

Memorandum 80-29

Subject: Study D-312 - Creditors' Remedies (Liability of Property of Married Persons--Exemptions)

Attached to this memorandum is the entire exemption chapter revised (1) to accommodate decisions made by the Commission at the January 1980 meeting relating to exemptions where the judgment debtor is married and (2) to make other conforming changes. If the draft is satisfactory, the staff will incorporate it into the final draft of the enforcement of judgments recommendation that is to be printed. The staff notes the following features of interest concerning the revised exemption chapter.

§ 703.000. Definitions. The definitions of "equity" and "judgment debtor" are phrased in terms of community and separate property for purposes of the exemption chapter. This greatly simplifies the drafting of the chapter.

§ 703.020. Persons entitled to exemptions. By virtue of the definition of "judgment debtor" in Section 703.000, a nondebtor spouse may claim exemptions for community property and for separate property of the nondebtor spouse. What happens when the judgment debtor desires to claim certain community property as exempt and the spouse desires to claim other community property as exempt? Professor Reppy suggests that the first to make a claim of exemption should prevail. This would be the result in most cases anyway, since an exemption will be claimed first for property the creditor levies upon first, thereby exhausting the exemption. What happens when both the judgment debtor's separate property and the spouse's separate property are levied upon at the same time and both spouses claim exemptions? The staff has no resolution for this problem.

§ 703.120. Application of exemptions to marital property. Section 703.120 states several basic rules: (1) Property of the judgment debtor's spouse is entitled to exemptions even if the spouse is not also a judgment debtor; (2) All the property of both spouses is taken into account in determining an exemption based upon the need of the judgment debtor and family; and (3) an exemption required to be applied first to property not before the court and then to property before the court must

be first applied to all property of the spouses not before the court, whether or not the property would be liable for the satisfaction of the judgment.

The first two points have been previously decided by the Commission. The third point is consistent with marshalling principles recommended by Professor Reppy. One drawback of the rule that exemptions are applied to nonliable property before they are applied to property before the court is that it may result in the property before the court being taken by the judgment creditor, leaving only separate property of the spouse over which the judgment debtor has no control. However, the separate property of the spouse will still be liable for support of the judgment debtor, so the staff sees no real problem here.

§ 704.010. Motor vehicle; proceeds. This section exempts a second motor vehicle if the second vehicle is necessary to enable both spouses to work.

§ 704.020. Household furnishings, wearing apparel, personal effects. A second household of furnishings, etc., is exempted where the spouses live separate and apart.

§ 704.060. Tools, etc., used in trade, business, or profession; proceeds. Each spouse is given a separate tools of the trade exemption, and the exemptions may be applied to the same property where the spouses work together in the same trade or profession.

§ 704.070. Deposit accounts and money. The deposit account exemption provided in earlier Commission drafts is left unchanged for a married judgment debtor but is halved in the case of an unmarried judgment debtor.

§ 704.100. Life insurance, endowment, annuity policies. The exemption for the loan value of unmatured life insurance policies is cut down to \$4,000 from previous drafts, but the exempt amount is doubled if the judgment debtor is married. This is consistent with the policy of the new Bankruptcy Code which provides a \$4,000 exemption and gives a second exemption to the spouse of the judgment debtor in a "joint case" (a case in which both spouses join, which may always be done if the spouses so desire).

§ 704.200. Cemetery plot. This section exempts a second cemetery plot for the spouse of the judgment debtor. This is consistent with the new Bankruptcy Code which provides a plot for the debtor or a dependent of the debtor.

§ 704.720. Dwelling exemption. Section 704.720 precludes the homestead from being sold unless the judgment debtor's equity is \$100,000 or greater. If the judgment debtor is married and the spouses live separate and apart, Section 704.720 precludes either homestead from being sold unless the equity is \$50,000 or greater. However, the spouses can apply the whole \$100,000 exemption to one of the homesteads and allow the other to be sold, if they can agree on the one to be saved. If they can't agree and both claim homesteads on dwellings in which the equities are greater than \$50,000, both can be sold.

§ 704.730. Exemption of dwelling proceeds. If a homestead is sold, each spouse living in the homestead is entitled to a \$7,500 exemption of the proceeds of sale, even though both may not be judgment debtors.

Respectfully submitted,

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Assistant Executive Secretary

CHAPTER 4. EXEMPTIONS

Article 1. General Provisions§ 703.000. Definitions

703.000. Unless the provision or context otherwise requires, as used in this chapter:

(a) "Equity" means the fair market value of the interest of the judgment debtor in property, or in the case of community property the fair market value of the interest of the judgment debtor and the spouse of the judgment debtor in the property, over and above all liens and encumbrances on the interest superior to the judgment creditor's lien.

(b) "Judgment debtor" means:

(1) If community property is sought to be applied to the satisfaction of a judgment, the judgment debtor and the spouse of the judgment debtor.

(2) If the separate property of the spouse of the judgment debtor is sought to be applied to the satisfaction of a judgment, the spouse of the judgment debtor.

Comment. Section 703.000 is intended to simplify drafting.

Subdivision (a) supersedes provisions of former Civil Code Sections 1245-1255 and former Code of Civil Procedure Section 690.31 that implied that "all" liens and encumbrances were considered in determining the judgment debtor's equity in a homestead. Subdivision (a) makes clear that the judgment creditor's lien and junior liens are excluded in a determination of equity for purposes of the homestead and other exemptions. See Sections 704.010 (motor vehicle), 704.030 (building materials), 704.060 (tools of trade), 704.720 (dwelling). In the case of joint judgment debtors, the equity includes the interests of all judgment debtors.

Subdivision (b) supplements the definition of "judgment debtor" found in Section _____. Community property, including the interest of a nondebtor spouse, is generally liable for the debts of a judgment debtor. See Civil Code § _____. The separate property of the spouse of a judgment debtor may be subject to enforcement of the judgment. See Civil Code § _____. The spouse of the judgment debtor may claim the exemptions in cases where the community property or the separate property of the spouse is sought to be applied to the satisfaction of the judgment. See Section 703.020 (persons entitled to exemptions) and Comment thereto. See also Section 703.120 (application of exemptions to marital property) and Comment thereto.

Note. Whether the definition of "judgment debtor" should be made applicable to the entire title rather than the exemption chapter is reserved.

CROSS-REFERENCES

Defined terms

Judgment creditor § _____
 Judgment debtor § _____

405/598

§ 703.010. Application of exemptions

703.010. (a) Except as otherwise provided by statute, the exemptions provided by this chapter or by any other statute apply to all procedures for enforcement of a money judgment.

(b) The exemptions provided by this chapter or by any other statute do not apply if 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 703.010 makes clear that exemptions apply regardless of the procedure selected for the enforcement of a money judgment. This provision is comparable to but broader than former Section 690 in that it applies to exemptions prescribed by statute apart from this chapter and it applies to all procedures for enforcement of a money judgment and not just execution. For exemptions not included in this chapter, see, e.g., Civil Code § 986(a)(6) (artist's residual payment); Sections 723.050-723.052 (earnings); Gov't Code § 32210 (fire service pensions); Health & Safety Code §§ 8561 (cemeteries), 32508 (hospital endowments), 33124, 34142, 34217 (public property); 10 U.S.C. § 1035 (servicemen savings); 38 U.S.C. § 3101 (veterans benefits); 42 U.S.C. § 407 (U.S. life insurance); 48 U.S.C. § 231(m) (railroad retirement pensions). The exemptions do not apply to nonmoney judgments except for enforcement of costs and damages under such judgments. See Section _____.

Certain exemptions do not apply where a judgment for child or spousal support is being enforced (see Section 703.070) or a property tax is being collected (see Section 703.100).

Subdivision (b) continues the substance of former Section 690.52. See also former Civil Code § 1241; former Code Civ. Proc. §§ 690.28, 690.31(b)(3).

CROSS-REFERENCES

Defined terms

Judgment § _____

§ 703.020. Persons entitled to exemptions

703.020. (a) The exemptions provided in this chapter apply only to property of a judgment debtor who is a natural person or property set aside and held for the purpose of making payments to a judgment debtor who is a natural person or the spouse or dependents of the 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 spouse or dependents of an individual judgment debtor, the person holding the property.

Comment. Subdivision (a) of Section 703.020 codifies the rule of Canal-Randolph Anaheim v. Wilkoski, ___ Cal. App.3d ___, ___ Cal. Rptr. ___ (1980).

The persons entitled to claim an exemption on behalf of a judgment debtor under subdivision (b) include the judgment debtor's agent and other persons authorized to exercise the rights of a judgment debtor. If community property is sought to be applied to the satisfaction of a judgment, either the judgment debtor or the spouse of the judgment debtor may claim exemptions for the property. See Section 703.000(b) ("judgment debtor" defined) and Comment thereto. This codifies the rule of White v. Gobey, 130 Cal. App. Supp. 789, 791, 19 P.2d 876 (1933). See also Section 703.120 (application of exemptions to marital property) and Comment thereto.

CROSS-REFERENCES

Defined terms

Judgment debtor §§ _____, 703.000(b)

§ 703.030. Manner of claiming exemptions

703.030. (a) Except as otherwise provided in this section, an exemption for property that is described as exempt pursuant to this chapter or any other statute shall be claimed within the time and in the manner prescribed in the applicable enforcement procedure. If the exemption is not so claimed, the property is subject to enforcement of a money judgment.

(b) Property that is described as exempt pursuant to this chapter or any other statute without making a claim is not subject to any procedure for enforcement of a money judgment.

(c) Nothing in this section limits the authority of the court pursuant to Section 473 to relieve a person from failure to claim an exemption within the time and in the manner prescribed in the applicable enforcement procedure.

Comment. Subdivisions (a) and (b) of Section 703.030 continue the substance of former Section 690 but are broader in their application since they are 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 703.010.

If property is levied upon by a levying officer, the applicable procedure for claiming an exemption is that provided in Article 2, with the exception of the dwelling exemption which is governed by Article 4. The exemption 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 _____). If the property is sought to be reached by a procedure other than a levy under a writ, a court hearing is required and exemption claims will be determined at such time or later upon noticed motion. See Sections _____ (examination proceedings), _____ (creditor's suit), _____ (assignment orders), _____ (collection where public entity is debtor of judgment debtor).

Subdivision (c) makes clear the power of the court under Section 473 to relieve the claimant from the consequences of failure to properly file a claim of exemption through mistake, inadvertance, surprise, or excusable neglect.

§ 703.040. Waiver of exemptions

703.040. 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. Section 703.040 codifies existing case law. See, e.g., Industrial Loan & Inv. Co. v. Superior Court, 189 Cal. 546, 209 P. 360 (1922).

§ 703.050. Exemptions in effect at time of levy govern

703.050. (a) The determination whether property is exempt or the amount of an exemption shall be made by application of the exemption statutes in effect at the time the enforcement lien on the property was created.

(b) It is the intent of the Legislature that this chapter be applied to all judgments enforced on or after the operative date of this act, whether based upon tort, contract, or other legal theory or cause of action that arose before or after the operative date of this act, and whether the judgment was entered before or after the operative date of this act. If a judgment lien or other enforcement lien was obtained upon property prior to the operative date of this act, the exemption and the amount of the exemption for the property in effect at the time the lien was created apply in an enforcement procedure against the property.

Comment. Section 703.050 declares the intent of retroactive application of the exemption provisions, including the exemption amounts. This is consistent with the decisions in *San Diego White Truck Co. v. Swift*, 96 Cal. App.3d 88, 157 Cal. Rptr. 745 (1979), and *National Collection Agency, Inc. v. Fabila*, 93 Cal. App.3d Supp. 1, 155 Cal. Rptr. 536 (1979), and 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). See also Comment, The Contract Clause and the Constitutionality of Retroactive Application of Exemption Statutes: A Reconsideration, 9 Pac. L.J. 889 (1978).

CROSS-REFERENCES

Defined terms

Judgment § _____

Operative date § _____

§ 703.060. Reserved power of state

703.060. (a) The Legislature finds and declares that generally persons who enter into contracts do not do so in reliance on an assumption that the exemptions in effect at the time of the contract will

govern enforcement of any judgment based on the contract, that liens imposed on property are imposed not as a matter of right but as a matter of privilege granted by state statute and no vested rights with respect to exemptions are created by imposition of a lien, that application of exemptions and exemption procedures in effect at the time of enforcement of a judgment is essential to the proper balance between the rights of judgment debtors and judgment creditors and has a minimal effect on the economic stability essential for the maintenance of private and public faith in commercial matters, and that it is the policy of the state to treat all judgment debtors equally with respect to exemptions and exemption procedures in effect at the time of enforcement of a money judgment. To this end, the Legislature reserves the right to alter the exemptions and the procedures therefore at any time and intends that any alterations apply upon their operative date to enforcement of all money judgments, whether based upon tort, contract, or other legal theory or cause of action that arose before or after the operative date of the alterations, whether the judgment was entered before or after the operative date of the alterations, and whether any liens based on the judgment have been imposed on the exempt property before or after the operative date of the alterations.

(b) All contracts shall be deemed to have been made and all liens on property shall be deemed to have been created in recognition of the power of the state to alter and to make additions to statutes providing for liens and exemptions from the enforcement of money judgments.

Comment. Section 703.060 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). The Legislature may give changes in exemptions retroactive as well as prospective effect.

CROSS-REFERENCES

Defined terms

Judgment § _____
 Judgment creditor § _____
 Judgment debtor §§ _____, 703.000(b)

[§ 703.070. Exemptions inapplicable against support judgment

703.070. (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 to 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) If property is held pursuant to a levy, 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 703.070 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.]

Note. The staff is currently reviewing this provision and will suggest revisions.

CROSS-REFERENCES

Defined terms

Court § _____

Judgment § _____

Judgment debtor §§ _____, 703.000(b)

Levying officer § _____

§ 703.080. Tracing exempt funds

703.080. (a) A fund for which an exemption may be claimed remains exempt to the extent that it can be traced through deposit accounts and in the form of cash or an equivalent of cash.

(b) The judgment debtor 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 703.080 prescribes the general rule governing the duration of an exemption for payments 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 704.010 (proceeds from motor vehicle), 704.060 (proceeds from tools of trade), 704.070 (deposit accounts and money), 704.080 (deposit account into which Social Security benefits are paid), 704.100 (life insurance benefits), 704.110 (retirement benefits), 704.120 (unemployment benefits), 704.130 (disability and health benefits), 704.140 (damages for personal injury), 704.150 (damages for wrongful death), 704.160 (worker's compensation), 704.170 (aid), 704.180 (relocation benefits), and 704.730 (proceeds from dwelling). Proceeds from a motor vehicle or tools may be traced only during the applicable period. See Sections 704.010 (90 days in case of motor vehicle) and 704.060 (90 days in case of tools).

Subdivision (b) continues existing law concerning the burden of tracing exempt funds. This is consistent with the general burden on the claimant in exemption proceedings. See Section 703.580(b).

Subdivision (c) prescribes the general rule for tracing exempt funds in deposit accounts. It reverses the rule 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). 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. As an example of the operation of the lowest intermediate balance principal, suppose the judgment debtor has a deposit account in which there is a balance of \$400 composed of nonexempt funds. The judgment debtor then makes a deposit of \$400 of exempt funds (leaving a balance of \$800), a withdrawal of \$600 (leaving a balance of \$200), and a deposit of \$300 of nonexempt funds (leaving a balance of \$500). The total exempt funds deposited were \$400, but under the lowest intermediate balance rule, the \$600 withdrawal reduces first the nonexempt funds and then the exempt funds, leaving \$200 of exempt funds. The final \$300 deposit does not affect the exempt funds, which remain exempt in the amount of \$200, the lowest intermediate balance, despite the final balance of \$500.

CROSS-REFERENCES

Defined terms

Deposit account § _____
 Judgment creditor § _____
 Judgment debtor §§ _____, 703.000(b)

100/913

§ 703.090. Costs in case of subsequent levy on exempt property

703.090. If the judgment creditor has failed to oppose a claim of exemption within the time allowed by Section 703.520 or if property has been determined by a court to be exempt and the judgment creditor subsequently levies upon or otherwise seeks again to apply the property toward the satisfaction of the same money judgment, the judgment creditor shall not recover the subsequent costs of collection unless the property is applied to satisfaction of the judgment.

Comment. Section 703.090 is intended to limit repeated levies on the same property by the judgment creditor. Nothing in this section affects any right the judgment debtor may have to recover damages for abuse of process. Cf. Section 704.810(c) (dwelling exemption).

CROSS-REFERENCES

Defined terms

Judgment creditor § _____

[§ 703.100. Exemptions from tax liability

703.100. (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 the superior 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. The public entity shall perform the duties of the levying officer with respect to the claim.

(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 703.100 supersedes former Section 690.51 which applied the exemptions from execution to certain procedures for the collection of several state taxes. Section 703.100 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 690.51, 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.]

Note. The staff is currently reviewing this provision and will suggest revisions.

CROSS-REFERENCES

Defined terms

Levying officer § _____

§ 703.110. Time for determination of exemptions

703.110. The determination whether property is exempt shall be made under the circumstances existing at the time of creation of the lien on the property pursuant to which enforcement is sought, but the court may take into consideration changes in circumstances that have occurred between the time of creation of the lien and the time of the hearing.

Comment. Section 703.110 rejects 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 judgment creditor has sought to apply the judgment 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).

045/060

§ 703.120. Application of exemptions to marital property

703.120. (a) If the judgment debtor is married, the exemptions provided by this chapter or by any other statute apply to community property or separate property of either spouse that is sought to be applied to the satisfaction of the judgment, whether or not both spouses are judgment debtors under the judgment.

(b) If an exemption is based upon need of the spouse and dependents of the judgment debtor, the court in determining the exemption shall take into account all property of the spouse and dependents, including community property and separate property of the spouse, whether or not such property is liable for the satisfaction of the judgment.

(c) If an exemption is required by statute to be applied first to property not before the court and then to property before the court, the application of the exemption to property not before the court shall be made to community property and separate property of either spouse, whether or not such property is liable for the satisfaction of the judgment.

Comment. Subdivision (a) of Section 703.120 is an application of the basic rule that exemptions apply to property that is liable for the

satisfaction of a judgment. If the judgment debtor is married, the property liable for the satisfaction of the judgment may include the community property and the separate property of a nondebtor spouse in certain situations, as well as the separate property of the judgment debtor. See generally Civil Code §§ _____. As a consequence, exemptions may apply to the community property and to the separate property of the nondebtor spouse. Cf. Sections 703.000(b) ("judgment debtor" includes spouse for purposes of exemptions) and 703.020 (persons entitled to claim exemptions). As a general rule, the fact that one or both spouses are judgment debtors or that community or separate property is sought to be applied to the satisfaction of the judgment, does not affect the exemptions applicable to the spouses as a marital unit.

Generally, property that is not liable for the satisfaction of a judgment does not enter into exemption determinations. Subdivision (b) creates an exception to this rule for exemptions based on need of the spouse of the judgment debtor. See Sections 704.010 (motor vehicle), 704.020 (household furnishings), 704.050 (health aids), 704.060 (tools of the trade), 704.100(c) (life insurance benefits), 704.140 (damages for personal injury), 704.150 (damages for wrongful death), 723.052 (earnings). In such situations, the court must take into account non-liable as well as liable property in making a determination of need.

Certain exemptions are required to be applied first to property not before the court. See Sections 704.070 (deposit accounts) and 704.100(b) (life insurance policies). Subdivision (c) makes clear that in applying the exemptions to property not before the court, the court should consider property that would not be liable for satisfaction of the judgment as well as property that would be liable for satisfaction.

CROSS-REFERENCES

Defined terms

Court § _____
 Judgment debtor §§ _____, 703.000(b)

28767

§ 703.130. Continuing review of exemptions

703.130. (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.

Comment. Section 703.130 is intended to provide an institutional mechanism for periodically updating and modernizing the exemptions without mandating increases tied to the cost of living.

100/902

Article 2. Procedure for Claiming Exemptions After Levy

§ 703.510. Application of article

703.510. (a) Except as otherwise provided by statute, property that has been levied upon may be claimed to be exempt as provided in this article.

(b) Property that is exempt without making a claim that has been levied upon may be released pursuant to the claim of exemption procedure provided in this article.

Comment. Subdivision (a) of Section 703.510 indicates the scope of the application of the exemption procedure provided in this article. As recognized by the introductory clause, special exemption procedures apply in certain cases where property has been levied upon. See, e.g., Sections 484.070(a) (attachment), 704.080 (deposit accounts consisting of Social Security benefits), 704.710-704.890 (dwellings), 723.010-723.154 (earnings). This continues the introductory portion of former Section 690.50(a).

Subdivision (b) supersedes former Section 690(b) which provided that property for which a claim of exemption was not required was not subject to enforcement procedures. See Section 703.030. Subdivision (b) makes clear that if such property is levied on, its release may be obtained through the exemption procedures. Cf. Section 695.030 (property not subject to enforcement of a money judgment).

16/973

§ 703.520. Claim of exemption

703.520. (a) The claimant may make a claim of exemption by filing with the levying officer a claim of exemption together with a copy

thereof. The claim shall be made within 10 days after the date the notice of levy was served on the judgment debtor.

(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 mailing address where service of a notice of opposition to the claim may be made upon the claimant.

(2) The name and address of the judgment debtor if the claimant is not the judgment debtor.

(3) A description of the property claimed to be exempt. If an exemption is claimed pursuant to Section 704.010 or 704.060, the claimant shall describe all other property of the same type owned by the judgment debtor on the date of levy and state which items are claimed as exempt. If an exemption is claimed pursuant to Section 704.070 or subdivision (b) of Section 704.100, the claimant shall state the nature and amount of all other funds of the same type owned by the judgment debtor alone or in combination with others on the date of levy.

(4) A financial statement if required by Section 703.530.

(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.

Comment. Section 703.520 supersedes subdivision (a) of former Section 690.50. See also Section 703.020 (persons entitled to exemptions).

CROSS-REFERENCES

Defined terms

Judgment debtor §§ _____, 703.000(b)

Levying officer § _____

28768

§ 703.530. Judgment debtor's financial statement

703.530. (a) If property is claimed as exempt pursuant to a provision exempting property to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor, the claim of exemption shall include the judgment debtor's financial statement.

(b) The judgment debtor's financial statement shall be executed under oath or by declaration under penalty of perjury and shall include all of the following information:

(1) The name, age, and relationship of all persons dependent upon the judgment debtor for support.

(2) All sources and the amounts of earnings and other income of the judgment debtor and the spouse and dependents of the judgment debtor.

(3) A listing of the assets of the judgment debtor and the spouse and dependents of the judgment debtor and the value of such assets.

(4) All outstanding obligations of the judgment debtor and the spouse and dependents of the judgment debtor.

Comment. Section 703.530 is comparable to Section 723.124 (wage garnishment). An exemption based upon the need of the judgment debtor and the spouse and dependents of the judgment debtor must take into account the property of the spouse and dependents. See Section 703.120(b).

CROSS-REFERENCES

Defined terms

Judgment debtor §§ _____, 703.000(b)

16/972

§ 703.540. Notice of claim of exemption

703.540. Upon the making of the claim of exemption, the levying officer shall promptly serve personally or by mail on 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 made 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 five days in the case of personal service or 10 days in the case of service by mailing after the date of service of the notice of the claim.

Comment. Section 703.540 supersedes subdivision (b) of former Section 690.50. The five-day period provided by former law for giving the notice of opposition is increased to 10 days in the case of service by mail. See Section 684.040 (time for performing act).

CROSS-REFERENCES

Defined terms

Judgment creditor § _____
 Levying officer § _____

968/708

§ 703.550. Opposition to exemption claim

703.550. (a) Within five days after service of the notice of claim of exemption, a judgment creditor who opposes the claim of exemption shall file with the court a notice of opposition to the claim of exemption and 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. Upon the filing of the copy of the notice of opposition and notice of motion, the levying officer shall promptly transmit the claim of exemption to the court.

(b) If the levying officer is not served with a copy of the notice of opposition and a notice of motion within the time prescribed in subdivision (a), the levying officer shall immediately release the property in the manner provided by Section _____ to the extent it is claimed to be exempt.

Comment. Subdivision (a) of Section 703.550 supersedes portions of subdivisions (c) and (e) of former Section 690.50. Subdivision (a), 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 _____, 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 five-day period for filing the notice of opposition and notice of motion runs from the date of service of the notice of claim of exemption. In the case of service by mail, 10 days is the relevant period. See Section 684.040 (time for performing act).

Subdivision (b) supersedes subdivisions (d) (release if no counter-affidavit served) and (f) (release if no motion) of former Section 690.50.

CROSS-REFERENCES

Defined terms

Judgment creditor § _____
 Levying officer § _____

§ 703.560. Contents of notice of opposition

703.560. The notice of opposition to the claim of exemption shall be executed under oath and shall include all of the following:

(a) An allegation either that (1) the property or a portion thereof is not exempt within the meaning of the provision of this chapter or other law relied upon or (2) the equity in the property claimed to be exempt is in excess of the amount stated in the applicable provision.

(b) A statement of the facts necessary to support the allegation.

(c) Points and authorities supporting any legal issues raised.

Comment. Section 703.560 supersedes a portion of subdivision (c) of former Section 690.50.

CROSS-REFERENCES

Defined terms

Equity § 703.000(a)

§ 703.570. Notice of motion for hearing

703.570. (a) 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 serve a notice of the hearing and a copy of the notice of opposition to the claim of exemption on the claimant and on the judgment debtor, if other than the claimant.

Comment. Section 703.570 supersedes portions of subdivisions (c) and (e) of former Section 690.50.

CROSS-REFERENCES

Defined terms

Judgment creditor § _____

Judgment debtor §§ _____, 703.000(b)

Proof of service § _____

§ 703.580. Hearing and order

703.580. (a) The claim of exemption and notice of opposition to the claim of exemption constitute the pleadings, subject to the power of the court to permit amendments in the interest of justice.

(b) At a hearing under this section, the claimant has the burden of proof.

(c) The claim of exemption is deemed controverted by the notice of opposition and both shall be received in evidence. If no other evidence is offered, the court, if satisfied that sufficient facts are shown by the claim of exemption and the notice of opposition to the claim of exemption, including the financial statement if one is required, may make its determination thereon. If not satisfied, the court shall order the hearing continued for the production of other evidence, oral or documentary.

(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 order is determinative of the right of the judgment creditor to apply the property to the satisfaction of the judgment. No findings are required in a proceeding under this section.

(e) The clerk shall promptly transmit a certified copy of the order to the levying officer. Subject to Section 703.610, the levying officer shall, in compliance with the order, release the property in the manner provided by Section _____ or apply the property to the satisfaction of the judgment.

Comment. Subdivisions (a)-(d) of Section 703.580 continue the substance of a portion of subdivision (i) of former Section 690.50.

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

CROSS-REFERENCES

Defined terms

Court § _____
 Judgment creditor § _____
 Levying officer § _____

§ 703.590. Extension of time

703.590. 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 703.590 continues the substance of a portion of former Section 690.50(1).

CROSS-REFERENCES

Defined terms

Court § _____
Levying officer § _____

16/967

§ 703.600. Appeal

703.600. 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 703.600 continues the substance of subdivision (m) of former Section 690.50.

100/909

§ 703.610. Disposition of property during pendency of proceedings

703.610. (a) Except as otherwise provided in this section or in Sections [702.620] and [706.750], until the final determination of the claim of exemption:

(1) The levying officer shall not release property unless the judgment creditor otherwise instructs.

(2) Property shall not be sold or otherwise disposed of except pursuant to an order of the court or under 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 for disposition of the property as may be proper under the circumstances of the case. Such an order may be modified or vacated by the court at any time during the pendency of the exemption proceedings upon such terms as are just.

(c) If an appeal of the determination of a claim of exemption is taken, notice of the appeal shall be given to the levying officer and the levying officer shall hold, release, or dispose of the property subject to the provisions governing enforcement and stay of enforcement of money judgments pending appeal.

Comment. Subdivision (a) of Section 703.610 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.

Subdivision (b) continues the substance of former Section 690.50(g), except that orders for the disposition of perishable property are governed by Section 703.220.

Subdivision (c) is new. For provisions governing enforcement and stays pending appeal, see Sections 916-923.

Note. Subdivision (c) will be reviewed in light of the Commission's recommendations concerning stays of enforcement.

CROSS-REFERENCES

Defined terms

- Court § _____
- Judgment creditor § _____
- Levying officer § _____

27/868

Article 3. Exempt Property

§ 704.010. Motor vehicle; proceeds

704.010. (a) One motor vehicle is exempt if the equity in the motor vehicle does not exceed one thousand dollars (\$1,000). A second motor vehicle is exempt if the second motor vehicle is necessary to enable both the judgment debtor and the judgment debtor's spouse to earn a livelihood, provided the equity in the second motor vehicle does not exceed one thousand dollars (\$1,000). For the purpose of determining the equity, the fair market value of the motor vehicle shall be determined by reference to used car price guides customarily used by California automobile dealers unless the motor vehicle is not listed in such price guides.

(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.

(c) If the judgment debtor has only one motor vehicle, proceeds of an execution sale of the motor vehicle are exempt in the amount provided in this section without making a claim. The levying officer shall consult and may rely upon the records of the Department of Motor Vehicles in determining whether the judgment debtor has only one motor vehicle.

Comment. Section 704.010 supersedes subdivisions (a), (d), and (e) of former Section 690.2.

Subdivision (a) increases the motor vehicle exemption from \$500 to \$1,000 and exempts a second motor vehicle in the case where the second is necessary so that both the judgment debtor and the spouse of the judgment debtor may work.

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, 103 (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).

Subdivision (c) makes clear that the exemption of proceeds need not be claimed where there is only one motor vehicle. See Section 707.030. Section 701.810 requires distribution of such proceeds to the judgment debtor before the judgment creditor. See also Section _____ (sale price required to exceed liens required to be satisfied and proceeds exemption).

CROSS-REFERENCES

Application to marital property § 703.120

Defined terms

Equity § 703.000(a)

Judgment debtor §§ _____, 703.000(b)

Levying officer § _____

Motor vehicle § _____

15329

§ 704.020. Household furnishings, wearing apparel, personal effects

704.020. Household furnishings, appliances, provisions, wearing apparel, and other personal effects, ordinarily and reasonably necessary for an average household are exempt in all of the following cases:

(a) If 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.

(b) Where the judgment debtor and the judgment debtor's spouse live separate and apart, if personally used or procured for use by the spouse and members of the spouse's household at the spouse's principal place of residence.

Comment. Section 704.020 supersedes the first sentence of former Section 690.1 and makes clear that the exemption applies to a second household where the spouses live separate and apart. Section 704.020 continues the ordinarily and reasonably necessary standard but limits the exemption to items that are necessary for the average household. This limitation 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).

CROSS-REFERENCES

Application to marital property § 703.120

Defined terms

Judgment debtor §§ _____, 703.000(b)

999/319

§ 704.030. Materials for repair or improvement of dwelling

704.030. All material in which the equity does not exceed one thousand dollars (\$1,000) is exempt as long as the material in good faith is about to be applied to the repair of the residence in all of the following cases:

(a) If purchased in good faith for use in the repair or improvement of the judgment debtor's principal place of residence.

(b) Where the judgment debtor and the judgment debtor's spouse live separate and apart, if purchased in good faith for use in the repair or improvement of the spouse's principal place of residence.

Comment. Section 704.030 continues a portion of former Section 690.17 and makes clear that a second exemption is available where the spouses live separate and apart.

CROSS-REFERENCES

Application to marital property § 703.120

Defined terms

Equity § 703.000(a)

Judgment debtor §§ _____, 703.000(b)

§ 704.040. Jewelry, heirlooms, works of art

704.040. Jewelry, heirlooms, works of art, and other personal effects are exempt to the extent the court determines that they reasonably have such sentimental or psychological value to the judgment debtor or a spouse or dependent of the judgment debtor that it would be inequitable to subject them to enforcement of a money judgment.

Comment. Section 704.040 provides an exemption for items of sentimental value. This section supersedes portions of former Section 690.1 which provided an exemption for wearing apparel, furnishings, and works of art "of or by the debtor and his resident family." The exemption of property under Section 704.040 depends upon its sentimental or psychological value, rather than upon its being ordinarily and reasonably necessary to the judgment debtor as under the former provision.

CROSS-REFERENCES

Defined terms

Court § _____
Judgment debtor §§ _____, 703.000(b)

405/332

§ 704.050. Health aids

704.050. 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 704.050 supersedes former Section 690.5 which exempted prosthetic and orthopedic appliances used by the debtor. Section 704.050 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.

CROSS-REFERENCES

Defined terms

Judgment debtor §§ _____, 703.000(b)

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

704.060. (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed two thousand five hundred dollars (\$2,500) in all of the following cases:

(1) If 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.

(2) If reasonably necessary to and actually used by the judgment debtor's spouse in the exercise of the trade, business, or profession by which the spouse earns a livelihood.

(3) If reasonably necessary to and actually used by the judgment debtor and the judgment debtor's spouse in the exercise of the trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exempt items and amounts are doubled.

(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 the amount prescribed in subdivision (a), 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 704.060 continues the substance of former Section 690.4 and a portion of former Section 690.17 (building materials not exceeding \$1,000) and makes clear that an additional exemption is available to the spouse of the judgment debtor as well as to the judgment debtor.

Subdivision (b) provides an exemption for the proceeds of sale or of insurance or other indemnification analogous to that provided by Section 704.010(b) (motor vehicle).

CROSS-REFERENCES

Application to marital property § 703.120

Defined terms

Equity § 703.000(a)

Judgment debtor §§ _____, 703.000(b)

Motor vehicle § _____

Vessel § _____

§ 704.070. Deposit accounts and money

704.070. (a) Any combination of deposit accounts (other than deposit accounts described in subdivisions (b) and (c)) and money is exempt in the maximum aggregate amount of two hundred fifty dollars (\$250).

(b) Any combination of savings deposits (including "investment certificates" and "withdrawable shares" as defined in Sections 5061 and 5067 of the Financial Code) in, shares or other accounts in, or shares of stock of, any state or federal savings and loan association is exempt in the maximum aggregate amount of five hundred dollars (\$500).

(c) Any combination of shares and certificates for funds deposited in a credit union and all the accumulation thereon is exempt in the maximum aggregate amount of seven hundred fifty dollars (\$750).

(d) If the judgment debtor is married, each spouse is entitled to the exemptions provided by this section, regardless whether the spouse of the judgment debtor is also a judgment debtor under the judgment. The amount of the exemptions provided by this section are reduced by the amount of any funds in the deposit account or money traceable and exempt pursuant to this chapter or any other law providing an exemption. Application of the exemptions provided by this section shall be first to amounts in deposit accounts and money other than the deposit account or money before the court and then, if not exhausted, to the deposit account or money before the court.

Comment. Subdivision (a) of Section 704.070 is new. It provides an exemption for deposit accounts other than savings and loan and credit unions as well as for money. The \$250 exemption is a maximum (except in the case of a married judgment debtor, where the maximum is \$500), available only to the extent the deposit account does not consist of other exempt funds.

Subdivision (b) supersedes former Section 690.7 (\$1,000 of savings deposits in, shares or other accounts in, or shares of stock of, savings and loan associations); it halves the amount of the exemption. See also Section 704.080 (exemption of deposit account into which social security payments are directly deposited).

Subdivision (c) supersedes former Financial Code Section 15406 (\$1,500 of shares or certificates in credit unions); it halves the amount of the exemption.

Subdivision (d) provides for doubling of the exemptions in the case of a married judgment debtor. Each spouse may claim an exemption of property subject to enforcement on the judgment in the same account or

different accounts. Subdivision (d) adopts the rule that the deposit account exemption is applied first to property not levied upon. The intent of this rule is to subject the greatest amount available to enforcement of the judgment. See Section 703.520 (exemption claim discloses assets not levied upon).

CROSS-REFERENCES

Application to marital property § 703.120

Defined terms

Court § _____

Deposit account § _____

Judgment debtor §§ _____, 703.000(b)

32/239

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

704.080. (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 exempt in the following amount without making a claim:

(1) Five hundred dollars (\$500) where one depositor is the designated payee of the directly deposited payments.

(2) Seven hundred fifty dollars (\$750) where two or more depositors are the designated payees of the directly deposited payments, unless such depositors are joint payees of directly deposited payments which represent a benefit to only one of the depositors, in which case the exempt amount is five hundred dollars (\$500).

(c) The amount of a deposit account described in subdivision (b) that exceeds the exemption provided in subdivision (b) is exempt to the extent that it consists of payments authorized by the Social Security Administration.

(d) Notwithstanding [Article 5 (commencing with Section 701.010) of Chapter 3], upon levy or service of other process the financial institution that holds the deposit account shall either place the amount that exceeds the exemption provided in subdivision (b) in a suspense account or otherwise prohibit withdrawal of the amount pending notification of

the failure of the judgment creditor to file the affidavit required by this section or the judicial determination of the exempt status of the amount. Within 10 business days after the levy, the financial institution shall provide the levying officer with a written notice stating that the deposit account is one described in subdivision (b) and state the balance of the deposit account. Promptly upon receipt of the notice, the levying officer shall serve personally or by mail notice of the nature and balance of the deposit account on the judgment creditor.

(e) Notwithstanding the procedure prescribed in Article 2 (commencing with Section 703.510), whether there is an amount exempt under subdivision (c) shall be determined as follows:

(1) Within five days after the levying officer serves notice of the nature and balance of the deposit account on the judgment creditor, a judgment creditor who desires to claim that the amount is not exempt shall file with the court an affidavit alleging that the amount is not exempt and serve a copy on the levying officer. The affidavit shall be in the form of the notice of opposition provided by Section 703.560, and a hearing shall be set and held, and notice given, as provided by Sections 703.570 and 703.580. For the purpose of this subdivision, the "notice of opposition to the claim of exemption" in Sections 703.570 and 703.580 means the affidavit under this subdivision.

(2) If the judgment creditor does not serve the affidavit on the levying officer and give notice of hearing pursuant to Section 703.570 within the time provided in paragraph (1) of this subdivision, the levying officer, if any, shall release the property in the manner provided by Section _____ and shall notify the financial institution.

(3) The affidavit 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 and no counteraffidavit is required.

(4) At a hearing under this subdivision, the judgment debtor has the burden of proving that the excess amount is exempt.

(5) At the conclusion of the hearing, the court by order shall determine whether or not the amount of the deposit account is exempt pursuant to subdivision (c) in whole or in part and shall make an appropriate order for the prompt disposition of the money. 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.

(6) Upon determining that all or part of the amount of the deposit account is exempt pursuant to subdivision (c), the clerk shall immediately transmit a certified copy of the order to the levying officer and the levying officer shall serve the copy of the order on the financial institution.

(f) If the judgment debtor claims that a portion of the amount is exempt other than pursuant to subdivision (c), the claim of exemption shall be made pursuant to Article 2 (commencing with Section 703.510). If the judgment debtor also opposes the judgment creditor's affidavit regarding an amount exempt pursuant to subdivision (c), both exemptions shall be determined at the same hearing, provided the judgment debtor has complied with Article 2 (commencing with Section 703.510).

Comment. Section 704.080 supersedes former Section 690.30. Social Security payments may be directly deposited pursuant to 31 U.S.C. § 492 (1976). 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 of former Section 690.30(b). Subdivision (d) continues the substance of former Section 690.30(b)(1).

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 703.510) (superseding 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 703.510) apply to the determination of the exemption. See Section 704.070 and subdivision (f) of this section.

See also Section _____ (release).

CROSS-REFERENCES

Defined terms

- Deposit account § _____
- Judgment creditor § _____
- Judgment debtor §§ _____, 703.000(b)
- Levying officer § _____

§ 704.090. Inmate's trust account

704.090. The funds of a judgment debtor confined in a 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 or to the credit of the judgment debtor, in an inmate's trust account or similar account by the state, county, or city, or any agency thereof, are exempt in the amount of one thousand dollars (\$1,000) without making a claim.

Comment. Section 704.090 supersedes former Section 690.21, which provided an exemption of \$40. Section 704.090 provides an exemption for each prisoner; where prisoners are jointly liable on a judgment, each is entitled to an exemption, regardless whether they are married.

CROSS-REFERENCES

Defined terms

Judgment debtor §§ _____, 703.000(b)

101/153

§ 704.100. Life insurance, endowment, annuity policies

704.100. (a) Unmatured life insurance policies, including endowment and annuity policies (but not the loan value of such policies), are exempt without making a claim.

(b) The aggregate loan value of unexpired life insurance policies, including endowment, and annuity policies is subject to the enforcement of a money judgment but is exempt in the amount of four thousand dollars (\$4,000). If the judgment debtor is married, each spouse may claim the exemption provided by this subdivision, regardless whether the spouse of the judgment debtor is also a judgment debtor under the judgment. Application of the exemption provided by this subdivision shall be first to policies other than the policy before the court and then, if not exhausted, to the policy before the court.

(c) Benefits from matured life insurance policies, including 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.

Comment. Section 704.100 supersedes the exemptions provided in former Sections 690.9 (life insurance represented by \$500 annual premium), 690.10 (group life insurance), and 690.14 (fraternal benefit society). Under subdivision (a), the judgment creditor is precluded from reaching an unmaturred policy except for its loan value; this prevents the judgment creditor from forcing the judgment debtor to surrender a life insurance policy for its cash value.

Subdivision (b) protects a portion of the loan value of unmaturred insurance policies. It provides for doubling of the exemption in the case of a married judgment debtor. Each spouse may claim an exemption of property subject to enforcement on the judgment in the same policy or different policies. The loan value is not subject to execution (see Section [703.110(b)(7)]) but may be reached by some other appropriate procedure. See Sections _____ (examination of judgment debtor), _____ (order in examination proceedings), _____ (appointment of receiver), _____ (assignment order).

Subdivision (c) limits former law, which made the exemption of benefits 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). Under subdivision (c), the exemption may be asserted against creditors of the judgment debtor or of the spouse or dependents of the judgment debtor. See *Holmes v. Marshall*, 145 Cal. 777, 779-82, 79 P. 534, ___ (1905).

CROSS-REFERENCES

Application to marital property § 703.120
 Defined terms
 Court § _____
 Judgment debtor §§ _____, 703.000(b)

32464

§ 704.110. Public retirement and related benefits and contributions

704.110. (a) As used in this section:

(1) "Public entity" means the state, or a city, city and county, county, or other political subdivision of the state, or a public trust, public corporation, or public board, or the governing body of any of them, but does not include the United States except where expressly so provided.

(2) "Public retirement benefit" means a pension or an annuity, or a retirement, disability, death, or other benefit, paid or payable by a public entity.

(3) "Public retirement system" means a system established pursuant to statute by a public entity for retirement, annuity, or pension purposes, or payment of disability or death benefits.

(b) All money held, controlled, or in process of distribution by a public entity derived from contributions by the public entity or by an officer or employee of the public entity for public retirement benefit purposes, and all rights and benefits accrued or accruing to any person under a public retirement system, are exempt without making a claim.

(c) All money received by any person, a resident of the state, as a public retirement benefit or as a return of contributions and interest thereon from the United States or a public entity or from a public retirement system is exempt.

Comment. Section 704.110 continues the substance of subdivisions (a) and (b) of former Section 690.18, with drafting changes for purposes of uniformity. The exemption provided in subdivision (c) applies whether the money is in the actual possession of the retirement benefit recipient or has been deposited. See Section 703.080 (tracing exempt funds). For the exemption of vacation credits, see Section 704.113. For the exemption of benefits under the Unemployment Insurance Code, see Section 704.120. For the application of exemptions against court-ordered spousal and child support judgments, see Section 703.070.

31515

§ 704.113. Public employee vacation credits

704.113. (a) As used in this section, "vacation credits" means vacation credits accumulated by a state employee pursuant to Section 18050 of the Government Code or by any other public employee pursuant to any law for the accumulation of vacation credits applicable to the employee.

(b) All vacation credits are exempt without making a claim.

(c) Amounts paid periodically or as a lump sum representing vacation credits are exempt to the same extent as earnings of a judgment debtor.

Comment. Subdivision (b) of Section 704.113 continues the substance of a portion of former Section 690.18(b).

Subdivision (c) makes clear that vacation pay is treated the same as earnings for exemption purposes. See Sections 723.050-723.052.

§ 704.115. Private retirement and related benefits and contributions

704.115. (a) As used in this section, "private retirement plan" means:

(1) Private retirement plans, including, but not limited to, union retirement plans.

(2) Profit-sharing plans designed and used for retirement purposes.

(3) Self-employed retirement plans and individual retirement annuities or accounts provided for in the Internal Revenue Code of 1954 as amended by the federal "Employee Retirement Income Security Act of 1974" (P.L. 93-406, 29 U.S.C. § 1001 et seq.) and by the "Tax Reform Act of 1976" (P.L. 94-455), to the extent the moneys held in the plans, annuities, or accounts do not exceed the maximum amounts exempt from federal income taxation under these acts.

(b) All money held, controlled, or in process of distribution by a private retirement plan, or the payment of benefits as an annuity, pension, retirement allowance, disability payment, or death benefit from a private retirement plan, and all contributions and interest thereon returned to any member of a private retirement plan, are exempt.

(c) The exemption provided by this subdivision does not apply to a private retirement plan described in subdivision (a)(3) with regard to moneys withheld from employees' wages and contributions based on wages in employment under provisions of the Unemployment Insurance Code.

Comment. Section 704.115 continues the substance of subdivision (c) of former Section 690.18. The exemption provided in subdivision (b) applies whether money received by the judgment debtor is in the actual possession of the recipient or has been deposited. See Section 703.080 (tracing exempt funds). For the application of exemptions against court-ordered spousal and child support judgments, see Section 703.070.

§ 704.120. Unemployment benefits and contributions; strike benefits

704.120. (a) Contributions by workers payable to the Unemployment Compensation Disability Fund and by employers payable to the Unemployment Fund are exempt without making a claim.

(b) Before payment, money held for payment of the following benefits is exempt without making a claim:

(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 that makes provision for employees generally or for a class or group of employees for the purpose of supplementing unemployment compensation benefits.

(7) Unemployment benefits by a fraternal organization to bona fide members.

(8) Benefits payable by a union due to a labor dispute.

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

Comment. Section 704.120 supersedes former Sections 690.13, 690.16, and 690.175 and portions of former Section 690.18(b) and Unemployment Insurance Code Sections 988 and 1342. Subdivision (b)(8) is new.

15331

§ 704.130. Disability and health benefits and contributions

704.130. (a) Before payment, benefits from a disability or health insurance policy or program are exempt without making a claim. After payment, the benefits are exempt.

(b) Subdivision (a) does not apply if the judgment creditor is a provider of health care whose claim arises out of the condition for which the benefits are collected.

Comment. Subdivision (a) of Section 704.130 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.

CROSS-REFERENCES

Defined terms

Judgment creditor § _____

101/173

§ 704.140. Damages for personal injury

704.140. (a) A cause of action for personal injury is exempt without making a claim.

(b) An award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

(c) Subdivision (b) does not apply if the judgment creditor is a provider of health care whose claim arises out of the personal injury for which the award or settlement was made.

Comment. Section 704.140 is new. A pending cause of action may only be reached by the lien procedure provided by Article 4 (commencing with Section 708.310) of Chapter 6.

CROSS-REFERENCES

Application to marital property § 703.120

Defined terms

Judgment creditor § _____

Judgment debtor §§ _____, 703.000(b)

29215

§ 704.150. Damages for wrongful death

704.150. (a) A cause of action for wrongful death is exempt without making a claim.

(b) 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 person

of whom the judgment debtor or the spouse of the judgment debtor was a dependent is exempt to the extent reasonably necessary for support of the judgment debtor and the spouse and dependents of the judgment debtor.

Comment. Section 704.150 is new. A pending cause of action may only be reached by the lien procedure provided by Article 4 (commencing with Section 708.310) of Chapter 6.

CROSS-REFERENCES

Application to marital property § 703.120

Defined terms

Judgment debtor §§ _____, 703.000(b)

405/354

§ 704.160. Worker's compensation

704.160. 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 exempt without making a claim. After payment, the award is exempt.

Comment. Section 704.160 continues the substance of former Section 690.15.

405/346

§ 704.170. Aid

704.170. 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, is exempt without making a claim. After payment, the aid is exempt.

Comment. Section 704.170 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 704.170 also expands the category of nongovernmental aid that is exempt. Former Section 690.14 applied only to fraternal benefit societies.

§ 704.180

27/872

§ 704.180. Relocation benefits

704.180. Before payment, relocation benefits for displacement from a dwelling which are to be paid 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 exempt without making a claim. After payment, the benefits are exempt.

Comment. Section 704.180 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.

27/823

§ 704.190. Licenses

704.190. Except as provided in Section 705.330, a license to engage in any business, profession, or activity issued by a public entity is exempt without making a claim.

Comment. Section 704.190 is derived from a portion of subdivision (f) of former Section 688 which precluded levy or sale on execution of a "license issued by this state to engage in any business, profession, or activity." See Section _____ (receiver to sell liquor license).

4457

§ 704.200. Cemetery plot

704.200. (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 that 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 exempt without making a claim.

(c) Except as provided in subdivision (d), a cemetery plot for the judgment debtor and the spouse of the judgment debtor 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 703.010, the exemptions provided in this section apply to property dedicated as a cemetery by a cemetery authority where the judgment to be enforced is for a debt due from an individual owner for the purchase price of a cemetery plot.

Comment. Section 704.200 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 cemetery lots for the judgment debtor and spouse. 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).

CROSS-REFERENCES

Application to marital property § 703.120
Defined terms
Judgment debtor §§ _____, 703.000(b)

406/239

Article 4. Dwelling Exemption

§ 704.710. Definitions

704.710. As used in this article:

(a) "Dwelling" includes but is not limited to the following:

(1) A house together with the outbuildings and the land upon which they are situated.

(2) A mobilehome together with the outbuildings and the land upon which they are situated.

(3) A waterborne vessel.

(4) A condominium, as defined in Section 783 of the Civil Code.

(5) A planned development, as defined in Section 11003 of the Business and Professions Code.

(6) A stock cooperative, as defined in Section 11003.1 of the Business and Professions Code.

(7) A community apartment project, as defined in Section 11004 of the Business and Professions Code.

(b) "Homestead" means the dwelling in which the judgment debtor or spouse of the judgment debtor actually resides.

Comment. Subdivision (a) of Section 704.710 supersedes the provisions of former law pertaining to the property that could 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(a) (dwelling house). Subdivision (a) 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 spouse actually resides.

Subdivision (b) is intended as a drafting aid.

CROSS-REFERENCES

Defined terms

Judgment debtor §§ _____, 703.000(b)

26758

§ 704.720. Dwelling exemption

704.720. (a) The homestead is exempt if the equity in the homestead does not exceed the amount of the dwelling exemption.

(b) If the judgment debtor and the spouse of the judgment debtor live separate and apart, each homestead is exempt if the equity in that homestead does not exceed one-half the amount of the dwelling exemption. The judgment debtor and the spouse of the judgment debtor may, upon motion to the court hearing the judgment debtor's application for sale of a dwelling, combine their exemptions in one of the dwellings.

(c) The amount of the dwelling exemption is one hundred thousand dollars (\$100,000).

Comment. Section 704.720 supersedes Civil Code Sections 1238 and 1240 (providing for a declared homestead) and Code of Civil Procedure Sections 690.3 and 690.31(a) (providing for a claimed dwelling exemption). Unlike the former provisions, Section 704.720 does not specify the interest that is protected and does not limit the homestead in a leasehold to a long-term lease; any interest sought to be reached by the judgment creditor in the dwelling is subject to the exemption. The question whether a dwelling is exempt is determined under the circumstances prevailing as of the date of creation of the enforcement lien. See Section 703.110. The dwelling exemption does not apply where a lien

on the property other than an enforcement lien is being foreclosed. See Section 703.010.

Subdivisions (a) and (b) make clear that two homesteads may be exempt in the case of a married judgment debtor living separate and apart from his or her spouse. In such a case, however, the amount of the exemption must be split between the two homesteads unless the judgment debtor and spouse agree to some other allocation of the exempt amount. The spouse may claim an exemption for the separate homestead even though it may be the separate property of the judgment debtor.

Subdivision (c) supersedes former Civil Code Section 1260 and former Code of Civil Procedure Sections 690.3(a) and 690.31(a), which provided an exemption of \$40,000 for heads of families and persons 65 years and older and \$25,000 for other persons. Section 704.720 increases the amount that is protected; however, if the equity exceeds the increased amount, the dwelling may be sold and the amount of proceeds exempted is lower. See Section 704.730.

CROSS-REFERENCES

Application to marital property § 703.120

Defined terms

Dwelling § 704.710(a)

Equity § 703.000(a)

Homestead § 704.710(b)

Judgment debtor §§ _____, 703.000(b)

26768

§ 704.730. Exemption of dwelling proceeds

704.730. If a homestead is sold under this title to enforce a money judgment or is otherwise voluntarily or involuntarily sold, the proceeds of sale are exempt in the amount of seven thousand five hundred dollars (\$7,500) each for the judgment debtor and the spouse of the judgment debtor who actually reside in the dwelling. Notwithstanding any other provision of this title, the exemption provided in this section applies against all liens and encumbrances on the property, regardless of the time the lien was created and regardless whether the lien was voluntary or involuntary.

Comment. Section 704.730 supersedes the first sentences of former Civil Code Section 1256 and former Code of Civil Procedure Section 690.31(k). It broadens them to include voluntary sales and other dispositions of the dwelling and deletes the six-month limitation for the proceeds exemption in favor of the general tracing provisions. See Section 703.080 (tracing of exempt amounts); see also the last portion of former Civil Code Section 1265. The amount of the proceeds exemption provided by Section 704.730 supersedes the amounts provided by former

Civil Code Section 1260 and former Code of Civil Procedure Sections 690.3(a) and 690.31(a). It is consistent with the exemption for a residence prescribed in bankruptcy. See 11 U.S.C. § 522 (bankruptcy). The proceeds exemption is absolute and is not subject to preexisting or voluntary liens and encumbrances. For the procedures for removal of a judgment lien in the case of a voluntary sale or other disposition to enable the judgment debtor to obtain the exempt proceeds, see Section _____.

CROSS-REFERENCES

Application to marital property § 703.120

Defined terms

Dwelling § 704.710(a)

Homestead § 704.710(b)

Judgment debtor §§ _____, 703.000(b)

27640

§ 704.740. Limitation on sale of dwelling

704.740. (a) Except as provided in subdivision (b), a dwelling may not be sold under this title to enforce a money judgment except pursuant to a court order for sale upon a determination of either of the following:

(1) The dwelling is not a homestead.

(2) The dwelling is a homestead but the equity in the homestead exceeds the amount of the dwelling exemption.

(b) If the dwelling is personal property or is real property in which the judgment debtor has a leasehold estate with an unexpired term of less than two years at the time of levy:

(1) A court order for sale is not required and the procedures provided in this article do not apply.

(2) Any exemption claim shall be made and determined as provided in Article 2 (commencing with Section 703.510).

Comment. Subdivision (a) of Section 704.740 supersedes portions of former Civil Code Sections 1245, 1249, and 1250 and former Code of Civil Procedure Section 690.31(c) and (f). Under subdivision (a), unlike the former provisions, the value of the dwelling need only exceed the amount of the exemption and superior liens and encumbrances on the property, rather than "all" (including junior) liens and encumbrances. See Section 703.000(a) (defining "equity") and Comment thereto. In determining whether the equity exceeds the amount of the exemption, the court does not determine market value but only whether it appears likely there is an excess. See Section 704.790.

Subdivision (b) incorporates the general procedures for claiming an exemption where the dwelling 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(a)(2) (judgment creditor's application for writ of execution on dwelling, including a mobilehome as defined by Health & Safety Code § 18008).

CROSS-REFERENCES

Defined terms

Dwelling § 704.710(a)
 Equity § 703.000(a)
 Homestead § 704.710(b)
 Judgment debtor §§ _____, 703.000(b)
 Dwelling exemption § 704.720

27641

§ 704.750. Application for order for sale

704.750. (a) When a dwelling is levied upon, the levying officer shall serve notice of levy personally or by mail on the judgment creditor. Within 20 days after service of the notice of levy, the judgment creditor shall apply to the court for an order for sale of the dwelling and shall notify the levying officer of the application. If the judgment creditor does not apply for an order for sale of the dwelling within the time prescribed in this section, the levying officer shall release the dwelling in the manner prescribed in Section _____.

(b) If the dwelling is located in a county other than the county where the judgment was entered:

(1) The judgment creditor shall apply to a court of similar jurisdiction in the county where the dwelling is located or, if there is no court of similar jurisdiction, to a court of higher jurisdiction in that county.

(2) The judgment creditor shall file with the application an abstract of judgment in the form prescribed by Section 674.

(3) The judgment creditor shall pay a filing fee of four dollars (\$4) in a justice court and six dollars (\$6) in a superior or municipal court.

Comment. Section 704.750 supersedes the introductory portion and the last two paragraphs of former Civil Code Section 1245 and former Code of Civil Procedure Section 690.31(c). Unlike the former provisions which required the judgment creditor to apply for issuance of a writ of execution, Section 704.750 requires the judgment creditor to apply for an order for sale after levy of execution. This ensures that all writs will be issued out of the court in which the judgment is entered. Notice of the application for an order for sale of the property must be given the levying officer, or the dwelling will be released. This requirement applies only to real property dwellings and not to personal property dwellings or to dwellings with less than a two-year leasehold. See Section 704.740(b).

CROSS-REFERENCES

Defined terms

Court § _____
Dwelling § 704.710(a)
Judgment creditor § _____
Levy on real property § _____
Service of notices §§ 684.010-684.070

27642

§ 704.760. Contents of application

704.760. The judgment creditor's application shall be verified, shall describe the dwelling, and shall contain one or both of the following:

(a) A statement that the dwelling is not a homestead and the reasons therefor. In such a case, the application shall also state whether the records of the county tax assessor indicate there is a current homeowner's exemption or disabled veteran's exemption for the dwelling claimed by the judgment debtor.

(b) A statement that, if the dwelling is a homestead, the equity in the homestead exceeds the amount of the dwelling exemption.

Comment. Section 704.760 supersedes subdivisions (a)-(c) of former Civil Code Section 1245 and subdivisions (1)-(2) of former Code of Civil Procedure Section 690.31(c).

CROSS-REFERENCES

Defined terms

Dwelling § 704.710(a)
Equity § 703.000(a)
Homestead § 704.710(b)
Judgment creditor § _____
Judgment debtor §§ _____, 703.000(b)
Disabled veteran's exemption Rev. & Tax. Code § 205.5
Dwelling exemption § 704.720
Homeowner's exemption Rev. & Tax. Code § 253.5

27643

§ 704.770. Notice of hearing

704.770. (a) Upon the filing of the application by the judgment creditor, the court shall set a time and place for hearing and order the judgment debtor to show cause why an order for sale should not be made. The time set for hearing shall be not later than 20 days after the application is filed or such later time as the court orders upon a showing of good cause.

(b) Not later than 10 days before the time set for hearing, the judgment creditor shall do both of the following:

(1) Serve on the judgment debtor personally or by mail a copy of the order to show cause, a copy of the application of the judgment creditor, and a copy of the notice of the hearing in the form prescribed in Section 693.050.

(2) Serve personally a copy of each document listed in paragraph (1) on an occupant of the dwelling or, if there is no occupant present at the time service is attempted, post a copy of each document in a conspicuous place at the dwelling.

Comment. Subdivision (a) of Section 704.770 supersedes the introductory portions of former Civil Code Section 1246 and Code of Civil Procedure Section 690.31(d).

Subdivision (b) supersedes former Civil Code Section 1257 and Code of Civil Procedure Section 690.31(1). Co-owners of the property receive notice of the hearing pursuant to Section 704.840.

CROSS-REFERENCES

Defined terms

Dwelling § 704.710(a)
Judgment creditor § _____
Judgment debtor §§ _____, 703.000(b)
Manner of service of notice §§ 684.010-684.070

§ 704.780. Hearing

704.780. (a) The burden of proof at the hearing is determined in the following manner:

(1) If the application states that the dwelling is not a homestead and the records of the county tax assessor indicate that there is a current homeowner's exemption or disabled veteran's exemption for the dwelling claimed by the judgment debtor, the judgment creditor has the burden of proof that the dwelling is not a homestead. If the records of the county tax assessor indicate that there is not a current homeowner's exemption for the dwelling claimed by the judgment debtor, the judgment debtor has the burden of proof that the dwelling is a homestead.

(2) If the application of the judgment creditor states that the equity in the homestead exceeds the amount of the dwelling exemption, the judgment creditor has the burden of proof that the equity exceeds the amount of the exemption.

(b) The court shall determine the issues raised in the judgment creditor's application and shall make an order for sale of the dwelling or denying an order for sale.

(c) The clerk of the court shall transmit a copy of the court order to:

(1) The levying officer; and

(2) The clerk of the court in which the judgment was entered if the court making the order is not the court in which the judgment was entered.

Comment. Section 704.780 supersedes former Civil Code Section 1247 and Code of Civil Procedure Section 690.31(c) (second paragraph) and (e).

CROSS-REFERENCES

Defined terms

- Dwelling § 704.710(a)
- Equity § 703.000(a)
- Homestead § 704.710(b)
- Judgment creditor § _____
- Judgment debtor §§ _____, 703.000(b)
- Disabled veteran's exemption Rev. & Tax. Code § 205.5
- Dwelling exemption § 704.720
- Homeowner's exemption Rev. & Tax. Code § 253.5

§ 704.790. Order for sale

704.790. (a) If the court determines that the dwelling is not a homestead, or that the dwelling is a homestead but it appears likely that the equity in the homestead exceeds the amount of the dwelling exemption, the court shall make an order for sale of the dwelling.

(b) If the dwelling is a homestead, the order for sale shall state the aggregate amount of all liens and encumbrances on the judgment debtor's interest in the dwelling superior to the judgment creditor's lien.

Comment. Section 704.790 supersedes former Civil Code Sections 1248-1250 and former Code of Civil Procedure Section 690.31(f). Unlike the former provisions, Section 704.790 does not provide for a determination whether the property can be divided without material injury. Nor does Section 704.790 require that the court specify the amounts for distribution, including names and addresses of persons having encumbrances; this is done following sale pursuant to Sections 700.920 and 700.930. In the case of co-owners of the dwelling, see Section 704.840. In the case of joint judgment debtors, see Section 704.850.

Section 704.790 does not require the court to value the equity in the homestead to ascertain whether the equity exceeds the dwelling exemption; the court is required only to determine that it appears likely there is an excess. See Section 704.740. The bids at sale determine whether there is in fact an excess and whether the property may be sold. See Section 704.820.

CROSS-REFERENCES

Defined terms

- Dwelling § 704.710(a)
- Equity § 703.000(a)
- Homestead § 704.710(b)
- Judgment creditor § _____
- Judgment debtor §§ _____, 703.000(b)
- Dwelling exemption § 704.720

§ 704.800. Procedure after order of sale upon default

704.800. If the court makes an order for sale upon a hearing at which neither the judgment debtor nor the attorney of the judgment debtor appeared:

(a) The judgment creditor shall, not later than 10 days after the date of the order, serve personally or by mail a copy of the order and a

notice of the order in the form prescribed in Section 693.060 on the judgment debtor and shall serve personally a copy of each on an occupant of the dwelling or, if there is no occupant present at the time service is attempted, post a copy in a conspicuous place at the dwelling.

(b) If, within 10 days after service of notice of the order, the judgment debtor files with the levying officer a declaration that the absence of the judgment debtor or the judgment debtor's attorney from the hearing was due to mistake, inadvertence, surprise, or excusable neglect and that the judgment debtor wishes to assert the dwelling exemption, the levying officer shall not sell the dwelling pending further orders of the court and shall transmit the declaration forthwith to the court. Upon receipt of the declaration, the court shall set a time and place for hearing to determine whether the order for sale should be modified or rescinded. The time set for hearing shall be not later than 20 days after receipt of the declaration. The clerk of the court shall promptly give notice of the hearing to the parties.

Comment. Subdivision (a) of Section 704.800 supersedes former Civil Code Sections 1251 and 1257 and former Code of Civil Procedure Section 690.31(g) and (1). Unlike the former provisions, co-owners receive only notice of sale, and not notice of default.

Subdivision (b) supersedes former Civil Code Section 1252 and former Code of Civil Procedure Section 690.31(h).

CROSS-REFERENCES

Defined terms

- Dwelling § 704.710(a)
- Judgment creditor § _____
- Judgment debtor §§ _____, 703.000(b)
- Manner of service of notice §§ 684.010-684.070

27801

§ 704.810. Denial of order

704.810. (a) If the court determines that the dwelling is a homestead and it appears likely that the equity in the homestead does not exceed the amount of the dwelling exemption, the court shall deny the order for sale.

(b) Upon receipt of a copy of the court order denying an order for

sale, the levying officer shall release the dwelling in the manner prescribed in Section _____.

(c) A subsequent application by the judgment creditor after the denial of an order for sale shall be supported by a statement under oath alleging that there is a material change in circumstances affecting the exemption and setting forth facts supporting the claimed material change of circumstances.

Comment. Subdivision (b) of Section 704.810 supersedes portions of former Civil Code Section 1258 and former Code of Civil Procedure Section 690.31(m) (incorporating former Section 690.50(j)).

Subdivision (c) supersedes former Civil Code Section 1253 and former Code of Civil Procedure Section 690.31(i), which required supporting allegations by any judgment creditor. Subdivision (b) requires supporting allegations only by the judgment creditor who was denied the order for sale.

CROSS-REFERENCES

Defined terms

- Dwelling § 704.710(a)
- Equity § 703.000(a)
- Homestead § 704.710(b)
- Judgment creditor § _____
- Judgment debtor §§ _____, 703.000(b)
- Dwelling exemption § 704.720

27802

§ 704.820. Sale of homestead

704.820. If a homestead is sold pursuant to court order for sale:

(a) No bid shall be received unless it exceeds the aggregate amount of all liens and encumbrances on the judgment debtor's interest in the dwelling superior to the judgment creditor's lien plus the amount of the dwelling exemption.

(b) If no bid is made that satisfies the requirements of subdivision (a), the court, upon motion of the judgment creditor, shall make an order for a new sale of the dwelling.

(c) Any sale shall be conducted within six months after the date of the original order for sale or such longer period as is agreed to by the judgment debtor. If the sale is not made within the prescribed period, the order is void, the levying officer shall release the dwelling in the

manner prescribed in Section _____, and the dwelling is not thereafter subject to a court order for sale upon subsequent application by the judgment creditor unless supported by a statement under oath alleging that there is a material change in circumstances affecting the dwelling and setting forth facts supporting the claimed material change of circumstances.

Comment. Section 704.820 supersedes former Section 1254.

CROSS-REFERENCES

Defined terms

Dwelling § 704.710(a)
 Homestead § 704.710(b)
 Judgment creditor § _____
 Judgment debtor §§ _____, 703.000(b)
 Dwelling exemption § 704.720

27803

§ 704.830. Distribution of proceeds of sale

704.830. If a homestead is sold pursuant to court order for sale, the proceeds of sale shall be distributed in the order prescribed in Section 701.810, except that prior to any other distribution, the proceeds shall be (1) distributed to the judgment debtor and the spouse of the judgment debtor in the amount of the exemption of dwelling proceeds to the extent provided in Section 704.730 and (2) applied to the satisfaction of all liens and encumbrances on the judgment debtor's interest in the dwelling superior to the judgment creditor's lien.

Comment. Section 704.830 supersedes former Civil Code Section 1255.

Note. Whether this section should be extended to all real property sales is reserved.

CROSS-REFERENCES

Defined terms

Dwelling § 704.710(a)
 Homestead § 704.710(b)
 Judgment debtor §§ _____, 703.000(b)
 Exemption of dwelling proceeds § 704.730

§ 704.840. Procedure where there are co-owners of the dwelling

704.840. If the dwelling is owned by the judgment debtor as a joint tenant, tenant in common, or otherwise as a co-owner of an undivided interest in the dwelling, in addition to the other requirements of this article the following provisions apply:

(a) The co-owners shall be served with a copy of the notice of hearing in the form prescribed in Section 693.050.

(b) The court shall determine and the order for sale shall state the proportionate interests of the co-owners in the dwelling.

(c) If the dwelling is ordered to be sold, the interests of the judgment debtor and the co-owners in the dwelling shall be sold.

(d) If a homestead is sold pursuant to court order for sale, no bid shall be received unless, in addition to all other bid requirements, the bid exceeds the aggregate amount of all liens and encumbrances on the interests of the judgment debtor and co-owners superior to the judgment creditor's lien plus an amount that, when apportioned among the judgment debtor and the co-owners, will yield an amount for the share of the judgment debtor that exceeds the amount of the exemption of dwelling proceeds.

(e) The co-owners shall have the right of first refusal to purchase the dwelling at the sale for the amount of the highest bid.

(f) The proceeds of sale remaining after the satisfaction of all liens and encumbrances on the interests of the judgment debtor and the co-owners superior to the judgment creditor's lien shall be apportioned among the judgment debtor and the co-owners in their proportionate shares. The share apportioned to the judgment debtor shall be distributed in the order prescribed in Section 701.810 except that prior to any other distribution, the proceeds shall be distributed to the judgment debtor and the spouse of the judgment debtor in the amount of the exemption of dwelling proceeds to the extent provided in Section 704.730.

Comment. Section 704.840 is drawn from 11 U.S.C. § 363(h) and (i) (bankruptcy). It adopts the principal that the dwelling is to be sold free of the interests of co-owners, but gives the co-owners the right of first refusal. Proceeds of sale are distributed to co-owners in their proportionate shares. This amounts in essence to a partition sale of the dwelling.

Note. The question whether this section should apply to all real property sales, not merely to sales of dwellings, is reserved.

CROSS-REFERENCES

Defined terms

Dwelling § 704.710(a)

Homestead § 704.710(b)

Judgment debtor §§ _____, 703.000(b)

Exemption of dwelling proceeds § 704.730

Notice of hearing, form § 693.050

26767

§ 704.850. Procedure where there are joint judgment debtors

704.850. If judgment debtors who are jointly obligated on a money judgment have interests in a dwelling sought to be applied to enforcement of the judgment, in addition to the other requirements of this article, the following provisions apply:

(a) The dwelling is a homestead if any of the joint judgment debtors or the spouse of any of the joint judgment debtors actually resides in the dwelling on the date of levy.

(b) If the dwelling is a homestead, the court shall not make an order for sale of the dwelling unless the court determines that the aggregate equities in the homestead exceed the amount of the dwelling exemption.

(c) If a homestead is sold pursuant to court order for sale, no bid shall be received unless, in addition to all other bid requirements, the bid exceeds the aggregate amount of all liens and encumbrances on the interests of the joint judgment debtors superior to the judgment creditor's lien plus the amount of the dwelling exemption.

(d) The proceeds of sale of a homestead remaining after the satisfaction of all liens and encumbrances on the interests of the joint judgment debtors superior to the judgment creditor's lien shall be apportioned among the persons entitled thereto. The shares apportioned to the joint judgment debtors shall be distributed in the order prescribed in Section 761.810 except that prior to any other distribution, the proceeds shall be distributed to the joint judgment debtors in the

amount of the exemption of dwelling proceeds to the extent provided in Section 704.730, each joint judgment debtor who actually resides in the dwelling on the date of levy being eligible for a separate exemption of dwelling proceeds.

Comment. Section 704.850 establishes the rule that although the equities of joint judgment debtors are combined to determine whether a dwelling may be sold, each joint judgment debtor who qualifies for the dwelling exemption receives the full amount of the exemption of dwelling proceeds not exceeding his or her share of the proceeds.

CROSS-REFERENCES

Defined terms

Dwelling § 704.710(a)
 Equity § 703.000(a)
 Homestead § 704.710(b)
 Judgment creditor § _____
 Judgment debtor §§ _____, 703.000(b)
 Dwelling exemption § 704.720
 Exemption of dwelling proceeds § 704.730

29198

§ 704.860. Procedure where the interest of the judgment debtor is less than a fee

704.860. If the interest of the judgment debtor in the dwelling is a leasehold or other interest less than an ownership interest, notwithstanding any other provision of this article:

(a) If the dwelling is ordered to be sold, the interest of the judgment debtor in the dwelling, and not the ownership interest, shall be sold.

(b) All references in this article to the "dwelling" are deemed to be references to the interest in the dwelling.

Comment. Section 704.860 implements the intent of this article not to restrict the interest of the judgment debtor for which a dwelling exemption is available. A dwelling exemption is available to a judgment debtor regardless whether the judgment debtor's interest is a fee, leasehold, or lesser interest. See Comment to Section 704.710.

CROSS-REFERENCES

Defined terms

Dwelling § 704.710(a)
 Judgment debtor §§ _____, 703.000(b)

§ 704.870. Extensions of time and appeals

704.870. The provisions of Sections 703.590 and 703.600 apply to proceedings under this article.

Comment. Section 704.870 continues the substance of former Civil Code Sections 1258 (portion incorporating Code of Civil Procedure Section 690.50(1)) and 1259.1, and former Code of Civil Procedure Section 690.31(m) (portion incorporating Code of Civil Procedure Section 690.50(1)) and (n). It incorporates the provisions in the general exemption procedure pertaining to extensions of time and appeals.

29200

§ 704.880. Costs

704.880. Notwithstanding any other provision of this title, the judgment creditor is entitled to recover reasonable costs incurred in a proceeding under this article, but shall not recover the costs if the court denies or rescinds the order for sale.

Comment. Section 704.880 supersedes former Civil Code Section 1259.

CROSS-REFERENCES

Costs § 685.010-685.080

Defined terms

Judgment creditor § _____