

## Memorandum 80-61

Subject: Study D-300 - Enforcement of Judgments (Methods of Levy;  
Duties and Liabilities of Third Persons)

Attached to this memorandum is a copy of the portion of the enforcement of judgments recommendation relating to methods of levy of execution and the duties and liabilities of third persons after levy. This material comprises Article 4 (commencing with Section 700.010) and Article 5 (commencing with Section 701.010) of Chapter 3 of Division 2. In the Tentative Recommendation this material was contained in Sections 703.190 and 703.310-703.460. (The comments of persons referred to below were sent to you previously as exhibits to Memorandum 70-29.) Definitions relevant to this material will soon be sent to you attached to Memorandum 80-56.

Much of the revised draft attached hereto is the same in substance as the material in the Tentative Recommendation. However, the staff has incorporated many technical changes and added provisions governing levy procedures and the duties of third persons where property subject to a security interest is levied upon. The approach of the draft is explained in the text accompanying the statute. The staff has also made the following important changes:

§ 700.060. Bailed goods not covered by negotiable document

Section 700.060 is a new provision that clarifies the manner of levy where a bailee has not issued a negotiable document for goods.

§ 700.070. Equipment and inventory of going business

Section 700.070 eliminates the mandatory two-day keeper required by existing law in response to a comment by Mr. Frederick Holden. (Exhibit 13, p. 6.) Subdivision (d), giving the levying officer a degree of discretion to shut down the business, has been added at the suggestion of the Sheriff's Association. (Exhibit 8, p. 4.)

§ 700.080. Personal property used as dwelling

Subdivision (d) has been added to Section 700.080 to provide a procedure for determining the right to possession of persons who refuse to vacate a mobile home levied upon to satisfy a money judgment. Professor

Vern Countryman and Mr. Frederick Holden suggested dealing with this problem. (Exhibit 4; Exhibit 13, p. 6.)

§ 700.180. Property that is subject of pending action or judgment

This section has been significantly revised to eliminate the concept of levying on a judgment as a distinct entity and also to specify the effect of a levy where notice is filed in the action.

Respectfully submitted,

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## Levy on Property Subject to Security Interest

Levy procedures under existing statutory law take no account of the possibility of a security interest having priority in the personal property levied upon.<sup>1</sup> However, if a secured party has collateral that a judgment creditor seeks to levy upon, the secured party may protect his or her rights by refusing to turn the property over to the levying officer. A priority determination may then be made in a creditor's suit brought by the judgment creditor against the secured party.<sup>2</sup> If the collateral is in the possession of the judgment debtor or some person other than the secured party, such as a bank or bailee, or if the collateral is intangible property, such as an account receivable, the secured party may make a third-party claim<sup>3</sup> or seek to enforce the security interest after the property levied upon is sold.<sup>4</sup> Judgment

1. Under Commercial Code Section 9301(1), (2), a lien creditor has priority over an unperfected security interest, except where a secured party on a purchase money security interest files no later than 10 days after the debtor receives possession of the collateral, in which case the secured party has priority. A perfected security interest has priority over an execution lien with respect to advances made before the execution levy and with respect to advances made within 45 days after levy or advances or commitments made thereafter without knowledge of the lien. Com. Code § 9310(4). Cf. Civil Code § 2897 (lien priority according to time of creation). It should be noted that a lien creditor with knowledge of the contents of an improperly filed financing statement may lose priority over an unperfected security interest if the filing was made in good faith. See Com. Code § 9401(2). This would be an unlikely occurrence, however, under the single filing alternative of the Uniform Commercial Code adopted in California.
2. See Section 720; see also the discussion under "Creditor's Suit" infra. This course subjects the secured party to liability for costs.
3. See Section 689b; see also the discussion under "Third-Party Claims" infra. The judgment creditor may also force the secured party to make a third-party claim within 30 days after a demand therefor or forfeit the security interest in the property levied upon. Section 689b(8).
4. See Sections 689, 699 (purchaser at execution sale takes judgment debtor's interest in the property); 5 B. Witkin, California Procedure Enforcement of Judgment §§ 116-117, at 3482-83 (2d ed. 1971).

creditors are permitted to levy on property in disregard of the perfected interests of secured parties, but this aspect of existing law is needlessly burdensome to secured parties and results in excessive disruptions of ongoing business relations.

The proposed law attempts to alleviate the conflict between levying creditors and secured parties through two procedures:

(1) Permitting a judgment creditor to obtain a judgment lien on personal property by filing in the manner provided for perfecting a security interest;<sup>5</sup>

(2) Revising the execution levy procedures to take account of paramount interests of secured parties.

The proposed law codifies the substance of decisional law regarding the rights of secured parties with perfected security interests as against levying creditors<sup>6</sup> and adopts the terminology of the Commercial Code as far as practicable to accomplish this goal. In summary, a levy under the proposed law reaches the judgment debtor's rights in the collateral<sup>7</sup> while minimizing the disruption of the secured party's rights to satisfaction of the security interest from collateral consisting of goods in the possession of the secured party, bailee, lessee, or conditional buyer, or from an account debtor or obligor obligated on collateral such as accounts receivable, chattel paper, instruments, or

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5. See the discussion under "Judgment Liens on Personal Property" infra.

6. The cases hold in general that a secured party with a perfected security interest in collateral involving a bailment or the indebtedness of an account debtor is entitled to the disposition of the collateral, including the collection of payments due thereon, without interference deriving from a subsequent levy by the creditor on the debtor's interest in the pledged property. See, e.g., *Puissegur v. Yarbrough*, 29 Cal.2d 409, 412-13, 175 P.2d 830, 831-32 (1946); *Dubois v. Spinks*, 114 Cal. 289, 294-95, 46 P. 95, 96 (1896); *William Deering & Co. v. Richardson-Kimball Co.*, 109 Cal. 73, 84, 41 P. 801, 803-04 (1895); *Robinson v. Tevis*, 38 Cal. 611, 614-15 (1869); *Axe v. Commercial Credit Corp.*, 227 Cal. App.2d 216, 220-23, 38 Cal. Rptr. 558, 563 (1964); *Crow v. Yosemite Creek Co.*, 149 Cal. App.2d 188, 308 P.2d 421 (1957).

7. See Code Civ. Proc. § 689a; Com. Code § 9311.

general intangibles.<sup>8</sup> The priority of the judgment creditor is established at the time of levy, although it is not then known whether the secured party has the priority of a perfected security interest or is subordinate to the judgment creditor's lien. This is accomplished by means of the notice served on account debtors, bailees, and obligors, which is designed to preserve the status quo pending a determination of the priorities between the judgment creditor and the secured party.<sup>9</sup> If it is determined that the judgment creditor's lien has priority over the security interest, the secured party would then be liable to the judgment creditor for any payments received after the levy or the value of any property subject to the execution lien.

#### Methods of Levy on Particular Types of Property

The proposed law contains specific provisions for levy upon various categories of property. Many of these provisions are the same in substance as existing law which in general incorporates the methods of levy under attachment.<sup>10</sup> Significant revisions include the following:

Real property. The proposed law requires the recording of a writ of execution and notice of levy in all cases of a levy on an interest in real property. Under existing law, no recordation is required if the judgment is already a lien on the property.<sup>11</sup> The proposed law also makes clear that a leasehold interest in real property is to be levied upon in the same manner as a freehold interest. It is the practice under existing law to treat some leases as personal property and some as real property for the purpose of determining the correct manner of levy.<sup>12</sup>

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8. The levy procedures are considered in more detail in the discussion under "Methods of Levy on Particular Types of Property" infra.
  9. See the discussion under "Duties and Liabilities of Third Persons After Levy" infra.
  10. Section 688(b). See discussion under "General Rules Governing Levy" supra.
  11. See Lehnhardt v. Jennings, 119 Cal. 192, 195-97, 48 P. 56, 51 P. 195 (1897). The practice has been to make a complete levy in every case. See Marshal's Manual of Procedure § 303.2 (rev. 1977).
  12. See Marshal's Manual of Procedure § 300.3 (rev. 1977) (leases for definite term of years treated as personal property, leases for indefinite term treated as real property). The Attachment Law, however, does not make this distinction. See Section 488.310.

Growing crops and timber to be cut. The manner of levy on growing crops or timber to be cut is the same as a levy on the underlying land.<sup>13</sup> The proposed law also requires that notice of the levy be given to any secured party who has filed a financing statement with respect to the crops or timber before the date of levy.<sup>14</sup> This notice is needed so that the secured party can obtain protection in the event the crops or timber are to be sold at an execution sale or the levying officer or a receiver is ordered by the court to cultivate, harvest, pack, or sell the property because of its perishable nature.

Paper levy. The proposed law contains a new provision governing levy on tangible personal property that is already in a levying officer's custody.<sup>15</sup> There is no need to seize the property again in such a case, so the levy is accomplished and a lien arises when the creditor delivers the writ of execution to the levying officer with instructions to levy upon the property already in the officer's custody. If the writ is to be executed by a levying officer other than the officer having custody of the property, the executing officer would levy upon the property by serving a copy of the writ and a notice of levy on the officer having custody. This procedure enables a second judgment creditor to establish a lien on the surplus proceeds that might remain after a sale of the property<sup>16</sup> and to prevent the release of the property should the lien of the first judgment creditor cease, such as pursuant to satisfaction of the first judgment or otherwise at the direction of the first judgment creditor.

Goods in possession of bailee. If the judgment debtor's property is in the possession of a bailee, levy is made by service of a writ of execution and notice of levy on the bailee, just as on any other third

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13. See Section 488.360(c) (incorporated by Section 688(b)).

14. A security interest in growing crops or timber to be cut may be perfected by filing in the office where a mortgage on real estate would be recorded. Com. Code §§ 9302, 9401(1)(b), 9402(1), (5).

15. See *O'Connor v. Blake*, 29 Cal. 312, 315 (1865) (valid paper levy effected by levying officer's return on back of attachment); *Colver v. W.B. Scarborough Co.*, 73 Cal. App. 441, 443, 238 P. 1104 (1925).

16. See the discussion under "Distribution of Proceeds of Sale and Collection" infra.

person. If a negotiable document has been issued, it must be levied upon to reach the goods.<sup>17</sup> If the goods are subject to a security interest, the proposed law permits service on the secured party, but does not make such service a prerequisite of a valid levy.<sup>19</sup> Until service, an unperfected security interest may be enforced free of the judgment creditor's lien. Even after service, if the security interest is perfected, levy reaches the judgment debtor's interest in the goods that remain after the interest of the secured party is satisfied.<sup>19</sup> Thus, if any proceeds remain after the secured party has sold the goods to satisfy the security interest, the secured party is required to pay the surplus over to the levying officer.<sup>20</sup>

Equipment and inventory of a going business. Existing law requires that tangible personal property of a going business be levied upon by placing a keeper in charge of the property; the business is permitted to operate for at least two days under the keeper unless the judgment debtor objects to the keeper.<sup>21</sup> Under the proposed law, the judgment creditor is not required to employ a keeper but may have the property seized outright. The two-day keeper requirement has been defended as a grace period during which the debtor may work out a settlement with the creditor. While a grace period is useful in prejudgment attachment, a grace period is unnecessary once a judgment has been entered and becomes enforceable. The proposed law does, however, permit the judgment creditor to levy by means of a keeper for a period specified by the creditor,<sup>22</sup> so long as the judgment debtor does not object. If the debtor

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17. See the discussion under "Negotiable documents" infra.

18. This provision overrules *Crow v. Yosemite Creek Co.*, 149 Cal. App.2d 188, 308 P.2d 421 (1957).

19. See Com. Code §§ 9311, 9504, 9506.

20. See the discussion under "Duties and Liabilities of Third Persons After Levy" infra.

21. Section 688(c).

22. The levying officer is given the power to discontinue operation of the business under a keeper if the levying officer determines that it is necessary to preserve the property levied upon. This exception codifies the practice under existing law. The levying officer would not be liable for such a determination made in good faith.

objects to the keeper, or otherwise at the end of the keeper period specified by the creditor, the levying officer would take exclusive custody of the property to the extent necessary to satisfy any portion of the judgment remaining due.

Personal property used as a dwelling. Existing law also provides for a two-day keeper levy on personal property used as a dwelling, such as a housetrailer, mobilehome, or vessel. At the end of the two-day period, the levying officer is required to remove the occupants and take exclusive custody of the dwelling unless some other disposition is agreed on by the parties or ordered by the court.<sup>23</sup> This procedure is defective because no adequate opportunity is afforded to claim a dwelling exemption<sup>24</sup> or assert rights to possession such as under a lease. This procedure is also needlessly expensive because of the keeper fees and any moving and storage charges that would be incurred if the occupant is able to stay proceedings pending a determination of an exemption claim or for some other reason.<sup>25</sup> The proposed law permits levy to be made by service on the occupant and posting the property. While this method of levy does not offer the same security as a keeper levy, it should suffice in most cases since it is unlikely that the judgment debtor could transfer the dwelling to a bona fide purchaser free of the lien on such short notice.<sup>26</sup> If the judgment creditor is unwilling to

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23. Section 688(c). This procedure would apparently not apply if the dwelling is of a type that could be selected as a homestead or is a mobilehome as defined in Health and Safety Code Section 18008 (exceeding 8X40 feet and designed to be used without permanent foundation). See Section 690.31(a)(2).

24. Existing law affords the judgment debtor 10 days after levy within which to make an exemption claim for such property not governed by Section 690.31. See Section 690.50(a).

25. A two-day keeper levy on an occupied mobilehome requires a deposit of \$200 plus the cost of moving the mobilehome and storing its contents. See Marshal's Manual of Procedure §§ 10, 369 (rev. 1979); see also California State Sheriffs' Ass'n, Civil Procedural Manual 1.22-1.23, 4.09 (rev. 1979).

26. See the discussion under "Effect of Liens" infra. If the dwelling is a vehicle or vessel required to be registered, the judgment creditor has the option of obtaining a lien by filing a notice of judgment lien with the Department of Motor Vehicles. See the discussion under "Judgment Liens on Personal Property" infra.



take this risk, however, a keeper levy remains available under the proposed law. The proposed law requires the judgment creditor to apply on noticed motion for an order directing the removal of the occupants if they have not vacated the dwelling within three days after levy. This would eliminate the harsh aspect of existing law which purports to permit the levying officer to remove any occupant of the dwelling after two days without any determination of the right to possession.

Vehicles and vessels required to be registered. Existing law requires the levying officer to give notice of levy on a vehicle or vessel required to be registered to the legal owner if different from the registered owner.<sup>27</sup> The proposed law is worded so as to avoid giving duplicate notice to legal owners, since if the legal owner is in possession, notice generally will be given at the time the property is seized.

Chattel paper. Under existing law, chattel paper is levied upon by serving a third person in possession of the chattel paper or, if it is in the possession of the judgment debtor, by taking custody of it.<sup>28</sup> After levy the account debtor obligated on the chattel paper is served with notice of the levy, but the rights of the account debtor are not affected before notice is given.

This method of levy works perfectly well if no competing rights of secured parties are involved. However, if the chattel paper is subject to a prior security interest, the account debtor may cease making payments in response to the levy, to the detriment of the secured party. The proposed law revises this procedure by making clear that the account debtor may be given notice of levy only if (1) the levying officer obtains custody of the chattel paper or (2) a secured party has left with the judgment debtor the liberty to collect payments due on the chattel paper or to enforce or accept the return of goods leased or sold

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27. See Section 689b(1).

28. See Section 488.380 (incorporated by Section 688(b)). This method of levy is the same as that provided for levy on any tangible personal property.

to create the chattel paper.<sup>29</sup> The notice given the account debtor under the proposed law states that the account debtor is to continue making payments to a secured party, but if any payments are being made or are required to be made to the judgment debtor, such payments must be made to the levying officer. In a case where payments are being made to the judgment debtor on chattel paper that is subject to a security interest having priority over the judgment creditor's lien, the secured party will find it necessary to take some action to assert the priority of the security interest.<sup>30</sup> After satisfaction of the security interest, any excess payments or excess proceeds from the sale of the collateral in the hands of the secured party are subject to the judgment

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29. Commercial Code Section 9205 permits the secured party to leave the "liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions . . . ." A notice of levy instructing the account debtor to cease making payments to the judgment debtor and to make payments or return property to the levying officer is served whether or not the levying officer has obtained custody of the chattel paper. This protects the interests of the judgment creditor by depriving the judgment debtor of the power to dispose of the collateral levied upon. Such notice to the account debtor is not needed if the secured party has power over the disposition of the collateral because the secured party in possession of the chattel paper is liable for compliance with the levy after satisfaction of the security interest.
30. A security interest in chattel paper is perfected either by filing (Com. Code § 9304(1)) or by possession of the chattel paper (Com. Code § 9305). If the secured party has perfected by filing, the proposed law would give the secured party no additional protection if the levying officer obtains custody of the chattel paper in a situation where the account debtor is making payments to the judgment debtor. However, if the payments are being made to the secured party, the account debtor would be instructed by the notice of levy to continue making payments even if the levying officer has obtained custody of the chattel paper.

creditor's lien and are paid over to the levying officer. The proposed law also makes clear that a levy on chattel paper creates a lien on the judgment debtor's interest in the collateral as well.<sup>31</sup>

Instruments. Under existing law, a negotiable instrument is levied upon by serving a third person in possession or, if the negotiable instrument is in the possession of the judgment debtor, by taking custody of it.<sup>32</sup> A nonnegotiable instrument<sup>33</sup> is treated as a chose in action which is levied upon by service on the obligor.<sup>34</sup> The proposed law revises these procedures to conform more closely to the Commercial Code provisions governing security interests in instruments.<sup>35</sup> Hence, all instruments, negotiable as well as nonnegotiable, are levied upon by

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31. This proposal is derived from the rule that a perfected security interest in chattel paper gives the secured party a perfected security interest in the rights to payment evidenced thereby and in the debtor's security interest in the goods sold if that security interest is perfected by filing. See Bolduan v. Normandin (In re Western Leasing, Inc.), 17 U.C.C. Rep. 1369 (D. Ore. 1975). The proposed provision resolves for the purposes of execution levy the conflict in decisions under the Uniform Commercial Code concerning whether a security interest in chattel paper that is perfected by possession results in a perfected security interest in the lessor's property interest in the leased goods since the lessor's interest is not a security interest in need of perfection. See Comment, In Re Leasing Consultants, Inc.: The Double Perfection Rule for Security Assignments of True Leases, 84 Yale L.J. 1722 (1975).
32. See Section 488.400(a) (incorporated by Section 688(b)).
33. A nonnegotiable instrument is an instrument which is otherwise negotiable within Division 3 (commencing with Section 3101) of the Commercial Code but which is not payable to order or to bearer.
34. Section 481.050 classes nonnegotiable instruments as choses in action which are levied upon pursuant to Section 488.370 (incorporated by Section 688(b)).
35. Under Commercial Code Section 9105(1)(i) an instrument includes a negotiable instrument, a certificated security, or "any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment." The proposed law includes a special provision governing levy on securities.

taking custody (if the instrument is in the judgment debtor's possession) or by service on a third person in possession.<sup>36</sup> Notice is not given to the person obligated on the instrument unless the levying officer obtains custody of the instrument. This limitation is intended to prevent disruption of the rights of secured parties<sup>37</sup> and holders in due course. As in the case of chattel paper subject to a security interest, the secured party would be liable for any excess payments made after satisfaction of the security interest. The rights of the obligor would not be affected until notice of levy is received, but payments made to a person other than the levying officer thereafter would not discharge the obligation on the instrument.

Negotiable documents. A negotiable document is levied upon under existing law by serving a third person in possession of the document or, if it is the possession of the judgment debtor, by taking custody of it.<sup>38</sup> In addition, notice of levy must be given the obligor on the document (i.e., the bailee who has issued it).<sup>39</sup> The proposed law deletes this additional requirement since the bailee cannot deliver the goods covered by the negotiable document to anyone not in possession of it.<sup>40</sup> There is no need to further alter these rules to take account of conflicting interests of secured parties.<sup>41</sup>

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36. The provision governing levy on instruments does not apply to levy on an instrument that constitutes a part of chattel paper, which would be levied upon in the manner provided for chattel paper. See Com. Code § 9105(1)(b).
37. A security interest in an instrument is perfected by possession. Com. Code §§ 9304, 9305.
38. See Section 488.400(a) (incorporated by Section 688(b)).
39. See Section 488.400(c).
40. See Com. Code §§ 7403, 7602.
41. A security interest in a negotiable document is perfected by possession (Com. Code § 9305) or by filing (Com. Code § 9304(1)). If the security interest is perfected by possession, the existing rules governing levy result in the secured party being served. Thus the secured party will be liable to the judgment creditor for any excess proceeds after satisfaction of the security interest. If the security interest in the negotiable document is perfected by filing and the negotiable document is in the hands of the judgment debtor, the levy is by seizure in order to prevent negotiation to a holder free of the lien pursuant to Commercial Code Section 7501. See also Com. Code § 9309. If the levying officer obtains possession of the negotiable document, the interest of the secured party may be asserted through the third-party claims procedure.

Securities. Existing law governing levy on securities is consistent with the former rule stated in Section 8317 of the Commercial Code.<sup>42</sup> The proposed law would revise this provision to incorporate to the proposed Uniform Commercial Code revision of Section 8317.<sup>43</sup>

Deposit accounts. A deposit account is levied upon by service on the financial institution holding the account.<sup>44</sup> If the deposit account is held in the name of a person other than the judgment debtor or in the names of both the judgment debtor and another person, the levy is not effective unless the judgment creditor delivers a bond in twice the amount of the judgment or twice the amount sought to be reached by levy (whichever is less) that indemnifies the nondebtor account holder.<sup>45</sup> A levy freezes the deposit account.<sup>46</sup> Under the proposed law, the financial institution would be required to hold in the account an amount equal to the sum of the amount levied upon. The proposed law balances the interests of the judgment creditor and the judgment debtor where accounts are sufficiently large by permitting the debtor to use excess amounts while making the levy effective.<sup>47</sup>

Safe deposit boxes. The procedures for levy on property in a safe deposit box are analogous to procedures for levy on deposit accounts.<sup>48</sup>

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42. See Section 488.410 (incorporated by Section 688(b)).
43. In sum, the revised version of Commercial Code Section 8317 permits garnishment of certificated securities and provides a garnishment procedure for reaching the newly recognized uncertificated securities. This revision has not yet been adopted in California.
44. See Sections 488.390 (incorporated by Section 688(b)), 682a.
45. Section 682a. Under the proposed law, a corporate surety bond is required whereas under existing law personal sureties are permitted. This will minimize the need for proceedings to justify sureties.
46. See Sections 488.390, 682a. The Commission is informed, however, that in practice at least some banks withhold in a suspense account only the amount needed to satisfy the levy.
47. In the case of a levy on a joint deposit account, withdrawals of the excess amount may be made by either the judgment debtor or the nondebtor account holder and the interest of the nondebtor account holder to the amount held under the levy may be asserted by way of a third-party claim.
48. See Sections 488.390 (incorporated by Section 688(b)), 682a.

A bond is required if the box is in the name of a person other than the judgment debtor. No access is permitted to the box after levy. In order to reduce costs, the proposed law specifically provides that the box holder be given an opportunity to open the box to permit the removal of its contents pursuant to the levy.

Accounts receivable and general intangibles. Under existing law, accounts receivable, choses in action, and other debts owed the judgment debtor are levied upon by service on the person obligated.<sup>49</sup> After levy the account debtor is relieved of the duty to pay the judgment debtor and must pay the levying officer.<sup>50</sup> The proposed law continues the substance of this provision but uses the term "general intangibles" in place of "choses in action" and "debts."<sup>51</sup> After levy, the account debtor must continue making payments as before, but if payments are being made or are required to be made to the judgment debtor,<sup>52</sup> such payments must be made thereafter to the levying officer. In such a situation, a secured party having priority over the judgment creditor's lien will find it necessary to take action to assert the priority of the security interest. If the account receivable or general intangibles are collected by a third person, such as a secured party or agent for collection, the judgment creditor may establish a lien by serving notice of levy on the third person. If the third person has a perfected security interest,<sup>53</sup> the third party has the right to receive payments due from the account debtor without interference from the levy.<sup>54</sup> After

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49. See Sections 488.370 (incorporated by Section 688(b)), 688(b) (manner of levy on debts for which a method of attachment is not provided).

50. See Sections 488.370, 488.540, 488.550.

51. Compare Section 481.050 ("choses in action" defined) with Com. Code § 9106 ("general intangibles" defined).

52. See Com. Code § 9205 ("liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions").

53. A security interest in an account receivable or general intangible is perfected by filing. Com. Code § 9302(1).

54. See Com. Code § 9301.

satisfaction of the security interest, any excess payments or excess proceeds from the sale of the collateral in the hands of the secured party would be subject to the judgment creditor's lien and should be paid over to the levying officer.

Pending causes of action and judgments in favor of the judgment debtor. Under existing law, a pending cause of action by, or judgment owing to, the judgment debtor is not subject to levy and sale, although it may be reached and collected through special proceedings.<sup>55</sup> This rule can result in confusion if the judgment creditor seeking to levy upon property is unaware that the property is the subject of a pending action or judgment. Accordingly, the proposed law preserves the rule that a cause of action and judgment are not subject to execution, and also provides for levy on the subject property in the same manner as any other levy. In the case of a levy on the property by a judgment creditor pursuant to this procedure and a lien created on the judgment by another judgment creditor, priority is based upon the time of levy or creation of the lien.

Interest in personal property of estate of decedent. The manner of levy on an interest of a judgment debtor in personal property in the estate of a decedent remains unchanged under the proposed law.<sup>56</sup>

#### Duties and Liabilities of Third Persons After Levy

The proposed law contains detailed provisions governing the duties and liabilities of third persons who are served with a copy of a writ of execution and a notice of levy in the course of enforcement of a money judgment. These provisions expand and clarify the existing law pertaining to the liability of garnishees<sup>57</sup> and prescribe the duties of secured parties, obligors, and account debtors in situations where the property levied upon is subject to a security interest.

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55. See Sections 688(f) and 688.1.

56. See Section 488.430 (incorporated by Section 688(b)).

57. See Section 488.550; Nordstrom v. Corona City Water Co., 155 Cal. 206, 212, 100 P. 242 (1909). This law is presumably incorporated by the general language of Section 688(b).

If tangible personal property in the possession of a third person is levied upon, the proposed law makes clear that the third person is liable for the value of the property for failing to comply with the levy by delivering the property to the levying officer.<sup>58</sup> If an account receivable, deposit account, or general intangibles are levied upon, the third person is required to pay over the amount due at the time of levy and any amounts falling due during the period of the execution lien, or the third person will be liable in proceedings taken for the enforcement of the lien.<sup>59</sup> A third person who is served with a copy of the writ of execution and a notice of levy is also required to prepare a memorandum to be mailed or delivered to the levying officer within 10 days after service.<sup>60</sup> The memorandum must describe tangible personal property sought to be levied upon that is not delivered to the levying officer and the reasons for not delivering it, state the terms of any debt sought to be levied upon that is not paid or will not be paid to the levying officer and the reasons for nonpayment, describe any other tangible personal property of the judgment debtor in the possession or control of the third person or any debt owed the judgment debtor, and describe any claims or rights of other persons in the property levied upon that are known to the third person. This expanded memorandum is intended to provide the judgment creditor with needed information and inhibit evasive answers by third persons. If the levy is not complied with, the third person must give a complete memorandum and may be held liable for the costs and reasonable attorney's fees in any proceedings necessary to obtain the withheld information.<sup>61</sup>

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58. This requirement is subject to the qualification that the garnishee may assert an adverse claim. In such situations, the judgment creditor may contest the adverse claim by means of an examination proceeding or a creditor's suit.

59. See Section 488.550.

60. This requirement is consistent with the procedure upon attachment under Section 488.080 (incorporated by Section 688(b)). See California State Sheriffs' Ass'n, Civil Procedural Manual 4.25 (1979); Marshal's Manual of Procedure § 404 (rev. 1977).

61. Such proceedings include examination proceedings and creditors' suits. The liability for noncompliance is not new, but the excuse from liability for compliance with the levy without explanation is. See Section 488.550.



Additional rules are provided in the proposed law governing the duties of secured parties, account debtors obligated on collateral, and obligors under instruments. A secured party may continue to enforce a security interest without regard to priority but is liable for any excess property or payments received by the secured party after satisfaction of the security agreement.<sup>62</sup> If it is determined that the levying judgment creditor has priority over the security interest,<sup>63</sup> the secured party will be liable for any payments received after levy.

The proposed law provides a statutory presumption in favor of security interests even in the absence of a determination of priority. Consequently, an account debtor on collateral levied upon is instructed to continue payments to the secured party pending a contrary direction by a court. If the account debtor is making payments to a secured party, such payments are to continue. If the account debtor is paying the judgment debtor,<sup>64</sup> the account debtor is to pay the levying officer.

Obligors on an instrument are instructed to make payments to the levying officer if the levying officer has obtained possession of the instrument. If the obligor pays the prior holder of the instrument, such payments will not satisfy the obligation of the obligor.

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62. See Com. Code § 9311.

63. See Com. Code § 9301.

64. See Com. Code § 9205.

Article 4. Methods of Levy§ 700.010. Real property

700.010. (a) To levy upon real property, the levying officer shall record with the recorder of the county where the real property is located a copy of the writ of execution and a copy of the notice of levy served on the judgment debtor.

(b) If the real property stands upon the records of the county in the name of a person other than the judgment debtor, the notice of levy shall identify the third person and the recorder shall index the copy of the writ and notice of levy in the names of both the judgment debtor and the third person.

(c) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy on the judgment debtor and any third person in whose name the real property stands upon the records of the county. Service shall be made personally or by mail. If service on the third person is by mail, it shall be sent to the address shown by the records of the office of the tax assessor of the county where the real property is located.

(d) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy on one occupant of the real property. Service on the occupant shall be made by leaving the copy of the writ and the notice of levy with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found upon the real property when service is attempted who is either an employee or agent of the occupant or a member of the occupant's family or household. If unable to serve an occupant at the time service is attempted, the levying officer shall post a copy of the writ and a notice of levy in a conspicuous place on the real property. If the real property described in the notice of levy consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lies with relation to any of the others so as to form one or more continuous, unbroken tracts, only one service or posting need be made under this subdivision as to each continuous, unbroken tract.

Comment. Section 700.010 is comparable to Section 488.310 (levy upon interests in real property pursuant to the Attachment Law) which was incorporated by former Section 688(b). Any legal or equitable interest in land that is subject to the enforcement of a money judgment is subject to execution unless another exclusive method of enforcement is specified, such as for a partner's interest in partnership real property where the partner and not the partnership is a judgment debtor, which may be reached only by a charging order pursuant to Section 708.210. See Sections 695.010 (property subject to enforcement of money judgment), 699.710 (property subject to execution); Lynch v. Cunningham, 131 Cal. App. 164, 173-75, 21 P.2d 154, 21 P.2d 973 (1933).

Leasehold interests are subject to levy as real property under subdivision (a). It was the practice under former law to treat some leases as personal property and some as real property for purposes of levy. See Marshal's Manual of Procedure § 300.3 (rev. 1977).

Former law did not require recordation of the writ and notice of levy if there was an existing judgment lien on the property. See Lehnhardt v. Jennings, 119 Cal. 192, 195-97, 48 P. 56, 51 P. 195 (1897) (no levy required where judgment is lien). However, the practice has been to levy in every case. See Marshal's Manual of Procedure § 303.2 (rev. 1977); Cal. State Sheriffs' Ass'n, Civil Procedural Manual 4.10 (1978). Subdivision (a) continues existing practice by requiring a complete levy to be made regardless whether there is a prior judgment lien or attachment lien on the property in favor of the judgment creditor.

CROSS-REFERENCES

Defined terms

- Judgment debtor § \_\_\_\_\_
- Levying officer § \_\_\_\_\_
- Person § \_\_\_\_\_
- Real property § \_\_\_\_\_
- Manner of service §§ 684.010-684.080
- Notice of levy
  - Contents § 699.540
  - Effect of failure to serve § 699.550
- Third-party claims §§ 720.010-720.800

27813

§ 700.020. Growing crops and standing timber

700.020. (a) To levy upon growing crops or timber to be cut, the levying officer shall record a copy of the writ of execution and a copy of the notice of levy served on the judgment debtor with the recorder of the county where the real property on which the crops are growing or on which the timber is standing is located.

(b) If the crops, timber, or real property stands upon the records of the county in the name of a person other than the judgment debtor, the notice of levy shall identify the third person and the recorder shall index the copy of the writ and notice of levy in the names of both the judgment debtor and the third person.

(c) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy personally or by mail on the following persons:

(1) The judgment debtor.

(2) Any third person in whose name the crops, timber, or real property stands upon the records of the county. If service on the third person is by mail, it shall be sent to the address shown by the records of the office of the tax assessor of the county where the real property is located.

(3) Any secured party who has filed a financing statement with respect to the crops or timber prior to the date of levy on the property.

(d) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy on one occupant of the real property. Service on the occupant shall be made by leaving the copy of the writ and the notice of levy with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found upon the real property when service is attempted who is either an employee or agent of the occupant or a member of the occupant's family or household. If unable to serve an occupant at the time service is attempted, the levying officer shall post a copy of the writ and a notice of levy in a conspicuous place on the real property. If the real property described in the notice of levy consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lies with relation to any of the others so as to form one or more continuous, unbroken tracts, only one service or posting need be made under this subdivision as to each continuous, unbroken tract.

Comment. Section 700.020 is derived from a portion of Section 488.360(c) (prescribing the manner of attachment of growing crops and timber to be cut), which was incorporated by former Section 688(b), and from paragraphs 1a and 2a of former Section 542 (repealed by 1974 Cal. Stats. ch. 1516, § 12, operative January 1, 1977). Once the crops are harvested or the timber is cut, the property may be levied upon in the manner provided for levy upon goods. See Sections 700.030-700.060. The levying officer or a receiver may cultivate, care for, harvest, pack, and sell the property, if necessary, pursuant to court order under Section 699.070. Subdivision (c)(3) is new. See Com. Code § 9401(1)(b) (place of filing financing statement concerning growing crops and timber to be cut).

CROSS-REFERENCES

Defined terms

- Judgment debtor § \_\_\_\_\_
- Levying officer § \_\_\_\_\_
- Person § \_\_\_\_\_
- Real property § \_\_\_\_\_
- Manner of service §§ 684.010-684.080
- Notice of levy
  - Contents § 699.540
  - Effect of failure to serve § 699.550
- Third-party claims §§ 720.010-720.800

27807

§ 700.030. Goods and money in possession of judgment debtor

700.030. (a) Unless another method of levy is provided by this article, to levy upon goods or money in the possession of the judgment debtor, the levying officer shall take the goods or money into custody.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on the judgment debtor. Service shall be made personally or by mail.

Comment. Subdivision (a) of Section 700.030 continues the substance of the first sentence of subdivision (c) of former Section 688. For the manner of taking custody, see Section 687.030. The introductory phrase of subdivision (a) recognizes that the general rule does not apply where another section of this article is applicable to a particular type of property. See Sections 700.070 (equipment and inventory of going business) and 700.080 (personal property used as dwelling).

Subdivision (b) continues the requirement of former Section 682.1 and of the second sentence of subdivision (b) of former Section 688 that a copy of the writ be served on the judgment debtor, and adds the requirement that a notice of levy also be served. The judgment creditor

has the responsibility of furnishing the levying officer with the information necessary to comply with this provision. See Section 687.010.

CROSS-REFERENCES

Defined terms

- Goods § \_\_\_\_\_
- Judgment debtor § \_\_\_\_\_
- Levying officer § \_\_\_\_\_
- Money § \_\_\_\_\_
- Manner of service §§ 684.010-684.080
- Notice of levy
  - Effect of failure to serve § 699.550

27808

§ 700.040. Goods and money in possession of third person

700.040. (a) Unless another method of levy is provided by this article, to levy upon goods or money in the possession of a third person, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the third person.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy on the judgment debtor. Service shall be made personally or by mail.

(c) If goods are in the possession of a bailee who has issued a negotiable document therefor, the goods may not be levied upon but the negotiable document may be levied upon in the manner provided by Section 700.120. If goods are in the possession of a bailee other than one who has issued a negotiable document therefor, the goods may be levied upon in the manner provided by Section 700.060.

Comment. Subdivision (a) of Section 700.040 continues the substance of a portion of the last sentence of subdivision (b) of former Section 688. The introductory portion of subdivision (a) recognizes that the general rule is subject to exceptions, such as that provided in subdivision (c). See also Sections 700.050 (goods and money in custody of levying officer), 700.060 (goods covered by nonnegotiable document), 700.250-700.260 (safe deposit boxes).

Subdivision (b) continues the requirement of former Section 682.1 and of the second sentence of subdivision (b) of former Section 688 that a copy of the writ be served on the judgment debtor, and adds the requirement that a notice of levy also be served. The judgment creditor has the responsibility of furnishing the levying officer with the information necessary to comply with this provision. See Section 687.010.

Subdivision (c) corresponds to subdivision (d) of Section 488.330 (attachment), which was incorporated by former Section 688(b).

CROSS-REFERENCES

Defined terms  
Bailee § \_\_\_\_\_  
Goods § \_\_\_\_\_  
Judgment debtor § \_\_\_\_\_  
Levying officer § \_\_\_\_\_  
Money § \_\_\_\_\_  
Duty of garnishee § \_\_\_\_\_  
Manner of service §§ 684.010-684.080  
Third-party claims §§ 720.010-720.800

27649

§ 700.050. Property in custody of levying officer

700.050. (a) To levy upon property in the custody of a levying officer:

(1) If the writ of execution is directed to the levying officer having custody of the property, the judgment creditor shall deliver the writ to the levying officer.

(2) If the writ of execution is directed to a levying officer other than the levying officer having custody of the property, the levying officer to whom the writ is directed shall serve a copy of the writ and a notice of levy on the levying officer having custody. Service shall be made personally or by mail.

(b) At the time of levy or promptly thereafter, the levying officer to whom the writ is directed shall serve a copy of the writ and a notice of levy on the judgment debtor. Service shall be made personally or by mail.

(c) The levying officer having custody of the property shall comply with the first writ received and is not subject to the provisions of Article 5 (commencing with Section 701.010) (duties and liabilities of third persons after levy).

Comment. Section 700.050 is new. Paragraph (1) of subdivision (a) is based on case law concerning a "paper levy" involving only one levying officer. See, e.g., O'Connor v. Blake, 29 Cal. 312, 315 (1865); Colver v. W.B. Scarborough Co., 73 Cal. App. 441, 443, 238 P. 1104

(1925). Under paragraph (1), the lien of execution arises at the time the writ is delivered to the levying officer. See also Section 699.010 (execution lien). Paragraph (1) applies in cases where the judgment creditor has previously attached or executed on the property as well as in cases where another judgment creditor has had the property taken into custody on attachment or execution. Paragraph (2) governs levies involving two levying officers, such as where property already levied upon and in the custody of a sheriff is sought to be levied upon under a writ directed to a marshal.

Subdivision (c) clarifies the effect of a paper levy.

#### CROSS-REFERENCES

Defined terms

Judgment creditor § \_\_\_\_\_

Levying officer § \_\_\_\_\_

Manner of service §§ 684.010-684.080

404/119

#### § 700.060. Bailed goods not covered by negotiable document

700.060. (a) To levy upon goods in the possession of a bailee other than one who has issued a negotiable document therefor, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the bailee. If the goods are subject to a security interest, the levying officer shall, if so instructed by the judgment creditor, serve a copy of the writ of execution and a notice of levy on the secured party. Service shall be made personally or by mail.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on the judgment debtor. Service shall be made personally or by mail.

Comment. Section 700.060 is new. Subdivision (a) reverses the rule in *Crow v. Yosemite Creek Co.*, 149 Cal. App.2d 188, 308 P.2d 421 (1957). Although levy establishes the judgment creditor's lien, it does not affect any superior rights the holder of a perfected security interest may have. See Section 701.040. A levy on goods subject to a security interest pursuant to this subdivision reaches both the judgment debtor's interest in any surplus remaining after satisfaction of the interest of the secured party and the judgment debtor's right to redeem the property from the security interest. See Civil Code § 2903; Com. Code §§ 9504, 9506.

If a negotiable document has been issued, it is levied upon pursuant to Section 700.120.



CROSS-REFERENCES

Defined terms  
Bailee § \_\_\_\_\_  
Document § \_\_\_\_\_  
Goods § \_\_\_\_\_  
Levying officer § \_\_\_\_\_  
Duty of garnishee § 701.010  
Manner of service §§ 684.010-684.080

405/948

§ 700.070. Equipment and inventory of going business

700.070. To levy upon equipment or inventory of a going business operated by the judgment debtor, the levying officer shall comply with Section 700.030, unless the judgment creditor instructs that levy be made in the following manner:

(a) The levying officer shall place a keeper in charge of the business for the period requested by the judgment creditor. During the period, the judgment debtor may continue to operate in the ordinary course of business provided that all sales are final and are for cash or the equivalent of cash. For the purpose of this subdivision, payment by check is the equivalent of cash payment. The levying officer is not liable for accepting payment in the form of a cash equivalent. The keeper shall take custody of the proceeds from all sales unless otherwise directed by the judgment creditor.

(b) If at any time the judgment debtor objects to placement of a keeper in charge of the business, or at the conclusion of the period requested by the judgment creditor, the levying officer shall take the equipment and inventory into exclusive custody.

(c) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on the judgment debtor. Service shall be made personally or by mail.

(d) Notwithstanding subdivision (a), if it is necessary to preserve the property levied upon, the levying officer may take the equipment and inventory of the going business into exclusive custody. The levying officer is not liable for a determination made in good faith under this subdivision.

Comment. Section 700.070 supersedes the fifth through the tenth sentences of former Section 688(c) which required a keeper levy for at least two days on the tangible personal property of a going business if the judgment debtor consented. Under this section the keeper levy is optional; unless the judgment creditor elects this option, the equipment and inventory of a going business are levied upon as goods generally pursuant to Section 700.030. Article 3 (commencing with Section 697.510) of Chapter 2 provides an alternative procedure for obtaining a lien on equipment and inventory.

Subdivision (b) makes clear that the judgment debtor may prevent the placement of a keeper in the business, at which time the levying officer must take exclusive possession of the equipment and inventory. This continues an aspect of former Section 688(c). The judgment creditor may instruct the levying officer not to take possession.

Subdivision (d) is a new provision that reflects the practice of levying officers under former law.

CROSS-REFERENCES

Defined terms

Equipment § \_\_\_\_\_

Inventory § \_\_\_\_\_

Judgment creditor § \_\_\_\_\_

Judgment debtor § \_\_\_\_\_

Levying officer § \_\_\_\_\_

Manner of service §§ 684.010-684.080

27812

§ 700.080. Personal property used as dwelling

700.080. (a) To levy upon personal property used as a dwelling, such as a housetrailer, mobilehome, or vessel, the levying officer shall serve a copy of the writ of execution and a notice of levy on one occupant of the property. Service on the occupant shall be made by leaving the copy of the writ and the notice of levy with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found at the property when service is attempted who is either an employee or agent of the occupant or a member of the occupant's family or household. If unable to serve an occupant at the time service is attempted, the levying officer shall post a copy of the writ and a notice of levy in a conspicuous place on the property.

(b) If the judgment creditor so instructs, the levying officer shall place a keeper in charge of the property for a period requested by the judgment creditor.

(c) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on the judgment debtor if the judgment debtor is not an occupant served pursuant to subdivision (a). Service shall be made personally or by mail.

(d) If the occupant does not voluntarily vacate the personal property used as a dwelling within three days after levy, the judgment creditor may apply to the court on noticed motion for an order directing the levying officer to remove the occupants. Notice of motion shall be served on any legal owner who was served pursuant to Section 700.090, on the occupant, and, if the judgment debtor is not the occupant, on the judgment debtor. At the hearing on the motion the court shall determine the occupant's right to possession and shall make an order including such terms and conditions as are appropriate under the circumstances of the case.

Comment. Section 700.080 supersedes the third and fourth sentences of former Section 688(c). Levy is accomplished by notice to the occupant under subdivision (a); but if the judgment creditor desires greater security, a keeper may be used pursuant to subdivision (b). Article 3 (commencing with Section 697.510) of Chapter 2 provides an alternate method of obtaining a lien on registered mobile homes and vessels.

Subdivision (c) makes clear that the judgment debtor is to be given notice of the levy just as in any other case of a levy on tangible personal property. See also Section 700.090 (notice to legal owner of vehicle or vessel for which certificate of ownership is issued).

Subdivision (d) supersedes the fourth sentence of former Section 688(c) which required the keeper to take exclusive custody of the property at the end of two days or a longer period agreed upon by the parties. This subdivision recognizes the right of the occupant to have a judicial determination of the occupant's right of possession.

#### CROSS-REFERENCES

##### Defined terms

Court § \_\_\_\_\_  
Judgment creditor § \_\_\_\_\_  
Judgment debtor § \_\_\_\_\_  
Levying officer § \_\_\_\_\_  
Manner of service §§ 684.010-684.080

§ 700.090. Vehicles and vessels for which certificate of ownership is issued

700.090. If a vehicle or vessel for which a certificate of ownership has been issued by the Department of Motor Vehicles is levied upon, the levying officer shall determine from the department the name and address of the legal owner of the vehicle or vessel. If the legal owner is not the judgment debtor and is not in possession of the vehicle or vessel, at the time of levy or promptly thereafter the levying officer shall serve a copy of the writ of execution and a notice of levy on the legal owner. Service shall be made personally or by mail.

Comment. Section 700.090 supersedes subdivision (1) of former Section 689b. Former law required notice to be given the legal owner if different from the registered owner. This section is worded so as to avoid duplicate notice in any case where the legal owner has already received notice in the course of the levy. See Sections 700.030, 700.040, 700.070, 700.080.

CROSS-REFERENCES

Defined terms

- Judgment debtor § \_\_\_\_\_
- Levying officer § \_\_\_\_\_
- Manner of service §§ 684.010-684.080

§ 700.100. Chattel paper

700.100. (a) To levy upon chattel paper, the levying officer shall:

- (1) If the chattel paper is in the possession of the judgment debtor, take the chattel paper into custody.
- (2) If the chattel paper is in the possession of a third person, personally serve a copy of the writ of execution and a notice of levy on the third person.

(b) If the levying officer obtains custody of the chattel paper or if pursuant to a security agreement the judgment debtor has liberty to collect or compromise the chattel paper or to accept the return of goods or make repossessions, the levying officer shall, if so instructed by the judgment creditor, serve a copy of the writ of execution and a notice of levy on the account debtor. Service shall be made personally

or by mail. The rights and duties of the account debtor under the chattel paper are not affected until the copy of the writ and notice of levy are actually received.

(c) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on the judgment debtor. Service shall be made personally or by mail.

(d) In addition to any other rights created by a levy on chattel paper, the levy creates a lien on the judgment debtor's rights in specific goods subject to the chattel paper.

Comment. Section 700.100 is derived from Section 488.380 (attachment of chattel paper) which was incorporated by former Section 688(b). See Sections 701.010-701.030 (duties and liabilities of garnishee) and 701.050 (duties of account debtor). Article 3 (commencing with Section 697.510) of Chapter 2 provides an alternate method for obtaining a lien on chattel paper.

Under subdivision (a), the method of levy on chattel paper is not affected by the fact that the chattel paper may be subject to a perfected security interest:

(1) If the chattel paper is in the possession of a third person who claims to be a secured party, the third person may protect his or her rights by delivering the chattel paper to the levying officer and obtaining a determination of priority through the third-party claims procedure (Division 4 (commencing with Section 720.010)) or by refusing to deliver the chattel paper to the levying officer. See Section 701.010 (duty of garnishee in general). If the third person refuses to deliver and the security interest claimed is subordinate to the rights of the judgment creditor under the levy (see Com. Code § 9301), the third person is liable to the judgment creditor. See Section 701.020.

(2) If the chattel paper is in the possession of the judgment debtor, and a secured party has left the liberty in the judgment debtor to collect the chattel paper or to enforce or accept the return of property under the chattel paper (see Com. Code § 9205), the judgment creditor may disregard the security interest and seize the chattel paper; the secured party's remedy is by way of a third-party claim. If the secured party has possession of the chattel paper in such a case, the account debtor may be served with a copy of the writ and a notice of levy to guard against payment or the return of property to the judgment debtor, whether or not possession of the chattel paper is obtained by the levying officer.

Subdivision (d) makes clear that a levy on chattel paper reaches all the judgment debtor's rights in the property, the security interest in which or the lease of which resulted in the chattel paper. This enables a creditor who levies on chattel paper to have priority over another creditor who later levies on the property.

CROSS-REFERENCES

Defined terms

Account debtor § 680. \_\_\_  
Chattel paper § 680. \_\_\_  
Judgment creditor § 680. \_\_\_  
Judgment debtor § \_\_\_\_\_  
Levying officer § \_\_\_\_\_  
Duty of account debtor § 701.050  
Manner of service §§ 684.010-684.080  
Notice of levy  
Contents § 699.540  
Effect of failure to serve § 699.550

405/766

§ 700.110. Instruments

700.110. (a) To levy upon an instrument other than a certificated security, the levying officer shall:

(1) If the instrument is in the possession of the judgment debtor, take the instrument into custody.

(2) If the instrument is in the possession of a third person, personally serve a copy of the writ of execution and a notice of levy on the third person.

(b) If the levying officer obtains custody of the instrument, the levying officer shall, if the judgment creditor so instructs, serve a copy of the writ of execution and a notice of levy on the obligor. Service shall be made personally or by mail. The rights and duties of the obligor under the instrument are not affected until the copy of the writ and notice of levy are actually received.

(c) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on the judgment debtor. Service shall be made personally or by mail.

Comment. Section 700.110 is derived from a portion of Section 488.400 (attachment of negotiable instruments) which was incorporated by former Section 688(b). The coverage of this section is broader than former law because it is not restricted to negotiable instruments. See Section 680. \_\_\_ ("instrument" defined). For the method of levy on a certificated security, see Section 700.130.

Subdivision (b) provides a new restriction on giving notice to the obligor under the instrument: such notice may be given only if the

levying officer has obtained possession of the instrument. This limitation is intended to prevent interference with the rights of secured parties and holders in due course.

CROSS-REFERENCES

Defined terms

Certificated security § 680.\_\_\_\_  
Instrument § 680.\_\_\_\_  
Judgment creditor § \_\_\_\_\_  
Judgment debtor § 680.\_\_\_\_  
Levying officer § 680.\_\_\_\_  
Duty of obligor § 701.060  
Manner of service §§ 684.010-684.080  
Notice of levy  
Effect of failure to serve § 699.550

405/767

§ 700.120. Negotiable documents

700.120. (a) To levy upon a negotiable document, the levying officer shall:

(1) If the negotiable document is in the possession of the judgment debtor, take the negotiable document into custody.

(2) If the negotiable document is in the possession of a third person, personally serve a copy of the writ of execution and a notice of levy on the third person.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on the judgment debtor. Service shall be made personally or by mail.

Comment. Section 700.120 continues the substance of a portion of Section 488.400 (attachment of negotiable documents) which was incorporated by former Section 688(b). Section 700.040(c) precludes levy on goods in the possession of a third person that are covered by a negotiable document. See also Com. Code §§ 1201(15), 7602. Article 3 (commencing with Section 697.510) of Chapter 2 provides an alternate method of obtaining a lien on a negotiable document.

CROSS-REFERENCES

Defined terms

Judgment debtor § 680.\_\_\_\_  
Levying officer § 680.\_\_\_\_  
Negotiable document § 680.\_\_\_\_  
Duty of garnishee in general § 701.010  
Manner of service §§ 684.010-684.080

§ 700.130. Securities

700.130. (a) To levy upon a security, the levying officer shall comply with Section 8317 of the Commercial Code.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy on the judgment debtor. Service shall be made personally or by mail.

Comment. Section 700.130 supersedes Section 488.410 (attachment of securities) which was incorporated by former Section 688(b).

CROSS-REFERENCES

Defined terms

Judgment debtor § 680.\_\_\_\_

Levying officer § 680.\_\_\_\_

Security § 680.\_\_\_\_

Manner of service §§ 684.010-684.080

27818

§ 700.140. Deposit accounts

700.140. (a) To levy upon a deposit account, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the financial institution with which the deposit account is maintained.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on the judgment debtor and on any third person in whose name the deposit account stands. Service shall be made personally or by mail.

(c) Subject to Section 700.160, during the time the execution lien is in effect, the financial institution shall not honor a check or other order for the payment of money drawn against, and shall not pay a withdrawal from, the deposit account that would reduce the deposit account to an amount less than the amount levied upon.

(d) During the time the execution lien is in effect, the financial institution is not liable to any person for any of the following:

(1) Performance of the duties of a garnishee under the levy.



(2) Nonpayment of a check or other order for the payment of money drawn or presented against the deposit account pursuant to subdivision (c).

(3) Refusal to pay a withdrawal from the deposit account pursuant to subdivision (c).

Comment. Section 700.140 is analogous to Section 488.390 (attachment of deposit accounts), which was incorporated by former Section 688(b). Withdrawals made after the time of levy reduce any applicable exemption. See Section 704.070(d). For provisions governing levy on a deposit account standing in the name of a person other than the judgment debtor, see Section 700.160.

#### CROSS-REFERENCES

##### Defined terms

Deposit accounts § 680.\_\_\_\_  
Financial institution § 680.\_\_\_\_  
Judgment debtor § 680.\_\_\_\_  
Levying officer § 680.\_\_\_\_  
Duty of garnishee § 701.010  
Exemption § 704.070  
Joint accounts § 700.160  
Manner of service §§ 684.010-684.080  
Social security accounts § 704.080  
Third-party claims §§ 720.010-720.800

405/949

#### § 700.150. Safe deposit boxes

700.150. (a) To levy upon property in a safe deposit box, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the financial institution with which the safe deposit box is maintained.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on the judgment debtor and on any third person in whose name the safe deposit box stands. Service shall be made personally or by mail.

(c) Subject to Section 700.160, during the time the execution lien is in effect, the financial institution shall not permit the removal of any of the contents of the safe deposit box except pursuant to the levy.

(d) The financial institution shall first give the person in whose name the safe deposit box stands an opportunity to open the safe deposit

box to permit the removal of the property levied upon. If the person fails or refuses to do so, the financial institution may refuse to permit the removal of the property levied upon unless the judgment creditor pays in advance the cost of forcibly opening the safe deposit box and of repairing any damage caused thereby.

(e) During the time the execution lien is in effect, the financial institution is not liable to any person for any of the following:

- (1) Performance of the duties of a garnishee under the levy.
- (2) Refusal to permit access to the safe deposit box by the person in whose name it stands.
- (3) Removal of any of the contents of the safe deposit box pursuant to the levy.

Comment. Section 700.150 is new. Subdivisions (a), (b), and (e) are analogous to Section 488.390 (attachment of deposit accounts). Subdivision (c) is drawn from a portion of the fourth sentence of former Section 682a. Subdivision (d) is drawn from the last sentence of former Section 682a. If the judgment creditor is required to pay the costs of forcibly opening a safe deposit box pursuant to subdivision (d), the costs may be later recovered from the judgment debtor. See Section 685.040. For provisions governing levy on a safe deposit box standing in the name of a person other than the judgment debtor, see Section 700.160.

#### CROSS-REFERENCES

##### Defined terms

Financial institution § 680. \_\_\_  
Judgment creditor § 680. \_\_\_  
Judgment debtor § 680. \_\_\_  
Levying officer § 680. \_\_\_  
Duty of garnishee § 701.010  
Manner of service §§ 684.010-684.080  
Notice of levy  
Effect of failure to serve § 699.550  
Third-party claims §§ 720.010-720.800

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#### § 700.160. Deposit accounts and safe deposit boxes not exclusively in name of judgment debtor

700.160. (a) The provisions of this section apply in addition to the provisions of Sections 700.140 and 700.150 if any of the following property is levied upon:

(1) A deposit account standing in the name of a third person or in the names of both the judgment debtor and a third person.

(2) Property in a safe deposit box standing in the name of a third person or by both the judgment debtor and a third person.

(b) The judgment creditor shall provide, and the levying officer shall deliver to the financial institution at the time of levy, an undertaking given by a corporate surety authorized to execute the undertaking by Section 1056. The undertaking shall be for not less than twice the amount of the judgment or, if a lesser amount in a deposit account is sought to be levied upon, not less than twice the lesser amount. The undertaking shall indemnify any third person rightfully entitled to the property against actual damage by reason of the levy on the property and shall assure to the third person the return of the property upon proof of the person's right thereto. The undertaking need not name the third person specifically but may refer to the third person generally in the same manner as in this subdivision.

(c) Upon delivery of the undertaking to the financial institution, the financial institution shall immediately mail notice of the delivery of the undertaking to the third person in whose name the deposit account or safe deposit box stands, by registered mail addressed to the person's last address known to the financial institution. The financial institution shall deliver the undertaking as directed by the third person.

(d) Notwithstanding Article 5 (commencing with Section 701.010), from the time of levy and the delivery of the undertaking to the financial institution until 15 days after the notice is mailed under subdivision (c), if no proceedings excepting to the sufficiency of the surety have been commenced or, if such proceedings have been commenced, until the surety has justified, the financial institution shall not honor a check or other order for the payment of money drawn against, and shall not pay a withdrawal from, the deposit account that would reduce the deposit account to less than the amount levied upon, and shall not permit the removal of any of the contents of the safe deposit box except pursuant to the levy. The financial institution is not liable to any person for any of the following during the period prescribed in this subdivision:

(1) Nonpayment of a check or other order for the payment of money drawn or presented against the deposit account pursuant to this subdivision.

(2) Refusal to pay a withdrawal from the deposit account pursuant to this subdivision.

(3) Refusal to permit access to the safe deposit box by the person in whose name it stands.

(4) Removal of any of the contents of the safe deposit box pursuant to the levy.

(e) Proceedings excepting to the sufficiency of the surety may be commenced by any person claiming to be rightfully entitled to the property levied upon in the manner provided by Chapter 7 (commencing with Section 720.710) of Chapter 4.

(f) Upon the expiration of the period prescribed in subdivision (d), the financial institution shall comply with the levy and Sections 700.140 and 700.150 apply.

(g) If the provisions of this section are not satisfied, the levy is ineffective and the financial institution shall not comply with the requirements of this section or with the levy.

Comment. Subdivision (a) of Section 700.160 continues the substance of the first portion of the first sentence of former Section 682a. Subdivision (b) continues the substance of the second sentence of former Section 682a. Subdivision (c) continues the third and eighth sentences of former Section 682a. Subdivision (d) continues the substance of the fourth and portions of the fifth sentences of former Section 682a, except that subdivision (d) recognizes the practice of holding only so much of the account as is necessary to satisfy the levy. Subdivision (e) continues the substance of the sixth and seventh sentences of former Section 682a except that under subdivision (b), the undertaking must be issued by a corporate surety. Subdivision (f) continues the substance of a portion of the fifth sentence of former Section 682a. Subdivision (g) continues the substance of the last portion of the first sentence of former Section 682a.

#### CROSS-REFERENCES

##### Defined terms

Deposit account § 680.\_\_\_\_  
Financial institution § 680.\_\_\_\_  
Judgment creditor § 680.\_\_\_\_  
Judgment debtor § 680.\_\_\_\_  
Levying officer § 680.\_\_\_\_  
Exemption § 704.070

Justification of corporate surety §§ 1057a-1057b  
Personal delivery in lieu of mailing § 681.020  
Release of property from lien and custody § 699.060  
Third-party claims §§ 720.010-720.800

405/817

§ 700.170. Accounts receivable and general intangibles

700.170. (a) Unless another method of levy is provided by this article, to levy upon an account receivable or general intangibles, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the account debtor.

(b) If payments on an account receivable or general intangibles are made to a person other than the judgment debtor, whether pursuant to a security agreement, assignment for collection, or otherwise, the levying officer shall, if so instructed by the judgment creditor, serve a copy of the writ of execution and a notice of levy on the third person. Service shall be made personally or by mail. Service of the copy of the writ and notice of levy on the third person is a levy on any amounts owed to the judgment debtor by the third person.

(c) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on the judgment debtor. Service shall be made personally or by mail.

Comment. Section 700.170 supersedes a portion of the last sentence of former Section 688(b) and Section 488.370 (attachment of accounts receivable and choses in action) to the extent it was incorporated by former Section 688(b). The introductory portion of subdivision (a) recognizes that a different method of levy may be provided for some types of property. See, e.g., Section 700.140 (deposit accounts).

Subdivision (b) is a new provision that recognizes the need for special provisions if the account receivable or general intangibles are subject to collection by a third person, such as pursuant to a security interest or assignment for collection. In such a situation, the levy by service on the account debtor establishes the judgment creditor's priority. The account debtor continues payment to the third person pending resolution of any disputes. See Section 701.050 (duty of account debtor); see also Sections 706.010-706.800 (third-party claims). Cf. Com. Code § 9301 (lien creditor has priority over unperfected security interest). Service of notice of levy on the third person operates as a levy on any amounts owed to the judgment debtor by the third person. This protects the rights of the judgment creditor, for example, to any surplus payments remaining after satisfaction of a security interest or to

payments in the hands of a collecting agent. This preserves the rule in such cases as *Axe v. Commercial Credit Corp.*, 227 Cal. App.2d 216, 38 Cal. Rptr. 746 (1946) (surplus payments under pledged accounts receivable), and *Puissegur v. Yarbrough*, 29 Cal.2d 409, 175 P.2d 830 (1964) (note held for collection). See also Section 701.040 (duty of secured party upon levy). Article 3 (commencing with Section 697.510) of Chapter 2 provides an alternate method for obtaining a lien on accounts receivable and general intangibles.

CROSS-REFERENCES

Defined terms

Account debtor § 680.\_\_\_\_  
Account receivable § 680.\_\_\_\_  
General intangibles § 680.\_\_\_\_  
Levying officer § 680.\_\_\_\_  
Manner of service §§ 684.010-684.080  
Notice of levy  
Effect of failure to serve § 699.550

405/942

§ 700.180. Property that is subject of pending action or judgment

700.180. (a) To levy upon property, whether tangible or intangible, that is the subject of a pending action or special proceeding or of a judgment, the levying officer shall follow the procedure prescribed in this article for levy and service of notice of levy on the property.

(b) At the time of levy or promptly thereafter, the levying officer shall file a copy of the writ of execution and a notice of levy in the action or special proceeding that is pending or in which the judgment was entered. Failure to so file does not affect the execution lien on the property. The court clerk shall endorse upon any judgment recovered in the action or special proceeding a statement of the existence of the lien on the property of the judgment debtor.

(c) During the time the execution lien is in effect:

(1) No writ may be issued to enforce the judgment recovered in the action or special proceeding.

(2) Any abstract issued upon a judgment recovered in the action or special proceeding shall contain a statement of the judgment creditor's lien and the date the lien was created.

(3) No compromise, settlement, or satisfaction of the action or special proceeding or judgment shall be entered by or on behalf of the judgment debtor without one of the following:

(A) The consent of the judgment creditor.

(B) The approval of the court in which the action or proceeding is pending or the judgment is entered, in the discretion of the court, obtained at a hearing on noticed motion.

(d) If property that is the subject of a pending action or special proceeding or of a judgment is levied upon, it shall not be sold or otherwise applied to the satisfaction of the judgment creditor's judgment until after final judgment is entered and the time for appeal from the judgment has expired or, if an appeal is filed, until the appeal is finally determined.

Comment. Section 700.180 supersedes a portion of former Section 688(b), which incorporated the method of levy of attachment under Section 488.420. Subdivision (a) of Section 700.180 makes clear that property may be levied upon regardless whether it is the subject of a pending action or a judgment. The cause of action or judgment is not itself a form of property that is subject to the enforcement of a money judgment; only the underlying property is subject to enforcement. See Section [695.030(a)] (property not subject to enforcement of money judgment).

Subdivisions (b) and (c) provide a means whereby the judgment creditor can make more effective the lien on the property that is the subject of the action or judgment. If a copy of the writ and a notice of levy are filed in the action, the judgment debtor cannot enforce the judgment or settle the action without first (1) satisfying the judgment creditor's lien or (2) obtaining the consent of the judgment creditor or the approval of the court. The provision for court approval protects against unreasonably withheld consent by the judgment creditor.

Subdivision (d) protects against disposition of the subject property or right until its status is finally determined.

See Article 5 (commencing with Section 708.410) of Chapter 6 for an alternative procedure for obtaining a lien on a judgment debtor's rights in a pending action. The procedure of Article 5 is useful in cases where a right that is the subject of a cause of action is not subject to execution.

#### CROSS-REFERENCES

##### Definitions

Judgment creditor § 680.\_\_\_\_

Judgment debtor § 680.\_\_\_\_

Levying officer § 680.\_\_\_\_

Writ § 680.\_\_\_\_

§ 700.190. Interest in personal property of estate of decedent

700.190. (a) To levy upon the interest of the judgment debtor as an heir, devisee, or legatee in personal property in the estate of a decedent, the levying officer shall personally serve a copy of the writ and a notice of levy on the personal representative of the decedent. The levy does not impair the powers of the representative over the property for the purposes of administration.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy on the judgment debtor. Service shall be made personally or by mail.

(c) The personal representative shall report the levy to the court in which the estate is being administered when any petition for distribution is filed. If a decree orders distribution to the judgment debtor, the court making the decree shall order the property levied upon to be delivered to the levying officer. The property may not be delivered to the levying officer until the decree distributing the property has become final. To the extent the property delivered to the levying officer is not necessary to satisfy the money judgment, it shall be released to the judgment debtor.

Comment. Section 700.190 is analogous to Section 488.430 (method of attachment of an interest in personal property of a decedent's estate) which was incorporated by former Section 688(b). See also Sections 699.010 (lien of execution on interest in personal property in estate of decedent), 699.560 (return of writ).

CROSS-REFERENCES

Defined terms

Judgment debtor § 680.  
 Levying officer § 680.  
 Manner of service §§ 684.010-684.080

Article 5. Duties and Liabilities of Third Persons After Levy

§ 701.010. Duty of garnishee

701.010. (a) Except as otherwise provided by statute, at the time of levy by service of a copy of the writ of execution and a notice of levy on a third person, or promptly thereafter:



(1) If the third person does not claim the right to possession of property levied upon, the third person shall deliver to the levying officer any such property that is in the possession or under the control of the third person at the time of levy.

(2) To the extent that the third person does not deny an obligation levied upon, or claim a priority over the judgment creditor's lien, the third person shall pay to the levying officer the amount that is due and payable to the judgment debtor at the time of levy and shall make further payments to the levying officer of amounts that become due during the period of the execution lien.

(b) If the third person makes a delivery or payment to the levying officer pursuant to subdivision (a), the third person shall execute and deliver any documents necessary to effect the transfer of the property.

Comment. Section 701.010 is new. Service of the copy of the writ of execution and a notice of levy on the third person creates a lien on any personal property or obligation that is subject to levy of execution even if the garnishee refuses to turn the property over or to pay the obligation to the levying officer. See Section 701.020; Nordstrom v. Corona City Water Co., 155 Cal. 206, 212, 100 P. 242, \_\_\_ (1909). See Sections 697.710-697.750 (execution lien).

The introductory portion of subdivision (a) recognizes exceptions to the duty of the garnishee. See, e.g., Sections 700.160 (delay by a financial institution), 700.050 (paper levy on a levying officer), 700.190 (power of personal representative of property in estate of a decedent), and 701.050 (duty of account obligor).

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680. \_\_\_

Levying officer § 680. \_\_\_

Third-party claims §§ 720.010-720.800

405/399

#### § 701.020. Liability of garnishee

701.020. (a) If a third person fails or refuses without good cause to comply with Section 701.010 by delivering property levied upon or paying the amount of the obligation levied upon when it is due, the third person is liable to the judgment creditor for the value of the judgment debtor's interest in the property in the third person's possession or control at the time of levy or for the amount of the obligation.

(b) The third person may, in the court's discretion, be required to pay the costs and reasonable attorney's fees incurred in any proceedings to enforce the liability under subdivision (a).

(c) The third person's liability under subdivision (a) continues until the property levied upon is delivered, the obligation levied upon is paid, the property is released pursuant to Section 699.060, or the judgment is satisfied or discharged, whichever first occurs.

Comment. Section 701.020 is new. It is comparable to Section 488.550(b) (liability of attachment garnishee). The judgment creditor may seek to enforce compliance with the levy or enforcement of the garnishee's liability pursuant to Article 2 (commencing with Section 708.110) (examination proceedings) or Article 3 (commencing with Section 708.210) (creditor's suit) of Chapter 6. See also Sections 697.710-697.750 (execution lien).

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.\_\_\_\_

Judgment debtor § 680.\_\_\_\_

Third-party claims §§ 720.010-720.800

405/408

#### § 701.030. Garnishee's memorandum

701.030. (a) At the time of service of a copy of the writ of execution and a notice of levy on a third person, the levying officer shall request the third person to give the levying officer a garnishee's memorandum containing the information required by this section. Within 10 days after the request is made, the third person shall mail the garnishee's memorandum to the levying officer.

(b) The garnishee's memorandum shall be executed under oath and shall contain the following information:

(1) A description of any property of the judgment debtor sought to be levied upon that is not delivered to the levying officer and the reason for not delivering the property.

(2) A description of any property of the judgment debtor not sought to be levied upon that is in the possession or under the control of the third person at the time of levy.

(3) A statement of the amount and terms of any obligation to the judgment debtor sought to be levied upon that is due and payable and is not paid to the levying officer, and the reason for not paying the obligation.

(4) A statement of the amount and terms of any obligation to the judgment debtor sought to be levied upon that is not due and payable at the time of levy.

(5) A statement of the amount and terms of any obligation to the judgment debtor at the time of levy not sought to be levied upon.

(6) A description of claims and rights of other persons to the property or obligation levied upon that are known to the third person and the names and addresses of such other persons.

(c) If a garnishee's memorandum is received from the third person, the levying officer shall promptly mail a copy of the memorandum to the judgment creditor and attach the original to the writ when it is returned to the court clerk. If a garnishee's memorandum is not received from the third person, the levying officer shall so state in the return.

(d) Except as provided in subdivision (e), if a third person does not give the levying officer a garnishee's memorandum within the time provided in subdivision (a) or does not provide complete information, the third person may, in the court's discretion, be required to pay the costs and reasonable attorney's fees incurred in any proceedings to obtain the information required in the garnishee's memorandum.

(e) If a third person fully complies with the levy, the third person need not give a garnishee's memorandum to the levying officer.

Comment. Section 701.030 is derived from Section 488.080(b) but requires the garnishee to provide a broader range of information. The garnishee's memorandum may serve as an inexpensive alternative to an examination proceeding under Section 708.130.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.\_\_\_\_

Judgment debtor § 680.\_\_\_\_

Levying officer § 680.\_\_\_\_

Delivery in lieu of mailing § 681.020

§ 701.040. Rights and duties of secured party

701.040. (a) Except as otherwise directed by the court, if property levied upon is subject to a security interest created prior to levy, the property or obligation is subject to enforcement of the security interest without regard to the levy unless it is in the custody of the levying officer. If the security interest is not perfected, the secured party is liable to the judgment debtor for any proceeds from the property to the extent of the levy.

(b) After satisfaction of the security interest, the secured party shall deliver any excess property or pay any excess payments or proceeds of property remaining in the possession of the secured party to the levying officer for the purposes of the levy unless otherwise directed by court order or by the levying officer.

Comment. Section 701.040 reflects the principle that where practicable an execution levy should not affect the right of a prior secured party to resort to collateral and should not disrupt on-going business relations between account debtors and secured parties in the absence of a determination that the judgment creditor's lien has priority. See Com. Code § 9203 (attachment of security interest). The levy is generally intended to appropriate the rights of the judgment debtor to any excess remaining after satisfaction of the security interest. See subdivision (b); Com. Code § 9311 (permissibility of involuntary alienation of debtor's rights in collateral). As recognized by the introductory clause of subdivision (a), this right of the secured party is subject to an exception where a court order determining that the judgment creditor has priority is obtained. See Com. Code § 9301(1)(b) (lien creditor has priority over unperfected security interest). Of course, the secured party may voluntarily release the collateral if the secured party recognizes that the judgment creditor has a clear priority.

Under subdivision (a), the secured party may enforce the security interest without interference from the levy only if the property or obligation levied upon is not in the custody of the levying officer. See also Section 701.050 (duty of account debtor).

## CROSS-REFERENCES

## Defined terms

Judgment debtor § 680.       

Levying officer § 680.       

Third-party claims §§ 720.010-720.800

§ 701.050. Duty of account debtor

701.050. After service of a copy of the writ of execution and a notice of levy on an account debtor obligated on an account receivable, chattel paper, or general intangibles:

(a) If the account debtor has been making payments or is required to make payments to the judgment debtor, the account debtor shall make payments to the levying officer as they become due unless otherwise directed by court order or by the levying officer. Payments made to the judgment debtor after service of the copy of the writ of execution and the notice of levy do not discharge the obligation of the account debtor.

(b) If the account debtor has been making payments or is required to make payments to a person other than the judgment debtor, whether pursuant to a security agreement, assignment for collection, or otherwise, the account debtor shall continue to make such payments notwithstanding the levy until the obligation to the third person is satisfied or unless otherwise directed by court order or by the third person. After satisfaction of the obligation to the third person, the account debtor shall make payments to the levying officer as they become due unless otherwise directed by court order or by the levying officer.

(c) If pursuant to a security agreement the judgment debtor has liberty to accept the return of goods or make repossessions under the account receivable or chattel paper, the account debtor shall deliver returnable property to the levying officer unless otherwise directed by court order or by the levying officer.

Comment. Section 701.050 sets forth the duties of account debtors obligated on property that is subject to a security or other interest of a third person. Like Section 701.040, this section is intended to preserve the status quo between the account debtor and the third person where it is practicable. See the Comment to Section 701.040. Subdivisions (a) and (c) provide significant exceptions to this principle, however, in cases where the judgment debtor has the liberty to accept payments or the return of property. See Com. Code § 9205 (liberty in debtor to collect accounts and chattel paper).

CROSS-REFERENCES

Defined terms

Account debtor § 680. \_\_\_\_\_  
 Account receivable § 680. \_\_\_\_\_  
 Chattel paper § 680. \_\_\_\_\_  
 General intangibles § 680. \_\_\_\_\_  
 Judgment debtor § 680. \_\_\_\_\_  
 Levying officer § 680. \_\_\_\_\_

968/980

§ 701.060. Duty of obligor

701.060. If the levying officer obtains custody of an instrument levied upon and serves the obligor under the instrument pursuant to the levy, the obligor shall make payments to the levying officer as they become due. Payments made to the judgment debtor after service do not discharge the obligation of the obligor. Payments made in good faith by the obligor to the previous holder of the instrument shall be applied to the discharge of the obligation of the obligor.

Comment. Section 701.060 makes clear that the obligor under an instrument has a duty to make payments to the levying officer only if the levying officer has obtained possession of the instrument. See Section 700.110 (method of levy on instruments). This is consistent with Commercial Code Section 3301 (rights of a holder of negotiable instrument). This section also applies to instruments that are not negotiable.

CROSS-REFERENCES

Defined terms

Instrument § 680. \_\_\_\_\_  
 Judgment debtor § 680. \_\_\_\_\_  
 Levying officer § 680. \_\_\_\_\_