

Memorandum 80-69

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

The following portions of the enforcement of judgments recommenda-
tion are attached to this memorandum:

Division 3. Enforcement of Nonmoney Judgments

Chapter 1. General Provisions (§ 712.010).

Chapter 2. Judgment for Possession of Personal Property
(§ 714.010).

Chapter 3. Judgment for Possession of Real Property
(§ 715.010).

Chapter 4. Judgment for Sale of Property (§ 716.010).

Chapter 5. Other Judgments (§ 717.010).

The substance of these provisions (Sections 708.110-712.110 in the
Tentative Recommendation) remains largely unchanged, but we have re-
drafted this material to create a chapter containing general provisions.
We have also made some technical changes in response to comments by the
Sheriffs' Association and several marshals.

Also attached to this memorandum is a copy of amendments to Section
1174 (unlawful detainer).

Respectfully submitted,

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ENFORCEMENT OF NONMONEY JUDGMENTS

Introduction

Existing law contains a few scattered references to enforcement of judgments other than money judgments--i.e., judgments for the sale or possession of property or requiring the performance of some other act. The extent to which the provisions concerning enforcement of money judgments govern the enforcement of these other types of judgments is not clear. The proposed law is designed to make clear which aspects of the law relating to the enforcement of money judgments apply to other judgments and to make enforcement procedures uniform to the extent practicable.

Another source of confusion under existing statutory and case law derives from the variety of names given the writs or other process used in the course of enforcing nonmoney judgments. The writ used to enforce a judgment for possession of personal property has been termed a writ of possession¹ or a writ of execution.² The writ used to enforce a judgment for possession of real property has been termed a writ of possession,³ a writ of restitution,⁴ a writ of execution,⁵ a writ of assistance,⁶ or a writ of enforcement.⁷ The process used to enforce a

1. See E. Jackson, California Debt Collection Practice § 17.39 (Cal. Cont. Ed. Bar 1968). It may also be called a writ for delivery of the possession of property. Id., at 391.
2. See Sections 682, subd. 4, 684. The form approved by the Judicial Council is entitled "writ of execution" and boxes are to be checked to indicate that it applies to possession of personal property.
3. See Section 1166a.
4. See Section 1174(d).
5. See Sections 682, subd. 4, 684. The form approved by the Judicial Council is entitled "writ of execution" and boxes are to be checked to indicate that it authorizes taking possession of real property.
6. See *Rafferty v. Kirkpatrick*, 29 Cal. App.2d 503, 505, 85 P.2d 147 (1938). The writ of assistance has been used to put the purchaser at a foreclosure sale of real property into possession where the defendant refuses to surrender possession. The writ of assistance derives from equity practice. See 1 A. Freeman, *Law of Executions* § 37d, at 155 (3d ed. 1900); Dinkelspiel, Enforcement of Judgments, in *California Remedies for Unsecured Creditors* § 16, at 140 (Cal. Cont. Ed. Bar 1957).
7. See *Hamilton v. Waters*, 93 Cal. App.2d 866, 868, 210 P.2d 67 (1949).

judgment for the sale of property has been termed a writ of enforcement⁸ or an order of sale.⁹ Under the proposed law, a money judgment is enforceable by a writ of execution, a judgment for the possession of property is enforceable by a writ of possession, and a judgment for the sale of property is enforceable by a writ of sale.

Uniform Procedures

Under the proposed law, provisions concerning the time within which judgments may be enforced, stays of enforcement, and other procedural provisions¹⁰ apply to enforcement of judgments for possession and judgments for sale, as well as to money judgments. Technical requirements concerning issuance and return are largely the same for writs of execution, possession, and sale.¹¹ The proposed law continues the substance of existing law except as noted below.

Judgments for Possession of Personal Property

Upon entry of a judgment for possession of personal property, such as in an action for specific recovery of personal property,¹² the judgment creditor may obtain a writ of possession of personal property, if the property has not already been delivered to the judgment creditor

8. See *Laubisch v. Roberdo*, 43 Cal.2d 702, 712, 277 P.2d 9 (1954). Section 684 refers to a writ used to enforce a judgment for sale as a "writ reciting such judgment."
9. *Id.* In *Knapp v. Rose*, 32 Cal.2d 530, 534, 197 P.2d 7 (1948), the court said that it was immaterial whether the writ used to sell real property was entitled a writ of enforcement, writ of execution, or order of sale if it was sufficient in substance. See also Gov't Code § 26829 (fee for issuing order of sale).
10. See the discussion under "General Provisions" supra.
11. See the discussion under "Issuance and Return of Writ of Execution" supra. Under existing law, it has been held that a writ of restitution remains in force beyond the 60-day period provided by Section 683 insofar as the writ directs the restitution of the premises although it had expired insofar as it directed the levying officer to levy on property to satisfy damages awarded in the judgment. See *Magnaud v. Traeger*, 66 Cal. App. 526, 530-31, 226 P. 990 (1924).
12. See generally 3 B. Witkin, *California Procedure Pleading* §§ 554-63, at 2194-203 (2d ed. 1971). The action for specific recovery is

under a prejudgment writ of possession.¹³ The levying officer, pursuant to the judgment creditor's instructions, attempts to take possession of the property in the manner provided for levy of execution where the property is in the judgment debtor's possession.¹⁴ Property may be seized only if it is in the possession of the judgment debtor or an agent of the judgment debtor.¹⁵

If property cannot be taken into custody, whether it is lost, destroyed, hidden, or in the hands of a third person, the judgment creditor is entitled to satisfy the judgment out of the property of the judgment debtor that is not exempt from execution for the value of the property as determined in the judgment for possession.¹⁶ For this purpose, the writ of possession is treated as a writ of execution. Whether or not the property awarded the judgment creditor can be found, the writ of possession is treated as a writ of execution for the purpose of satisfying costs and damages awarded in the judgment and costs and interest accruing thereafter.¹⁷ The proposed law also makes clear that the judgment creditor is entitled to resort to all of the remedies available for the enforcement of a money judgment, such as an examination proceeding, a creditor's suit or an assignment order,¹⁸ for the purpose

frequently referred to as a claim and delivery action, and a distinction is sometimes made between replevin, where the original taking was wrongful, and detinue, where the original taking was lawful. Id. § 554, at 2195-96.

13. Possession may be obtained prior to judgment by way of the provisional remedy of claim and delivery. See Sections 511.010-516.050.

14. See the discussion under "Levy Under Writs of Execution" supra.

15. See Section 514.010.

16. See Sections 627, 667, 682, subd. 4, 682.2. It is not necessary to determine the value of the property if it has already been taken into the custody of the levying officer pursuant to claim and delivery proceedings. See Section 627; Webster v. Mountain Monarch Gold Mining Co., 6 Cal. App.2d 450, 454-55, 44 P.2d 646 (1935).

17. See Section 682, subd. 4.

18. See the discussion under "Special Procedures for Enforcement of Money Judgments" supra.

of collecting costs, interest, damages, and the value of the property if possession cannot be obtained.

The proposed law permits the judgment creditor to seek an order, enforceable by the power to punish for contempt, requiring the judgment debtor to turn the property over to the judgment creditor directly. This order is the same as that available in claim and delivery proceedings prior to judgment.¹⁹

The proposed law also permits the appointment of a receiver to enforce the judgment in an appropriate case.²⁰

Judgments for Possession of Real Property

Upon entry of a judgment for possession of real property, such as in an action for unlawful detainer, forceable entry, ejectment, or quiet title,²¹ the judgment creditor is entitled to a writ of possession of real property. Under the proposed law, the levying officer executes the writ of possession of real property in the manner provided by existing law for enforcement in unlawful detainer cases.²²

Like the writ of possession of personal property, the writ of possession of real property may be treated as a writ of execution for the purpose of levying on other property of the judgment debtor in order to satisfy costs, interest, and damages awarded in the judgment and costs and interest accruing thereafter.²³ The proposed law makes clear

19. See Section 512.070.

20. Existing law does not specifically authorize appointment of a receiver to enforce a judgment for possession of personal property although Section 564, para. 3, authorizes appointment of a receiver "[a]fter judgment, to carry the judgment into effect." See the discussion under "Receivers" supra.

21. See generally 3 B. Witkin, California Procedure Pleading §§ 506-16, at 2164-70 (unlawful detainer), §§ 517-21, at 2170-72 (forceable entry), §§ 522-34, at 2173-83 (ejectment and quiet title) (2d ed. 1971).

22. See Section 1174(c)-(d). The proposed law also incorporates the procedure for disposition of personal property remaining on the premises provided by Section 1174(e)-(m).

23. See Section 682, subd. 4, 682.2.

that the judgment creditor is entitled to resort to other remedies for collection of a money judgment in order to satisfy any monetary liability.²⁴

The proposed law would also permit the appointment of a receiver to enforce a judgment for possession of real property in an appropriate case.²⁵

Judgments for Sale of Real or Personal Property

Upon entry of a judgment for the sale of real or personal property, such as in an action to foreclose a mortgage or other lien or to enforce a security interest,²⁶ the judgment creditor is entitled to issuance of a writ of sale. The proposed law requires that a levy be made in the same manner as under execution, whereas existing law permits sale under an order of sale issued by the court and does not require an actual levy.²⁷ The proposed law provides that the property is to be sold in the same manner as under execution,²⁸ but the proceeds would be distributed in the manner provided in the judgment.²⁹

The writ of sale may be treated as a writ of execution for the purpose of collecting costs, interest, and damages, but the judgment

24. See the discussion under "Special Procedures for Enforcement of Money Judgments" supra.

25. Existing law does not specifically authorize appointment of a receiver to enforce a judgment for possession of real property although Section 564, subd. 3, authorizes appointment of a receiver "[a]fter judgment, to carry the judgment into effect." See the discussion under "Receivers" supra.

26. See generally 3 B. Witkin, California Procedure Pleading §§ 539-42, at 2185-88 (2d ed. 1971); Code Civ. Proc. § 726 (mortgage foreclosure); Com. Code § 9501(1) (foreclosure of security interest).

27. See, e.g., Knapp v. Rose, 32 Cal.2d 530, 534, 197 P.2d 7 (1948); Southern Cal. Lumber Co. v. Ocean Beach Hotel Co., 94 Cal. 217, 222-24, 26 P. 627 (1892).

28. This continues a principle of existing law. See Johnson v. Tyrell, 77 Cal. App. 179, 182, 246 P. 140 (1926) (foreclosure sale of real property); Podrat v. Oberndorff, 207 Cal. 457, 459-60, 278 P. 1035 (1929) (foreclosure sale of personal property). It should be noted that the proposed law revises the sale provisions, as discussed under "Sale Procedure" supra.

29. This continues existing law. See Sections 684, 726, 727.

creditor may be limited by the judgment to resort to proceeds of the property if it is designated as security for such amounts.³⁰

The proposed law permits the judgment creditor to obtain an order, enforceable by the power to punish for contempt, requiring the judgment debtor to transfer to the levying officer property to be sold and documentary evidence of title to the property. This order is similar to the turnover order which would be available under the proposed law for the enforcement of a money judgment.

The proposed law also permits the appointment of a receiver to enforce a judgment for sale of real or personal property.³¹

Other Types of Judgments

Under the proposed law, as under existing law, judgments requiring a person to perform some other act or to refrain from performing an act,³² are enforceable by the power to punish for contempt.³³ A court may exercise its contempt power when the person against whom the judgment was rendered has notice or knowledge of the judgment and has the ability to comply but wilfully refuses to do so.³⁴ The proposed law, like existing law, provides for personal service of a certified copy of the judgment on the person required to obey as a basis for invoking the contempt power.

30. This continues existing law. See Section 726.

31. Existing law does not specifically authorize appointment of a receiver to enforce a judgment for sale of property although Section 564, para. 3, authorizes appointment of a receiver "[a]fter judgment, to carry the judgment into effect." See the discussion under "Receivers" supra. A receiver may be appointed at the commencement of a foreclosure action and continued in possession until sale of the property. See *Boyd v. Benneyan*, 204 Cal. 23, 25, 266 P. 278 (1928).

32. Many types of judgments are self-executing and do not require enforcement, such as, for example, declaratory judgments, marital dissolutions, and corporate dissolutions.

33. See Sections 684, 1209-1222.

34. See *Phillips v. Superior Court*, 22 Cal.2d 256, 257-58, 137 P.2d 838 (1943) (person must have notice, actual knowledge, or have been present in court); *Mossman v. Superior Court*, 22 Cal. App.3d 706, 711-12, 99 Cal. Rptr. 638 (1972) (knowledge of attorney imputable to contemnor); *In re Moulton*, 100 Cal. App.2d 559, 562, 224 P.2d 76 (1950) (inability to comply).

DIVISION 3. ENFORCEMENT OF NONMONEY JUDGMENTS

CHAPTER 1. GENERAL PROVISIONS

§ 712.010. Issuance of writ

712.010. (a) Except as provided in subdivision (b), after entry of a judgment for possession or sale of property, a writ for possession or sale shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the judgment is to be enforced. Separate writs shall be issued for separate counties. Writs may be issued successively until the judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 90 days after the issuance of a prior writ for that county unless the prior writ has been earlier returned.

(b) A writ of possession of real property may not be issued to enforce a judgment for unlawful detainer after default in the payment of rent until the expiration of the time provided by subdivision (c) of Section 1174.

Comment. Section 712.010 is a general provision applicable to the issuance of writs of possession or sale that may be used to enforce judgments for possession or sale under this division. Subdivision (a) is analogous to subdivision (a) of Section 699.510 relating to writs of execution. See the Comment to Section 699.510. It is based in part on former Sections 681, 684, and 687.

Section 712.010 authorizes issuance of writs to more than one county; it will be a rare case, however, in which a writ of sale or possession of real property is needed in a county other than that where the judgment is entered. See, e.g., Sections 392 (venue for actions concerning real property), 726(d) (place of sale of mortgaged premises).

The last sentence of subdivision (a) providing for successive writs, is made necessary by the provisions of Section 712.050 concerning the return of the writ.

Subdivision (b) makes clear that in certain unlawful detainer cases, a writ of possession of real property may not be issued until the expiration of five days after entry of the judgment.

CROSS-REFERENCES

Defined terms

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

Return of writ § 712.050

Writ of possession, personal property § 714.010

Writ of possession, real property § 715.010

Writ of sale § 716.010

§ 712.020. Contents of writ

712.020. (a) A writ of possession or sale issued pursuant to this division shall contain the following information:

- (1) The date of issuance of the writ.
- (2) The name of the judgment creditor.
- (3) The name and mailing address of the judgment debtor.

(4) The date the judgment for possession or sale was entered and where it was entered on the court records.

(5) If the judgment for possession or sale includes a money judgment, the amount required to satisfy the money judgment on the date the writ is issued and the amount of interest accruing daily from the date the writ is issued.

(6) Whether any person has requested notice of sale under the judgment and, if so, the name and mailing address of such person.

(7) Any other information required to be included in the particular writ.

(b) The writ shall require the levying officer to whom it is directed to enforce the judgment.

Comment. Section 712.020 prescribes the essential elements of a writ of possession or sale issued to enforce a judgment under this division. This section is analogous to Section 699.520 (contents of writ of execution). Additional information is required depending upon the type of writ. See Sections 714.010, 715.010, 716.010. A statutory form of the writ is provided in Section 693.____. The Judicial Council has authority to supersede the statutory form. See Section 681.030(b).

CROSS-REFERENCES

Costs § 685.050

Defined terms

Judgment § 680.____

Judgment creditor § 680.____

Judgment debtor § 680.____

Levying officer § 680.____

Writ § 680.____

Interest §§ 685.010-685.030, 685.050

Request for notice of sale § 701.550

§ 712.030. Delivery and execution of writ

712.030. (a) Upon delivery of the writ of possession or sale to the levying officer to whom the writ is directed, together with the written instructions of the judgment creditor, the levying officer shall execute the writ in the manner prescribed by law.

(b) The levying officer may not levy upon or otherwise seize property under the writ after the expiration of 90 days from the date the writ was issued.

Comment. Section 712.030 is analogous to Section 699.530 (delivery and execution of writ of execution). See the Comment to Section 699.530.

CROSS-REFERENCES

Defined terms

Judgment creditor § 680.____

Levying officer § 680.____

Instructions to levying officer § 687.010

998/827

§ 712.040. Collection of money amounts

712.040. (a) A writ of possession or sale may be enforced as a writ of execution to satisfy any money judgment included in the judgment for possession or sale. If amounts due under the judgment are not satisfied pursuant to the writ of possession or sale, the judgment creditor may use a writ of execution to satisfy any money judgment included in the judgment after the writ of possession or sale has been returned or 90 days after its issuance, whichever is earlier. If the judgment creditor does not desire issuance of a writ of possession or sale, because possession has been voluntarily surrendered, the secured obligation has been voluntarily satisfied, or otherwise, a writ of execution may be issued first to satisfy any money judgment included in the judgment.

(b) Whether or not a writ of possession or sale has been issued, enforced, or returned, the judgment creditor may employ any available remedies provided by Chapter 5 (commencing with Section 706.010) or Chapter 6 (commencing with Section 708.010) of Division 2 to satisfy any money judgment included in the judgment.

(c) Notwithstanding subdivisions (a) and (b), if so ordered in a judgment for sale, a money judgment included in the judgment may only be enforced as ordered by the court.

Comment. Section 712.040 is derived from a portion of subdivision 4 of former Section 682 (satisfaction of costs, damages, rents, or profits under judgment for possession of real or personal property). Subdivision (a) promotes procedural efficiency by permitting a writ of possession or sale to be enforced by a levying officer as if it were a writ of execution issued to enforce a money judgment. Subdivision (a) also makes clear that the money judgment portion of the judgment for sale or possession is enforceable directly by a writ of execution after the writ of possession or sale is no longer leviable as a writ of execution or in a case where no writ of possession or sale is needed or desired.

Subdivision (b) makes clear that the judgment creditor is not restricted to this remedy, but is free to use any other appropriate remedy provided for enforcement of a money judgment. See Sections 706.010-706.____ (wage garnishment), 708.010-709.030 (miscellaneous creditors' remedies). The judgment debtor may be entitled to claim exemptions for property sought to be applied to the satisfaction of a money judgment pursuant to a writ of possession or sale. See Sections 703.010-704.880 (exemptions).

Subdivision (c) recognizes that a judgment for sale may provide restrictions on the collection of money amounts awarded in the judgment. See Section 716.020 (execution of writ of sale). Costs and attorney's fees may be ordered to be satisfied out of the proceeds from the sale of the property, if it is security for such amounts. See, e.g., Section 727; *Clemens v. Luce*, 101 Cal. 432, 436, 35 P. 1032 (1894).

CROSS-REFERENCES

Defined terms

- Judgment § 680.____
- Judgment creditor § 680.____
- Money judgment § 680.____
- Writ of possession, personal property § 714.010
- Writ of possession, real property § 715.010
- Writ of sale § 716.010

26952

§ 712.050. Return of writ

712.050. The return of a writ of possession or sale is governed by Section 699.560 (return of writ of execution).

Comment. Section 712.050 is new; prior statutory law did not provide for the return of a writ of possession or sale. See former Section 683. This section differs from the rule applied in *Magnaud v. Traeger*, 66 Cal. App. 526, 530-31, 226 P. 990 (1924), where it was held

that a writ of possession of real property remained in force insofar as it directed the levying officer to levy on property to satisfy the part of the judgment awarding damages.

28280

§ 712.060. Receiver

712.060. The court may appoint a receiver pursuant to Article 7 (commencing with Section 708.610) of Chapter 6 of Division 2 to enforce a judgment for possession or sale of property.

Comment. Section 712.060 makes clear that a receiver may be appointed to enforce a judgment for possession or sale of property under this division. Under former law, receivers were not expressly authorized to enforce such judgments. Cf. Section 726 (former provision for appointment of elisor or commissioner to sell property at conclusion of foreclosure action); Ramsey v. Furlott, 14 Cal. App.2d 145, 148, 57 P.2d 1007 (1936) (appointment of "receiver and commissioner" to gather property and sell it is in effect appointment of commissioner). Receivers have been appointed at the commencement of a foreclosure action and continued in possession until sale. Boyd v. Benneyan, 204 Cal. 23, 28, 266 P. 278 (1928). The appointment of a receiver is subject to the general rules concerning the time within which a judgment may be enforced. See Sections 683.010-683.220.

CROSS-REFERENCES

Defined terms

Court § 680.____

Judgment § 680.____

Judgment for possession, personal property § 714.010 et seq.

Judgment for possession, real property § 715.010 et seq.

Judgment for sale § 716.010 et seq.

3051

CHAPTER 2. JUDGMENT FOR POSSESSION OF PERSONAL PROPERTY

§ 714.010. Writ of possession of personal property

714.010. (a) A judgment for possession of personal property may be enforced by a writ of possession of personal property issued pursuant to Section 712.010.

(b) In addition to the information required by Section 712.020, the writ of possession of personal property shall contain the following:

(1) A description of the property to be delivered to the judgment creditor in satisfaction of the judgment.

(2) The value of the property as specified in the judgment.

Comment. Section 714.010 supersedes portions of subdivision 4 of former Section 682 and of former Section 684. Under this chapter, a judgment for possession of personal property is enforced by a writ of sale rather than a writ of execution. A statutory form for the writ of possession is provided in Section 693.____. The Judicial Council has authority to supersede the statutory form. See Section 681.030(b).

CROSS-REFERENCES

Defined terms

Judgment § 680.____

Judgment creditor § 680.____

3052

§ 714.020. Execution of writ of possession of personal property

714.020. (a) To execute the writ of possession of personal property, the levying officer shall search for the property specified in the writ and take custody of it, if it is in the possession of the judgment debtor or an agent of the judgment debtor, in the same manner as a levy under a writ of execution on such property in the possession of the judgment debtor. Custody of personal property used as a dwelling shall be taken as provided by Section 700.080. Custody of property in a private place shall be taken as provided by Section 699.030.

(b) If the property specified in the writ of possession cannot be taken into custody, the levying officer shall make a demand upon the judgment debtor for the property if the judgment debtor can be located. If custody of the property is not then obtained, the levying officer shall so state in the return. Thereafter the judgment for the possession of the property may be enforced in the same manner as a money judgment for the value of the property as specified in the judgment.

(c) The writ of possession of personal property may, under the circumstances described in subdivision (b), be treated as a writ of execution.

Comment. Section 714.020 supersedes a portion of subdivision 4 of former Section 682 and former Section 684.1 (incorporating the manner of enforcing prejudgment writs of possession pursuant to Section 514.010). By incorporating the manner of levy under a writ of execution, subdivision (a) continues the general substance of prior law. See, e.g.,

Sections 699.030 (property in private place), 700.030 (goods in judgment debtor's possession), 700.070 (equipment and inventory), 700.080 (personal property dwelling).

Under subdivision (b), the value of the property is substituted only where the property cannot be delivered. See Section 667; Drinkhouse v. Van Ness, 202 Cal. 359, 374, 260 P. 869 (1927). The value of the property is generally alleged and determined in the action. See Sections 627, 667; 3 B. Witkin, California Procedure Pleading § 555, at 2197, § 563, at 2203-04 (2d ed. 1971). The judgment creditor is not obligated to accept merely the value of the property if it is available. Griffith v. Reddick, 41 Cal. App. 458, 461-62, 182 P. 984 (1919).

CROSS-REFERENCES

Collection of money judgment included in judgment § 712.040
 Custody § 687.030
 Defined terms
 Judgment debtor § 680.____
 Levying officer § 680.____
 Enforcement of money judgments §§ 695.010-709.030
 Instructions to levying officer § 687.010

3056

§ 714.030. Turnover order

714.030. (a) After entry of a judgment for possession of personal property, and whether or not a writ of possession of personal property has been issued, the judgment creditor may apply to the court ex parte, or on noticed motion if the court so directs or a court rule so provides, for an order directing the judgment debtor to transfer possession of the property to the judgment creditor.

(b) The court may issue an order pursuant to this section upon a showing of need for the order.

(c) The order shall be personally served on the judgment debtor and shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court.

Comment. Section 714.030 is based on a comparable provision applicable before judgment. See Section 512.070. This section makes clear that the court has power to issue a turnover order directing the judgment debtor to transfer possession of the specified property directly to the judgment creditor. The order may be used in lieu of or in addition to a writ of possession.

CROSS-REFERENCES

Defined terms

Court § 680.____

Judgment creditor § 680.____

Judgment debtor § 680.____

Writ of possession of personal property § 714.010

30167

CHAPTER 3. JUDGMENT FOR POSSESSION OF REAL PROPERTY

§ 715.010. Writ of possession of real property

715.101. (a) A judgment for possession of real property may be enforced by a writ of possession of real property issued pursuant to Section 712.010.

(b) In addition to the information required by Section 712.020, the writ of possession of real property shall contain the following:

(1) A description of the premises, possession of which is to be delivered to the judgment creditor in satisfaction of the judgment.

(2) A statement that if the premises is not vacated within five days from the date of service of a copy of the writ on the occupant or, if the copy of the writ is posted, within five days from the date a copy of the writ is served on the judgment debtor, the levying officer will remove the occupants from the premises and place the judgment creditor in possession.

(3) A statement that any personal property remaining on the premises after the judgment creditor has been placed in possession will be sold or otherwise disposed of in accordance with Section 1174 of the Code of Civil Procedure unless the judgment debtor or other owner pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

Comment. Section 715.010 supersedes a portion of subdivision 4 of former Section 682, a portion of former Section 684, and portions of Section 1174 (unlawful detainer). Under this chapter, a judgment for

possession of real property is enforced by a writ of possession rather than a writ of execution or a writ of restitution. A statutory form for the writ of possession is provided in Section 693.____. The Judicial Council has authority to supersede the statutory form. See Section 681.030(b). Subdivision (b)(3) continues a provision formerly found in Section 1174(d).

CROSS-REFERENCES

Defined terms

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

30152

§ 715.020. Execution of writ of possession of real property

715.020. To execute the writ of possession of real property:

(a) The levying officer shall serve a copy of the writ of possession on one occupant of the property. Service on the occupant shall be made by leaving the copy of the writ with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found upon 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.

(b) If unable to serve an occupant at the time service is attempted, the levying officer shall post a copy of the writ in a conspicuous place on the property and serve a copy of the writ of possession on the judgment debtor. Service shall be made personally or by mail. If the judgment debtor's address is not known, the copy of the writ may be served by mailing it to the address of the property.

(c) If the judgment debtor, members of the judgment debtor's household, and any other occupants holding under the judgment debtor do not vacate the property within five days from the date of service on an occupant pursuant to subdivision (a) or on the judgment debtor pursuant to subdivision (b), the levying officer shall remove the occupants from the property and place the judgment creditor in possession.

Comment. Section 715.020 continues the substance of a portion of subdivision 4 of former Section 682 and provisions formerly contained in Section 1174(d) (unlawful detainer).

CROSS-REFERENCES

Collection of money judgment included in judgment § 712.040
Defined terms
 Judgment debtor § 780.____
 Levying officer § 680.____
Manner of service §§ 684.010-684.080

32234

§ 715.030. Disposition of personal property

715.030. The disposition of personal property remaining on the premises after the judgment creditor is placed in possession thereof is governed by subdivisions (e) to (m), inclusive, of Section 1174. For this purpose, references in Section 1174 and provisions incorporated by Section 1174 to the "landlord" shall be deemed to be references to the judgment creditor and references to the "tenant" shall be deemed to be references to the judgment debtor or other occupant.

Comment. Section 709.140 makes the procedure for disposition of personal property remaining on the premises where a tenant has vacated in an unlawful detainer action applicable to all cases where personal property remains on the premises after possession is delivered to a judgment creditor pursuant to a writ of possession of real property.

CROSS-REFERENCES

Defined terms
 Judgment creditor § 680.____
 Judgment debtor § 680.____

3057

CHAPTER 4. JUDGMENT FOR SALE OF PROPERTY

§ 716.010. Writ of sale

716.010. (a) A judgment for sale of real or personal property may be enforced by a writ of sale issued pursuant to Section 712.010.

(b) In addition to the information required by Section 712.020, the writ of sale shall contain a description of the property to be sold in satisfaction of the judgment for sale.

(c) The writ of sale delivered to the levying officer shall be accompanied by a certified copy of the judgment for sale.

Comment. Section 716.010 supersedes a portion of former Section 684. Under this chapter, judgments for the sale of real or personal property are no longer enforced without resort to a writ of sale. The judgment is not enforced through an order of sale or a writ of enforcement as was formerly the practice. See, e.g., *Laubish v. Roberdo*, 43 Cal.2d 702, 713, 277 P.2d 9 (1954); *Knapp v. Rose*, 32 Cal.2d 530, 534, 197 P.2d 7 (1948). A statutory form for the writ of sale is provided in Section 693.____. The Judicial Council has authority to supersede the statutory form. See Section 681.030(b). A levy is required in every case whereas under former law no levy was required since the property was directed to be sold by the judgment--a practice arising from distinctions between the manner of enforcing common law judgments and equitable decrees. See *Southern Cal. Lumber Co. v. Ocean Beach Hotel Co.*, 94 Cal. 217, 222-24, 26 P. 627 (1892). Subdivision (c) requires delivery of a certified copy of the judgment to enable the levying officer to follow the terms of the judgment. See, e.g., Section 716.020(c) (application of proceeds in conformity with judgment). The judgment may also direct that a single parcel or contiguous parcels of real property situated in two or more counties be sold in one of the counties as if it were all situated therein. See Section 726(d).

CROSS-REFERENCES

Defined terms

Judgment § 680.____
 Levying officer § 680.____

3711

§ 716.020. Execution of writ of sale

716.020. To execute the writ of sale, the levying officer shall:

- (a) Levy upon the property described in the writ of sale in the manner prescribed by Article 4 (commencing with Section 700.010) of Chapter 3 of Division 2 for levy under a writ of execution.
- (b) Except as otherwise ordered by the court, give notice of sale and sell the property described in the writ of sale in the manner prescribed by Article 6 (commencing with Section 701.510) of Chapter 3 of Division 2 for giving notice and selling under a writ of execution.
- (c) Apply the proceeds of the sale of the property in conformity with the judgment for sale.

Comment. Section 716.020 continues the substance of former law regarding enforcement of a judgment for the sale of real or personal property. See former Section 684, former portion of Section 726; *Johnson v. Tyrell*, 77 Cal. App. 179, 182, 246 P. 140 (1926) (foreclosure sale of real property made in same manner as execution sale); *Podrat v. Oberndorff*, 207 Cal. 457, 459-60, 278 P. 1035 (1929) (foreclosure sale

of personal property under chattel mortgage made in same manner as execution sale); Marshal's Manual of Procedure §§ 452.1, 452.2 (n.d.); Cal. State Sheriffs' Ass'n, Civil Procedural Manual 6.28 (1978). Section 716.020 changes the former practice under which the judgment debtor was requested to bring personal property to the sale and, if he or she refused, the judgment creditor had to bring a claim and delivery action. See *Ely v. Williams*, 6 Cal. App. 455, 457-58, 92 P. 393 (1907). In appropriate cases, the items recoverable under this paragraph may be satisfied from any property of the judgment debtor that is subject to enforcement of a money judgment. See Section 712.040.

CROSS-REFERENCES

Collection of money judgment included in judgment § 712.040

Defined terms

Levying officer § 680.____

10/006

§ 716.030. Turnover order

716.030. (a) If a writ of sale is issued, the judgment creditor may apply to the court ex parte, or on noticed motion if the court so directs or a court rule so provides, for an order directing the judgment debtor to transfer to the levying officer:

(1) Possession of the property to be sold if the prescribed method of levy is by taking the property into custody.

(2) Possession of any documentary evidence of title to property to be sold. An order pursuant to this paragraph may be served when the property is levied upon or thereafter.

(b) The court may issue an order pursuant to this section upon a showing of need for the order.

(c) The order shall be personally served on the judgment debtor and shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court.

Comment. Section 716.030 is comparable to Section 699.040 (turnover order in aid of execution).

CROSS-REFERENCES

Defined terms

Court § 680.____

Judgment creditor § 680.____

Judgment debtor § 680.____

Levying officer § 680.____

Manner of service §§ 684.010-684.080

CHAPTER 5. OTHER JUDGMENTS

§ 717.010. Enforcement by other judgments

717.010. A judgment not otherwise enforceable pursuant to this title may be enforced by personally serving a certified copy of the judgment on the person required to obey it and invoking the power of the court to punish for contempt.

Comment. Section 717.010 continues the substance of a portion of former Section 684.

CROSS-REFERENCES

Contempt §§ 1209-1222

Defined terms

Judgment § 680.

Manner of service §§ 684.010-684.080

Code of Civil Procedure § 1174 (amended). Judgment for restitution of premises

1174. (a) If upon the trial, the verdict of the jury, or, if the case be tried without a jury, the findings of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceedings be for an unlawful detainer after neglect, or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement if the notice required by Section 1161 of ~~the code~~ states the election of the landlord to declare the forfeiture thereof, but if such notice does not so state such election, the lease or agreement shall not be forfeited.

Except as provided in Section 1166a, in any action for unlawful detainer brought by a petroleum distributor against a gasoline dealer, possession shall not be restored to the petroleum distributor unless the court in the unlawful detainer action determines that the petroleum distributor had good cause under Section 20999.1 of the Business and Professions Code to terminate, cancel, or refuse to renew the franchise of the gasoline dealer.

In any action for unlawful detainer brought by a petroleum distributor against the gasoline dealer, the court may, at the time of request of either party, require the tenant to make rental payments into the court, for the lessor, at the contract rate, pending the resolution of the action.

(b) The jury or the court, if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent. If the defendant is found guilty of forcible entry, or forcible or unlawful detainer, and malice is shown, the plaintiff may be awarded either damages and rent found due or punitive damages in an amount which does not exceed three times the amount of damages and rent found due.

The trier of fact shall determine whether damages and rent found due or punitive damages shall be awarded, and judgment shall be entered accordingly.

(c) When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, and the notice required by Section 1161 has not stated the election of the landlord to declare the forfeiture thereof, the court may, and, if the lease or agreement is in writing, is for a term of more than one year, and does not contain a forfeiture clause, shall order that ~~execution upon the judgment~~ a writ shall not be issued to enforce the judgment until the expiration of five days after the entry of the judgment, within which time the tenant, or any subtenant, or any mortgagee of the term, or any other party interested in its continuance, may pay into the court, for the landlord, the amount found due as rent, with interest thereon, and the amount of the damages found by the jury or the court for the unlawful detainer, and the costs of the proceedings, and thereupon the judgment shall be satisfied and the tenant be restored to his estate.

~~But if~~ (d) If payment as here provided be in subdivision (c) is not made within five days, the judgment may be enforced for its full amount, and for the possession of the premises. In all other cases the judgment may be enforced immediately. The judgment may be enforced as provided in Division 3 (commencing with Section 712.010) of Title 9 of Part 2.

(d) ~~A plaintiff, having obtained a writ of restitution of the premises pursuant to an action for unlawful detainer, shall be entitled to have the premises restored to him by officers charged with the enforcement of such writs. Promptly upon payment of reasonable costs of service, the enforcing officer shall serve an occupant or post a copy of the writ in the same manner as upon levy of writ of attachment pursuant to subdivision (d) of Section 488.310. In addition, where the copy is posted on the property, another copy of the writ shall thereafter be mailed to the defendant at his business or residence address last known to the plaintiff or his attorney or, if no such address is known, at the premises. The writ of restitution of the premises shall include a statement that personal property remaining on the premises at the time of its restitution to the landlord will be sold or otherwise disposed of in accordance with Section 1174 of the Code of Civil Procedure unless~~

the tenant or the owner pays the landlord the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the premises are restored to the landlord. If the tenant does not vacate the premises within five days from the date of service, or, if the copy of the writ is posted, within five days from the date of mailing of the additional notice, the enforcing officer shall remove the tenant from the premises and place the plaintiff in possession thereof. It shall be the duty of the party delivering the writ to the officer for execution to furnish the information required by the officer to comply with this section.

(e) Personal property remaining on the premises which the landlord reasonably believes to have been lost shall be disposed of pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Title 6 of Part 4 of Division 3 of the Civil Code. The landlord is not liable to the owner of any property which he disposes of in this manner. If the appropriate police or sheriff's department refuses to accept such property, it shall be deemed not to have been lost for the purposes of this subdivision.

(f) The landlord shall give notice pursuant to Section 1983 of the Civil Code to any person (other than the tenant) reasonably believed by the landlord to be the owner of personal property remaining on the premises.

(g) The landlord shall store the personal property in a place of safekeeping until it is either released pursuant to subdivision (b) or disposed of pursuant to subdivision (i).

(h) The landlord shall release the personal property to the tenant or, at the landlord's option, to a person reasonably believed by the landlord to be its owner if such tenant or other person pays the costs of storage as provided in Section 1990 of the Civil Code and claims the property not later than the date specified in the writ of restitution before which the tenant must make his claim or the date specified in the notice before which a person other than the tenant must make his claim.

(i) Personal property not released pursuant to subdivision (h) shall be disposed of pursuant to Section 1988 of the Civil Code.

(j) Where the landlord releases personal property to the tenant pursuant to subdivision (h), the landlord is not liable with respect to that property to any person.

(k) Where the landlord releases personal property pursuant to subdivision (h) to a person (other than the tenant) reasonably believed by the landlord to be its owner, the landlord is not liable with respect to that property to:

(1) The tenant or to any person to whom notice was given pursuant to subdivision (f); or

(2) Any other person, unless such person proves that, prior to releasing the property, the landlord believed or reasonably should have believed that such person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of such person.

(1) Where personal property is disposed of pursuant to Section 1988 of the Civil Code, the landlord is not liable with respect to that property to:

(1) The tenant or to any person to whom notice was given pursuant to subdivision (f); or

(2) Any other person unless such person proves that, prior to disposing of the property pursuant to Section 1988 of the Civil Code, the landlord believed or reasonably should have believed that such person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of such person.

(m) For the purposes of subdivisions (e), (f), (h), (k), and (l), the terms "owner," "premises," and "reasonable belief" have the same meaning as provided in Section 1980 of the Civil Code.

Comment. Section 1174 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 (Enforcement of Judgments Law). The material deleted from subdivision (d) is continued in Sections 715.010 (writ of possession of real property), 715.020 (execution of writ of possession).