

Memorandum 80-55

Subject: Study D-300 - Enforcement of Judgments (Division 1--General Provisions)

The following portions of the enforcement of judgments recommendation are attached to this memorandum:

Division 1. Definitions and General Provisions

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Chapter 2. General Provisions (\$ 681.010)

Chapter 3. Period for Enforcement and Renewal of Judgments (\$ 683.010)

Chapter 4. Manner of Service of Writs, Notices, and Other Papers (\$ 684.010)

Chapter 5. Costs and Interest (\$ 685.010)

Chapter 6. Death of Judgment Creditor or Judgment Debtor (\$ 686.010)

Chapter 7. Levying Officers (\$ 687.010)

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The substance of these provisions has been approved by the Commission. Chapter 5 (Costs and Interest) has been rearranged by the staff in a more logical order. We have no new policy issues to raise concerning this material.

Two conforming revisions relating to enforcement of child and spousal support orders are attached as an appendix to this material.

Respectfully submitted,

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TYPES OF JUDGMENTS ENFORCEABLE

Title 9 of the Code of Civil Procedure¹ provides for the enforcement of money judgments, judgments for the possession or sale of real or personal property, and judgments enforceable by contempt.² Its provisions are also available for the enforcement of a tax liability in a situation where the state is authorized to issue a warrant pursuant to particular sections in the Revenue and Taxation Code and the Unemployment Insurance Code.³ For the most part, however, Title 9 is concerned with enforcement of money judgments.

The scope of the proposed revision of Title 9 is essentially the same as that of existing law.⁴ The proposed law separates the provisions pertaining to the enforcement of the various types of judgments and clarifies the extent to which general provisions apply to nonmoney judgments. Under existing law, it is not always clear which provisions apply to which types of judgments.⁵

1. Sections 681-724e. Except as otherwise noted, all statutory citations are to the Code of Civil Procedure.
2. See, e.g., Sections 682, 684. See the discussion under "Enforcement of Nonmoney Judgments" infra.
3. Section 722.5. This provision applies where warrants are issuable pursuant to Sections 6776, 7881, 9001, 10111, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code or Section 1785 of the Unemployment Insurance Code. Four recently enacted warrant provisions are not listed in Section 722.5. See Rev. & Tax. Code §§ 3202, 16071, 38541, 40161. The proposed law omits the references to specific sections providing authority for issuing warrants to collect a tax so that further amendment will not be required when tax laws are revised.
4. The proposed law would not, however, apply to enforcement of money judgments against public entities. The Commission submitted a recommendation on this aspect of this study to the 1980 Legislature. See Recommendation Relating to Enforcement of Claims and Judgments Against Public Entities, 15 Cal. L. Revision Comm'n Reports xxx (1980).
5. The word "execution" leads a chameleon-like existence in existing law; it is frequently unclear whether "execution" or "writ of execution" refers to process to enforce money judgments and judgments for the possession or sale of property, process to enforce money judgments and judgments for the possession but not the sale of property, or only process to enforce money judgments. For example, Section 684 provides that a writ of execution may be used

TIME FOR ENFORCEMENT OF JUDGMENTS

Under existing law, a writ or order for the enforcement of a judgment may be obtained as a matter of right within 10 years after the entry of the judgment.⁶ The time during which the enforcement of the judgment is stayed or enjoined is excluded from the computation of the 10 years within which the writ or order may issue.⁷ The judgment may be

to enforce a money judgment or a judgment for the possession of real or personal property; a judgment for the sale of property may be enforced by a "writ reciting such judgment." Section 683 provides for the return of the "execution" not less than 10 nor more than 60 days after its receipt by the levying officer, but it was held in *Magnaud v. Traeger*, 66 Cal. App. 526, 530-31, 226 P. 990 (1924), that a writ of execution for the possession of real property remained in force insofar as it directed the restitution of the premises although it had expired insofar as it directed the levying officer to levy on property to satisfy the part of the judgment awarding damages. Section 681 was amended in 1955 to add a reference to "enforcement" of the judgment since it was felt that the word "execution" was arguably not broad enough to cover enforcement of a mortgage foreclosure decree, *i.e.*, a judgment for the sale of real property. See Review of 1955 Code Legislation 101 (Cal. Cont. Ed. Bar 1955). Section 692 (sale on execution) seems on its face to apply only to the enforcement of money judgments, although it has been held that foreclosure sales of real and personal property should be made in the same manner as in a sale under a money judgment. See *Podrat v. Oberndorff*, 207 Cal. 457, 459-60, 278 P. 1035 (1929) (personal property); *Johnson v. Tyrell*, 77 Cal. App. 179, 182, 246 P. 140 (1926).

6. Section 681. Section 681, and its companion provision (Section 685 pertaining to issuance after 10 years), govern issuance of writs or orders for the enforcement of money judgments and judgments for the possession or sale of property. See, *e.g.*, *Butcher v. Brouwer*, 21 Cal.2d 354, 132 P.2d 205 (1942) (money judgment); *Laubisch v. Roberdo*, 43 Cal.2d 702, 708-09, 713-15, 277 P.2d 9, 13, 16-17 (1954) (judgment for sale of real property); *City of Los Angeles v. Forrester*, 12 Cal. App.2d 146, 148-49, 55 P.2d 277, 278 (1936) (judgment for possession of real property). See also 5 B. Witkin, *California Procedure Enforcement of Judgment* § 68, at 3443, § 199, at 3553 (2d ed. 1971); Review of 1955 Code Legislation 101 (Cal. Cont. Ed. Bar 1955). But see Civil Code § 4380 (court has discretion as to manner of enforcement of judgment, order, or decree under Family Law Act).
7. Section 681.

enforced after 10 years in the discretion of the court upon motion by the judgment creditor with notice to the judgment debtor.⁸ The judgment may also be renewed by bringing an action upon it within 10 years after entry.⁹ This scheme is a direct descendant of the common law rules concerning actionability and executability of a money judgment.¹⁰

The proposed law establishes a 10-year period of enforcement for money judgments and judgments for possession or sale of property,¹¹ but permits the 10-year period to be extended by renewal of the judgment. If the judgment is not renewed,¹² it becomes unenforceable at the conclusion of 10 years from its entry and all enforcement proceedings

8. Section 685. This provision requires the judgment creditor to file an affidavit stating the reasons for failure to enforce the judgment within the 10 years allowed by Section 681. See the cases cited in 5 B. Witkin, California Procedure Enforcement of Judgment § 202, at 3555 (2d ed. 1971). See also discussion in note 21 infra.
9. Section 337.5 (statute of limitations); *Atkinson v. Adkins*, 92 Cal. App. 424, 426, 268 P. 461, 462 (1928).
10. At common law, a writ of the appropriate type--*leviari facias*, *fieri facias*, or *elegit*--could be issued to enforce a money judgment only for a year and a day after the signing of the judgment. If a writ was not issued within this time, the judgment became dormant and the judgment creditor was required to initiate proceedings to revive the judgment by means of a writ of *scire facias* or to bring an action of debt to renew the judgment. *Scire facias* could be obtained without application to the court for a period of 10 years after judgment. At a later time, the common law developed a rebuttable presumption of payment after 20 years. See Riesenfeld, Collection of Money Judgments in American Law--A Historical Inventory and a Prospectus, 42 Iowa L. Rev. 155, 156-59, 172-73 (1957).
11. A stay of enforcement would not extend the 10-year period.
12. The proposed procedure for renewal of judgments would not preclude resort to the traditional method of renewing a judgment by bringing an action on the judgment. The proposed law also makes clear that an action may be brought on a judgment renewed through the statutory procedure.

against the judgment debtor must cease.¹³ If a judgment is not renewed within the 10-year period of enforceability, there will be no need to retain certain of the court records thereafter.¹⁴

In the case of money judgments payable in installments,¹⁵ the proposed law codifies case law holding that the time for enforcement of

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13. The rule announced in *Alonso Inv. Corp. v. Doff*, 17 Cal.3d 539, 551 P.2d 1243, 131 Cal. Rptr. 411, (1976), permitting the enforcement of a writ of execution after the expiration of the 10-year period provided by Section 681 if the writ had been timely issued, is not continued in the proposed law. An otherwise unenforceable judgment could be used as a setoff, however, if it was enforceable at the same time that the judgment debtor had a claim against the judgment creditor. A judgment that has become unenforceable under the proposed law may still be renewed by an action if the 10-year statute of limitations provided by Section 337.5 has not run. This may occur because the statute of limitations does not begin to run until the judgment is final (see *Turner v. Donovan*, 52 Cal. App.2d 236, 126 P.2d 187 (1942)) and may be tolled for reasons such as the debtor's absence from the state (see Section 351). In addition, the judgment creditor would be able to continue a creditor's suit against a third person holding property of or owing debts to the judgment debtor and enforce any judgment obtained in that suit after the time for enforcement of the original judgment against the judgment debtor had expired. See the discussion under "Creditors' Suits" infra.
14. There is no fixed time limit for a motion under Section 685 so all the court records must be preserved indefinitely. Cases cited in *Long v. Long*, 76 Cal. App.2d 716, 722, 173 P.2d 840, 843 (1946), reveal that execution has been permitted under Section 685 for as much as 20 years after judgment. In *Hatch v. Calkins*, 21 Cal.2d 364, 371, 132 P.2d 210, 214 (1942), the court denied issuance of a writ of execution 29 years after entry of judgment for lack of diligence.
15. See Code Civ. Proc. §§ 85 (installment payment of money judgments of municipal or justice court), 667.7 (periodic payment of future damages in action against provider of health care services); Labor Code §§ 5801, 5806 (installment payment of worker's compensation award; entry of judgment); Veh. Code § 16380 (installment payment of vehicle accident damage judgment). Installment judgments for spousal or child support (Civil Code §§ 4700, 4801) are not governed by the proposed provisions outlined in the text. Instead, judgments under the Family Law Act would be enforceable after the expiration of 10 years from entry or accrual of an installment in the discretion of the court. This is consistent with Civil Code Section 4380 giving the court discretion in the manner of enforcing judgments, orders, and decrees under the Family Law Act.

each installment runs from the time the installment falls due.¹⁶ If an installment judgment is not renewed, payments due more than 10 years are unenforceable, but payments not more than 10 years overdue and future installments are enforceable even though the judgment was entered more than 10 years previously.

The proposed law provides a simple renewal procedure for extending the period of enforceability of a money judgment or judgment for the possession or sale of property. The judgment creditor may file an application with the court where the judgment was entered. The clerk then enters the renewal in the amount stated in the judgment creditor's application¹⁷ and the enforceability of the judgment is extended for 10 years from the date of filing. The judgment creditor is required to serve notice of the filing of the application on the judgment debtor who has 30 days after service within which to make a motion to vacate the renewal. No writ to enforce the judgment may be issued unless the judgment creditor files proof of service on the judgment debtor with the court clerk. The judgment can be vacated on any grounds that would be a defense to an action on the judgment.¹⁸ In addition, the court has authority to modify the amount of the renewal if it is shown at the hearing on the motion that the amount due has been incorrectly stated in the judgment creditor's application. An application for renewal must be filed before the expiration of the 10-year period of enforceability.¹⁹

16. See, e.g., Wolfe v. Wolfe, 30 Cal.2d 1, 4, 180 P.2d 345 (1947); Lohman v. Lohman, 29 Cal.2d 144, 150, 173 P.2d 657 (1946); DeUprey v. DeUprey, 23 Cal. 352, 353 (1863).

17. The amount due on the judgment includes the amount of unsatisfied principal, allowed costs, and accrued interest. This procedure is analogous to the procedure for entry of a judgment on the basis of a sister state judgment upon filing an application with the clerk. See Section 1710.25.

18. This procedure is analogous to Sections 1710.30 and 1710.40 (sister state judgments).

19. An application for renewal may be filed under the proposed law even if enforcement of the judgment is stayed since renewal has no effect on the stay but does prevent the expiration of the 10-year period of enforceability.

In the case of an installment judgment, only installments due not more than 10 years will be renewed by the application.²⁰ There is no limit placed on the number of times the judgment creditor may renew the judgment by means of this procedure, and there is no requirement that the judgment creditor demonstrate diligence in enforcing the judgment during the previous 10 years.²¹

Under the proposed law, a certified copy of the judgment creditor's application for renewal may be recorded with the county recorder in order to renew a judgment lien on an interest in real property for 10 years running from the date the application for renewal was filed with

20. In the case of an installment judgment, the past due installments are aggregated into a lump sum with a period of enforceability running 10 years from the filing of the application for renewal. Future installments may continue to fall due under the terms of the judgment and are not affected by the renewal.

21. The necessity of satisfying the reasonable diligence requirement of existing law is a waste of judicial resources for no significant benefit. Prior to the amendment of Section 685 in 1933, the creditor could obtain issuance of a writ of execution "almost as a matter of right" after the expiration of the period prescribed by Section 681 (five years at the time). *Butcher v. Brouwer*, 21 Cal.2d 354, 357, 132 P.2d 205 (1942). However, in *Butcher* the court held that execution could issue only if the judgment creditor has

exercised due diligence in locating and levying upon property owned by the debtor, or in following available information to the point where a reasonable person would conclude that there was no property subject to levy within that time. And even though the creditor may have satisfied the court that he has proceeded with due diligence . . . , the court may still deny him its process if the debtor shows circumstances occurring subsequent to the five-year period upon which, in the exercise of a sound discretion, it should conclude that he is not now entitled to collect his judgment.

Id. at 358, 132 P.2d at _____. For the application of this standard in a variety of factual settings, see the cases cited in 5 B. Witkin, *California Procedure Enforcement of Judgment* § 202, at 3555 (2d ed. 1971).

the court clerk.²² Other liens and enforcement proceedings may also be continued after the expiration of a prior 10-year enforcement period if a certified copy of the application for renewal has been served on or filed or recorded with the proper person.

COSTS OF ENFORCEMENT

Existing provisions governing the award and collection of the costs incurred in enforcing a judgment are scattered.²³ The proposed law reorganizes these provisions and makes clarifying changes. The proposed law also corrects one substantive defect in the costs provisions. Under existing law, a levying officer who makes a levy under the writ collects, in addition to the costs entered on the writ, "the commissions and costs of the levying officer",²⁴ but no provision is made for review of the amount collected. The proposed law adds a provision to enable the judgment debtor to have the costs collected by the levying officer under a writ taxed by the court within six months after their collection.

Accrual of Interest

The proposed law continues the general rule that interest on a money judgment commences to accrue upon entry of the judgment.²⁵ In the case of a money judgment payable in installments, the proposed law

22. This provision achieves the same result as under existing law in a case where a judgment in an action on a money judgment is recorded to create a judgment lien on the judgment debtor's property that is still subject to the judgment lien of the original judgment. See *Provisor v. Nelson*, 234 Cal. App.2d Supp. 876, 44 Cal. Rptr. 894 (1965). The proposed law also permits the renewal of a judgment lien on an interest in real property that has been transferred subject to the lien.

23. See Sections 682.2, 691, 1032.6, 1033.7. Provisions relating to advance deposit of costs of the levying officer are found in Section 488.050 (incorporated by Section 688(b)) and Government Code Sections 6100 and 24350.5.

24. Section 682.2.

25. See Sections 682.2, 1033; *Dixon Mobile Homes, Inc. v. Walters*, 48 Cal. App.3d 964, 122 Cal. Rptr. 202 (1975).

makes clear that interest accrues on each installment from the date it becomes due unless the judgment otherwise provides.²⁶

As a general rule, the judgment creditor is entitled to receive interest on the unpaid principal amount of the judgment until the judgment is satisfied.²⁷ However, full satisfaction of a judgment through the levy process would not be possible if minimal amounts of interest were to continue to accrue until the judgment creditor is actually paid the proceeds of collection or sale by the levying officer.²⁸ For this reason, existing law grants interest only to the date of levy if the judgment is satisfied in full pursuant to a levy under writ of execution.²⁹ The proposed law modifies this rule to provide that, if a money judgment is satisfied in full pursuant to a writ, interest ceases to accrue when the proceeds are received by the levying officer. This change will reduce the lost interest to a practical minimum.³⁰ In all other cases of full or partial satisfaction, the proposed law makes

26. See, e.g., Huellmantel v. Huellmantel, 124 Cal. 583, 589-90, 57 P. 582 (1899); In re Marriage of Hoffee, 60 Cal. App.3d 337, 131 Cal. Rptr. 637 (1976).

27. See, e.g., State v. Day, 76 Cal. App.2d 536, 556, 173 P.2d 399 (1946); City of Los Angeles v. Aitken, 32 Cal. App.2d 524, 531-32, 90 P.2d 377 (1939).

28. Most collections are in the form of personal checks which must clear before the levying officer may safely pay the amount collected to the judgment creditor. There is also an inevitable delay in processing the proceeds through the sheriff's or marshal's office and in the issuance of warrants by the appropriate auditing agency. Judgment creditors are probably content with receiving a substantially full satisfaction by this process and are not unduly troubled by the loss of several weeks' worth of interest.

29. See Section 682.2.

30. The judgment creditor will be entitled to interest accruing from the date of levy until the date of sale or collection, but will still not receive any interest for the time it takes to pay out the funds received by the levying officer.

clear that interest runs until the judgment is satisfied, whether by actual receipt of payment by the judgment creditor, tender, deposit in court, or otherwise.³¹

Interest on Costs

The existing statutes are silent on the question whether interest accrues on costs that have been incurred during the enforcement process. Generally, interest accrues on "judgments."³² Costs allowed pursuant to a memorandum of costs or a motion for costs are entered "on the margin of the judgment" and are included in writs subsequently issued to enforce the judgment.³³ Whether this makes costs part of the judgment for purposes of interest is not clear. The Judicial Council form of the writ of execution, through a quirk of drafting, provides for interest on costs if there has been a partial satisfaction of the judgment but not otherwise.³⁴

The proposed law provides that costs advanced by the judgment creditor draw interest from (1) the date a court order allowing the costs is filed or (2), if a memorandum of costs is filed and no motion to tax is made, the date of expiration of the time for making the motion. Interest is intended to compensate the judgment creditor for the loss of use of money advanced by the judgment creditor to cover collection costs.

31. For example, if a partial satisfaction is received as the result of a levy, the judgment creditor will be entitled to apply the partial satisfaction to the total amount due, including interest and allowed costs, on the date the partial satisfaction is received from the levying officer. In the case of a partial satisfaction, the expense of the law's delay is borne by the judgment debtor who had the ability to pay part of the judgment voluntarily and so could have avoided the extra amount of interest as well as collection costs.

32. See Sections 682.1, 682.2.

33. Section 1033.7; see also Sections 682.1, 682.2, 691.

34. See Writ of Execution (Form Approved by the Judicial Council of California, effective January 1, 1978).

SERVICE OF WRITS, NOTICES, AND OTHER PAPERS

Existing law provides a variety of methods for serving writs, notices, and other papers in connection with the enforcement of a judgment.³⁵ Some provisions permit use of ordinary mail, others require certified or registered mail, and others permit service by personal delivery or ordinary mail.

The proposed law provides general provisions for the service of writs, notices, and other papers. These provisions apply unless a particular provision otherwise provides. Generally the proposed law permits service by personal delivery or by first-class mail, postage prepaid. First-class mail is preferable to certified or registered mail because it is cheaper and more likely to be received expeditiously.

The proposed law requires service on the attorney for the judgment creditor (rather than on the judgment creditor) if the judgment creditor has an attorney of record in the action or proceeding and the attorney still represents the judgment creditor. When some action is required within a short time to protect the judgment creditor's interests, serving the attorney directly will give the attorney more time to take the necessary action.

The proposed law permits the judgment debtor to file a request in the action that service be made on the judgment debtor's attorney rather

35. Notice provisions vary under existing law. See, e.g., Sections 11 (certified mail complies with registered mail requirement), 682a (bank notice to holder of joint account levied upon sent by registered mail), 682.1 (copy of writ of execution mailed to judgment debtor after levy), 688(b) (service of writ of execution on judgment debtor by personal delivery or by mail), 689 (demand for undertaking sent to judgment creditor by registered or certified mail), 689b(3) (demand for undertaking or deposit sent to judgment creditor by registered or certified mail), 690.2(d) (notification by levying officer to judgment debtor of multiple vehicle registration), 690.30(b)(2) (notification by levying officer to judgment creditor of nature of account into which social security payments are directly deposited), 690.31(1) (copies of papers in dwelling exemption proceedings sent to judgment debtor and certain third persons by first-class mail), 692, para. 2 (notice of personal property sale mailed or delivered to judgment debtor), 692, para. 3 (notice of real property sale sent by certified mail or delivered to judgment debtor), 692a (notice of sale mailed to persons requesting notice), 710(d) (notice mailed by court clerk to parties interested in condemnation award).

than on the judgment debtor. This provision is also designed to give the attorney more time to take any action needed to protect the interests of the judgment debtor.

The existing wage garnishment statute includes a provision that permits the judgment debtor or the judgment debtor's agent to deliver personally a notice or document that otherwise would be served by the levying officer.³⁶ This is permitted only if the notice or document runs in the judgment debtor's favor and the permission of the levying officer is obtained. The proposed law generalizes this provision to cover an order, notice, or other paper and extends the provision to cover personal delivery by the judgment creditor or the judgment creditor's agent. Permission of the levying officer must be obtained. The cost of service is not a recoverable cost, but this would not affect the right to recover the cost of service by a registered process server to the extent otherwise permitted.

Whenever the proposed law requires service of notice of a court hearing, proof of service must be made at or before the hearing to the satisfaction of the court.³⁷ This general requirement supersedes comparable provisions of existing law applicable to particular notices.³⁸

The proposed law requires the judgment creditor to include in the instructions to the levying officer the correct name and address of any person required to be given notice by the levying officer. The judgment creditor is required to use reasonable diligence to ascertain the correct name and address of the person. The levying officer may rely on the instructions unless the levying officer has actual knowledge that the name or address included in the instructions is incorrect.

36. Section 723.101(c).

37. The proposed law specifies methods, consistent with existing law, for proof of service.

38. See, e.g., Section 723.105(e) (hearing on claim of exemption from wage garnishment).

PROTECTION OF LEVYING OFFICER AGAINST LIABILITY

Existing law contains various provisions that give the levying officer protection against liability for actions taken in connection with the enforcement of a judgment.³⁹ The proposed law replaces these provisions with a general provision that the levying officer is not liable for actions taken in conformance with the statutes. The immunity under the proposed law extends to actions taken in reliance on information contained in the written instructions of the judgment creditor except to the extent the levying officer has actual knowledge that the information is incorrect. This immunity does not limit any liability the judgment creditor may have for incorrect information given in the instructions.⁴⁰

The Attachment Law protects the levying officer from liability for loss by fire, theft, injury, or damage to personal property while in the possession of the levying officer either in a warehouse or in the custody of a keeper or en route to or from a warehouse unless the levying officer is negligent in the care or handling of the property.⁴¹ A levying officer acting under the proposed law is given the same protection.

39. See Sections 262 (judgment creditor's instructions must be in writing to discharge levying officer from liability), 262.1 (levying officer required to execute all process regular on its face and issued by competent authority), 689 (levying officer not liable to third person for levy, etc., if no third-party claim delivered or if provisions of Section 689 followed), 689b(9) (levying officer not liable for levy, etc., if undertaking given), 697 (levying officer not liable for more than amount bid by subsequent purchaser where first bidder fails or refuses to pay amount bid at execution sale).

40. The proposed law imposes on the judgment creditor a duty to use reasonable diligence to ascertain the correct name and address of any person required to be given notice and to include that information in the written instructions given to the levying officer.

41. Section 488.060(b).

FORMS

The proposed law gives the Judicial Council authority to make rules for practice and procedure under the law and to prescribe forms for applications, notices, orders, writs, and other documents.⁴² The proposed law provides forms for writs and some other important notices and documents, but the Judicial Council is given the authority to supersede and supplement the statutory forms.

42. Under existing law, the Judicial Council has issued approved forms for the general writ of execution (covering money judgments and judgments for the possession of property) and for the writ of execution against a dwelling house. A statutory form of the writ of execution on a money judgment is provided by Section 682.1 and a statutory form for notice of proposed levy on a dwelling is provided by Section 690.31.

Code of Civil Procedure §§ 680.010-724.xxx (added). Enforcement of judgments

SEC. ____ . Title 9 (commencing with Section 680.010) is added to Part 2 of the Code of Civil Procedure, to read:

TITLE 9. ENFORCEMENT OF JUDGMENTS

DIVISION 1. DEFINITIONS AND GENERAL PROVISIONS

CHAPTER 1. SHORT TITLE AND DEFINITIONS

§ 680.010. Short title

680.010. This title shall be known and may be cited as the Enforcement of Judgments Law.

Comment. Section 680.010 is new and provides a convenient means of referring to this title.

[Remainder of this Chapter to be assembled.]

968/652

CHAPTER 2. GENERAL PROVISIONS

§ 681.010. Provisions for enforcing judgments

681.010. Except as otherwise provided by statute:

- (a) A money judgment is enforceable as provided in Division 2 (commencing with Section 695.010).
- (b) A judgment for possession of personal property is enforceable as provided in Chapter 2 (commencing with Section 714.010) of Division 3.
- (c) A judgment for possession of real property is enforceable as provided in Chapter 3 (commencing with Section 715.010) of Division 3.
- (d) A judgment for sale of real or personal property is enforceable as provided in Chapter 4 (commencing with Section 716.010) of Division 3.
- (e) A judgment requiring performance of an act not described in subdivisions (a) through (d) or requiring forbearance from performing an act is enforceable as provided in Chapter 5 (commencing with Section 717.010) of Division 3.

Comment. Section 681.010 supersedes former Section 684. It refers to the provisions of this title that provide the means available for the enforcement of a judgment entered in this state. See Section 680.____ ("judgment" defined). The introductory clause recognizes that this title does not provide the exclusive means for enforcing all judgments entered in this state. See, e.g., Civil Code § 4701 (payment of child support enforceable by order for wage assignment). Also an order for support of a spouse or child is enforceable by contempt as well as by proceedings under this title. See In re Hendricks, 5 Cal. App.3d 793, 85 Cal. Rptr. 220 (1970). See also 5 B. Witkin, California Procedure Enforcement of Judgment § 158, at 3519-20 (2d ed. 1971). See also Gov't Code §§ 942, 965.6, 965.7, 965.8, 965.9, 970.1, 970.2 (enforcement of money judgments against public entities).

A money judgment entered in another state is not enforceable pursuant to this title until a California judgment has been entered based on the sister state money judgment. See Sections 1710.10(c) ("sister state judgment" defined), 1710.25 (entry of California judgment), 1710.35 (enforcement), 1710.60 (action on judgment). A support order issued in another state is enforceable in the same manner as a support order rendered in this state after it has been registered in California. See Sections 1698 (registration of foreign support order), 1699 (enforcement). A federal district court judgment entered or registered in this state is enforceable in the manner provided by federal law which to some extent incorporates state enforcement procedures. See Fed. R. Civ. P. 69(a) (enforcement of district court money judgment); 28 U.S.C. § 1963 (1976) (registration of judgment of one district court in another district). A money judgment of a court of a foreign nation is enforceable pursuant to Section 1713.3.

CROSS-REFERENCES

Defined terms

Money judgment § 680.____
 Period of enforceability §§ 683.010-683.220

404/996

§ 681.020. Personal delivery in lieu of mailing

681.020. Whenever under this title a writ, notice, order, or other paper is required or permitted to be mailed, whether by first-class, certified, or registered mail, it may be delivered personally to the person to whom it is required or permitted to be mailed. Personal delivery as provided in this section is deemed to satisfy the provision that requires or permits the paper to be mailed.

Comment. Section 681.020 is new. For provisions applicable where a person is required to be served personally or by mail, see Sections 684.010-684.080.

§ 681.030. Rules for practice and procedure; forms

681.030. (a) The Judicial Council may provide by rule for the practice and procedure in proceedings under this title.

(b) The Judicial Council may prescribe the form of the applications, notices, orders, writs, and other documents under this title. A form prescribed by the Judicial Council under this section supersedes any corresponding form provided in this title and is deemed to comply with this title. The Judicial Council may prescribe forms in languages other than English.

Comment. Section 681.030 authorizes the Judicial Council to adopt and revise forms which supersede those provided in Chapter 19 (commencing with Section 693.010). The last two sentences of subdivision (b) are drawn from comparable provisions formerly contained in Section 723.120 (wage garnishment).

21984

CHAPTER 3. PERIOD FOR ENFORCEMENT AND RENEWAL
OF JUDGMENTS

Article 1. Period for Enforcement of Judgments

§ 683.010. Judgment enforceable upon entry

683.010. Except as otherwise provided by statute or in the judgment, a judgment is enforceable under this title upon entry.

Comment. Section 683.010 continues the substance of a portion of former Section 681. Nothing in Section 683.010 limits the authority of the court to stay enforcement of a judgment under any other applicable statutory provisions, such as Sections 916-923.

CROSS-REFERENCES

Defined terms

Judgment § 680.____

968/673

§ 683.020. Ten-year period for enforcement of judgment

683.020. Except as otherwise provided by statute, upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property:

(a) The judgment may not be enforced.

(b) All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease.

(c) Any lien created by an enforcement procedure pursuant to the judgment is extinguished.

Comment. Section 683.020 supersedes the first sentence of former Section 681 (which provided a 10-year enforcement period). Unless the judgment is renewed by action (see Section 683.050) or pursuant to Article 2 (commencing with Section 683.110), a judgment is enforceable only for 10 years; at the end of this period, enforcement of the judgment is barred and any liens created by the enforcement process are extinguished. No further action, including levy, sale, collection, or delivery pursuant to the judgment, or pursuant to a writ or order issued to enforce the judgment, may take place. The rule announced in *Alonso Inv. Corp. v. Doff*, 17 Cal.3d 539, 541-43, 551 P.2d 1243, 131 Cal. Rptr. 411 (1976), permitting the enforcement of a writ of execution after the expiration of the 10-year period if the writ had been timely issued, is not continued, subject to an exception where the judgment is renewed. See Section 683.200 (continuation of enforcement procedures upon renewal).

Section 683.020 applies only to money judgments and judgments for the possession or sale of property. Accordingly, other judgments--such as those governed by Chapter 5 (commencing with Section 717.010) of Division 3--are not subject to the 10-year rule of Section 683.020. Section 683.030 provides a special rule applicable to money judgments payable in installments. See also Sections 683.060 (judgments under Family Law Act excluded from this article), 683.070 (money judgment against public entity excluded from this article).

The 10-year period provided by this section is not tolled for any reason. The statement in *Nutt v. Nutt*, 247 Cal. App.2d 166, 168, 55 Cal. Rptr. 380 (1966), that the absence from the state of the judgment debtor and the debtor's property tolls the running of the time to seek a writ of execution under former Section 681, does not apply to this chapter. However, a judgment may be used as an offset after the expiration of the 10-year period if the claim of the judgment debtor (against which the judgment is offset) existed during the 10-year period during which the judgment was enforceable. See Section 431.70 and Comment thereto. The judgment creditor may also be able to bring an action on the judgment after the 10-year enforcement period of this section has expired if the statute of limitations provided by Section 337.5 has not yet run. See Section 683.050 and the Comment thereto.

CROSS-REFERENCES

Defined terms

Judgment § 680.____
 Money judgment § 680.____

968/675

§ 683.030. Time for enforcement of installment judgment

683.030. If a money judgment is payable in installments, the 10-year period of enforceability prescribed by Section 683.020 runs as to each installment from the date the installment becomes due.

Comment. Section 683.030 codifies case law concerning the time within which installment judgments may be enforced. Cf. Wolfe v. Wolfe, 30 Cal.2d 1, 4, 180 P.2d 345 (1947) (installment judgment for support). For provisions authorizing installment judgments, see Code Civ. Proc. §§ 85 (municipal or justice court may order installment payment of money judgment), 667.7 (periodic payment of future damages in action against provider of health care services); Labor Code §§ 5801, 5806 (installment payment of worker's compensation award); Veh. Code § 16380 (installment payment of vehicle accident damage judgment). Some installment judgments are not governed by this article. See Sections 683.060 (spousal or child support), 683.070 (money judgment against public entity).

CROSS-REFERENCES

Defined terms

Money judgment § 680.____

21986

§ 683.040. Application for writ more than 10 years after entry of judgment

683.040. If the judgment creditor applies for a writ for the enforcement of a money judgment or a judgment for possession or sale of property and the application is made more than 10 years after the date of the entry of the judgment, the application shall be accompanied by an affidavit of a person having knowledge of the facts stating facts showing that the issuance of the writ sought in the application is not barred under this chapter. A copy of the affidavit shall be attached to the writ when issued.

Comment. Section 683.040 establishes a new requirement designed to provide information to the court clerk and levying officer when a writ is sought more than 10 years after the judgment was entered. An affidavit will satisfy the requirements of this section if it states that the 10-year limitation period (Section 683.020) has been extended by renewing the judgment pursuant to Article 2 (commencing with Section 683.110). Where the judgment is a money judgment payable in installments, the affidavit will be sufficient if it states that the 10-year limitation period (Section 683.030) has not run as to the installment or installments covered by the application for the writ. Section 683.040 does not apply to a judgment for child or spousal support; Civil Code Section 4383 requires the creditor to obtain a court order to enforce support obligations that are more than 10 years overdue. See Section 683.060.

CROSS-REFERENCES

Defined terms

Judgment creditor § 680.____

Money judgment § 680.____

Judgments for possession, personal property § 714.010 et seq.

Judgments for possession, real property § 715.010 et seq.

Judgments for sale § 716.010 et seq.

§ 683.050. Right of action on judgment preserved

683.050. Nothing in this chapter limits any right the judgment creditor may have to bring an action on a judgment, but any such action shall be commenced within the period prescribed by Section 337.5.

Comment. Section 683.050 makes clear that the 10-year period of enforcement prescribed by Section 683.020 and the renewal procedure provided by Article 2 (commencing with Section 683.110) do not affect the right to bring an action on a judgment. The limitation period for commencing the action is prescribed by Section 337.5. The 10-year period provided by Section 683.020 and the 10-year statute of limitations provided by Section 337.5 are not coterminous. The period prescribed in Section 683.020 commences on the date of entry and is not tolled for any reason. The statute of limitations commences to run when the judgment is final (see *Turner v. Donovan*, 52 Cal. App.2d 236, 126 P.2d 187 (1942)) and may be tolled such as by the debtor's absence from the state (see Section 351). See also Section 683.220 (action on renewed judgment).

CROSS-REFERENCES

Defined terms

Judgment § 680.____
 Judgment creditor § 680.____

32723

§ 683.060. Judgments under Family Law Act

683.060. This chapter does not apply to judgments made or entered pursuant to the Family Law Act, Part 5 (commencing with Section 4000) of Division 4 of the Civil Code.

Comment. Section 683.060 excludes judgments under the Family Law Act from the coverage of this chapter. See Civil Code 4382.

405/454

§ 683.070. Judgments against public entities

683.070. This chapter does not apply to a money judgment against a public entity that is subject to Section 965.5 or 970.1 of the Government Code.

Comment. Section 683.070 is included to reflect the fact that the period of enforceability of a money judgment against the state or a local public entity is governed by provisions of the Government Code. The period of enforceability of a money judgment against a public entity may not be extended using the renewal procedure under Sections 683.110-683.220. This does not, however, affect the right to bring an action on the judgment.

Note. Sections 965.5 and 970.1 would be added to the Government Code by A.B. 2146.

Article 2. Renewal of Judgments

§ 683.110. Renewal of judgment authorized

683.110. The period of enforceability of a money judgment or a judgment for possession or sale of property may be extended by renewal of the judgment as provided in this article.

Comment. Sections 683.110-683.220 provide a new procedure for renewing judgments. This procedure is drawn from the procedure for enforcing sister state money judgments (Sections 1710.10-1710.65). Renewal under this article permits enforcement of a judgment beyond the basic 10-year period prescribed by Section 683.020. This procedure supersedes the procedure under former Section 685 pursuant to which a judgment could be enforced upon noticed motion after the expiration of 10 years in the discretion of the court upon a showing of the reasons for failure to enforce the judgment during the first 10 years. This article does not require the judgment creditor to demonstrate diligence in enforcing the judgment, but if renewal is not accomplished within 10 years after entry of the judgment, the judgment becomes unenforceable. See Section 683.020. See also Section 683.050 (right of action on judgment preserved).

CROSS-REFERENCES

Defined terms

- Money judgment § 680.____
- Judgments for possession, personal property § 714.010 et seq.
- Judgments for possession, real property § 715.010 et seq.
- Judgments for sale § 716.010 et seq.

§ 683.120. Judgment renewed upon filing of application; effect of renewal

683.120. (a) The judgment creditor may renew the judgment by filing an application for renewal of the judgment with the court in which the judgment was entered.

(b) Except as otherwise provided in this article, the filing of an application for renewal of the judgment extends the period of enforceability of the judgment until 10 years from the date of filing.

(c) In the case of a money judgment payable in installments, the enforceability of the judgment for the amounts described in the application for renewal is extended until 10 years from the date of filing.

The renewed installments (with allowed costs) comprising the principal amount due shall be treated as a lump-sum money judgment entered on the date of the filing of the application for renewal for the purposes of enforcement and of any later renewal.

Comment. Under Section 683.120 the enforceability of the judgment is extended until 10 years from the date the application for renewal is filed. Renewal under this article does not result in entry of a new judgment as would be the case where an action is brought on a California or sister state judgment or where a California judgment is entered on the basis of a sister state judgment. See Sections 683.050 (right of action on judgment preserved), 1710.25, 1710.35 (entry of California judgment on basis of sister state judgment).

Subdivision (c) makes clear that the application for renewal of an installment judgment reduces past due amounts of principal (including allowed costs) to a lump sum enforceable for an additional 10 years. Future installments continue to accrue under the judgment as originally entered according to its terms. The renewal also extends the right to enforce the payment of accrued interest for 10 years from the date the application for renewal is filed; but, in order to avoid compounding of interest, this interest is not added to the principal. See Section 683.150(b).

This renewal procedure does not apply to the enforcement of judgments for support. See Section 683.060; Civil Code §§ 4380, 4382.

CROSS-REFERENCES

Defined terms

- Costs § 680.____
- Court § 680.____
- Judgment creditor § 680.____
- Money judgment § 680.____

12801

§ 683.130. Time for filing application

683.130. (a) In the case of a lump-sum money judgment or a judgment for possession or sale of property, the application for renewal of the judgment may be filed at any time prior to the expiration of the 10-year period of enforceability provided by Section 683.020 or, if the judgment is a renewed judgment, at any time prior to the expiration of the 10-year period of enforceability of the renewed judgment provided by Section 683.120.

(b) In the case of a money judgment payable in installments, the application for renewal of the judgment may be filed at any time as to past due installments that at the time of filing are not barred by the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

Comment. Subdivision (a) of Section 683.120 prescribes the general rule that renewal may be accomplished at any time when the judgment is still enforceable. See also Section 683.210 (renewal permitted during stay of enforcement). Renewal may take place during the basic 10-year period of enforcement (see Section 683.020) or during any subsequent renewal period (see Section 683.120). There is no limit on the number of renewals.

Subdivision (b) states a special application of the general rule to installment judgments. Renewal as to any installment must take place within 10 years after the installment becomes due. See Section 683.030 (time for enforcement of installment judgment). This provision governs, for example, installment judgments under Code of Civil Procedure Sections 85 (municipal or justice court may order installment payment of money judgment) and 667.7 (periodic payment of future damages in action against provider of health care services), Labor Code Sections 5801, 5806 (installment payment of worker's compensation award), and Vehicle Code Section 16380 (installment payment of vehicle accident damage judgment). When a judgment is renewed as to past due installments, the renewed judgment is a lump-sum judgment (see subdivision (c) of Section 683.120) which thereafter is governed by subdivision (a) of Section 683.130. See Section 683.150(a)(1).

CROSS-REFERENCES

Defined terms

Judgment § 680.____

Money judgment § 680.____

Judgments for possession, personal property § 714.010 et seq.

Judgments for possession, real property § 715.010 et seq.

Judgments for sale § 716.010 et seq.

32809

§ 683.140. Contents of application

683.140. The application for renewal of the judgment shall be executed under oath and shall include all of the following:

(a) The title of the court where the judgment is entered and the cause and number of the action.

(b) The date of entry of the judgment and of any subsequent renewals, and where entered in the records of the court.

(c) The name and last known address of each of the following:

(1) The judgment debtor.

(2) The judgment creditor.

(3) The original judgment creditor, if different from the judgment creditor filing the application.

(d) The total amount or terms of the judgment as entered if the judgment has not previously been renewed or, if the judgment has been

renewed, the total amount or terms of the judgment under the most recent renewal.

(e) The amount of costs allowed subsequent to the entry or the prior renewal of the judgment.

(f) The amount of accrued interest to the date of the application.

(g) The amount of any partial satisfactions.

(h) The net balance of the principal (including allowed costs) remaining due on the judgment, the amount of accrued interest remaining due on the judgment, and any other performance remaining due.

Comment. Section 683.140 sets forth the contents of the application for renewal of a judgment. It is drawn in part from Section 1710.15 (application for entry of judgment based on sister state judgment). The amount of principal and costs and the amount of interest are required to be separately stated to avoid compounding of interest. See Section 683.150(b). See also Section 685.010 (interest accrues on amount of money judgment remaining unsatisfied), 685.090 (addition of costs to judgment).

CROSS-REFERENCES

- Declaration under penalty of perjury § 2015.5
- Defined terms
 - Costs § 680.____
 - Court § 680.____
 - Judgment § 680.____
 - Judgment creditor § 680.____
 - Judgment debtor § 680.____

406/223

§ 683.150. Entry of renewal by court clerk

683.150. (a) Upon the filing of the application, the court clerk shall enter the renewal of the judgment in the court records and shall file the application in the action.

(b) In the case of a money judgment, the entry of renewal shall show separately both of the following as set forth in the application:

(1) The amount of principal (including allowed costs) remaining unpaid under the judgment. In the case of a judgment payable in installments, this amount is the amount of the unpaid past due installments described in subdivision (b) of Section 683.130 and allowed costs.

(2) The amount of unpaid accrued interest on the judgment.

(c) In the case of a judgment for possession or sale of property, the entry of renewal shall describe the performance remaining due.

Comment. Section 683.150 requires that the court clerk enter the renewal of the judgment based on the application. The entry of the renewal by the court clerk is a ministerial act. Section 683.150 requires that the amount of principal (which includes allowed costs) and the amount of interest be separately stated in order to avoid compounding of interest.

CROSS-REFERENCES

Costs, addition to principal of judgment § 685.090
 Defined terms
 Costs § 680.____
 Money judgment § 680.____
 Interest, accrual on amount of money judgment remaining unsatisfied
 § 685.010
 Judgments for possession, personal property § 714.010 et seq.
 Judgments for possession, real property § 715.010 et seq.
 Judgments for sale § 716.010 et seq.

32810

§ 683.160. Service of notice of renewal; proof of service

683.160. (a) The judgment creditor shall personally serve a notice of renewal of the judgment on the judgment debtor and shall file proof of service with the court clerk. The notice shall be in a form prescribed by the Judicial Council and shall inform the judgment debtor that the judgment debtor has 30 days within which to make a motion to vacate the renewal.

(b) If proof of service is not filed pursuant to subdivision (a), no writ may be issued to enforce the judgment after the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

Comment. Subdivision (a) of Section 683.160 is derived from subdivision (a) of Section 1710.30 and a portion of subdivision (b) of Section 1710.40 pertaining to sister state judgments. Under Section 683.150, the entry and filing of the renewal is a ministerial act. The judgment debtor is protected, however, by the provisions for notice under Section 683.160 and the opportunity to seek an order vacating or modifying the renewal pursuant to Section 683.170.

Subdivision (b) is designed to prevent issuance of a writ after 10 years in a case where the judgment creditor has failed to serve notice of renewal on the judgment debtor. See also Section 683.040 (application for writ after 10 years).

CROSS-REFERENCES

Defined terms
 Judgment § 680.____
 Judgment creditor § 680.____
 Judgment debtor § 680.____
 Writ § 680.____
 Personal service § 684.030
 Proof of service § 684.080

§ 683.170. Vacation or modification of renewal

683.170. (a) The renewal of a judgment pursuant to this article may be vacated on any ground that would be a defense to an action on the judgment, including the ground that the amount of unpaid principal or unpaid accrued interest entered pursuant to this article is incorrect.

(b) Not later than 30 days after service of the notice of renewal pursuant to Section 683.160, the judgment debtor, on written notice to the judgment creditor, may make a motion under this section to vacate the renewal of the judgment.

(c) Upon the hearing of the motion, the renewal may be ordered vacated upon any ground provided in subdivision (a), and another and different renewal may be entered (including, but not limited to, the renewal of the judgment in a different amount if the decision of the court is that the judgment creditor is entitled to renewal in a different amount).

Comment. Section 683.170 is derived from Section 1710.40 pertaining to sister state judgments. If it is determined at the hearing that a different amount of principal (including allowed costs) is due on the judgment than is stated in the judgment creditor's application for renewal or that the accrued interest is incorrectly stated in the application, the court may order renewal in the correct amount pursuant to subdivision (c). On the other hand, if the court determines that the judgment has been fully satisfied or set off, the renewal should be vacated. If a motion to vacate is not made within the time stated in subdivision (b), the judgment remains enforceable in the amounts stated in the application for renewal. See Section 683.150.

CROSS-REFERENCES

Defined terms

Judgment § 680.____
Judgment creditor § 680.____
Judgment debtor § 680.____

§ 683.180. Continuation of judgment lien on real property

683.180. If a judgment lien on an interest in real property has been created pursuant to a judgment and the judgment is renewed pursuant to this article, the duration of the judgment lien is extended until 10 years from the date of the filing of the application for renewal if,

prior to the expiration of the judgment lien, a certified copy of the application for renewal is recorded with the county recorder of the county where the real property subject to the judgment lien is located.

Comment. Section 683.180 provides a special procedure for continuing a judgment lien on an interest in real property. See generally Article 2 (commencing with Section 697.310) of Chapter 2 of Division 2 (judgment liens on interests in real property). Extension of the judgment lien for an additional 10 years under this section is analogous to the result obtained where a judgment in an action on a money judgment is recorded while a judgment lien under the original judgment is still in effect. See *Provisor v. Nelson*, 234 Cal. App.2d Supp. 876, 44 Cal. Rptr. 894 (1965). The priority of the judgment lien on an interest in real property remains the same, but the extension adds 10 years to the life of the lien dating from the time the application for renewal is filed. See also Section [697.050] (duration of liens). The judgment lien is extended only if the certified copy of the application for renewal is recorded while the judgment lien is still in effect. If the property has been transferred subject to the lien, an extension pursuant to this section extends the lien on the property in the hands of the transferee.

32816

§ 683.190. Continuation of other liens

683.190. If a lien (other than a judgment lien on an interest in real property) has been created by an enforcement procedure pursuant to a judgment and the judgment is renewed pursuant to this article, the duration of the lien is extended, subject to any other limitations on its duration under this title, until 10 years from the date of the filing of the application for renewal of the judgment if, prior to the expiration of the lien, a certified copy of the application for renewal is served on or filed or recorded with the same person and in the same manner as the writ, notice, or order that created the lien.

Comment. Section 683.190 permits the continuation of liens other than judgment liens on interests in real property. Under Section 683.190, however, liens of limited duration, such as execution liens (one year) and judgment liens on personal property (five years), are not increased in duration but are permitted to continue past the 10-year period specified in Section 683.020. See Sections 699.010 (execution lien), 697.560 (duration of judgment lien on personal property). However, liens governed by the general rule that the lien exists as long as the judgment is enforceable (see Section 697.050) are increased in duration pursuant to Section 683.190.

§ 683.200. Continuation of enforcement procedures

683.200. If a judgment is renewed pursuant to this article, any enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment that would have ceased pursuant to Section 683.020 had the judgment not been renewed may be continued, subject to any other limitations provided in this title, upon the filing of a certified copy of the application for renewal of the judgment in any such proceeding or with the levying officer, receiver, or other officer acting pursuant to such writ or order.

Comment. Section 683.200 permits the continuation of enforcement procedures under this title that would otherwise have ceased because of the expiration of the period of enforceability. See Section 683.020. For example, a sale of real property pursuant to a writ of execution may proceed after the expiration of 10 years from the date of entry of the judgment if the judgment is renewed within the time allowed and a certified copy of the application for renewal is filed with the levying officer in charge of the sale. Likewise, an examination proceeding may continue if the certified copy of the application for renewal is filed with the court that is to conduct the examination.

CROSS-REFERENCES

Defined terms

Judgment § 680.____

Levying officer § 680.____

Writ § 680.____

Receivers § 708.610

§ 683.210. Renewal during stay of enforcement

683.210. A judgment may be renewed notwithstanding any stay of enforcement of the judgment, but the judgment as renewed remains subject to the terms of the stay of enforcement unless otherwise ordered by the court that issued the order staying enforcement.

Comment. Section 683.210 permits the judgment creditor to obtain an extension of the enforceability of a judgment even though a stay of enforcement is in effect. Renewal may be necessary if a judgment is temporarily stayed during the time that the 10-year enforcement period prescribed by Section 683.020 is running out. Renewal during a stay of enforcement does not affect the stay, but merely prevents the termination of the period of enforceability.

CROSS-REFERENCES

Defined terms

Judgment § 680.____
 Stay of enforcement § _____

18303

§ 683.220. Limitation period for action on renewed judgment

683.220. If a judgment is renewed pursuant to this article, the date of the filing of the application for renewal shall be deemed to be the date of the entry of the judgment for the purpose of determining the period for commencing an action on the judgment provided by Section 337.5.

Comment. Section 683.220 preserves any right the judgment creditor may have to bring an action on a renewed judgment which would have existed had the judgment creditor earlier resorted to an action on the judgment instead of the renewal procedure provided by this article. See Section 683.050 (right of action on judgment preserved).

18548

CHAPTER 4. MANNER OF SERVICE OF WRITS, NOTICES,
 AND OTHER PAPERS

§ 684.010. Service on judgment creditor's or judgment debtor's attorney

684.010. (a) Subject to Chapter 1 (commencing with Section 283) of Title 5 of Part 1, when a writ, notice, order, or other paper is required to be served under this title:

(1) If the paper is required to be served on the judgment creditor, it shall be served on the judgment creditor's attorney of record rather than on the judgment creditor if the judgment creditor has an attorney of record in the action or proceeding.

(2) If the paper is required to be served on the judgment debtor, it shall be served on the attorney specified by the judgment debtor rather than on the judgment debtor if:

(A) The judgment debtor has filed in the action or proceeding and served on the judgment creditor a request that service on the judgment debtor under this title be made by serving the attorney specified in the request; and

(B) Such request has not been revoked by the judgment debtor by filing in the action or proceeding and serving on the judgment creditor a notice revoking the request.

(b) Subdivision (a) does not apply to subpoenas and other process to require the attendance of a party or to papers to bring a party into contempt.

Comment. The introductory clause of subdivision (a) and paragraph (1) of subdivision (a) of Section 684.010 are drawn from the second and third sentences of Section 1015. Paragraph (2) in effect gives the judgment debtor the option to have papers served either on the judgment debtor or on the judgment debtor's attorney. The introductory clause to subdivision (a) recognizes that, if the applicable procedure is followed, an attorney of record referred to in paragraph (1) or an attorney designated in a request filed under paragraph (2) may withdraw from the case, be discharged, or be replaced by another attorney.

Subdivision (b) is drawn from a provision of Section 1015.

CROSS-REFERENCES

Defined terms

Judgment creditor § 680.____
Judgment debtor § 680.____
Writ § 680.____

404/987

§ 684.020. Manner of service on attorney

684.020. When service on an attorney is required under Section 684.010, service on the attorney shall be made in any of the following ways:

- (a) By personal delivery to the attorney.
- (b) By service in the manner provided in subdivision (1) of Section 1011.
- (c) By mail in the manner provided in Section 684.040.

Comment. Subdivisions (a) and (b) of Section 684.020 are comparable to the relevant portions of Section 1011. Subdivision (c) refers to a provision that is comparable to a portion of the first sentence of Section 1013(a).

404/991

§ 684.030. Manner of personal service

684.030. (a) Subject to subdivisions (b) and (c), when a writ, notice, order, or other paper is required to be personally served under this title, service shall be made in the same manner as a summons is served under Chapter 4 (commencing with Section 413.10) of Title 5.

(b) Where the paper is required to be personally served under this title and service on an attorney is required under Section 684.010, service shall be made on the attorney in the manner provided in Section 684.020.

(c) Where the service is on (1) a financial institution, (2) a title insurance company or underwritten title company (as defined in Section 12402 of the Insurance Code), or (3) an industrial loan company (as defined in Section 18003 of the Financial Code), service shall be made at the office or branch thereof which has actual possession of the property levied upon or at which a deposit account levied upon is carried and shall be made upon the officer, manager, or other person in charge of such office or branch at the time of service.

Comment. Subdivision (a) of Section 684.030 adopts by reference the manner for service of summons. Subdivision (b) makes clear that when personal service is required on the judgment debtor or judgment creditor, service on the attorney in the manner provided in Section 684.020 is required in cases where service is required on the attorney instead of on the judgment debtor or judgment creditor (Section 684.010). Subdivision (c) is the same in substance as Section 488.040(a) (attachment).

CROSS-REFERENCES

Defined terms

Deposit account § 680.____
Financial institution § 680.____

404/123

§ 684.040. Manner of service by mail; extension of time for exercising right or performing act

684.040. (a) Except as otherwise provided in this title, when a writ, notice, order, or other paper is to be served by mail under this title, it shall be sent by first-class mail (unless some other type of mail is specifically required) and shall be deposited in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed as follows:

(1) If an attorney is being served in place of the judgment creditor or judgment debtor as provided in Section 684.010, to the attorney at the last address as given by the attorney on any document filed in the proceeding and served on the party making the service.

(2) If any other person is being served, to such person at the person's current mailing address, if known, or otherwise at the address as last given by the person on any document filed in the proceeding and served on the party making the service.

(3) If the mailing cannot be made as provided in paragraph (1) or (2), to the person at the person's last known residence address, if known, or otherwise at the person's last known business address.

(b) Service by mail is complete at the time of the deposit; but, if within a given number of days after the service a right may be exercised or an act is to be done by the person served, the time within which the right may be exercised or the act may be done is extended:

(1) Five days if the place of address is within the State of California.

(2) Ten days if the place of address is outside the State of California but within the United States.

(3) Twenty days if the place of address is outside the United States.

(c) The writ, notice, order, or other paper served by mail under this section shall bear a notation of the date and place of mailing or be accompanied by an unsigned copy of the affidavit or certificate of mailing. This subdivision is directory only.

Comment. Section 684.040 is drawn from Section 1013. The manner of computing time under subdivision (b) is the same as under the comparable portion of Section 1013.

CROSS-REFERENCES

Defined terms

Judgment creditor § 680. ___

Judgment debtor § 680. ___

Writ § 680. ___

405/000

§ 684.050. Name and address supplied by judgment creditor

684.050. (a) If the levying officer is required by any provision of this title to serve any writ, order, notice, or other paper on any person or give any notice to any person, the judgment creditor shall include in the instructions to the levying officer the correct name and

address of the person. The judgment creditor shall use reasonable diligence to ascertain the correct name and address of the person.

(b) Unless the levying officer has actual knowledge that the name or address included in the instructions is incorrect, the levying officer shall rely thereon in serving the writ, order, notice, or other paper on the person or giving the notice to the person.

Comment. Section 684.050 is a specific application of Section 687.010 (instructions to levying officer). The address to be supplied by the judgment creditor varies in particular provisions of this title. See, e.g., Sections 684.040 (address for service), [703.310] (address shown by the records of tax assessor). See also Section 687.040 (liability of levying officer for action taken in reliance on information supplied by judgment creditor).

CROSS-REFERENCES

Defined terms

Judgment creditor § 680.____
 Levying officer § 680.____
 Writ § 680.____

405/002

§ 684.060. Service by person authorized by levying officer to make service

684.060. If a provision of this title provides for service by the levying officer of an order, notice, or other paper that runs in the favor of a particular person, personal service of the paper may be made by the person or the person's agent if the levying officer's permission is given. The levying officer's permission shall be evidenced by a certificate signed by the levying officer. This section does not authorize the levying officer to give permission to serve a writ or notice of levy. If service is made by a person or the person's agent pursuant to this section, the cost of such service is not a recoverable cost.

Comment. Section 684.060 is derived from a sentence formerly contained in Section 723.101(c) (personal service of notice or document by wage garnishment debtor). The last sentence of Section 684.060 is new, but does not affect the right to recover cost of service by a registered process server to the extent otherwise permitted. See Section 699.080.

CROSS-REFERENCES

Defined terms

Levying officer § 680.____
 Writ § 680.____

§ 684.070. Proof of service of notice of court hearing required

684.070. If service of notice of a court hearing is required under this title, proof of the giving of such notice shall be made at or before the hearing to the satisfaction of the court.

Comment. Section 684.070 is a new provision that establishes a general requirement that supersedes comparable requirements of former law, such as that formerly found in Section 723.105(e). As to the manner of making proof of service, see Section 684.080.

§ 684.080. Proof of giving of notice

684.080. If proof of notice is required in proceedings under this title, proof may be made as follows:

(a) Proof of notice by personal delivery may be made by the affidavit of the person making the delivery, showing the time and place of delivery and the name of the person to whom delivery was made.

(b) Proof of service by mail may be made in the manner prescribed in Section 1013a.

(c) Proof of posting may be made by the affidavit of the person who posted the notice.

(d) Proof of publication may be made by the affidavit of the publisher or printer, or the foreman or principal clerk of the publisher or printer, showing the time and place of publication.

(e) Proof of notice, however given, may be made by testimonial evidence.

Comment. Subdivision (a) of Section 684.080 is drawn from Section 417.10(a). Subdivision (d) is drawn from Section 417.10(b). The remainder of Section 684.080 is consistent with civil practice generally.

CHAPTER 5. COSTS AND INTEREST

§ 685.010. Rate of interest on judgment

685.010. [(a) Interest accrues at the rate of 10 percent per annum on the amount of a judgment remaining unsatisfied.

(b) The Legislature reserves the right to change the rate of interest provided in subdivision (a) at any time to a rate of not less than

seven percent per annum and not more than 10 percent per annum, regardless of the date of entry of the judgment or the date any obligation upon which the judgment is based was incurred. The change in the rate of interest may be made applicable only to the interest that accrues after the operative date of the act that changes the rate.]

Comment. [Subdivision (a) of Section 685.010 alters the legal rate of interest on judgments from seven to 10 percent as permitted by Section 1 of Article 15 of the California Constitution.

Subdivision (b) states the reserved power of the state to alter the interest rate as to both past and future judgments at any time. The rate change may apply only to interest that accrues after the operative date of the act that changes the rate.]

Note. The content of this section depends on action by the Legislature this session.

08931

§ 685.020. Commencement of interest

685.020. (a) Except as provided in subdivision (b), interest commences to accrue on a money judgment on the date of entry of the judgment.

(b) Unless the judgment otherwise provides, if a money judgment is payable in installments, interest commences to accrue as to each installment on the date the installment becomes due.

Comment. Subdivision (a) of Section 685.020 continues the general rule as to the time postjudgment interest commences to run. See former Section 682.2; *Dixon Mobile Homes, Inc. v. Walters*, 48 Cal. App.3d 964, 122 Cal. Rptr. 202 (1975); see also Section 1033.

Subdivision (b) codifies the rule concerning accrual of interest on support judgments payable in installments and extends the rule to other judgments payable in installments. See, e.g., *Huellmantel v. Huellmantel*, 124 Cal. 583, 589-90, 57 P. 582 (1899); *In re Marriage of Hoffee*, 60 Cal. App.3d 337, 131 Cal. Rptr. 637 (1976). The introductory clause of subdivision (b) also recognizes that in certain circumstances the court may have the authority to order that interest accrues from the date of entry of a judgment rendered in an amount certain but payable in installments. See Section 85 (municipal or justice court may fix terms and conditions of payment of money judgment).

CROSS-REFERENCES

Defined terms

Money judgment § 680.____

§ 685.030. Cessation of interest

685.030. (a) If a money judgment is satisfied in full pursuant to a writ under this title, interest ceases to accrue on the judgment on the date the proceeds of sale or collection are actually received by the levying officer.

(b) If a money judgment is satisfied in full other than pursuant to a writ under this title, interest ceases to accrue on the date the judgment is satisfied in full.

(c) If a money judgment is partially satisfied pursuant to a writ under this title or is otherwise partially satisfied, interest ceases to accrue as to the part satisfied on the date the part is satisfied.

(d) For the purposes of subdivisions (b) and (c), the date a money judgment is satisfied in full or in part is the earliest of the following times:

(1) The date satisfaction is actually received by the judgment creditor.

(2) The date satisfaction is tendered to the judgment creditor or deposited in court for the judgment creditor.

(3) The date of any other performance that has the effect of satisfaction.

Comment. Section 685.030 supersedes portions of former Sections 682.1 and 682.2 (interest to date of levy). In order to facilitate full satisfaction in cases where enforcement is by a levying officer pursuant to a writ, subdivision (a) cuts off interest as of the date proceeds are received by the levying officer.

Subdivisions (b) and (c) implement statements in the cases that interest runs until a judgment is paid. See *State v. Day*, 76 Cal. App.2d 536, 556, 173 P.2d 399 (1946); *City of Los Angeles v. Aitken*, 32 Cal. App.2d 524, 531-32, 90 P.2d 377 (1939). Hence, if the judgment debtor voluntarily pays the judgment, the judgment creditor is entitled to interest to the date of satisfaction, as provided in subdivision (b). Similarly, if the judgment is partially satisfied, whether pursuant to a writ or otherwise, subdivision (c) makes clear that interest runs on the part satisfied until the date the satisfaction is made.

Subdivision (d) recognizes that a judgment may be satisfied other than by a writ or voluntary payment to the judgment creditor. See, e.g., *Beeler v. American Trust Co.*, 28 Cal.2d 435, 170 P.2d 439 (1946) (tender of amount due); *Pinecrest Prods., Inc. v. RKO Teleradio Pictures, Inc.*, 14 Cal. App.3d 6, 92 Cal. Rptr 44 (1970) (deposit with court). See also Section 724.010 (judgment deemed satisfied in full if

judgment creditor accepts different performance in full satisfaction). For additional discussion concerning methods of satisfying a money judgment, see the Comment to Section 724.010.

For provisions governing the distribution of proceeds and the allocation of proceeds between interest and principal, see Sections 701.810-_____.

CROSS-REFERENCES

Defined terms

Court § 680.____
Judgment creditor § 680.____
Levying officer § 680.____
Money judgment § 680.____
Writ § 680.____

968/684

§ 685.040. Right to costs of enforcing judgment

685.040. The judgment creditor is entitled to the reasonable and necessary costs of enforcing a judgment.

Comment. Section 685.040 supersedes former Section 1032.6. The reference to superior, municipal, and justice courts in former Section 1032.6 is not continued because it is unnecessary. Recoverable costs may be limited by statute or may be subject to procedural restrictions. See, e.g., Sections 685.070 (memorandum of costs incurred must be filed within specified period), 699.080 (cost of registered process server).

CROSS-REFERENCES

Defined terms

Costs § 680.____
Court § 680.____
Judgment § 680.____
Judgment creditor § 680.____

368/244

§ 685.050. Costs and interest under writ

685.050. (a) If a writ is issued pursuant to this title to enforce a judgment, the costs and interest to be satisfied in a levy under the writ are the following:

- (1) The statutory fee for issuance of the writ.
- (2) The amount of interest that has accrued from the date of entry of the judgment to the date of issuance of the writ, if the judgment creditor has filed an affidavit with the court clerk stating such amount.

(3) The amount of interest that accrues on the amount of the judgment remaining unsatisfied from the date of issuance of the writ until the date interest ceases to accrue.

(4) The levying officer's statutory costs for performing the duties under the writ.

(b) In a levy under the writ, the levying officer shall collect the amount of costs and interest entered on the writ pursuant to paragraphs (1) and (2) of subdivision (a), compute and collect the amount of additional interest required to be collected by paragraph (3) of subdivision (a) by reference to the daily interest entered on the writ, and determine and collect the amount of additional costs pursuant to paragraph (4) of subdivision (a).

Comment. Section 685.050 supersedes former Section 682.2 and a portion of former Section 1033.7. In addition to the costs collected pursuant to this section, the levying officer will also collect previously allowed costs that have been added to the judgment and are included in the amount of the judgment remaining unsatisfied. See Section 685.090. This section applies not only to writs of execution but also to writs of possession and of sale.

CROSS-REFERENCES

Contents of writ of execution § 699.520
Date interest ceases to accrue § 685.030
Defined terms
Costs § 680.____
Court § 680.____
Judgment § 680.____
Judgment creditor § 680.____
Levying officer § 680.____
Writ § 680.____

368/245

§ 685.060. Motion to tax costs collected by levying officer

685.060. Within six months after a writ is returned, the judgment debtor may apply by noticed motion to have the costs collected by the levying officer pursuant to Section 685.050 taxed by the court. The court shall make an order allowing or disallowing the costs collected to the extent justified under the circumstances of the case. The judgment debtor has the burden of showing that the costs collected were not reasonable or were not necessary. If costs collected are disallowed,

the court shall order the entry of judgment against the judgment creditor in the amount of disallowed costs or shall order the amount of disallowed costs to be set off against any amount of the judgment against the judgment debtor remaining unsatisfied.

Comment. Section 685.060 is intended to provide a remedy for the judgment debtor in a case where costs are collected by the levying officer pursuant to Section 685.050. If the costs of issuing a writ and the levying officer's costs are not collected under the writ, the judgment creditor must resort to the memorandum procedure provided by Section 685.070 and the objections of the judgment debtor may be asserted by way of a motion to tax pursuant to Section 685.070(c).

CROSS-REFERENCES

Defined terms

Costs § 680.____
Court § 680.____
Judgment § 680.____
Judgment creditor § 680.____
Judgment debtor § 680.____
Levying officer § 680.____
Writ § 680.____

368/239

§ 685.070. Memorandum of costs of enforcing judgment

685.070. (a) The judgment creditor may claim under this section the following costs of enforcing a judgment:

(1) Statutory fees for preparing and issuing, and recording and indexing, an abstract of judgment.

(2) Statutory fees for issuing a writ for the enforcement of the judgment that are not satisfied pursuant to Section 685.050.

(3) Statutory costs of the levying officer for performing the duties under a writ that are not satisfied pursuant to Section 685.050.

(4) Costs incurred in connection with any proceeding under Chapter 6 (commencing with Section 708.010) of Division 2 that have been approved as to amount, reasonableness, and necessity by the judge or referee conducting the proceeding.

(b) Before the judgment is fully satisfied but not later than six months after the costs have been incurred, the judgment creditor claiming costs under this section shall file a memorandum of costs with the court clerk and serve personally or by mail a copy on the judgment debtor. The memorandum of costs shall be executed under oath by a

person who has knowledge of the facts and shall state that to the person's best knowledge and belief the costs are correct, are reasonable and necessary, and have not been satisfied.

(c) Within 10 days after the memorandum of costs is served on the judgment debtor, the judgment debtor may apply by noticed motion to have the costs taxed by the court. The court shall make an order allowing or disallowing the costs to the extent justified under the circumstances of the case.

Comment. Section 685.070 continues the substance of the first paragraph of former Section 1033.7, with the exception of the references in former law to the fee for issuance of a writ of prohibition. A motion under this section may be determined at chambers. See Section 166.

The costs of issuance of a writ and the levying officer's costs are automatically added to the amount to be satisfied as provided by Section 685.050. If the property levied upon under the writ is insufficient to satisfy the accrued costs, the judgment creditor must resort to the memorandum of costs procedure in this section in order to have the unsatisfied costs added to the judgment. See Section 685.090 (addition of costs to judgment).

CROSS-REFERENCES

Defined terms

- Costs § 680.____
- Court § 680.____
- Judgment § 680.____
- Judgment creditor § 680.____
- Judgment debtor § 680.____
- Levying officer § 680.____
- Writ § 680.____
- Manner of service §§ 684.010-684.080

368/240

§ 685.080. Motion for costs of enforcing judgment

685.080. (a) The judgment creditor may claim costs by noticed motion. The motion shall be made before the judgment is satisfied in full, but not later than six months after the costs have been incurred. The costs that may be claimed under this section include costs that may be claimed under Section 685.070 and costs incurred but not approved by the court or referee in a proceeding under Chapter 6 (commencing with Section 708.010) of Division 2.

(b) The notice of motion shall describe the costs claimed, shall state their amount, and shall be supported by an affidavit of a person

who has knowledge of the facts stating that to the person's best knowledge and belief the costs are correct, are reasonable and necessary, and have not been satisfied.

(c) The court shall make an order allowing or disallowing the costs to the extent justified under the circumstances of the case.

Comment. Section 685.080 continues the substance of the second paragraph of former Section 1033.7 but also permits the judgment creditor to claim costs by motion that could have been claimed pursuant to the memorandum procedure set forth in Section 685.070.

CROSS-REFERENCES

Defined terms

- Costs § 680.____
- Court § 680.____
- Judgment § 680.____
- Judgment creditor § 680.____

368/242

§ 685.090. Addition of costs to judgment

685.090. (a) Costs are added to and become a part of the judgment:

(1) Upon the filing of an order allowing the costs pursuant to this chapter.

(2) If a memorandum of the costs is filed pursuant to Section 685.070 and no motion to tax is made, upon the expiration of the time for making the motion.

(b) The costs added to the judgment pursuant to this section are included in the amount of the judgment remaining unsatisfied.

Comment. Section 685.090 supersedes the last paragraph of former Section 1033.7.

CROSS-REFERENCES

Defined terms

- Costs § 680.____
- Judgment § 680.____

405/463

§ 685.100. Deposit of levying officer's costs

685.100. (a) Except as otherwise provided by law:

(1) As a prerequisite to the performance by the levying officer of a duty under this title, the judgment creditor shall deposit a sum of

money with the levying officer sufficient to pay the costs of performing the duty.

(2) As a prerequisite to the taking of property into custody by the levying officer, whether by keeper or otherwise, the judgment creditor shall deposit with the levying officer a sum of money sufficient to pay the costs of taking the property and keeping it safely for a period not to exceed 15 days. In the event that continuation of the custody of the property is required, the levying officer shall, from time to time, demand orally or in writing that the judgment creditor deposit additional amounts to cover estimated costs for periods not to exceed 30 days each. A written demand may be mailed to the judgment creditor. The judgment creditor shall be given not less than three business days after receipt of the demand within which to comply with the demand. In the event that the amount so demanded is not paid within the time specified in the oral or written demand, the levying officer shall release the property in the manner provided by Section 699.060.

(b) The levying officer is not liable for failure to take or hold property unless the judgment creditor has fully complied with the provisions of this section.

Comment. Subdivision (a)(1) of Section 685.100 makes more specific the requirement that costs of the levying officer be paid in advance. See Gov't Code §§ 6100, 24350.5.

Subdivision (a)(2) is comparable to Section 488.050 (expenses in attachment) and recognizes the practice under former law of making an oral demand for costs.

The introductory clause of subdivision (a) recognizes that there are exceptions to the general rule stated in Section 685.100, such as where certain governmental agencies are judgment creditors. See Labor Code § 101 (Labor Commissioner). Similarly, certain creditors may not be required to prepay costs. See Section 1677 (collection of support payments under Uniform Reciprocal Enforcement of Support Act); *Martin v. Superior Court*, 176 Cal. 289, 296-97, 168 P. 135 (1917) (actions in forma pauperis).

Subdivision (b) is comparable to Section 488.060(a) (attachment).

CROSS-REFERENCES

Defined terms

Costs § 680.____
Judgment creditor § 680.____
Levying officer § 680.____

CHAPTER 6. DEATH OF JUDGMENT CREDITOR OR JUDGMENT DEBTOR

§ 686.010. Enforcement after death of judgment creditor

686.010. After the death of the judgment creditor, the judgment may be enforced as provided in this title by the judgment creditor's executor or administrator or successor in interest.

Comment. Section 686.010 continues the substance of subdivision 1 of former Section 686. The judgment is enforceable by the executor or administrator or successor in interest in the same manner as by a judgment creditor.

CROSS-REFERENCES

Defined terms

Judgment § 680.____
Judgment creditor § 680.____

21980

§ 686.020. Enforcement after death of judgment debtor

686.020. After the death of the judgment debtor, enforcement of a judgment against the judgment debtor is governed by the provisions of the Probate Code.

Comment. Section 686.020 makes clear that, although various provisions of the Probate Code permit use of enforcement procedures provided in this title, the enforcement of a judgment against the judgment debtor after the death of the judgment debtor is governed by the Probate Code. See, e.g., Prob. Code §§ 716, 730, 732, 950.

CROSS-REFERENCES

Defined terms

Judgment § 680.____
Judgment debtor § 680.____

Note. The Probate Code provisions relating to enforcement after death of the judgment debtor were revised on recommendation of the Commission by 1980 Cal. Stats. ch. 124.

404/949

CHAPTER 7. LEVYING OFFICERS

§ 687.010. Instructions to levying officer

687.010. (a) The judgment creditor shall give the levying officer instructions in writing, signed by the judgment creditor or the judgment

creditor's attorney, containing the information needed or requested by the levying officer to comply with the provisions of this title, including but not limited to an adequate description of any property to be levied upon and an indication whether the property is a dwelling and if so whether it is real or personal property.

(b) Subject to subdivision (c), the levying officer shall act in accordance with the written instructions to the extent the actions are taken in conformance with the provisions of this title.

(c) Except to the extent the levying officer has actual knowledge that the information is incorrect, the levying officer may rely on any information contained in the written instructions.

Comment. Subdivision (a) of Section 687.010 is based on Section 488.010(a) (attachment) and on parts of subdivisions 2 and 3 of former Section 692 (sale of personal and real property). See also Sections 684.050 (address for notices), 699.520 (writ of execution), 714.____ (writ of possession of personal property), 715.____ (writ of possession of real property), 716.____ (writ of sale).

Subdivisions (b) and (c) are consistent with Sections 262 (signed written instructions as excuse) and 687.040 (liability of levying officer). See also Section 684.050 (reliance on name and address given in instructions).

CROSS-REFERENCES

Defined terms

Judgment creditor § 680.____
Levying officer § 680.____

08/947

§ 687.020. Execution of certain commercial paper by levying officer

687.020. (a) If a check, draft, money order, or other order for the withdrawal of money from a financial institution, the United States, any state, or any public entity within any state, payable to the judgment debtor on demand, comes into the possession of a levying officer pursuant to this title, the levying officer shall promptly endorse and present it for payment.

(b) The levying officer shall endorse the check, draft, money order, or other order by writing the name of the judgment debtor thereon and the name and official title of the levying officer and giving the title of the court and the cause in which the writ or other enforcement process was issued. The endorsement is as valid as if endorsed by the

judgment debtor. No financial institution or public entity on which the check, draft, money order, or other order is drawn is liable to any person for paying it to the levying officer rather than to the judgment debtor by reason of the endorsement. No levying officer is liable by reason of endorsing, presenting, and obtaining payment of the check, draft, money order, or other order.

(c) If it appears from the face of the check, draft, money order, or other order that it has been tendered to the judgment debtor in satisfaction of a claim or demand and that endorsement thereof is considered a release and satisfaction by the judgment debtor of the claim or demand, the levying officer shall not endorse the check, draft, money order, or other order unless the judgment debtor has first endorsed it to the levying officer. If the judgment debtor does not endorse the check, draft, money order, or other order to the levying officer, the levying officer shall hold it for 30 days and is not liable to the judgment debtor or to any other person for delay in presenting it for payment. At the end of the 30-day holding period, the levying officer shall return it to the maker.

Comment. Section 687.020 continues the substance of former Section 688(g) (which incorporated Section 488.520 in the Attachment Law by reference) except that (1) the former provision was limited to situations where commercial paper comes into the possession of a levying officer or a receiver pursuant to a writ of execution whereas Section 687.020 is not so limited and (2) Section 687.020 adds a new provision for the return of the instrument to the maker after 30 days.

CROSS-REFERENCES

Defined terms

Financial institution § 680.____
 Judgment debtor § 680.____
 Levying officer § 680.____
 Writ § 680.____

09046

§ 687.030. Manner of custody

687.030. Except as otherwise provided by statute, where the method of levy upon property requires that the property be taken into custody or where the levying officer is otherwise directed to take property into custody, the levying officer may do so by any of the following methods:

- (a) Removing the property to a place of safekeeping.
- (b) Installing a keeper.
- (c) Otherwise obtaining possession or control of the property.

Comment. Section 687.030 continues the substance of the second sentence of former Section 688(c) except that Section 687.030 is not limited to custody under a writ of execution. The introductory clause recognizes exceptions to this general rule. See Sections 700.____ (keeper for tangible personal property of a going business), 700.____ (keeper for personal property used as dwelling).

Subdivision (c) is intended to provide levying officers with a degree of flexibility in determining efficient and economical means of securing custody of personal property levied upon. Under this subdivision use of a keeper is not required in cases where the property is not moved to a place of safekeeping, but the custody obtained must be sufficient to prevent removal of the property. Such custody will be useful where property such as large construction equipment is levied upon.

CROSS-REFERENCES

Defined terms

Levying officer § 680.____

405/202

§ 687.040. Liability of levying officer

687.040. (a) The levying officer is not liable for actions taken in conformance with the provisions of this title, including actions taken in reliance on any information contained in the written instructions of the judgment creditor, except to the extent the levying officer has actual knowledge that the information is incorrect. Nothing in this subdivision limits any liability the judgment creditor may have for incorrect information given in the written instructions.

(b) The levying officer is not liable either to the judgment debtor or the judgment creditor for loss by fire, theft, injury, or damage of any kind to personal property while in the possession of the levying officer either in a warehouse or in the custody of a keeper or en route to or from a warehouse unless the levying officer is negligent in the care or handling of the property.

Comment. Subdivision (a) of Section 687.040 supersedes the second sentence of the sixth paragraph of former Section 689, the fourth sentence of former Section 689b(9), former Section 697, and the second sentence of Section 488.370(b) (attachment of accounts receivable and choses in action) insofar as it was incorporated by former Section 688(b). For other provisions concerning the levying officer's liability, see Sections 699.060 (release), 699.070 (quick sale of perishable

§ 687.040

property), 700.____ (payment by cash equivalent in keeper levy), 701.____
(sale without notice).

Subdivision (b) is comparable to Section 488.060(b) (attachment).

CROSS-REFERENCES

Defined terms

Judgment creditor § 680.____

Judgment debtor § 680.____

Levying officer § 680.____

Instructions to levying officer § 687.010

APPENDIX

SELECTED CONFORMING REVISIONS

Civil Code § 4382 (added). Lack of diligence for more than 10 years in seeking enforcement of money judgment

SEC. __. Section 4382 is added to the Civil Code, to read:

4382. The lack of diligence for more than 10 years in seeking enforcement of a judgment, order, or decree of the court made or entered pursuant to this part that requires the payment of money shall be considered by the court in determining whether to permit enforcement of the judgment, order, or decree under Section 4380. In the case of a judgment, order, or decree for the payment of money in installments, the 10-year period runs as to each installment from the date the installment became due.

Comment. The first sentence of Section 4382 is drawn from a portion of former Code of Civil Procedure Section 685 that applied to issuance of writs of execution to enforce judgments under the Family Law Act. See, e.g., *Lesh v. Lesh*, 8 Cal. App.3d 883, 87 Cal. Rptr. 632 (1970); *Nutt v. Nutt*, 247 Cal. App.2d 166, 55 Cal. Rptr. 380 (1966). Unlike former Section 685, Section 4382 applies to all enforcement procedures sought after the expiration of 10 years. The second sentence recognizes case law concerning the time within which installment judgments may be enforced without a showing of diligence. See, e.g., *Wolfe v. Wolfe*, 30 Cal.2d 1, 4, 180 P.2d 345 (1947). Nothing in Section 4382 precludes the court from permitting enforcement after 10 years even though diligence is not shown if the court, in its discretion, determines that enforcement would be equitable in light of all the circumstances of the particular case.

This section is an exception to the general provisions governing time for enforcement and renewal of judgments provided by Sections 683.010-683.220 of the Code of Civil Procedure. See Code Civ. Proc. § 683.060.

100/958

Civil Code § 4383 (added). Execution to enforce support

SEC. __. Section 4838 is added to the Civil Code, to read:

4383. (a) Notwithstanding Section 4380, a final judgment, order, or decree for the payment of child or spousal support may be enforced by a writ of execution without prior court approval for amounts that are not more than 10 years overdue.

(b) The application for a writ of execution made pursuant to by the affidavit of the judgment creditor showing the amount of each due and

unpaid installment and the date it became due. The affidavit shall be filed in the action and a copy shall be attached to the writ of execution delivered to the levying officer. The levying officer shall serve the copy of the affidavit on the judgment debtor when the writ of execution is first served on the judgment debtor pursuant to a levy under the writ.

Comment. Section 4383 is a new provision permitting enforcement of child and spousal support judgments by execution without the necessity of obtaining prior court approval under Section 4380, so long as the amounts sought to be collected are not more than 10 years overdue. See Section 4382 (showing of diligence required before amounts due more than 10 years may be enforced). This section applies only to enforcement of final support judgments, not to interlocutory judgments.

Subdivision (b) provides technical requirements that must be complied with in addition to the general provisions governing execution. The affidavit of amounts due and owing provides the court clerk with the information needed to issue the writ and informs the judgment debtor concerning the nature of the debt sought to be collected.