

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

SEPTEMBER 5, 1980

SAN FRANCISCO

A meeting of the California Law Revision Commission was held in San Francisco on September 5, 1980.

Law Revision Commission

Present:	Beatrice P. Lawson, Chairperson	Robert J. Berton
	Jean C. Love, Vice Chairperson	Thomas S. Loo
	Judith Meisels Ashmann	Bion M. Gregory, <u>Ex Officio</u>
Absent:	Omer L. Rains, Senate Member	George Y. Chinn
	Alister McAlister, Assembly Member	Warren M. Stanton

Staff Members Present

John H. DeMouilly	Robert J. Murphy III
Nathaniel Sterling	Stan G. Ulrich

Consultant Present

Stefan A. Riesenfeld, Creditors' Remedies

ADMINISTRATIVE MATTERS

MINUTES OF JUNE 1980 MEETING

The Minutes of the June 13, 1980, meeting were approved without change.

MEETING SCHEDULE

The October meeting (originally scheduled for October 10 only) was scheduled as follows:

October 10 (Friday)	- 10:00 a.m. - 5:00 p.m.
October 11 (Saturday)	- 9:00 a.m. - 3:00 p.m.

APPROVAL OF BUDGET

The Commission considered Memorandum 80-100 and approved the budget attached thereto as submitted with the understanding that the staff is to make minor changes to conform the total amounts for 1980-1981 and 1981-1982 to the amounts prescribed by the Department of Finance.

CONTRACT WITH CONSULTANT

The Commission authorized and directed the Executive Secretary to execute on behalf of the Commission a contract with Bruce Wolk of the University of California at Davis Law School to provide expert advice to the Commission, staff, and consultants and to attend Commission meetings and legislative hearings when requested to do so by the Commission's staff, in connection with the tax aspects of the Commission's study of community property. The contract is to provide travel reimbursement, subject to the same limitations that apply to reimbursement of travel expenses by state employees, for attending Commission meetings. The total amount payable under the contract is not to exceed \$500 and the contract is to expire on June 30, 1982.

LEGISLATIVE PROGRAM

The Commission considered Memorandum 80-78 relating to the 1980 Legislative Program which reported 14 of 15 bills recommended by the Commission were passed by the Legislature and that the substance of the other bill was included in another bill passed by the Legislature.

The Commission also approved the proposal to include the substance of Assembly Bill 1394 relating to the interest rate on judgments in the comprehensive enforcement of judgments statute and to make conforming changes in the sister state money judgment enforcement act.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS

The Commission considered the following memorandums relating to enforcement of judgments:

Memorandum 80-54: Approval of Enforcement of Judgments Study

Memorandum 80-55: Division 1--General Provisions

Memorandum 80-56: Definitions

Memorandum 80-57: Assignment of Judgments

Memorandum 80-58: Property Subject to Enforcement of Money
Judgment

Memorandum 80-59: Liens

First Supplement: Liens

Second Supplement: Effect of Stay of Enforcement of
Judgment

Memorandum 80-60: Execution

Memorandum 80-61: Methods of Levy; Duties and Liabilities of
Third Persons

First Supplement: Methods of Levy

Memorandum 80-62: Miscellaneous Creditors' Remedies

Memorandum 80-63: Execution Sale and Distribution of Proceeds

Memorandum 80-64: Exemptions Generally

Memorandum 80-65: Wage Garnishment

Memorandum 80-67: Liens on Pending Actions; Assignment Orders

First Supplement: Lien in Pending Action or Proceeding

Memorandum 80-68: Collection Where Judgment Debtor is Creditor
of Public Entity

Memorandum 80-69: Enforcement of Nonmoney Judgments

Memorandum 80-70: Division 4--Third-Party Claims

First Supplement: Division 4--Third-Party Claims

Memorandum 80-71: Satisfaction of Judgment

Memorandum 80-72: Forms

Memorandum 80-73: Transitional Provisions

Memorandum 80-74: Comments on Draft Statute

Memorandum 80-76: Enforcement of State Tax Liability

Memorandum 80-77: Approval for Printing of Tentative Recommen-
dation

The Commission approved the draft statute for printing as a tenta-
tive recommendation and introduction as a bill in the 1981 legislative
session subject to the changes set forth in the memorandums and supple-
ments and to technical and editorial revisions. The following changes
were made at the meeting:

§ 680.190. Costs. Section 680.190 defining costs should make
clear that costs does not include attorney's fees. This should be done
by adding a statement to the Comment to the effect that attorney's fees
incurred in enforcing a judgment are not included in costs collectable
under Title 9 unless otherwise provided by law.

§§ 684.010-684.080. Manner of service. This chapter providing the manner of service of writs, notices, and other papers under Title 9 should be reorganized. It should also be made clear that the manner of service of a writ and notice of levy on a third party is restricted to personal delivery, abode service, and service on a corporate officer and does not include service by mail, posting, or publication.

§ 695.030. Property not subject to enforcement of money judgment. This section should be revised to make clear that it does not preclude the obtaining of a lien in a pending action for a cause of action for personal injury. Creation of a lien in a pending action is an exception to the general rule that only property that is transferable may be subject to the enforcement of a money judgment.

§§ 697.310-697.410. Judgment lien on real property. It should be made clear that the priority of a judgment lien created by recording a judgment in an action on a judgment relates back to the time of creation of the judgment lien under the first judgment if the second judgment is recorded prior to the expiration of the first judgment lien. This is consistent with the rule applicable under the draft statute where a judgment is renewed by filing a notice of renewal. A judgment lien should not continue on property that is transferred unless the transferee is given notice of the renewal of the lien.

§ 699.080. Levy by registered process server. This section should permit the registered process server to levy on a final money judgment pursuant to Section 700.190 as set forth in the First Supplement to Memorandum 80-61.

§ 701.070. Liability of third person for noncompliance with levy. A section providing substantially as follows should be added to the provisions governing the duties and liabilities of third persons:

701.070. (a) If after a levy made pursuant to this chapter a third person is required by this article to deliver property to the levying officer or to make payments to the levying officer and the third person fails or refuses to do so, the third person is liable to the judgment creditor for the value of the judgment debtor's interest in the property or the amount of the payment required to be made, whichever is the lesser amount. A third person is not

liable under this section if the third person establishes good cause for the failure or refusal to comply with the levy. Such good cause includes but is not limited to a showing that the third person did not have reason to know of the levy from all the facts and circumstances known to the third person.

(b) The third person's liability continues until the property levied upon is delivered to the levying officer, the payment is made to the levying officer, the property is released pursuant to Section 699.060, or the judgment is satisfied or discharged, whichever first occurs.

(c) If the third person's liability is established, the court which determines the liability may, in its discretion, require the third person to pay the costs and reasonable attorney's fees incurred by the judgment creditor in establishing the liability.

Comment. Section 701.070 is new and is comparable to Section 488.550 (attachment). The judgment creditor may seek to enforce compliance with the levy or to impose liability on the third person pursuant to Article 2 (commencing with Section 708.110) (examination proceedings) or Article 3 (commencing with Section 708.210) (creditor's suit) of Chapter 6. See also Sections 697.710-697.750 (execution lien).

§ 701.520. Sale of collectable property. This section should be revised to provide a standard for determining whether collectable property may be sold. Factors the court should consider might include whether the obligation is currently being paid, the probable proceeds of a sale of the obligation, the costs of collection if it is not sold, the utility of other remedies, and any other circumstances of the case. Subdivision (d) should permit rather than require the court to specify terms and conditions of the sale. The reference to "fair consideration" should be deleted because it is ambiguous in the context of an execution sale of an obligation.

§§ 704.710-704.880. Homestead exemption. The homestead exemption should be revised to include the following features. The recorded declaration of homestead should be eliminated and a claimed homestead having the same effect be provided. The claimed homestead should be based on the procedure of the existing claimed homestead. The amount of the homestead exemption should be \$45,000, but it should be reduced proportionately to the judgment debtor's interest in the home. An execution sale of a homestead should be treated as a partition sale,

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with the whole property sold and all interests paid off, subject to the homestead exemption. At the sale, all prior liens and encumbrances burdening the property should be satisfied. The sale should be cash, except that coowners should be permitted to make a credit bid to the extent of their proportionate share of the homestead exemption. Co-owners should have the right to meet the amount of the highest bid. Upon sale of a homestead, the proceeds should be subject to voluntary and consensual liens subordinate to the judgment creditor, and otherwise should receive exempt status for a period of 18 months under general tracing principles. As a related matter, a renter or other person not entitled to a homestead exemption should be entitled to a wage garnishment necessity exemption unrestricted by the common necessities limitation, unless the debt is for rent.

APPROVED AS SUBMITTED _____

APPROVED AS CORRECTED _____ (for corrections, see Minutes of next meeting)

Date

Chairperson

Executive Secretary