

Memorandum 80-34

Subject: Study D-300 - Enforcement of Judgments (Receivers)

This memorandum considers comments we received concerning the receiver provisions in the Tentative Recommendation Relating to Enforcement of Judgments. (The comments referred to were sent to you previously as exhibits to Memorandum 79-29.) A revised staff draft of these provisions is attached hereto.

§ 708.630. Receiver to transfer alcoholic beverage license
(TR § 705.330)

Mr. Frederick Holden suggests that a receiver under this section be empowered to transfer a liquor license "held by a third person in which the judgment debtor has an interest or which is the subject of a debt owed to the judgment debtor." (Exhibit 13, p. 17.) The staff recommends no change. In general, a creditor is not permitted to forcefully transfer other property of third persons in which the debtor may have some interest. To provide such a broad remedy in this specialized area seems unwarranted.

Subdivision (c) of this section has been revised in response to a comment of Mr. David Paulsen of the Employment Development Department (Exhibit 15, pp. 1-2).

§ 708.640. Receiver's lien (TR § 708.340)

Mr. Rick Schwartz states that the provision for commencement of a receiver's lien by service of a copy of the order appointing the receiver in the manner of service of other process that creates a lien under Title 9 is unclear and suggests that the copy of the order appointing a receiver should be served only as provided for a levy of execution (Exhibit 12, p. 5.) If this provision is retained, the staff recommends retention of the reference to service of other process since the receiver may, pursuant to court authorization, employ any available remedy and is not limited to resort to property subject to execution. For example, the receiver may be authorized to commence a creditor's suit.

The staff is uneasy about creating a receiver's lien. The law relating to receivers has a long and complicated history. Since receivers are used in a multitude of situations, it is difficult to derive

general rules that can be stated with the clarity demanded for a statute. The leading treatise on enforcement of judgments states that by "virtue of his appointment and qualification, the receiver becomes invested with all the personal estate of the judgment debtor which is liable to be forced to contribute to the payment of his debts." 3 A. Freeman, Law of Executions § 419, at 2243 (3d ed. 1900). The situation with regard to real property is doubtful. It may also be said that the receiver takes subject to prior equities and defenses and has priority over later claims. Cf. Downey v. Humphreys, 102 Cal. App.2d 323, 227 P.2d 484 (1951) (receiver to liquidate insolvent insurance company). The problem is that the powers of a receiver and the priority of the receiver over other creditors or transferees is almost never discussed in terms of liens. We found one case in which the receiver claimed a lien deriving from a creditor's suit in which the receiver was appointed, and the court there ruled that the receiver had no lien outside the state of New York. See Booth v. Clark, 58 U.S. 322, 334, 339 (1854). The intent of the receiver's lien section in the tentative recommendation was to make this remedy consistent with other remedies and to clarify the priority rules regarding receivers. However, we are not confident that this has been accomplished by grafting a lien onto the body of case law governing receivers. If the Commission thinks that the lien approach is promising, we will devote further time to perfecting draft Section 708.640 and will reconsider it when the general provisions governing the effect of liens are presented at a future meeting. Alternatively, we could delete this provision and leave the question of the effect of a receivership to the common law.

Respectfully submitted,

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Receivers

Existing law permits the appointment of a receiver in aid of execution where the writ of execution has been returned unsatisfied or where the judgment debtor refuses to apply property toward the satisfaction of the judgment.¹ Appointment of a receiver may also enable the judgment creditor to reach and apply types of property that cannot be reached by levy under a writ of execution.² Generally, receivers are appointed in examination proceedings where the requisite showing is made,³ but a receiver may also be appointed in independent proceedings on noticed motion.⁴ Receivership is considered a drastic remedy, and the courts are reluctant to appoint a receiver unless it is shown that other remedies are inadequate.⁵

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

1. Section 564, subd. 4.

2. See Habenicht v. Lissak, 78 Cal. 351, 357, 20 P. 874, 877 (1889) (seat on stock exchange); Pacific Bank v. Robinson, 57 Cal. 520, 524 (1881) (patent); Medical Fin. Ass'n v. Short, 36 Cal. App.2d Supp. 745, 747, 92 P.2d 961 (1935) (federal wages).

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

4. Olsan v. Comora, 73 Cal. App.3d 642, 647-49, 140 Cal. Rptr. 835 (1977).

5. Jackson v. Jackson, 253 Cal. App.2d 1026, 1040-41, 62 Cal. Rptr. 121 (1967); Olsan v. Comora, 73 Cal. App.3d 642, 646-47, 140 Cal. Rptr. 835 (1977).

judgment debtor's assets and merely increases the costs of collection.⁶ The law concerning the appointment, qualification, powers, and duties of receivers should remain unchanged.⁷

Existing law is unclear as to the effect of the appointment and enforcement activities of a receiver. The proposed law provides for a receiver's lien which arises when a copy of the order appointing the receiver is served, filed, or recorded in the manner provided for levy under a writ of execution or for service of other process that creates a lien.⁸ The proposed law also specifically provides for the appointment of a receiver to transfer the judgment debtor's interest in a liquor license which, under existing law, may not be forceably applied to the satisfaction of a money judgment.⁹

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6. The 10-day delay is the result of Section 683 which provides that the writ is returnable not less than 10 nor more than 60 days after its receipt by the levying officer. The cost of issuance of a writ is recoverable pursuant to Section 1033.7(c). It may be argued that the provision that the writ be returned nulla bona (no goods) before a receiver may be appointed is no longer the law since a receiver may be appointed in examination proceedings under Section 714 which, since 1955, has not required the return of the writ unsatisfied. See 1955 Cal. Stats. ch. 1191, § 1. Levying officers no longer make an independent search for property subject to execution, but instead act at the instructions of the judgment creditor. See 1 A. Freeman, Law of Executions § 107, at 395-98 (3d ed. 1900) (former practice); Cal. State Sheriffs' Ass'n, Civil Procedural Manual 4.05 (1978) (modern practice). If so instructed, the levying officer will return the writ unsatisfied and will not attempt to levy under the writ. Obviously, this procedure should not result in a presumption that there is no property subject to levy and sale.
 7. See Sections 564-571.
 8. See the discussion under "Effect of Liens" supra.
 9. Section 688(f) has, since 1959, precluded the use of any enforcement process against licenses, including liquor licenses. See 37 Op. Cal. Att'y Gen. 4 (1961). The use of a receiver permits application of the proceeds according to the set of priorities spelled out in Business and Professions Code Section 24074. See Grover Escrow Corp. v. Gole, 71 Cal.2d 61, 65, 453, P.2d 461, 463, 77 Cal. Rptr. 21, 23 (1969) (statutory priorities are mandatory and exclusive). The proposed law will not permit appointment of a receiver to sell a liquor license if the probable sale price of the license does not exceed the amount necessary to satisfy the claims of creditors with priority over the judgment creditor who is seeking the appointment of a receiver.

Article 7. Receiver to Enforce Judgment

§ 708.610. Application of general provisions

708.610. The provisions of Chapter 5 (commencing with Section 564) and Chapter 5a (commencing with Section 571) of Title 7 govern the appointment, qualifications, powers, rights, and duties of a receiver appointed under this article.

Comment. Section 708.610 makes clear that the general receiver provisions continue to apply to receivers for enforcement of judgments. The appointment of a receiver is subject to the general rules concerning the time within which judgments may be enforced. See Chapter 3 (commencing with Section 683.010) of Division 1.

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§ 708.620. Appointment of receiver

708.620. The court may appoint a receiver to enforce the judgment where the judgment creditor shows that, considering the interests of both the judgment creditor and the judgment debtor, the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment.

Comment. Section 708.620 supersedes portions of Section 564 that authorized the appointment of a receiver to enforce a judgment. It eliminates as a prerequisite to the appointment of a receiver a showing that a writ of execution has been returned unsatisfied or that the judgment debtor refuses to apply property in satisfaction of the judgment as was formerly required by subdivision 4 of Section 564. See *Olsan v. Comora*, 73 Cal. App.3d 642, 647-49, 140 Cal. Rptr. 835 (1977).

Under Section 708.620, a receiver may be appointed where a writ of execution would not reach certain property and other remedies appear inadequate. A receiver may also be appointed in examination proceedings under Article 2 (commencing with Section 708.110) where the requisite showing is made under this section. Cf. *Tucker v. Fontes*, 70 Cal. App.2d 768, 771-72, 161 P.2d 697, 699 (1945); *Medical Finance Ass'n v. Short*, 36 Cal. App.2d Supp. 745, 747, 92 P.2d 961, 962 (1939) (appointment of receiver in supplementary proceedings under former law). A receiver may be appointed to enforce a charging order against a partnership under Corporations Code Section 15028 or 15522. See Section 708.310 (charging orders).

A receiver may also be appointed to enforce a judgment for the possession of personal property (see Section _____), for the possession of real property (see Section _____), or for the sale of real or personal property (see Section _____).

§ 708.630. Receiver to transfer alcoholic beverage license

708.630. (a) The judgment debtor's interest in an alcoholic beverage license may be applied to the satisfaction of a money judgment only as provided in this section.

(b) The court may appoint a receiver for the purpose of transferring the judgment debtor's interest in an alcoholic beverage license that is transferable under Article 5 (commencing with Section 24070) of Chapter 6 of Division 9 of the Business and Professions Code, unless the judgment debtor shows in the proceeding to appoint a receiver that claims of creditors with priority over the judgment creditor pursuant to Section 24074 of the Business and Professions Code exceed the probable sale price of the license.

(c) The receiver may exercise the powers of the licensee as necessary, and in exercising such powers shall comply with the applicable provisions of Division 9 (commencing with Section 23000) of the Business and Professions Code and applicable regulations of the Department of Alcoholic Beverage Control.

Comment. Section 708.630 supersedes a portion of former Section 688(f). After the amendment of former Section 688 in 1959 (1959 Cal. Stats. ch. 2140, § 1), alcoholic beverage licenses were not reachable by any state enforcement process. See 37 Ops. Cal. Att'y Gen. 4 (1961). Alcoholic beverage licenses are not subject to levy under a writ of execution. See Section 699.720(a). The Alcoholic Beverage Control Act (commencing with Business and Professions Code Section 23000) provides detailed procedures for the sale of alcoholic beverage licenses which make use of a receiver appropriate. Cf. *Mollis v. Jiffy-Stitcher Co.*, 125 Cal. App.2d 236, 238, 270 P.2d 25, 26 (1954).

In order to prevent a situation where the judgment creditor forces the sale of the judgment debtor's license but does not receive any proceeds to be applied toward satisfaction of the judgment, subdivision (b) precludes transfer if the judgment debtor shows that it is unlikely that the sale of the license would yield any excess over the amount required to satisfy claims of creditors with priority over the judgment creditor under Business and Professions Code Section 24074. The scheme of priorities set out in Section 24074 is "mandatory and exclusive." *Grover Escrow Corp. v. Gole*, 71 Cal.2d 61, 65, 453 P.2d 461, 463, 77 Cal. Rptr. 21, 23 (1969). See also Bus. & Prof. Code § 24076.

Subdivision (c) enables the receiver to exercise the powers of the licensee as necessary to comply with the transfer provisions of the Alcoholic Beverage Control Act. The strict regulation of all aspects of alcoholic beverage licenses by the Alcoholic Beverage Control Act requires that the receiver comply with its procedures and the regulations of the Department of Alcoholic Beverage Control.

§ 708.640. Receiver's lien

708.640. Service, filing, or recording of a copy of the order appointing the receiver, if made in the manner provided for the levy under a writ of execution or for the service of other process that creates a lien under this title, creates a lien on the judgment debtor's property that is subject to the receivership to the same extent and with the same duration as would be obtained by a levy under a writ of execution or service of other process.

Comment. Section 708.640 provides for a receiver's lien in favor of the judgment creditor. Prior law was unclear as to the effect of the appointment and enforcement activities of the receiver. Section 708.640 is generally consistent with the rule in the cases that held that the appointment and qualification of a receiver vested the property of the judgment debtor in the receiver. See 3 A. Freeman, Law of Executions § 419, at 2243-46 (3d ed. 1900). For provisions governing the effect of liens, see Article 1 (commencing with Section 697.010) of Chapter 2.

For the manner provided for levy under a writ, see Sections 700.010-700.____. See also Section 699.010 (execution lien). For provisions concerning liens created by the service of other process, see Sections 708.____ (examination of judgment debtor), 708.____ (examination of third person), 708.____ (creditor's suit), 708.320 (charging order), 708.____ (lien or cause of action and nonfinal judgment), 708.____ (assignment order), 708.____ (lien where judgment debtor is creditor of public entity).