor, such as in a case where the creditor decides not to contest an exemption claim. (Exhibit 15, p. 3.)

Professor Vern Countryman asks whether this section should provide that the property is not to be released until the time for an appeal from the order has expired or, if an appeal is filed, the appeal is determined and cites Section 703.450(c) as an example. (Exhibit 4.) The staff recommends that this provision be revised to make clear that the officer should not dispose of the property unless an appeal is waived or until any appeal is determined, with provision for notice of appeal to be served on the levying officer to prevent release. The general provisions relating to stay of proceedings on appeal would also be incorporated.

§ 707.510. Exemption of motor vehicle

Professor Vern Countryman states that there is some tension between this section's reference to "motor vehicle" and the reference in Section

707.550 (tools of trade) to one "vehicle." (Exhibit 4.) The staff recommends that Section 707.550 be revised to refer to a "motor vehicle" and the Comment to Section 707.510 expanded to explain that the motor vehicle exemption is in addition to the tools of trade exemption.

Lieutenant Bernard Morgan asks how the levying officer is to know that the debtor has only one motor vehicle for the purpose of distributing the exempt proceeds to the debtor. (Exhibit 9, p. 6.) The staff recommends that a provision be added to this section to the effect that the levying officer should consult the records of the Department of Motor Vehicles and may rely on the information obtained. Lieutenant Morgan also asks what happens to the property if the minimum bid is not reached pursuant to Section 703.740(b) which must include the amount of exempt proceeds. The staff recommends that Section 703.740 be revised to provide that the property is to be released if the minimum bid is not reached.

Mr. Rick Schwartz states that Section 707.510 is defective in that it keys the exemption to the fair market value of the vehicle rather than the owner's equity in the vehicle. (Exhibit 12, p. 9.) Apparently, he has overlooked the phrase "exclusive of liens and encumbrances superior to the judgment creditor's lien." This has the effect of applying the \$1,000 exemption to the owner's equity. The staff plans to eliminate the confusion by referring to value "over and above" liens and encumbrances. It should also be noted that the debtor has two chances to save his or her car under the proposed law. If it is found that the value of the vehicle over and above liens and encumbrances is less than \$1,000 as determined by the blue book, the car may not even be scheduled for sale because it is exempt. If the debtor's equity is greater than \$1,000 according to the blue book, it still will not be sold if the minimum bid is not reached as required by Section 703.740. For these purposes, blue book value should create a presumption affecting the burden of proof, but should not be the exclusive means of determining value. Even if the debtor does nothing, if he or she has only one vehicle, Section 707.510(b) provides a right to a proceeds exemption of \$1,000.

§ 707.520. Exemption for household furnishings, etc.

Existing law permits the exemption of household furnishings, appliances, wearing apparel, provisions, and other personal effects reasonably necessary for the household, without limitation as to value. Under this rule, valuable antiques and other furnishings have been exempted as consistent with the debtor's station in life. The Commission's tentative recommendation places a \$500 per item limit on the household furnishings exemption in an effort to free valuable assets for satisfaction of judgments.

Mr. Rick Schwartz finds the limitation on the exemption to be inadequate. (Exhibit 12, pp. 9-10.) Mr. Schwartz believes that, since there is no proceeds exemption under this section, an unscrupulous creditor might make a credit bid of \$501 for an item such as a refrigerator or television set in order to harrass the debtor, even though the creditor would not be able to resell the item for what was bid. Mr. Schwartz suggests consideration of a \$750 aggregate proceeds exemption which would inhibit such a practice since the creditor would have to pay that amount in cash.

The staff recommends adoption of this proposal although we do not believe it would be needed except in a few cases. The following subdivision would be added to Section 707.520:

(b) If property that is 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 is sold at an execution sale, the proceeds of sale are exempt in the aggregate amount of seven hundred fifty dollars (\$750) for a period of 90 days after receipt of the proceeds by the judgment debtor.

Mr. Schwartz also suggests a separate exemption for a piano with a value not exceeding \$2,000. Existing law exempts one piano absolutely. The staff recommends against this suggestion. We do not see why this one type of property should have a special exemption in so high an amount.

Mr. Lynn Koller also recommends a \$750 to \$1,000 amount if the limitation feature of the exemption is to be retained. (Exhibit 18, pp. 4-5.) However, he questions the need for the dollar amount at all and suggests that it is sufficient to eliminate the station-in-life

test. (See the Comment to Section 707.520.) The State Bar Committee on Administration of Justice also opposes the \$500 limit. (Exhibit 22, p. 4.) The Commission should consider whether it wishes to retain the \$500 limit per item on the exemption. It may simply prove to be a litigation factor, generating hearings to determine value. On the other hand, it may save hearings since the judgment creditor will be deterred from levying on low-ticket items and the judgment debtor will not have to claim and prove the exemption. The staff believes the dollar limit is useful and that litigation over value can be minimized by allowing the price at execution sale to determine whether its value exceeds \$500, the costs of a sale that generates less than that being nonrecoverable by the judgment creditor.

§ 707.530. Exemption for jewelry, heirlooms, works of art

Existing law makes works of art nonexempt unless of or by the judgment debtor or family. Section 707.530 exempts any work of art, regardless of artist or subject, if the work does not exceed \$500 in value.

Mr. Robert Sprague suggests retention of the exemption for works of art portraying the debtor or the debtor's family because of their great sentimental value, and asks why such works of art should be given up because executed by Andy Warhol or Pablo Picasso. The Commission should decide whether the creditor's interest in satisfying the judgment by reaching a valuable work of art overrides the debtor's interest in its sentimental value.

Mr. Rick Schwartz states that the \$500 amount of the exemption for jewelry, heirlooms, and art is too low, particularly with regard to wedding rings, and suggests it be raised to \$2,000 and provide for a proceeds exemption. Mr. Lynn Koller (Exhibit 14, p. 5) suggests the amount be raised to \$1,000 or \$1,500. The Committee on Administration of Justice of the State Bar (Exhibit 22, p. 4) suggests no monetary limit on the exemption but would exempt them if the court finds that "such items reasonably have such sentimental or psychological value to the debtor that it would be inequitable to subject them to enforcement." There would be no proceeds exemption. Again, the Commission should decide whether the sentimental interest of the debtor should prevail

over the need of the creditor to satisfy the judgment. A lower exemption forces the debtor to dispose of other assets to satisfy the judgment voluntarily, if possible, if the debtor wishes to protect items having sentimental value. We note that Section 522(d)(4) of the new Bankruptcy Act provides a \$500 exemption for jewelry.

Mr. Lynn Koller states that this exemption is unnecessary since Section 707.520 covers personal effects. (Exhibit 18, p. 5.) As the Comment to Section 707.530 notes, there is no need to show necessity under this section, so its coverage is somewhat different from Section 707.520.

§ 707.550. Tools of trade

Among the items listed in the tools of trade exemption in Section 707.550 is "materials." This item is intended to protect materials used by an artisan in plying his or her trade. It supersedes the exemption presently provided by Section 690.17:

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

The staff now believes that one aspect of Section 690.17 should be restored. Building materials may be used by a person to repair his or her own dwelling, and these should be protected. The staff would add a new provision, perhaps located with the dwelling exemption:

All material not exceeding one thousand dollars in value, purchased in good faith for use in the repair of the dwelling of the judgment debtor or the family of the judgment debtor, as long as in good faith, the material is about to be applied to the repair of the dwelling.

§ 707.560. Exemption of deposit accounts and money

Existing law does not exempt checking or savings accounts in banks but does exempt \$1,000 in savings and loans and \$1,500 in credit unions. The tentative recommendation provides a single aggregate exemption of \$2,000 for all deposit accounts.

Mr. Lynn Koller approves this section but suggests it be raised to \$2,500 which is the possible aggregate under existing law. (Exhibit 18,

p. 5.) This is also the position of the State Bar Committee on Administration of Justice (Exhibit 22, p. 4). Mr. Roy Wolcott (Exhibit 21, p. 1) apparently likes reduction of existing exemptions to a single \$2,000 exemption but does not like exempting checking and savings accounts in banks. Mr. Raymond Mushrush objects to this exemption on the ground that approximately one-fourth of the wages in the hands of the employer may be reached but, under this provision, they would be totally exempt if they reached a deposit account or were paid to the debtor. The deposit account and money exemption is intended to provide the debtor with a limited fund with which to purchase necessities for the debtor and his or her family. It is impractical to provide a fractional exemption of a deposit account when the balance of the account changes frequently. The staff recommends, however, that this amount be lowered to \$500. The Legislature will never approve the \$2,000 amount, especially since it covers checking accounts.

Mr. David Paulsen states that this provision should be deleted because it does not distinguish between personal savings accounts and business accounts and because the debtor is not required to include amounts in accounts under another person's name, such as a nondebtor spouse. (Exhibit 15, p. 3.) Section 707.320(b)(3) and (4) require a listing of all amounts in accounts; the staff will revise these provisions to make clear that joint accounts must also be listed. We consider the "business account" problem to be minimal and certainly not a sufficient reason to eliminate the exemption for all debtors. It must be remembered that the exemption may only be claimed by individual judgment debtors. If a debtor uses an account in his or her own name in the operation of a small business, we still do not see that there should be no exemption since in such cases the "business" account may also be the family account and to the extent the business account is exempt any other family account will be nonexempt.

Professor Countryman (Exhibit 4) suggests that there is some tension between Section 707.560 and Section 707.570 (deposit account in which social security payments are directly deposited). This points up a general problem--to what extent should the deposit account exemption be available where there are funds in the deposit account already exempt

by virtue of some other exemption. The tentative recommendation purports to allow the judgment debtor to cumulate exemptions. The staff believes this policy should be reexamined. The purpose of protecting funds in a deposit account is to allow the debtor a small amount for expenses of daily living. Where there are exempt funds in a deposit account, for example from social security, insurance proceeds, or retirement payments, this purpose is already satisfied. The staff would not exempt general funds in a deposit account to the extent there are special funds in the deposit account that are exempt.

Another problem that must be dealt with is the joint account. Where a joint account is levied on, does each joint account holder get an exemption, or only the judgment debtor? The answer to this question is dependent upon how we treat the levy on a joint account. If the levy reaches the whole account, each account holder probably should have the exemption. If levy severs the account and only the debtor's interest is reached, only the debtor should have an exemption. The staff will be making proposals to deal with this problem later.

As drafted, Section 707.560 supersedes an existing provision that exempts a prison inmate's trust account in the amount of \$40. The staff recommends that the prison inmate's trust account receive an individual exemption in an unlimited amount. A person getting out of prison will need all the money he or she has to get started again. Section 690.21 would be revised to read:

The funds of any person confined in any prison or facility under the jurisdiction of the Department of Corrections or the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for ~~him~~ the person, or to ~~his~~ the person's credit, in an inmate's trust account or similar account by the state, county, or city, or any agency thereof, ~~not to exceed the sum of forty dollars (\$40);~~ shall be exempt from execution without failing a claim for exemption ~~as provided in Section 690-50~~ .

If this recommendation is not acceptable, we recommend that not to exceed \$2,500 be exempt.

§ 707.570. Exemption of deposit account in which social security payments are directly deposited

Section 707.570(e)(1) allows the judgment creditor a five-day period to respond to the levying officer's notice of the nature and

balance of an account in which social security payments are deposited. The Sheriffs' Association Committee and Mr. Raymond Mushrush suggest that the five-day period is not sufficient, particularly when the notice is mailed, and should be extended to 10 or 12 days. (Exhibit 8, p. 9; Exhibit 10, p. 3.) The staff recommends that the five-day period be extended to 10 days in the case of a mailed notice, consistent with the general provisions on this subject. See Fifth Supplement to Memorandum 79-29.

Mr. Mushrush also objects to the double filing provision in subdivision (e)(1) which requires the judgment creditor to file one document with the levying officer and another with the court. The staff recommends that this section be revised to have both documents filed with the court, with service on the levying officer, in the same manner as suggested for Section 707.340, supra.

§ 707.580. Life insurance exemption

Mr. Lynn Koller questions the need for subdivision (d) of this section, which provides an increased life insurance loan value exemption if no dwelling exemption is obtained. (Exhibit 18, p. 6.) Mr. Rick Schwartz considers this provision to be too limited and would provide a \$5,000 "blanket" exemption in any property. (Exhibit 12, p. 8.) The intent of this provision is to protect a fund to provide for housing. However, the additional exemption in Section 707.580(d) is only of use if the debtor has a life insurance policy with a significant cash value. This may benefit older people, but would not be much if any use to younger debtors who are more likely to be supporting children. The staff recommends subdivision (d) be deleted.

Professor Stefan Riesenfeld states that the meaning of the words "or decedent" in subdivision (c) is unclear. (Exhibit 23, p. 4.) The staff proposes to revise subdivision (c) to read:

(c) Death benefits and benefits from matured life insurance, endowment, and annuity policies, paid or payable to the judgment debtor or the spouse or dependents of the judgment debtor are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

§ 707.590. Retirement benefits and contributions

This section continues provisions of existing law exempting retirement benefits of public entities and qualified private retirement plans. This section fails to continue provisions making return of contributions and interest exempt and provisions making death benefits absolutely exempt (Section 707.580 makes death benefits exempt to a limited extent). These provisions were enacted due to efforts of pressure groups in the Legislature, and the staff believes they should be simply continued in the new statute regardless of policy. The staff plans also to recombine with this provision the substance of Section 707.670, which exempts public employee vacation credits. We also plan to draft provisions specifying how these benefits and contributions can be reached where the judgment is based on a support obligation.

§ 707.620. Damages for personal injury

Section 707.620 exempts personal injury damage awards to the extent necessary for support of the judgment debtor and spouse and dependents. The Comment to this section notes that a cause of action for personal injury or wrongful death is by case law not subject to enforcement. The staff believes it would be useful to codify this provision, and would add the following subdivision:

(c) A cause of action for personal injury or wrongful death is exempt without making a claim.

As the Comment points out, once an action is commenced, the pending cause of action may be reached by a lien procedure.

§ 707.630. Exemption of damages for wrongful death

Section 707.630 exempts wrongful death damages payable to the judgment debtor on account of the death of the spouse or person on whom the judgment debtor was dependent. Mr. Lynn Koller suggests that the exemption be extended to the spouse and dependents of the judgment debtor to the extent necessary for support. (Exhibit 18, p. 5.) He states that this would make Section 707.630 consistent with Sections 707.580 (life insurance benefits) and 707.620 (personal injury damages). The staff believes that no change is needed because Section 707.630 is consistent with the other sections, neither of which provides an exemption for persons dependent on or married to the survivor of the judgment

debtor unless such person was also a dependent of the judgment debtor. Section 707.630 should not provide an exemption based on the needs of persons dependent on a person who in turn was dependent on the decedent for whose death the damages were awarded.

§ 707.660. Relocation benefits

Section 707.660 exempts relocation benefits received by a person displaced from a dwelling by a public entity. Since the time of enactment of the provision upon which this section is based, the relocation statutes have been broadened to require payment of benefits where a person is displaced in a condemnation proceeding by a quasi-public entity or a private person. Section 707.660 should be expanded to include relocation benefits from all these sources.

Respectfully submitted,

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