

8/26/80

Memorandum 80-73

Subject: Study D-300 - Enforcement of Judgments (Transitional Provisions)

Attached to this memorandum is a copy of Chapter 20 (commencing with Section 694.010) of Division 1 of the proposed enforcement of judgments statute. This draft is substantially the same as the draft approved by the Commission at the May 1979 meeting, but has been revised to take account of changes made in the proposed law concerning the time for enforcement of judgments (see draft Section 694.030) and to make clear that homestead declarations will be ineffective after the operative date of the proposed law (see draft Section 694.090).

Respectfully submitted,

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CHAPTER 20. TRANSITIONAL PROVISIONS

§ 694.010. Definitions

694.010. As used in this chapter:

(a) "Operative date" means January 1, 1983.

(b) "Prior law" means the applicable law in effect on December 31, 1982.

Comment. Section 694.010 is new.

10/002

§ 694.020. General rule concerning application of title

694.020. Except as otherwise provided in this chapter, this title on and after its operative date applies to all proceedings commenced prior thereto unless in the opinion of the court application of a particular provision of this title would substantially interfere with the effective conduct of the proceedings or the rights of the parties or other interested persons, in which case the particular provision of this title does not apply and prior law applies.

Comment. Section 694.020 states the general rule governing the application of the Enforcement of Judgments Law to pending matters.

10/005

§ 694.030. Period for enforcement of judgments

694.030. (a) Except as provided in subdivision (b), the period for enforcement of a money judgment or a judgment for possession or sale of property entered prior to the operative date is governed on and after the operative date by Chapter 3 (commencing with Section 683.010).

(b) If a judgment entered prior to the operative date is not renewable pursuant to Chapter 3 (commencing with Section 683.010), whether by an action on the judgment or by filing an application for renewal, the judgment may be enforced by motion pursuant to Section 685 of prior law for a period of two years after the operative date.

Comment. Subdivision (a) applies the 10-year renewable period of enforcement of this title to judgments entered before or after the operative date. Subdivision (b) provides an exception to this general rule permitting a dormant judgment to be revived by motion during a two-

year grace period if the judgment is otherwise unenforceable. See Sections 683.050 (action on judgment), 683.120 (application for renewal). For special rules applicable to judgments under the Family Law Act, see Civil Code Section 4385.

CROSS-REFERENCES

Defined terms

Judgment § 680.330  
Money judgment § 680.390  
Operative date § 694.010(a)  
Prior law § 694.010(b)

10/007

§ 694.040. Execution and return of writs and orders

694.040. (a) Except as provided in subdivision (c), property levied upon or otherwise subjected to process for enforcement of a money judgment or a judgment for possession or sale of property prior to the operative date is subject to prior law relating to sale and delivery.

(b) The duties to be performed in the execution of a writ or order for the enforcement of a money judgment or a judgment for possession or sale of property that is served prior to the operative date are governed by prior law.

(c) The manner of payment at a sale of property pursuant to a writ or order after the operative date is governed by Section 701.590.

Comment. Subdivisions (a) and (b) of Section 694.040 make clear that writs and orders served prior to the operative date are governed by prior law rather than this title, except that any sale is subject to the credit transaction provision of Section 701.590.

CROSS-REFERENCES

Defined terms

Money judgment § 680.390  
Operative date § 694.010(a)  
Prior law § 694.010(b)

10/009

§ 694.050. Redemption rights

694.050. (a) Except as provided in subdivision (b), property levied upon prior to the operative date that would have been sold

subject to the right of redemption under prior law shall be sold subject to the right of redemption and may be redeemed as provided by prior law.

(b) If the judgment creditor and judgment debtor consent in writing, property described in subdivision (a) may be sold as provided in this title rather than subject to the right of redemption.

Comment. Section 694.050 preserves the right of redemption from execution and foreclosure sales where property has been levied upon prior to the operative date unless the parties consent in writing to application of the provisions of this title. See Sections 701.540(i) (delayed sale), 701.680 (sales absolute).

CROSS-REFERENCES

Defined terms

Judgment creditor § 680.340  
Judgment debtor § 680.350  
Operative date § 694.010(a)  
Prior law § 694.010(b)

10/010

§ 694.060. Creditor's suit

694.060. Notwithstanding Section 708.230, an action may be commenced pursuant to Section 708.210 within one year after the operative date if the action could have been commenced under prior law at such time.

Comment. Section 694.060 provides a one-year grace period for bringing a creditor's suit that would otherwise be barred by Section 708.230.

CROSS-REFERENCES

Creditor's suit § 708.210 et seq.

Defined terms

Operative date § 694.010(a)  
Prior law § 694.010(b)

10/013

§ 694.070. Third-party proceedings

694.070. (a) A third-party claim filed prior to the operative date is governed by prior law.

(b) A demand for a third-party claim served on a secured party prior to the operative date is governed by prior law.

Comment. Section 694.070 provides exceptions to the general rule governing application of this title provided by Section 694.020.

CROSS-REFERENCES

Defined terms

Operative date § 694.010(a)  
Prior law § 694.010(b)  
Third-party claims § 720.010 et seq.

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§ 694.080. Exemptions

694.080. The exemptions from enforcement of a money judgment provided by this title apply to exemption claims made after the operative date unless the property claimed to be exempt was levied upon or otherwise subjected to a lien prior to the operative date, in which case the exemptions provided by law at the time the lien was created apply.

Comment. Section 694.080 facilitates the early application of Section 703.050 (exemptions in effect at time of levy govern) but recognizes that the judgment creditor may have a vested right in the application of the exemptions of prior law in a case where a lien has been obtained before the operative date.

CROSS-REFERENCES

Defined terms

Operative date § 694.010(a)  
Prior law § 694.010(b)  
Exemptions § 703.010 et seq.

404/951

§ 694.090. Effect of homestead declaration

694.090. On and after the operative date, a declaration of homestead made under prior law pursuant to Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code is ineffective for any purpose.

Comment. Section 694.090 makes clear that a homestead declaration recorded pursuant to former Civil Code Sections 1237-1304 is ineffective as an exemption from creditors or as a restriction on conveyance. See the Comment to the repeal of former Civil Code Sections 1237-1304.

CROSS-REFERENCES

Defined terms

Operative date § 694.010(a)  
Prior law § 694.010(b)  
Homestead exemption §§ 704.710-704.880