

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
JULY 9-11, 1981
SAN DIEGO

A meeting of the California Law Revision Commission was held in San Diego on July 9-11, 1981.

Law Revision Commission

Present: Beatrice P. Lawson, Chairperson
Jean C. Love, Vice Chairperson
Absent: Omer L. Rains, Senate Member
Alister McAlister, Assembly Member
Robert J. Berton
Thomas S. Loo
Bion M. Gregory, Ex Officio

Staff Members Present

John H. DeMouilly
Robert J. Murphy III
(July 10 and 11 only)
Nathaniel Sterling
Stan G. Ulrich

Consultants Present

James L. Blawie, Property Law (July 10-11)
Jesse Dukeminier, Probate Law, Property Law (July 10)
Susan French, Probate Law, Property Law (July 10)
Russell Niles, Probate Law, Property Law (July 10-11)

Others Present

John D. Bessey, Counsel for the California Association of Collectors, Sacramento (July 9-10)
Betty G. Denitz, private citizen, Beverly Hills (July 10)
Ronald P. Denitz, Tishman West Management Corp., Los Angeles (July 9-11)
William E. Ferguson, Exec. Comm. State Bar Estate Planning, Probate, and Trust Section, San Diego (July 10)
William G. Freed, Calif. State Sheriffs' Assoc., San Diego (July 9-10)
William C. George, Assembly Fin., Ins. and Comm. Committee, Sacramento (July 9-10)
James Goodwin, Exec. Comm. State Bar Estate Planning, Probate and Trust Section, San Diego (July 10)
James M. Hughes, Hughes Attorney Service, Calif. Ass'n of Professional Process Servers, San Diego (July 9-10)
Robert E. Kincaid, S.D. Wholesale Credit Assn., San Diego (July 10)
Mel Shaw, Calif. Assoc. of Collectors, Los Angeles (July 9-10)
Jerry D. Springer, Calif. Assoc. of Collectors, Santa Barbara (July 9-10)
Julie Springer, Calif. Assoc. of Collectors, Santa Barbara (July 9-10)

ADMINISTRATIVE MATTERS

MINUTES OF THE MAY MEETING

The Minutes of the May 14-15, 1981, meeting of the Law Revision Commission were approved after the spelling of the word "Probate" was corrected in the last line of the first page of the Minutes as submitted by the staff.

SCHEDULE FOR FUTURE MEETINGS

The following schedule for future meetings was adopted.

September 1981

September 10 (Thursday)	7:00 p.m. - 10:00 p.m.	San Francisco
September 11 (Friday)	9:00 a.m. - 4:00 p.m.	

October 1981

October 22 (Thursday)	7:00 p.m. - 10:00 p.m.	Los Angeles
October 23 (Friday)	9:00 a.m. - 4:00 p.m.	

November 1981

No meeting scheduled

December 1981

December 3 (Thursday)	7:00 p.m. - 10:00 p.m.	San Francisco
December 4 (Friday)	9:00 a.m. - 5:00 p.m.	
December 5 (Saturday)	9:00 a.m. - 12:00 noon	

LEGISLATIVE PROGRAM

The Executive Secretary made the following report concerning the Commission's 1981 Legislative program:

Enacted

Assembly Concurrent Resolution No. 5 (authorizes Commission to continue its study of previously authorized topics) (1981 Stats. Res. ch. 14).

Assembly Bill No. 132 (guardianship-conservatorship revisions (1981 Stats. ch. 9).

Assembly Bill No. 327 (powers of appointment) (1981 Stats. ch. 63).

Assembly Bill No. 78 (technical clean-up amendment to special assessment lien statute enacted upon Commission recommendation last session) (1981 Stats. ch. 139).

Sent to Governor

Senate Bill No. 202 (technical clean-up amendment to state tax lien revision enacted upon Commission recommendation last session).

Set for Hearing in Second House

Assembly Bill No. 329 (durable power of attorney) (set for hearing on August 11).

Introduced to be Set for Hearing in January 1982

Assembly Bill No. 325 (nonprobate transfers).

Assembly Bill No. 707 (comprehensive enforcement of judgments law).

Assembly Bill No. 798 (conforming additions, amendments, and repeals to enforcement of judgments law).

Not Enacted

Senate Bill No. 203 (increases interest rate to 10 percent). (This bill amended by author in Assembly so that it would no longer effectuate Commission's recommendation.)

SCHEDULE FOR CONSIDERATION OF COMMUNITY PROPERTY STUDY

The Executive Secretary reported that the community property background study had not yet been received from the consultant in a form in which the study could be distributed to interested persons for their comments.

The Commission determined that it would be desirable to have the views of the State Bar Family Law Section Committee at the time the Commission considers the background study. For this reason, it was concluded that consideration of the study should be delayed so that the State Bar Committee would have time to review the background study and submit comments.

The Commission decided that the portions of the study relating to the problem of whether increased earning capacity during marriage should be divided at the time of marriage dissolution and related matters should be considered at the December 1981 meeting. The State Bar Committee should be requested to submit its views by October 15, 1981, if possible, on this matter.

The remainder of the background study will be considered at the January 1982 meeting unless priority is given to other topics. The State Bar Committee should be requested to submit its comments on the entire study by December 1, 1981, if possible, so that the remainder of the study can be considered at the January 1982 meeting.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS

The Commission considered Memorandum 81-24 and the First, Second, Third, Fourth, and Fifth Supplements thereto, and Memorandum 81-25, relating to Assembly Bills 707 and 798, and the comments and suggestions of various persons who attended the meeting. The Commission approved the substance of the amendments to Assembly Bills 707 and 798 which are attached to these Minutes. The bills should be amended to incorporate these amendments as soon as possible so that the bills as amended will be available in printed form.

The Commission also took the following actions and directed the staff to give further study to the matters noted below.

§ 685.010. Rate of interest on judgments

The Commission considered the Second Supplement to Memorandum 81-24. The Commission reaffirmed the proposed 10 percent interest rate on judgments, notwithstanding the amendment of Senate Bill 203 to provide for a variable rate, and determined not to recommend legislation to provide a variable interest rate.

§ 695.020. Community property

Some concern was expressed about the practical application of the provisions governing the liability of community property for the satisfaction of judgments. The Commission plans to devote further study to such matters in connection with its study of community property.

§ 695.035. Leaseholds subject to enforcement of money judgment

The Comment to Section 695.035 (see the Fourth Supplement to Memorandum 81-24) should state that a potential purchaser of the judgment debtor's leasehold interest in real property at an execution sale would be wise to negotiate with the lessor before the sale to avoid disagreement that might arise after the sale.

§ 699.080. Levy by registered process server

The staff will analyze AB 707 with a view toward expanding the authority of registered process servers to levy. The staff will work with the levying officers and the process servers in developing a clear and practical procedure. The problem of delay in processing earnings withholding orders was also discussed. These matters should be covered in a staff memorandum prepared for the next meeting.

§ 701.555. Collection of judgment creditor's costs of advertising sale

The provision providing a procedure for collection of costs incurred after a writ is issued but before the writ is returned (set forth on page 13 of the First Supplement to Memorandum 81-24) was approved in substance. The Comment to Section 701.555 should note that the judgment creditor sometimes as a practical matter will not be able to collect the cost of advertising.

§ 704.070. Deposit account exemption

In view of the proposed exemption for paid earnings and the proposed increase in the homestead exemption from \$45,000 to \$60,000, the exemption for deposit accounts and money should be eliminated.

§§ 704.710-704.840. Homestead exemption

The amount of the homestead exemption should remain as recommended, but the Commission recognized that Assemblyman McAlister should have authority to determine a different amount if needed to get the bill enacted. A procedure should be added to allow the judgment debtor voluntarily to sell a dwelling and protect proceeds in the exempt amount so that, upon a voluntary sale, the judgment lien on the property may be released, with the judgment lien attaching to the proceeds over the exempt amount and senior liens required to be paid.

AMENDMENTS TO ASSEMBLY BILL 707

Amendment 1

On page 5, line 25 of the printed bill, strike the comma after "to"

Amendment 2

On page 6, strike out line 17, and insert:
national bank, state or federal savings and loan association or credit union,

Amendment 3

On page 6, line 24, after "Code" insert:
, but does not include a security

Amendment 4

On page 7, line 14, strike out the comma after "to"

Amendment 5

On page 7, between lines 21 and 22, insert:
680.345. "Security" means a "security" as defined in Section 8102 of the Commercial Code.

Amendment 6

On page 7, line 28, after "instruments," insert:
securities,

Amendment 7

On page 8, line 16, after "673" insert:
or the assignee has otherwise become an assignee of record

Amendment 8

On page 8, between lines 26 and 27, insert:
681.040. If a paper is required or permitted to be filed with a levying officer under this title, the paper is considered filed when it is actually received by the levying officer.

Amendment 9

On page 11, line 4, strike out "last-known" and insert:
last known

Amendment 10

On page 13, line 22, strike out the comma and insert:

Amendment 11

On page 13, line 23, strike out the comma and insert:
or an execution lien)

Amendment 12

On page 13, line 31, strike out "or recorded"

Amendment 13

On page 13, line 32, strike out "writ, notice," and insert:
notice

Amendment 14

On page 15, line 10, after the period, insert:
Service on the judgment creditor of the request shall be made personally
or by mail.

Amendment 15

On page 18, line 23, strike out "shall" and insert:
may

Amendment 16

On page 21, strike out lines 32 to 40, inclusive

Amendment 17

On page 22, strike out lines 1 to 9, inclusive

Amendment 18

On page 22, line 32, strike out "six months" and insert:
two years

Amendment 19

On page 23, line 15, strike out "six months" and insert:
two years

Amendment 20

On page 24, between lines 2 and 3, insert:

(c) If a writ is outstanding at the time the costs are added to the judgment pursuant to this section, the levying officer shall add the amount of such costs to the amount to be collected pursuant to the writ if the levying officer receives either of the following before the writ is returned:

(1) A certified copy of the court order allowing the costs.

(2) A certificate from the clerk of the court that the costs have been added to the judgment where the costs have been added to the judgment after a memorandum of costs has been filed pursuant to Section 685.070 and no motion to tax has been made within the time allowed for making the motion.

(d) The levying officer shall include the costs described in subdivision (c) in the amount of the sale or collection distributed to the judgment creditor only if the levying officer receives the certified copy of the court order or the clerk's certificate before the distribution is made.

Amendment 21

On page 25, strike out lines 4 and 5

Amendment 22

On page 25, line 6, strike out "containing" and insert:
levying officer instructions in writing. The instructions shall be signed by the judgment creditor's attorney of record or, if the judgment creditor does not have an attorney of record, by the judgment creditor. The instructions shall contain

Amendment 23

On page 27, line 5, after "warehouse" insert:
or other storage place

Amendment 24

On page 27, line 6, after "warehouse" insert:
or other storage place

Amendment 25

On page 27, between lines 6 and 7, insert:
687.050. The levying officer has a special lien, dependent upon possession, on personal property levied upon in the amount of the levying officer's costs for which an advance has not been made.

Amendment 26

On page 28, line 4, after "Taxation Code" insert:
(excluding Sections 3201 to 3204, inclusive)

Amendment 27

On page 28, line 17, after "property" insert:
or a security interest in or lien on the property

Amendment 28

On page A-1, strike out the entire caption above item 1 and insert:

ATTORNEY OR PARTY WITHOUT ATTORNEY (name and address): <input type="checkbox"/> Recording requested by and return to:	TELEPHONE NO.:	FOR RECORDER'S USE ONLY
ATTORNEY FOR (Name): NAME OF COURT AND BRANCH, IF ANY: STREET ADDRESS: MAILING ADDRESS: CITY, ZIP CODE:		
PLAINTIFF: DEFENDANT:		CASE NUMBER:
WRIT OF: <input type="checkbox"/> EXECUTION (MONEY JUDGMENT); <input type="checkbox"/> JOINT DEBTOR <input type="checkbox"/> POSSESSION OF: <input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> SALE <input type="checkbox"/> REAL PROPERTY		FOR COURT USE ONLY

Amendment 29

On page A-1, in the second line of item 2, strike out "699080" and insert:
699.080

Amendment 30

On page A-1, following item 15, delete the box before "Clerk"

Amendment 31

On page A-2, strike out the second line of item 10a and insert: then for the value (itemize in 10e) specified in the judgment or supplemental order.

Amendment 32

On page A-2, strike out the last line of the second item in the box entitled "NOTICE TO PERSON SERVED" and insert: judgment or in a supplemental order.

Amendment 33

On page A-3, after the colon in the third line, strike out the entire caption and insert:

ATTORNEY OR PARTY WITHOUT ATTORNEY (name and address): <input type="checkbox"/> Recording requested by and return to:	TELEPHONE NO.:	FOR RECORDER'S USE ONLY
ATTORNEY FOR (Name): NAME OF COURT AND BRANCH, IF ANY		
STREET ADDRESS: MAILING ADDRESS: CITY, ZIP CODE:		
PLAINTIFF:		
DEFENDANT:		
NOTICE OF LEVY under: WRIT OF: <input type="checkbox"/> EXECUTION (MONEY JUDGMENT) <input type="checkbox"/> JOINT DEBTOR	CASE NUMBER:	
<input type="checkbox"/> SALE	FOR COURT USE ONLY	

Amendment 34

On page A-3, in the second line of item 2, strike out "and 7" and insert:
7, and 8

Amendment 35

On page A-6, in the line following "720.800" which constitutes the last line of item 7, insert:

8. The amount necessary to satisfy the judgment creditor's judgment as of the date of issuance of this notice is \$ _____, plus additional interest in the amount of \$ _____ per day from _____ until paid.
(date)

Amendment 35.1

On page A-7, in the fourth line, strike out "MEMORANDUM OF GARNISHEE" and insert:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):		TELEPHONE NO.:	LEVYING OFFICER (Name and Address):	
ATTORNEY FOR (Name):				
Name of court, judicial district or branch court, if any:				
PLAINTIFF:				
DEFENDANT:				
MEMORANDUM OF GARNISHEE		LEVYING OFFICER FILE NUMBER:	COURT CASE NUMBER	

Amendment 36

On page A-7, in the second line in the first box, strike out "returned" and insert:
mailed or delivered

Amendment 37

On page A-7, in the third line in the first box, after "service"
insert:
on you

Amendment 38

On page A-7, strike out the material between the two boxes

Amendment 39

On page A-9, after the colon in the third line, strike out the
entire caption and insert:

ATTORNEY OR PARTY WITHOUT ATTORNEY (name and address): <input type="checkbox"/> Recording requested by and return to:	TELEPHONE NO.:	FOR RECORDER'S USE ONLY
ATTORNEY FOR (Name):		
NAME OF COURT AND BRANCH, IF ANY:		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY, ZIP CODE:		
PLAINTIFF:		
DEFENDANT:		
NOTICE OF RENEWAL OF JUDGMENT	CASE NUMBER:	
	FOR COURT USE ONLY	

Amendment 40

On page A-9, in the line following the caption, after "TO
JUDGMENT DEBTOR (name and" strike out "last-known" and insert:
last known

Amendment 41

On page A-11, line 5, strike out quotation marks before
"IMPORTANT"

Amendment 42

On page A-11, line 22, strike out the quotation marks after "LANDLORD"

Amendment 43

On page A-11, line 23, strike out the quotation marks before "IMPORTANTE"

Amendment 44

On page A-12, line 4, strike out the quotation marks after "ARRENDADOR"

Amendment 45

On page A-12, line 9, strike out the quotation marks before "IMPORTANT"

Amendment 46

On page A-12, between lines 8 and 9, following the line reading "substantially in the following form:" insert:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):		TELEPHONE NO.:	LEVYING OFFICER (Name and Address):	
ATTORNEY FOR (Name):				
Name of court, judicial district or branch court, if any:				
PLAINTIFF:				
DEFENDANT:				
DECLARATION FOR REHEARING ON HOMESTEAD EXEMPTION			LEVYING OFFICER FILE NUMBER:	COURT CASE NUMBER

Amendment 47

On page A-12, strike out line 28 reading "..... (Cut Out and Return This Form to)" and insert:

Return This Form to:

Amendment 48

On page A-13, lines 1 and 2, strike out "the clerk of the court will notify me" and insert:

I will be notified

Amendment 49

On page A-13, line 8, strike out the quotation marks before "IMPORTANTE"

Amendment 50

On page A-13, strike out line 27 reading "..... (Corte y Devuelva Este Formato a)....." and insert:

Devuelva Este Formato a:

Amendment 51

On page A-14, lines 5 and 6, strike out "el oficial de la corte me notificará" and insert:

seré notificado

Amendment 52

On page A-14, line 11, strike out the quotation marks

Amendment 53

On page 31, line 5, strike out "January" and insert:

July

Amendment 54

On page 31, strike out line 7 and insert:

June 30, 1983.

Amendment 55

On page 32, line 12, after "upon" insert:

, or property to be sold upon which foreclosure or other proceedings for sale have been commenced,

Amendment 56

On page 32, between lines 20 and 21, insert:

(c) Property sold prior to the operative date subject to the right of redemption under prior law may be redeemed as provided by prior law.

Amendment 57

On page 33, line 25, strike out "the community" and insert:
either spouse that are community property

Amendment 58

On page 33, line 31, strike out "Property" and insert:
Except as otherwise provided by statute, property

Amendment 59

On page 33, line 34, strike out "Notwithstanding subdivision (a), the" and insert:
The

Amendment 60

On page 33, strike out lines 36 and 37

Amendment 61

On page 33, line 38, strike out "(2)" and insert:
(1)

Amendment 62

On page 33, line 40, strike out "(3)" and insert:
(2)

Amendment 63

On page 34, between lines 1 and 2, insert:

695.035. (a) A lessee's interest in real property may be applied to the satisfaction of a money judgment in any of the following circumstances:

(1) If the lessee has the right voluntarily to sublet the property or assign the interest in the lease.

(2) If the lessee has the right voluntarily to sublet the property or assign the interest in the lease subject to standards or conditions and the purchaser at the execution sale or other assignee agrees to comply with the standards or conditions that would have had to be complied with had the lessee voluntarily sublet the property or assigned the interest in the lease.

(3) If the lessee has the right voluntarily to sublet the property or assign the interest in the lease with the consent of the lessor, in which case the obligation of the lessor to consent to the assignment is subject to the same standard that would apply had the lessee voluntarily sublet the property or assigned the interest in the lease.

(4) In any other case, if the lessor consents in writing.

(b) A provision in a lease for the termination or modification of the lease upon an involuntary transfer or assignment of the lessee's interest is ineffective to the extent that such provision would prevent the application of the lessee's interest to the satisfaction of the money judgment under subdivision (a).

Amendment 64

On page 34, line 6, after "a" insert:

money

Amendment 65

On page 34, between lines 15 and 16, insert:

695.060. Except as provided in Section 708.630, a license issued by a public entity to engage in any business, profession, or activity is not subject to enforcement of a money judgment.

695.070. Notwithstanding the transfer or encumbrance of property subject to a lien created under this division, if the property

remains subject to the lien after the transfer or encumbrance, the judgment may be enforced against the property in the same manner and to the same extent as if it had not been transferred or encumbered.

Amendment 66

On page 35, line 25, after "to" insert:
Sections 683.180 to 683.200, inclusive, and to

Amendment 67

On page 35, lines 38 and 39, strike out "this division" and insert:
Article 2 (commencing with Section 697.310) or Article 3 (commencing with Section 697.510); but, unless the court otherwise expressly orders, no other liens may be created or continued under this division during the period of the stay of enforcement

Amendment 68

On page 36, between lines 12 and 13, insert:
697.060. (a) An abstract or certified copy of a money judgment of a court of the United States that is enforceable in this state may be recorded to create a judgment lien on real property pursuant to Article 2 (commencing with Section 697.310).
(b) A notice of judgment lien based on a money judgment of a court of the United States that is enforceable in this state may be filed to create a judgment lien on personal property pursuant to Article 3 (commencing with Section 697.510).

Amendment 69

On page 38, line 1, after "years" insert:
or the interest of a beneficiary under a trust

Amendment 70

On page 44, line 24, strike out "a" and insert:
(1) A

Amendment 71

On page 44, line 25, strike out "boat" and insert:
vessel

Amendment 72

On page 44, between lines 28 and 29, insert:

(2) The inventory of a retail merchant held for sale except to the extent that the inventory of the retail merchant consists of durable goods having a unit retail value of at least five hundred dollars (\$500). For the purposes of this paragraph, "retail merchant" does not include (A) a person whose sales for resale exceeded 75 percent in dollar volume of the person's total sales of all goods during the 12 months preceding the filing of the notice of judgment lien on personal property or (B) a cooperative association organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code (agricultural cooperative associations) or Part 3 (commencing with Section 13200) of Division 3 of Title 1 of the Corporations Code (Fish Marketing Act).

(e) If property subject to a lien under this article becomes a fixture (as defined in Section 9313 of the Commercial Code), the judgment lien on such property is extinguished.

Amendment 73

On page 44, line 40, after "oath" insert:
by the judgment creditor's attorney if the judgment creditor has an attorney of record or, if the judgment creditor does not have an attorney of record, by the judgment creditor

Amendment 74

On page 45, line 4, strike out "last-known" and insert:
last known

Amendment 75

On page 45, strike out line 17, and insert:
date of the notice.

(g) The date of the notice.

Amendment 76

On page 45, line 32, after the period, insert:
A notice shall not be filed if it is presented for filing more than
10 days after the date of the notice.

Amendment 77

On page 46, lines 10 and 11, strike out "upon the creation of"

Amendment 78

On page 46, lines 11 and 12, strike out ", the judgment
creditor has the priority of a lien creditor" and insert:
has priority

Amendment 79

On page 46, line 17, strike out "security interest"

Amendment 80

On page 46, strike out lines 18 and 19, and insert:
date the financing statement was filed with respect to the security
interest is after the date the notice of judgment lien was filed under
this article

Amendment 81

On page 46, line 36, strike out "the"

Amendment 82

On page 47, line 15, after "proceeds" insert:
with the same priority

Amendment 83

On page 47, line 16, after "proceedings" insert:
(as defined in Section 1201 of the Commercial Code)

Amendment 84

On page 50, line 40, after "article" insert:
and the Secretary of State may require use of such form.

Amendment 85

On page 51, line 5, strike out "one year" and insert:
two years

Amendment 86

On page 51, line 26, after "consideration" insert:
(as defined in Section 3439.03 of the Civil Code)

Amendment 87

On page 51, line 40, strike out "(Section 8102 of"

Amendment 88

On page 52, line 1, strike out "the Commercial Code)"

Amendment 89

On page 54, strike out lines 23 and 24 and insert:
upon if the property is sought to be levied upon by taking it into
custody.

Amendment 90

On page 54, line 35, strike out "being held in" and insert:
arrest and punishment for

Amendment 91

On page 55, line 11, after "the" insert:
judgment creditor's attorney of record or, if the judgment creditor
does not have an attorney of record, from the

Amendment 92

On page 55, line 32, after the period, insert:
If the amount deposited is not claimed by the person, or the legal representative of the person, within five years after the deposit is made, by making application to the treasurer or other official designated by the county, it shall be paid into the general fund of the county.

Amendment 93

On page 56, line 9, strike out the comma after "to"

Amendment 94

On page 58, between lines 5 and 6, insert:
(4) Instructions in writing, as required by the provisions of Section 687.010.

Amendment 95

On page 58, line 39, strike out "90" and insert:
180

Amendment 96

On page 59, line 6, strike out "Section 4383" and insert:
any applicable provisions of Sections 4380 to 4384, inclusive,

Amendment 97

On page 60, line 10, strike out "90" and insert:
180

Amendment 98

On page 61, line 7, strike out "One year" and insert:
Two years

Amendment 99

On page 61, line 12, strike out "90" and insert:
180

Amendment 100

On page 61, line 14, strike out "90-day" and insert:
180-day

Amendment 101

On page 63, line 7, after "the" insert:
judgment debtor's interest in the

Amendment 102

On page 63, line 8, after "If the" insert:
judgment debtor's interest in the

Amendment 103

On page 63, line 16, after "the" insert:
judgment debtor's interest in the

Amendment 104

On page 63, line 19, strike out "address" and insert:
person at the address for such person, if any,

Amendment 105

On page 63, line 21, after "located" insert:
or, if no address is so shown, to the person at the address used by the
county recorder for the return of the instrument creating the interest
of the third person in the property

Amendment 106

On page 64, line 9, after "the" insert:
judgment debtor's interest in the

Amendment 107

On page 64, line 10, after "upon" insert:
and describes the real property where the crops, timber, or minerals or
the like are located

Amendment 108

On page 64, line 10, after "If" insert:
the judgment debtor's interest in

Amendment 109

On page 64, line 11, after "like, or" insert:
if

Amendment 110

On page 64, line 21, after "the" insert:
judgment debtor's interest in the

Amendment 111

On page 64, line 22, strike out ", or real property,"

Amendment 112

On page 64, line 23, after "county" insert:
and any third person in whose name the real property stands upon the
records of the county

Amendment 113

On page 64, line 24, strike out "address" and insert:
person at the address for such person, if any,

Amendment 114

On page 64, line 26, after "located" insert:
or, if no address is so shown, to the person at the address used by the
county recorder for the return of the instrument creating the interest
of the third person in the property

Amendment 115

On page 66, line 19, after "business" insert:
in the possession or under the control of the judgment debtor

Amendment 116

On page 66, line 20, strike out "unless" and insert:
except to the extent that

Amendment 117

On page 66, between lines 39 and 40, insert:
(3) At the end of 10 days from the time the keeper is placed
in charge of the business.

Amendment 118

On page 67, line 1, strike out "such as a housetrailer,
mobilehome, or boat,"

Amendment 119

On page 67, line 28, strike out "boat for which" and insert:
vessel is levied upon and

Amendment 120

On page 67, line 30, strike out ", or" and insert:
for such vehicle or vessel and the certificate of ownership is still in
effect, or if

Amendment 121

On page 67, lines 30 and 31, strike out "for which" and insert:
is levied upon and

Amendment 122

On page 67, lines 32 and 33, strike out ", is levied upon" and
insert:
for such mobilehome or commercial coach and the certificate of title
is still in effect

Amendment 123

On page 67, line 35, after "property" insert:
levied upon

Amendment 124

On page 67, line 37, strike out "boat" and insert:
vessel

Amendment 125

On page 69, lines 1 and 2, strike out "(as defined in Section 8102 of the Commercial Code)"

Amendment 126

On page 69, line 18, after the period, insert:
For the purposes of this subdivision, in determining the amount of the deposit account, the financial institution shall not include the amount of items deposited to the credit of the deposit account that are in the process of being collected.

Amendment 127

On page 70, line 4, strike out "financial institution shall" and insert:
levying officer may

Amendment 128

On page 70, lines 7 and 8, strike out "If the person fails or refuses to do so, the" and insert:
The

Amendment 129

On page 70, line 9, after "permit" insert:
the forcible opening of the safe deposit box to permit

Amendment 130

On page 71, line 22, after "(c)" delete the comma

Amendment 131

On page 71, line 29, after the period, insert:
For the purposes of this paragraph, in determining the amount of the deposit account, the financial institution shall not include the amount of items deposited to the credit of the deposit account that are in the process of being collected.

Amendment 132

On page 72, strike out lines 30 to 40, inclusive, and insert:
700.180. (a) The following property may be levied upon pursuant to this article notwithstanding that the property levied upon is the subject of a pending action or special proceeding:

- (1) Real property.
 - (2) Growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead.
 - (3) Tangible personal property in the possession or under the control of the judgment debtor or in the custody of a levying officer.
 - (4) The interest of an heir, devisee, or legatee in personal property in the estate of a decedent.
- (b) Except as provided in subdivision (a), a levy upon property that is the subject of an action or special proceeding pending at the time of the levy is not effective.

Amendment 133

On page 74, strike out lines 35 and 36 and insert:
section shall be returned not later than one year after the

Amendment 134

On page 77, line 14, strike out "clerk"

Amendment 135

On page 77, line 29, after "levy" insert:
and, if a garnishee's memorandum is required, the garnishee's memorandum

need provide information with respect only to property which is carried on the records available at the office or branch where the levy is made

Amendment 136

On page 78, line 1, after "court" insert:
upon a determination that the judgment creditor's lien has priority over the security interest

Amendment 137

On page 78, line 2, strike out "created" and insert:
that attached

Amendment 138

On page 78, line 27, after "debtor" insert:
to make payments as required by this subdivision

Amendment 139

On page 79, line 13, after "obligor" insert:
to make payments as required by this section

Amendment 140

On page 80, strike out lines 16 to 18, inclusive, and insert:
collected rather than sold. A judgment debtor who so applies shall, within the time allowed for the application, serve a copy of the notice of motion on the judgment creditor and file a copy of the notice of motion with the levying officer. Service of the copy of the notice of motion on the judgment creditor shall be made personally or by mail. If the copy of the

Amendment 141

On page 80, line 21, after "If" insert:
a copy of the

Amendment 142

On page 81, line 32, after "served" insert:
, mailed,

Amendment 143

On page 81, line 34, strike out "(f), and (g)" and insert:
and (f)

Amendment 144

On page 81, line 35, strike out "personally"

Amendment 145

On page 81, line 36, after the period, insert:
Service shall be made personally or by mail.

Amendment 146

On page 82, line 18, strike out "a continuous tract" and
insert:
one or more continuous, unbroken tracts

Amendment 147

On page 82, line 21, strike out "such continuous" and insert:
continuous, unbroken

Amendment 148

On page 82, strike out lines 34 to 40, inclusive

Amendment 149

On page 83, strike out lines 1 and 2, and insert:
(h) Not earlier than 30 days after the date of levy, the
judgment creditor shall determine the names of all persons having liens
on the real property on the date of levy that are of record in the
office of the county recorder and shall instruct the levying officer to
mail notice of sale to each such person at the address used by the
county recorder for the return of the instrument creating the person's

lien after recording. The levying officer shall mail notice to each such person, at the address given in the instructions, not less than 20 days before the date of sale.

Amendment 150

On page 83, between lines 8 and 9, insert:

701.547. A notice of sale shall contain the substance of the following statement: "Prospective bidders should refer to Sections 701.510 to 701.680, inclusive, of the Code of Civil Procedure for provisions governing the terms, conditions, and effect of the sale and the liability of defaulting bidders."

Amendment 151

On page 83, strike out line 13, and insert:
of the sale pursuant to this section.

Amendment 152

On page 83, line 14, after "section" insert:
made prior to the issuance of the writ

Amendment 153

On page 83, line 20, after the period, insert:
The name and address of the person requesting notice of sale under this subdivision shall be noted on the writ.

Amendment 154

On page 83, between lines 20 and 21, insert:

(c) A person who desires notice of sale of particular property that has been levied upon may file a request for notice of sale with the levying officer who will conduct the sale. The request shall contain the information specified by the levying officer as needed in order to comply with the request.

Amendment 155

On page 85, line 14, strike out "20" and insert:

Amendment 156

On page 85, line 17, after "on" insert:
the balance of

Amendment 157

On page 85, strike out lines 24 to 29, inclusive, and insert:

(a) The levying officer shall sell the property:

(1) If the default occurs at the sale, either to the next highest bidder at the amount of the next highest bid if such bidder agrees or to the highest bidder at a new sale held immediately.

(2) If the default occurs after the sale to a credit bidder pursuant to subdivision (c) of Section 701.590, to the highest bidder at a new sale.

Amendment 158

On page 86, between lines 17 and 18, insert:

(d) The levying officer may, in the levying officer's discretion, reject any subsequent bid of the defaulting bidder.

Amendment 159

On page 86, strike out lines 22 to 24, inclusive, and insert:

(1) The amount of all preferred labor claims that are required by Section 1206 to be satisfied from the proceeds.

Amendment 160

On page 87, line 3, after "sold" insert:

(1) that is

Amendment 161

On page 87, line 4, after "or" insert:

(2) that is

Amendment 162

On page 87, line 35, strike out "last-known" and insert:
last known

Amendment 163

On page 88, line 2, strike out "is discharged because it"

Amendment 164

On page 88, line 3, strike out "or for any other reason" and
insert:
, vacated, or otherwise set aside

Amendment 165

On page 88, line 5, strike out "discharged"

Amendment 166

On page 88, line 7, strike out "improperly"

Amendment 167

On page 88, line 14, after the period, insert:
Subject to paragraph (2), if the sale is set aside, the judgment of the
judgment creditor is revived to reflect the amount that was satisfied
from the proceeds of the sale and the judgment creditor is entitled to
interest on the amount of the judgment as so revived as if the sale had
not been made.

Amendment 168

On page 88, strike out lines 29 to 32, and insert:
(a) To persons having preferred labor claims that are required
by Section 1206 to be satisfied from the proceeds, in the amounts required
by Section 1206 to be satisfied.
(b) If a deposit

Amendment 169

On page 88, lines 37 and 38, strike out ", in the order of
their respective priorities"

Amendment 170

On page 88, line 39, strike out "(b)" and insert:
(c)

Amendment 171

On page 89, line 7, strike out "(c)" and insert:
(d)

Amendment 172

On page 89, line 10, strike out "(d)" and insert:
(e)

Amendment 173

On page 89, line 16, strike out "(e)" and insert:
(f)

Amendment 174

On page 89, lines 17 and 18, strike out "before the sale or collection"

Amendment 175

On page 89, line 19, strike out "same property" and insert:
judgment debtor's property or the proceeds of its sale or collection

Amendment 176

On page 89, line 19, strike out "having" and insert:
actually known by the levying officer to have

Amendment 177

On page 89, line 25, strike out "(f)" and insert:
(g)

Amendment 178

On page 89, strike out lines 27 to 40, inclusive, and insert:
this title, the levying officer shall distribute the proceeds to the persons entitled thereto or, in cases covered by Section 701.830, deposit the proceeds with the court.

(b) Except as otherwise provided by statute, the proceeds shall be paid to the persons entitled thereto within 30 days after they are received by the levying officer.

(c) If the proceeds are not to be received by the levying officer in one payment, the levying officer may accumulate proceeds received during a 30-day period and the accumulated proceeds shall be paid to the persons entitled thereto not later than 20 days after the expiration of the 30-day period.

(d) When proceeds are received by the levying officer in the form of a check or other form of noncash payment that is to be honored upon presentation by the levying officer for payment, the proceeds are not received for the purposes of this section until the check or other form of noncash payment has actually been honored upon presentation for payment.

(e) The provisions of Section 26680 of the Government Code apply to the levying officer only if all of the following conditions are satisfied:

(1) The levying officer has failed to pay the proceeds or deposit them with the court as provided in this article within the time provided in this section.

(2) Upon such failure, a person entitled to any of the proceeds has filed with the levying officer a written demand for the payment of the proceeds to the persons entitled thereto.

(3) The levying officer has failed within 10 days after the demand is filed to pay to the person filing the demand the proceeds to which that person is entitled.

Amendment 179

On page 90, strike out lines 1 to 26, inclusive, and insert:

701.830. (a) If there are conflicting claims to all or a portion of the proceeds of sale or collection known to the levying officer before the proceeds are distributed, the levying officer may deposit with the court the proceeds that are the subject of the conflicting claims instead of distributing such proceeds under Section 701.810. Any interested person may apply on noticed motion for an order for the distribution of the proceeds deposited with the court. A copy of the notice of motion shall be served on such persons as the court shall by order determine in such manner as the court prescribes. Any interested person may request time for filing a response to the motion for an order for the distribution of the

Amendment 180

On page 90, line 33, strike out "exceptions" and insert:
issues presented by the motion

Amendment 181

On page 90, line 35, strike out "exceptions" and insert:
issues presented by the motion

Amendment 182

On page 90, line 36, strike out "conclusion of" and insert:
issues presented by the motion can be determined in a

Amendment 183

On page 91, line 2, strike out "exception" and insert:
issues presented by the motion.

Amendment 184

On page 91, line 13, strike out "(a)" and strike out the comma
and insert a colon

Amendment 185

On page 91, line 14, strike out "the" and insert:
(a) The

Amendment 186

On page 91, line 21, after "division" insert:
or pursuant to Title 6.5 (commencing with Section 481.010) (attachment)

Amendment 187

On page 91, line 38, strike out "Property" and insert:
Except as otherwise specifically provided by statute, property

Amendment 188

On page 92, strike out line 22 and in line 23 strike out "be applied" and insert:

(b) This section applies

Amendment 189

On page 92, between lines 27 and 28, insert:

(c) Notwithstanding subdivision (a), in the case of a levy of execution, the procedures to be followed in levying upon, selling, or releasing property, claiming, processing, opposing, and determining exemptions, and paying exemption proceeds, shall be governed by the law in effect at the time the levy of execution is made on the property.

Amendment 190

On page 94, line 34, strike out "481.101" and insert:

481.010

Amendment 191

On page 96, line 5, strike out "Five" and insert:

Ten

Amendment 192

On page 96, line 6, strike out "five" and insert:

10

Amendment 193

On page 96, line 7, strike out "examine" and insert:

review

Amendment 194

On page 96, line 8, strike out "in" at the end of the line

Amendment 195

On page 96, strike out lines 9 to 13, inclusive, and insert:
and recommend to the

Amendment 196

On page 96, line 36, strike out "Subject to"

Amendment 197

On page 96, strike out line 37

Amendment 198

On page 96, line 38, strike out "is served by mail, the" and
insert:
The

Amendment 199

On page 97, line 11, after "type" insert:
(including exempt proceeds of property of the same type)

Amendment 200

On page 97, line 13, strike out "items are claimed as exempt"
and insert:
of the described property to which the exemption is to be applied

Amendment 201

On page 97, line 14, strike out "Section 704.070 or"

Amendment 202

On page 97, line 16, strike out "funds" and insert:
property

Amendment 203

On page 98, line 22, strike out "five" and insert:
10

Amendment 204

On page 98, line 27, after "and" insert:
shall

Amendment 205

On page 99, line 20, after "the" insert:
exemption

Amendment 206

On page 100, line 6, after "served" insert:
promptly

Amendment 207

On page 100, strike out lines 32 to 39, inclusive, and insert:
704.010. (a) Any combination of the following is exempt in
the amount of one thousand two hundred dollars (\$1,200):

- (1) The aggregate equity in motor vehicles.
- (2) The proceeds of an execution sale of a motor vehicle.
- (3) The proceeds of insurance or other indemnification for the
loss, damage, or destruction of a motor vehicle.

(b) Proceeds exempt under subdivision (a) are exempt for a
period of 90 days after the time the proceeds are actually received by
the judgment debtor.

(c) For the

Amendment 208

On page 101, line 1, strike out "the" and insert:
a

Amendment 209

On page 101, strike out lines 5 to 32, inclusive, and insert:
(d) If the judgment debtor has only one motor vehicle and it
is sold at an execution sale, the proceeds of the execution sale are
exempt in the amount of one thousand two hundred dollars (\$1,200) without
making a claim. The levying officer shall consult and may rely upon the
records of the Department of Motor Vehicles in determining whether the
judgment debtor has only one motor vehicle. In the case covered by this
subdivision, the exemption provided by subdivision (a) is not available.

Amendment 210

On page 102, line 1, strike out "jugment" and insert:
judgment

Amendment 211

On page 102, line 7, after "repair" insert:
or improvement

Amendment 212

On page 102, strike out lines 17 to 24, inclusive, and insert:
704.040. Jewelry, heirlooms, and works of art are exempt to
the extent that the aggregate equity therein does not exceed two thousand
five hundred dollars (\$2,500).

Amendment 213

On page 102, line 29, after "implements," insert:
instruments,

Amendment 214

On page 102, line 30, after the first "one" insert:
commercial

Amendment 215

On page 102, line 32, after "exceed" insert a colon

Amendment 215.1

On page 102, strike out lines 33 and 34

Amendment 215.2

On page 102, line 35, strike out "If" and insert:
Two thousand five hundred dollars (\$2,500), if

Amendment 215.3

On page 102, line 39, strike out "If" and insert:
Two thousand five hundred dollars (\$2,500), if

Amendment 215.4

On page 103, line 3, strike out "If" and insert:
Five thousand dollars (\$5,000), if

Amendment 215.5

On page 103, lines 7 and 8, strike out "exempt items and amounts are doubled but the"

Amendment 216

On page 103, strike out lines 10 to 18, inclusive, and insert:

(b) If property described in subdivision (a) is sold at an execution sale, or if it has been lost, damaged, or destroyed, the proceeds of the execution sale or of insurance or other indemnification are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor or the judgment debtor's spouse. The amount exempt under this subdivision is the amount specified in subdivision (a) that applies to the particular case less the aggregate equity of any other property to which the exemption provided by subdivision (a) for the particular case has been applied.

(c) Notwithstanding subdivision (a), a motor vehicle is not exempt under subdivision (a) if there is a motor vehicle exempt under Section 704.010 which is reasonably adequate for use in the trade business, or profession for which the exemption is claimed under this section.

Amendment 217

On page 103, strike out lines 19 to 40, inclusive

Amendment 218

On page 104, strike out lines 1 to 23, inclusive, and insert:
704.070. (a) As used in this section:

(1) "Earnings withholding order" means an earnings withholding order under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

(2) "Paid earnings" means earnings as defined in Section 706.011 that were paid to the employee during the 30-day period ending

on the date of the levy. For the purposes of this paragraph, where earnings that have been paid to the employee are sought to be subjected to the enforcement of a money judgment other than by a levy, the date of levy is deemed to be the date the earnings were otherwise subjected to the enforcement of the judgment.

(3) "Wage assignment for support" means a wage assignment for support as defined in Section 706.011.

(b) Paid earnings that can be traced into deposit accounts or in the form of cash or its equivalent as provided in Section 703.080 are exempt in the following amounts:

(1) All of the paid earnings are exempt if prior to payment to the employee they were subject to an earnings withholding order or a wage assignment for support.

(2) Seventy-five percent of the paid earnings that are levied upon or otherwise sought to be subjected to the enforcement of a money judgment are exempt if prior to payment to the employee they were not subject to an earnings withholding order or a wage assignment for support.

Amendment 219

On page 105, line 23, strike out "Government" and insert:
government

Amendment 220

On page 106, strike out lines 23 to 28, inclusive, and insert:
(6) Upon determining the exemption claim for the deposit account under subdivision (c), the court shall immediately transmit a certified copy of the order of the court to the financial institution and to the levying officer. If the order determines that all or part of the excess is exempt under subdivision (c), with respect to the amount of the excess which is exempt, the financial institution shall transfer the exempt excess from the suspense account or otherwise release any restrictions on its withdrawal by the judgment debtor. The transfer or release shall be effected within three business days of the receipt of the certified copy of the court order by the financial institution.

Amendment 221

On page 107, line 29, strike out ", paid or"

Amendment 222

On page 107, strike out line 30

Amendment 223

On page 107, line 31, strike out "dependents of the judgment debtor,"

Amendment 224

On page 108, line 1, strike out "benefit" and insert:
benefit

Amendment 225

On page 108, strike out lines 15 to 28, inclusive, and insert:

(c) Notwithstanding subdivision (b), where an amount described in subdivision (b) becomes payable to a person and is sought to be applied to the satisfaction of a judgment for child or spousal support against that person:

(1) Except as provided in paragraph (2), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to a wage assignment for support as defined in Section 706.011 or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052. The paying entity may deduct from each payment made pursuant to a wage assignment under this paragraph an amount reflecting the actual cost of administration caused by the wage assignment up to two dollars (\$2) for each payment.

Amendment 226

On page 109, strike out lines 27 to 29, inclusive, and insert:
private retirement plan are exempt.

(c) Notwithstanding subdivision (b), where an amount described in subdivision (b) becomes payable to a person and is sought to be applied to the satisfaction of a judgment for child or spousal support against that person:

(1) Except as provided in paragraph (2), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to a wage assignment for support as defined in Section 706.011 or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052.

(d) After payment, the amounts described in subdivision (b) and all contributions and interest thereon returned to any member of a private retirement plan are exempt.

Amendment 227

On page 110, line 33, strike out "An" and insert:
Except as provided in subdivisions (c) and (d), an

Amendment 228

On page 110, after line 40, insert:

(d) Where an award of damages or a settlement arising out of personal injury is payable periodically, the amount of such periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

Amendment 229

On page 111, line 5, strike out "An" and insert:
Except as provided in subdivision (c), an

Amendment 230

On page 111, between lines 10 and 11, insert:

(c) Where an award of damages or a settlement arising out of the wrongful death of the judgment debtor's spouse or a person on whom the judgment debtor or the judgment debtor's spouse was dependent is payable periodically, the amount of such a periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

Amendment 231

On page 111, strike out lines 32 to 35, inclusive

Amendment 232

On page 112, line 28, strike out "11003.1" and insert:

11003.2

Amendment 233

On page 113, line 40, strike out "18" and insert:

six

Amendment 234

On page 114, line 1, strike out "18" and insert:

six

Amendment 235

On page 117, line 10, after the period, insert:

Subject to the provisions of this article, the sale is governed by Article 6 (commencing with Section 701.510) of Chapter 3.

Amendment 236

On page 117, line 11, after "a" insert:

certified

Amendment 237

On page 117, line 34, after the period, insert:

If the judgment creditor fails to comply with this subdivision and with subdivision (b) in any case where this section applies, the dwelling may not be sold under the order for sale.

Amendment 238

On page 118, line 10, strike out "promptly give" and insert:

cause

Amendment 239

On page 118, line 10, after "hearing" insert:

promptly to be given

Amendment 240

On page 118, line 13, strike out "equals or"

Amendment 241

On page 118, line 40, strike out "All" and insert:

For the purposes of this section, all

Amendment 242

On page 119, line 9, strike out "equals or"

Amendment 243

On page 119, line 14, after "sale" insert a period and strike out the remainder of the line and strike out lines 15 and 16

Amendment 244

On page 120, line 1, after "liability" insert:
, and includes the spouse of the judgment debtor where the earnings of the spouse of the judgment debtor are liable for the satisfaction of the judgment against the judgment debtor

Amendment 245

On page 120, line 5, after "order" insert a comma

Amendment 246

On page 120, line 6, after "Code" insert:
or Section 3088 of the Probate Code,

Amendment 247

On page 124, strike out lines 20 to 37, inclusive, and insert:
(1) The debt was incurred for the common necessities of life furnished to the judgment debtor or the family of the judgment debtor.

Amendment 248

On page 124, line 38, strike out "(3)" and insert:
(2)

Amendment 249

On page 125, line 1, strike out "(4)" and insert:
(3)

Amendment 250

On page 125, line 3, strike out "(5)" and insert:
(4)

Amendment 251

On page 138, between lines 11 and 12, insert:

706.108. An earnings withholding order may be issued against the earnings of the spouse of the judgment debtor only if one of the following requirements is satisfied:

(a) The spouse of the judgment debtor is named as a judgment debtor in the writ of execution.

(b) The court has determined on noticed motion that the earnings of the spouse of the judgment debtor are liable for the satisfaction of the money judgment against the judgment debtor.

Amendment 252

On page 139, strike out lines 37 to 40, inclusive

Amendment 253

On page 144, strike out lines 38 to 40, inclusive, and insert:

(b) If enforcement of the judgment is stayed on appeal by the giving of a sufficient undertaking under Chapter 2 (commencing with Section 916) of Title 13, all proceedings under this article are stayed. In any other case where the enforcement of the judgment is stayed, all proceedings under this article are stayed unless the court otherwise expressly orders.

Amendment 254

On page 146, line 4, strike out "boldface type" and insert: 14-point boldface type if printed or in capital letters if typed

Amendment 255

On page 146, line 6, strike out "punished" and insert: subject to arrest and punishment

Amendment 256

On page 146, line 8, strike out "fee" and insert:
fees

Amendment 257

On page 147, line 20, strike out "boldface type" and insert:
14-point boldface type if printed or in capital letters if typed

Amendment 258

On page 147, line 22, after "appear" insert:
at the time and place specified in this order,

Amendment 259

On page 147, line 24, strike out "fee" and insert:
fees

Amendment 260

On page 148, line 29, strike out "attorneys'" and insert:
attorney's

Amendment 261

On page 149, lines 12 and 13, strike out "examination is to be
conducted pursuant to Section 708.120 and the"

Amendment 262

On page 149, line 23, after "person" insert:
sought to be examined

Amendment 263

On page 150, line 32, after "may" insert:
, if the judgment creditor so requests,

Amendment 264

On page 150, line 33, strike out "ownership of" and insert:
interests in

Amendment 265

On page 151, line 8, strike out "ownership of" and insert:
interests in

Amendment 266

On page 151, line 15, strike out "ownership of" and insert:
interests in

Amendment 267

On page 151, line 16, strike out "ownership of" and insert:
interests in

Amendment 268

On page 151, line 23, strike out "ownership of" and insert:
interests in

Amendment 269

On page 151, line 32, strike out "creditor's claim is probably
valid" and insert:
debtor probably owns an interest in the property or that the debt probably
is owed to the judgment debtor

Amendment 270

On page 151, line 35, strike out "ownership of" and insert:
interests in

Amendment 271

On page 155, line 30, strike out "cost" and insert:
costs

Amendment 272

On page 156, lines 37 and 38, strike out "a copy of the notice
of lien"

Amendment 273

On page 156, line 40, after "proceeding" insert:
a copy of the notice of lien and a statement of the date when the notice
of lien was filed in the action or special proceeding

Amendment 274

On page 157, line 14, strike out "has been" and insert:
is

Amendment 275

On page 157, line 15, strike out "last-known" and insert:
last known

Amendment 276

On page 157, strike out lines 23 and 24

Amendment 277

On page 157, line 25, strike out "(f)" and insert:
(e)

Amendment 278

On page 157, line 27, strike out "was" and insert:
is

Amendment 279

On page 157, line 28, strike out "(g)" and insert:
(f)

Amendment 280

On page 157, line 33, strike out "(h)" and insert:
(g)

Amendment 281

On page 158, line 10, strike out "(i)" and insert:
(h)

Amendment 282

On page 158, line 13, strike out ". If" and insert:
and a statement that, if

Amendment 283

On page 158, line 38, after "judgment" insert:
procured therein

Amendment 284

On page 161, between lines 13 and 14, insert:
(6) Insurance policy loan value.

Amendment 285

On page 161, line 17, strike out "In" and insert:
Subject to subdivisions (d), (e), and (f), in

Amendment 286

On page 161, between lines 33 and 34, insert:

(e) When earnings or periodic payments pursuant to a pension or retirement plan are assigned pursuant to subdivision (a), the amount of the earnings or the periodic payments assigned shall not exceed the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

(f) Where a specific amount of the payment or payments to be assigned is exempt by another statutory provision, the amount of the payment or payments to be assigned pursuant to subdivision (a) shall not exceed the amount by which the payment or payments exceed the exempt amount.

Amendment 287

On page 164, line 24, after "708.720." insert:

(a)

Amendment 288

On page 164, between lines 31 and 32, insert:

(b) The earnings of a public officer or employee shall not be withheld pursuant to this article. Except as expressly provided by law, the earnings of a public officer or employee may be withheld for the payment of a money judgment only pursuant to Chapter 5 (commencing with Section 706.010).

(c) If the obligation of a public entity to pay money to the judgment debtor is the subject of a pending action or special proceeding, the procedure in this article does not apply. The payment of the obligation that is the subject of the pending action or special proceeding may be applied to the satisfaction of the money judgment against the judgment debtor only in the manner provided in Article 5 (commencing with Section 708.410).

Amendment 289

On page 164, strike out lines 32 to 34, inclusive and insert:
708.730. (a) If money is owing

Amendment 290

On page 166, line 39, strike out "serve" and insert:
cause

Amendment 291

On page 166, line 40, after "deposit" insert:
to be served

Amendment 292

On page 167, strike out lines 2 to 6, inclusive, and insert:
(b) Within 10 days after service of the notice of deposit pursuant to subdivision (a), the judgment debtor who claims an exemption shall do both of the following:

(1) File with the court a claim of exemption and a notice of motion for an order determining the claim of exemption. The claim of exemption shall include all of the matters set forth in subdivision (b) of Section 703.520.

(2) Serve on the judgment creditor a copy of the notice of motion, a copy of the claim of exemption, and a notice of hearing on the motion. Service shall be made personally or by mail.

(c) The hearing on the motion shall be held not later than 30 days from the date the notice of motion was filed with the court unless continued by the court for good cause.

(c) Within 10 days after the judgment creditor is served under subdivision (b), the judgment creditor who opposes the motion shall do both of the following:

(1) File with the court a notice of opposition to the claim of exemption. The notice of opposition to the claim of exemption shall be executed under oath and shall include all of the matters set forth in Section 703.560.

(2) Serve on the judgment debtor a copy of the notice of opposition to the claim of exemption. Service shall be made personally or by mail.

(d) Subdivisions (a) to (d), inclusive, of Section 703.580 and Sections 703.590 and 703.600 apply to a claim of exemption made pursuant to this section.

(e) The failure of the judgment debtor to make a claim of exemption under this section constitutes a waiver of the exemption.

Amendment 293

On page 167, line 8, strike out the comma

Amendment 294

On page 167, line 9, after the comma, insert:
or after the determination of the claim of exemption if an exemption is claimed within the period allowed for claiming the exemption under Section 708.770,

Amendment 295

On page 167, line 10, after "deposited" insert:
to which the judgment creditor is entitled

Amendment 296

On page 168, line 4, after "Code", insert:
or under Division 6 (commencing with Section 13000) of the Unemployment Insurance Code

Amendment 297

On page 169, line 37, after "applying" insert:
to the satisfaction of a money judgment

Amendment 298

On page 169, line 40, strike out "to the satisfaction of the"

Amendment 299

On page 170, line 1, strike out "money judgment"

Amendment 300

On page 170, strike out line 22

Amendment 301

On page 170, line 23, strike out "after" and insert:
712.010. After

Amendment 302

On page 170, line 31, strike out "90" and insert:

180

Amendment 303

On page 170, strike out lines 34 to 37, inclusive

Amendment 304

On page 171, line 7, strike out "last-known" and insert:
last known

Amendment 305

On page 171, line 28, strike out "90" and insert:

180

Amendment 306

On page 171, line 36, strike out "90" and insert:

180

Amendment 307

On page 172, strike out lines 36 and 37 and insert:

(2) The value of the property if specified in the judgment or a supplemental order.

Amendment 308

On page 173, line 8, after the period insert:

If the levying officer obtains possession of the property specified in the writ of possession, the levying officer shall deliver the property to the judgment creditor in satisfaction of the judgment.

Amendment 309

On page 173, line 17, after "judgment" insert:

or a supplemental order

Amendment 310

On page 173, line 26, after "property" insert:

or documentary evidence of title to the property or both

Amendment 311

On page 174, line 7, strike out "premises" and insert:

real property

Amendment 312

On page 174, line 10, strike out "premises" and insert:

real property

Amendment 313

On page 174, line 15, strike out "premises" and insert:

property

Amendment 314

On page 174, line 18, strike out "premises" and insert:

real property

Amendment 315

On page 174, line 25, strike out "premises" and insert:
real property

Amendment 316

On page 175, line 12, after the period, insert:
The provisions of subdivision (c) of Section 684.120, extending time, do not apply to the five day period specified in this subdivision.

Amendment 317

On page 175, line 14, strike out "premises" and insert:
real property

Amendment 318

On page 177, line 23, strike out "peoperty" and insert:
property

Amendment 319

On page 179, strike out lines 25 to 30, inclusive, and insert:

(1) If the action is pending or the judgment was entered in the superior court, seven thousand five hundred dollars (\$7,500), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(2) If the action is pending or the judgment was entered in a municipal or justice court, two thousand five hundred dollars (\$2,500), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

Amendment 320

On page 185, line 17, strike out "A" and insert:
The

Amendment 321

On page 186, line 8, strike out "prusuant" and insert:
pursuant

Amendment 322

On page 186, line 31, strike out "(a)"

Amendment 323

On page 186, lines 31 and 32, strike out "of ownership, right to possession, or a lien"

Amendment 324

On page 186, strike out lines 34 and 35

Amendment 325

On page 191, line 32, after "undertaking" insert:
, and filed with the levying officer a copy of the notice of motion as required by subdivision (b) of Section 720.760,

Amendment 326

On page 192, strike out lines 19 and 20 and insert:
(b) The objection to an

Amendment 327

On page 192, line 26, after the first "and" insert:
a copy of the notice of motion

Amendment 328

On page 192, line 26, after the second "and" insert:
a copy shall be filed with

Amendment 329

On page 194, line 22, after "724.010." insert:
(a)

Amendment 330

On page 194, between lines 25 and 26, insert:
(b) Where a money judgment is satisfied by levy, the obligation of the judgment creditor to give or file an acknowledgment of satisfaction arises only when the judgment creditor has received the full amount required to satisfy the judgment from the levying officer.

(c) Where a money judgment is satisfied by payment to the judgment creditor by check or other form of noncash payment that is to be honored upon presentation by the judgment creditor for payment, the obligation of the judgment creditor to give or file an acknowledgment of satisfaction of judgment arises only when the check or other form of noncash payment has actually been honored upon presentation for payment.

Amendment 331

On page 203, line 5, strike out "January" and insert:

July

AMENDMENTS TO ASSEMBLY BILL NO. 798

Amendment 1

In line 4 of the title of the printed bill, after "954.5,"

insert:

1861.25,

Amendment 2

In line 8 of the title, after "487.020," insert:

488.020,

Amendment 3

In line 9 of the title, strike out "490.050,"

Amendment 4

In line 10 of the title, after "1162a," insert:

1166a,

Amendment 5

In line 15 of the title, strike out "675" and insert:

875

Amendment 6

In line 17 of the title, after "Sections" insert:

490.050,

Amendment 7

In line 18 of the title, strike out "802,"

Amendment 8

In line 19 of the title, strike out "Section" and insert:

Sections 9301 and

Amendment 9

In line 24 of the title, after "6103.2," insert:

7170,

Amendment 10

In line 26 of the title, after "66499.6," insert:
69503.1,

Amendment 11

In the second line of the title on page 2, after "270.6,"
insert:
300,

Amendment 12

In the sixth line of the title on page 2, after "3073,"
insert:
3088,

Amendment 13

On page 6, between lines 29 and 30, insert:
(6) To any sale of a work of fine art under the provisions of
Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil
Procedure.

Amendment 14

On page 10, between lines 34 and 35, insert:
SEC. 10.5. Section 1861.25 is added to the Civil Code, to
read:

1861.25. Where the property taken is claimed by a third
person, the rules and proceedings applicable in cases of third-party
claims under Division 4 (commencing with Section 720.010) of Title 9
of Part 2 of the Code of Civil Procedure apply.

Amendment 15

On page 26, line 33, strike out "funiture" and insert:
furniture

Amendment 16

On page 33, line 19, strike out the first comma

Amendment 17

On page 37, between lines 27 and 28, insert:

SEC. 36.5. Section 488.020 of the Code of Civil Procedure is amended to read:

488.020. The notice of attachment shall inform the person who is served with the attachment notified of all of the following:

- (a) The capacity in which ~~he has been served~~ the person is notified .
- (b) The specific property which is sought to be attached.
- (c) ~~His~~ The person's rights under the attachment, including the right to make a third-party claim pursuant to ~~Section 689~~ Division 4 (commencing with Section 720.010) of Title 9 .
- (d) ~~His~~ The person's duties under the attachment.

Amendment 18

On page 40, strike out lines 1 to 11, inclusive, and insert:
Procedure is repealed.

~~490.050.~~ A person not originally a party to an action whose property is attached is entitled to intervene in the action and to recover damages for wrongful attachment to the same extent and in the same manner as a defendant in the action. For this purpose, the person whose property is attached shall be deemed to be the beneficiary of the undertaking for the attachment of such property and shall have all rights of the beneficiary, including the right to recover such damages by using the procedure provided by Section ~~490.030.~~

Amendment 19

On page 41, line 23, strike out the semicolon and insert a period

Amendment 20

On page 53, line 12, strike out the comma

Amendment 21

On page 55, line 18, after the period insert:
Notwithstanding Section 701.630, the sale of the encumbered property does not affect the interest of a person who holds a conveyance from or

under the mortgagor of the property mortgaged, or has a lien thereon, if the conveyance or lien appears of record in the proper office at the time of the commencement of the action and the person holding the recorded conveyance or lien is not made a party to the action.

Amendment 22

On page 57, strike out lines 13 to 15, inclusive

Amendment 23

On page 57, line 33, strike out "675" and insert:

875

Amendment 24

On page 63, line 8, after "premises" insert a comma

Amendment 25

On page 65, between lines 10 and 11, insert:

SEC. 75.5. Section 1166a of the Code of Civil Procedure is amended to read:

1166a. (a) Upon filing the complaint, the plaintiff may, upon motion, have immediate possession of the premises by a writ of possession of real property issued by the court and directed to the sheriff of the county, or constable or marshal, for execution, where it appears to the satisfaction of the court, after a hearing on the motion, from the verified complaint and from any affidavits filed or oral testimony given by or on behalf of the parties, that the defendant resides out of state, has departed from the state, cannot, after due diligence, be found within the state, or has concealed himself or herself to avoid the service of summons.

(b) Written notice of the hearing on the motion shall be served on the defendant by the plaintiff in accordance with the provisions of Section 1011, and shall inform the defendant ~~that he~~ as follows:
"You may file affidavits on his your own behalf with the court and may appear and present testimony on his your own behalf ; ~~and that;~~
However, if he fails you fail to appear, the plaintiff will apply to the court for ~~the a writ of possession;~~ possession of real property."

(c) The plaintiff shall file an undertaking with good and sufficient sureties, to be approved by the judge, in such sum as shall be fixed and determined by the judge, to the effect that, if the plaintiff fails to recover judgment against the defendant for the possession of the premises or if the suit is dismissed, the plaintiff will pay to the defendant such damages, not to exceed the amount fixed in the undertaking, as may be sustained by the defendant by reason of such dispossession under the writ of ~~possession~~ possession of real property. An action to recover such damages shall be commenced by the defendant in a court of competent jurisdiction within one year from the date of entry of dismissal or of final judgment in favor of the defendant.

(d) If at the hearing on the motion the findings of the court be in favor of the plaintiff and against the defendant, an order shall be entered for the immediate possession of the premises.

(e) The order for the immediate possession of the premises may be enforced as provided in Division 3 (commencing with Section 712.010) of Title 9 of Part 2.

(f) For the purposes of this section, references in Division 3 (commencing with Section 712.010) of Title 9 of Part 2 and in subdivisions (e) to (m), inclusive, of Section 1174, to the "judgment debtor" shall be deemed references to the defendant, to the "judgment creditor" shall be deemed references to the plaintiff, and to the "judgment of possession or sale of property" shall be deemed references to an order for the immediate possession of the premises.

Amendment 26

On page 65, line 16, strike out "restitution" and insert:
possession

Amendment 27

On page 66, strike out lines 33 and 34 and insert:
be restored to the tenant's estate. If payment as provided in

Amendment 28

On page 66, line 35, strike out "subdivision (c)" and insert:
this subdivision

Amendment 29

On page 66, line 38, strike out "The judgment" and insert:
(d) Subject to subdivision (c), the judgment

Amendment 30

On page 69, line 20, strike out the comma

Amendment 31

On page 75, line 1, strike out "11b." and insert:

11.7.

Amendment 32

On page 77, between lines 23 and 24, insert:

SEC. 82.5. Section 9301 of the Commercial Code is amended to read:

9301. (1) Except as otherwise provided in subdivision (2), an unperfected security interest is subordinate to the rights of

(a) Persons entitled to priority under Section 9312;

(b) A person who becomes a lien creditor before the security interest is perfected;

(c) In the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) In the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within 10 days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like, or by filing a notice of judgment lien on personal property, and includes an assignee

for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

Amendment 33

On page 78, line 25, after "debt" insert a comma

Amendment 34

On page 78, line 32, after "the" insert:
deceased

Amendment 35

On page 82, between lines 3 and 4, insert:
 Paid earnings (CCP 704.070)

Amendment 36

On page 82, line 4, after "from" insert:
execution

Amendment 37

On page 82, line 23, strike out the first "of" and insert:
from execution

Amendment 38

On page 82, line 28, after "perjury" insert:
under the laws of the State of California

Amendment 39

On page 82, strike out lines 30 to 32, inclusive, and insert:
Date: _____ Signed: _____"

- (2) A holder of a security interest.
- (3) A mechanic's lienor.
- (4) A judgment lien creditor.
- (c) A state tax lien is not valid as to personal property

against:

(1) The holder of a security interest in the property whose interest is perfected pursuant to Section 9303 of the Commercial Code prior to the time the notice of the state tax lien is filed with the Secretary of State pursuant to Section 7171.

(2) Any person (other than the taxpayer) who acquires an interest in the property under the law of this state without knowledge of the lien or who perfects an interest in accordance with the law of this state prior to the time that the notice of state tax lien is filed with the Secretary of State pursuant to Section 7171.

(3) A buyer in ordinary course of business who, under Section 9307 of the Commercial Code, would take free of a security interest created by the seller.

(4) Any person (other than the taxpayer) who, notwithstanding the prior filing of the notice of the state tax lien:

(A) Is a holder in due course of a negotiable instrument.

(B) Is a holder to whom a negotiable document of title has been duly negotiated.

(C) Is a bona fide purchaser of a security.

(D) Is a purchaser of chattel paper or an instrument who gives new value and takes possession of the chattel paper or instrument in the ordinary course of business.

(E) Is a holder of a purchase money security interest.

(F) Is a collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Commercial Code.

(G) Acquires a security interest in a deposit account or in the beneficial interest in a trust or estate.

(H) Acquires any right or interest in letters of credit, advices of credit, or money.

(I) Acquires without actual knowledge of the state tax lien a security interest in or a claim in or under any policy of insurance including unearned premiums.

(J) Acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of the security interest.

(5) A judgment lien creditor whose lien was created by the filing of a notice of judgment lien on personal property with the Secretary of State prior to the time the notice of state tax lien is filed with the Secretary of State pursuant to Section 7171.

Amendment 46

On page 93, line 1, strike out "the creditor or"

Amendment 47

On page 93, line 2, after "attorney" insert:
of record or, if the creditor does not have an attorney of record, by
the creditor

Amendment 48

On page 93, line 15, after "26726" insert:

(a)

Amendment 49

On page 93, between lines 28 and 29, insert:

(b) In addition to the fees provided by Section 26721, the fee for maintaining custody of property under levy by the use of a keeper is eleven dollars (\$11) for each day custody is so maintained after the first day.

Amendment 50

On page 93, line 29, before "Notwithstanding" insert:

(c)

Amendment 51

On page 93, line 30, strike out "eight dollars and fifty cents (\$8.50)" and insert:
eleven dollars (\$11)

Amendment 52

On page 94, strike out line 35 and insert:
is eleven dollars (\$11).

Amendment 53

On page 97, between lines 34 and 35, insert:
SEC. 120.5. Section 69503.1 of the Government Code is amended to read:

69503.1. (a) Notwithstanding Section 69503 of the Government Code or any other law relating to the destruction of court records except the provisions of this section and Section 69503.2, the county clerk may cause to be destroyed any records, papers, case files, and exhibits in any superior court action or proceeding after 30 years have elapsed since the filing of any paper in the action or proceeding and when the records of the county clerk do not show that the action or proceeding is pending on appeal in any court, provided that minute book entries, minute books, judgment books, and registers of actions shall not be destroyed, unless microfilmed in accordance with the provisions of Section 69503 of the Government Code, and shall constitute for all purposes the record in lieu of the records, papers and exhibits destroyed. For the purposes of this section, "destroy" means destroy or dispose of for the purposes of destruction.

(b) Prior to the disposition of such records the county clerk shall give notice of the proposed disposition to the Secretary of State, who shall have 60 days to request the transfer of the records. If the Secretary of State does not request the transfer of the records the county clerk may destroy them pursuant to this section.

(c) Case files of civil actions which have been dismissed may be destroyed pursuant to this section seven years after dismissal. Case files of civil actions for tortious injury to the person or for wrongful

death, which have not been dismissed, may be destroyed 15 years after final judgment, except case files of actions involving the filing of a petition pursuant to Section 372 of the Code of Civil Procedure; provided that no such case file shall be destroyed if the action is pending or under appeal, judgment in the action has been enjoined, the time in which to enforce the judgment has been extended by court order or by operation of law ; or there is pending in the action a motion filed pursuant to Section 685 of the Code of Civil Procedure .

(d) This section shall not apply to the records of probate, real property, juvenile, criminal, or adoption actions or proceedings.

Amendment 54

On page 103, between lines 21 and 22, insert:

SEC. 132.5. Section 300 of the Labor Code is amended to read:

300. (a) As used in this section, the phrase "assignment of wages" includes the sale or assignment of, or giving of an order for, wages or salary but does not include an order or assignment made pursuant to Section 4701 or 4801.6 of the Civil Code or Section 3088 of the Probate Code .

(b) No assignment of wages, earned or to be earned, is valid unless all of the following conditions are satisfied:

(1) The assignment is contained in a separate written instrument, signed by the person by whom the wages or salary have been earned or are to be earned, and identifying specifically the transaction to which the assignment relates.

(2) Where the assignment is made by a married person, the written consent of the spouse of the person making the assignment is attached to the assignment. No such consent is required of any married person (i) after entry of a judgment decreeing a legal separation from such person's spouse or (ii) if the married person and the spouse of the married person are living separate and apart after entry of an interlocutory judgment of dissolution of their marriage, if a written statement by the person making the assignment, setting forth such facts, is attached to or included in the assignment.

(3) Where the assignment is made by a minor, the written consent of a parent or guardian of the minor is attached to the assignment.

(4) Where the assignment is made by a person who is unmarried or who is an adult or who is both unmarried and an adult, a written statement by the person making the assignment, setting forth such facts, is attached to or included in the assignment.

(5) No other assignment exists in connection with the same transaction or series of transactions and a written statement by the person making the assignment to that effect is attached to or included in the assignment.

(6) A copy of the assignment and of the written statement provided for in paragraphs (2), (4), and (5), authenticated by a notary public, is filed with the employer, accompanied by an itemized statement of the amount then due to the assignee.

(7) At the time the assignment is filed with the employer, no other assignment of wages of the employee is subject to payment and no earnings withholding order against the employee's wages or salary is in force.

~~(c)~~ A valid assignment of wages in effect at the time an earnings withholding order is served suspends the operation of the earnings withholding order until after the end of the pay period during which the earnings withholding order is served. Thereafter the employer shall withhold from the employee's wages or salary pursuant to the earnings withholding order without regard to whether the assignment remains in effect.

~~(d)~~ (c) Under any assignment of wages, a sum not to exceed 50 per centum of the assignor's wages or salary shall be withheld by, and be collectible from, the assignor's employer at the time of each payment of such wages or salary.

~~(e)~~ (d) The employer is entitled to rely upon the statements of fact in the written statement provided for in paragraphs (2), (4), and (5) of subdivision (b), without the necessity of inquiring into the truth thereof, and the employer shall incur no liability whatsoever by reason of any payments made by the employer to an assignee under any assignment in reliance upon the facts so stated.

~~(f)~~ (e) An assignment of wages to be earned is revocable at any time by the maker thereof. Any power of attorney to assign or collect wages or salary is revocable at any time by the maker thereof.

No revocation of such an assignment or power of attorney is effective as to the employer until the employer receives written notice of revocation from the maker.

~~(g)~~ (f) No assignment of wages, earned or to be earned, is valid under any circumstances if the wages or salary earned or to be earned are paid under a plan for payment at a central place or places established under the provisions of Section 204a.

~~(h)~~ (g) This section does not apply to deductions which the employer may be requested by the employee to make for the payment of life, retirement, disability or unemployment insurance premiums, for the payment of taxes owing from the employee, for contribution to funds, plans or systems providing for death, retirement, disability, unemployment, or other benefits, for the payment for goods or services furnished by the employer to the employee or the employee's family at the request of the employee, or for charitable, educational, patriotic or similar purposes.

~~(i)~~ (h) No assignment of wages is valid unless at the time of the making thereof, such wages or salary have been earned, except for necessities of life and then only to the person or persons furnishing such necessities of life directly and then only for the amount needed to furnish such necessities.

Amendment 55

On page 109, line 8, after "COMMUNITY" insert:

PROPERTY

Amendment 56

On page 115, between lines 15 and 16, insert:

SEC. 158.5. Section 3088 of the Probate Code is amended to read:

3088. (a) The court may order the spouse who has the management or control of community property to apply the income or principal, or both, of the community property to the support and maintenance of the conservatee (including care, treatment, and support of a conservatee who is a patient in a state hospital under the jurisdiction of the State

Department of Mental Health or the State Department of Developmental Services) as ordered by the court.

(b) In determining the amount ordered for support and maintenance, the court shall consider the following circumstances of the spouses:

- (1) The earning capacity and needs of each spouse.
- (2) The obligations and assets, including the separate property, of each spouse.
- (3) The duration of the marriage.
- (4) The age and health of the spouses.
- (5) The standard of living of the spouses.
- (6) Any other relevant factors which it considers just and equitable.

(c) At the request of any interested person, the court shall make appropriate findings with respect to the circumstances.

(d) The court may order the spouse who has the management or control of community property to make a specified monthly or other periodic payment to the conservator of the person of the conservatee or to such other person as is designated in the order. The court may order the spouse required to make the periodic payments to give reasonable security therefor.

(e) The court may order the spouse required to make the periodic payments to assign, to the person designated in the order to receive the payments, that portion of the earnings of the spouse due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support and maintenance of the conservatee. Such order shall operate as an assignment and shall be binding upon any existing or future employer upon whom a copy of the order is served. The order shall be in the form for an order assigning salary or wages prescribed by the Judicial Council for use in family law proceedings. The employer may deduct the sum of one dollar (\$1) for each payment made pursuant to the order. Any such assignment made pursuant to court order shall have priority as against any execution or other assignment unless otherwise ordered by the court or unless the other assignment is made pursuant to Section 4701 of the Civil Code. No employer shall use any assignment authorized by this subdivision as grounds for the dismissal of such employee. As used in this subdivision, "employer" includes the United

States government and any public entity as defined in Section 811.2 of the Government Code. The provisions of this subdivision apply to the money and benefits described in Sections 704.110 and 704.113 of the Code of Civil Procedure to the extent that such moneys and benefits are subject to a wage assignment for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(f) The court shall retain jurisdiction to modify or to vacate an order made under this section where justice requires, except as to any amount that may have accrued prior to the date of the filing of the petition to modify or revoke the order. At the request of any interested person, the order of modification or revocation shall include findings of fact and may be made retroactive to the date of the filing of the petition to revoke or modify, or to any date subsequent thereto. At least 15 days before the hearing on the petition to modify or vacate the order, the petitioner shall mail a notice of the time and place of the hearing on the petition, accompanied by a copy of the petition, to the spouse who has the management or control of the community property. Notice shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1 to any other persons entitled to notice of the hearing under that chapter.

(g) In a proceeding under Title 3 (commencing with Section 4500) of Part 5 of Division 4 of the Civil Code, the court has jurisdiction to modify or vacate an order made under this section to the same extent as it may modify or vacate an order made in a proceeding under that title.

Amendment 57

On page 126, line 12, strike out "1982" and insert:

1983

Amendment 58

On page 126, line 13, strike out "January" and insert:

July

STUDY D-330 - ATTACHMENT

The Commission considered Memorandum 81-22 concerning several policy questions involved in the preparation of a tentative recommendation to revise the Attachment Law. The Commission made the following decisions:

§ 483.010. Jurisdictional amount of attachment

The proposal to raise the \$500 minimum claim for issuance of an attachment to \$1,500 was rejected. The Commission was informed that there is a need for attachments under \$1,500.

§ 487.010. Attachment of interest in real property

If an individual's dwelling is attached as permitted by Section 487.010(c)(1), the defendant should be permitted to obtain the release of the attachment lien on the dwelling at any time before judgment. Under existing law, a prior attachment lien is defeated by a homestead declaration later recorded. It is not clear whether the attachment lien is released or whether the homestead declaration merely gives priority to the homestead exemption over the attachment lien. In any case, the Commission decided that a defendant should be able to obtain release of the attachment lien on the defendant's dwelling. The reason for this decision is that there may be a very long time--more than five years in some cases--between the time the attachment lien attaches and the time the judgment is entered in the action. During this period, the defendant is unable to sell or encumber the dwelling. The defendant may need to move during the period prior to judgment and will be unable to sell his or her home. The Commission considered this to be too great a burden to place on a defendant prior to the time the plaintiff obtains a judgment in the action. Moreover, the property to which an attachment lien attaches is ordinarily property used in the trade, business, or profession out of which the attachment arose; although the provision permitting attachment of any real property of the defendant is not limited to property used in the trade, business, or profession, the provision should not extend to the defendant's dwelling. Finally, the repeal of the declared homestead requires some adjustment of the Attachment Law to protect the defendant's dwelling from attachment.

The defendant's failure to claim the homestead exemption at the hearing on issuance of the writ of attachment should not be a waiver of

the exemption (as is provided for other exemptions by Section 484.070). The defendant should be able to claim the dwelling exemption after judgment if the defendant did not challenge the attachment lien.

If the attachment lien on a dwelling is released, the plaintiff should not be allowed to reattach the property.

§§ 484.020, 484.320. Amount of attachment

The Attachment Law should be revised to provide that an attachment may be issued in the amount of the defendant's indebtedness over the amount of (1) legal offsets and (2) cross complaints in a fixed or readily ascertainable amount for which an attachment could issue. This amendment would make clear that the amount of the attachment is not to be reduced on the basis of vague or speculative claims. For example, a tort claim not reduced to judgment should not reduce the amount of an attachment.

§ 488.360(c). Filed lien on inventory

Section 488.360(c), which permits the plaintiff to obtain a lien on inventory of a going business by filing with the Secretary of State, should be retained. The Commission is informed that this is a useful procedure, particularly where the defendant attempts to sell in bulk. However, in order to put potential users of the procedure on notice of its limitations, the statute should be amended to make clear that the lien attaches to the inventory of a retail merchant only if the inventory consists of durable goods having a unit retail value of at least \$500.

Review of Right to Attach Order

The Commission rejected a suggestion that a right to attach order obtained on noticed motion be subject to a motion to set aside the order on the basis of evidence not produced at the original hearing. However, Code of Civil Procedure Section 904.1(e) (which provides for an appeal from an "order discharging or refusing to discharge an attachment") should be amended to provide specifically for an appeal from the granting of a right to attach order.

STUDY D-801 - TRANSFER BETWEEN MEMBERS OF HOUSEHOLD
AS FRAUDULENT CONVEYANCE

The Commission considered Memorandum 81-23 and a letter from the State Bar Committee on Administration of Justice (attached as an Exhibit hereto) containing comments on the tentative recommendation relating to transfers between members of a household as fraudulent conveyances. The Commission noted that the State Bar Committee on Administration of Justice approved the tentative recommendation whereas the State Bar Debtor/Creditor and Bankruptcy Subcommittee of the Business Law Section disapproved the tentative recommendation. The Commission directed that the letters of each be sent to the other to see whether the committees could reconcile their views.

JOSEPH P. LOEB (1883-1974)
EDWIN J. LOEB (1886-1970)

WRITER'S DIRECT DIAL NUMBER:
(213) 629-0290

LAW OFFICES OF
LOEB AND LOEB
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
ONE WILSHIRE BUILDING
SIXTEENTH FLOOR
WILSHIRE BOULEVARD AT GRAND AVENUE
LOS ANGELES, CALIFORNIA 90017
(213) 629-0200
(213) 278-7351

CABLE ADDRESS "LOBAND"
TELEX 67-3106

CENTURY CITY OFFICE
10100 SANTA MONICA BOULEVARD
LOS ANGELES, CALIFORNIA 90067
(213) 552-7700

NEWPORT BEACH OFFICE
500 NEWPORT CENTER DRIVE
NEWPORT BEACH, CALIFORNIA 92660
(714) 759-1272

June 24, 1981

John E. DeMouilly, Esq.
Executive Secretary
California Law Revision Commission
400 Middlefield Road
Room D-2
Palo Alto, California 94306

Re: Law Revision Commission Study D-801
Transfer Between Members of Household
as Fraudulent Conveyance (CAJ Agenda
Item 29.22)

Dear John:

The State Bar Committee on the Administration of Justice considered the above Law Revision Commission tentative recommendation at its statewide meeting on May 29, 1981. The minutes have just become available, and I trust that you will therefore forgive the delay in forwarding our comments.

CAJ generally concurs in the proposed amendment to Civil Code Section 3440, for the reasons stated by the Law Revision Commission in its tentative recommendation. We agree that the conclusive presumption can and probably does invalidate bona fide transfers among family members, where an open, notorious change of possession is impossible or impractical.

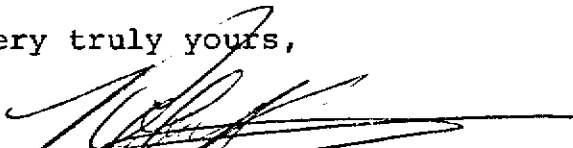
We do suggest, however, that the nature of the rebuttable presumption be made clear. The same policy considerations that lead to the proposed amendment, namely, that transfers that are suspect should be examined with care, and those that are bona fide should not be set aside solely because they occur within the confines of a single household, lead us to recommend that the presumption be one affecting only the burden of proof. Thus, the family members must come forward

John E. DeMully, Esq.
June 24, 1981
Page 2

with evidence that the transfer is non-fraudulent; once this occurs, the case will proceed as any ordinary litigation.

Please do not hesitate to call upon us if we may be of further assistance in connection with this proposal.

Very truly yours,



Robert A. Holtzman
Chair, Committee on the
Administration of Justice

RAH/nf

cc: Monroe Baer, Esq.
Richard Mansfield, Esq.

STUDY H-401 - MARKETABLE TITLE
(ANCIENT MORTGAGES AND DEEDS OF TRUST)

The Commission considered Memorandum 81-32 and the attached staff draft of a tentative recommendation relating to ancient mortgages and deeds of trust. The Commission revised the draft to provide for expiration of record of a mortgage or deed of trust whose maturity date cannot be ascertained from the record 60, rather than 30, years after the mortgage or deed of trust is recorded. As so revised, the tentative recommendation should be distributed for comment.

STUDY H-402 - MARKETABLE TITLE
(DORMANT MINERAL RIGHTS)

The Commission considered Memorandum 81-39 and the attached staff draft of a tentative recommendation relating to dormant mineral rights. The Commission revised the draft to provide for expiration of mineral rights only if the mineral rights have been dormant for a period of one year rather than five years. In addition, the staff should develop language for the definition of dormancy that makes reference to actual production of minerals or an open, visible, or substantial use of the property. As so revised, the tentative recommendation should be distributed for comment.

STUDY H-403 - MARKETABLE TITLE
(UNEXERCISED OPTIONS)

The Commission considered Memorandum 81-40 and the attached staff draft of a tentative recommendation relating to unexercised options. The Commission revised the draft to provide that a recorded option expires of record 6 months, rather than 30 days, after the option expires according to its terms. The draft should also make clear that the interest of a person in possession of the property is not affected by the expiration provisions. As so revised, the tentative recommendation should be distributed for comment.

STUDY J-600 - DISMISSAL FOR LACK OF PROSECUTION

The Commission considered Memorandum 81-20 and the First Supplement thereto, along with two letters from trial courts attached hereto, and the staff draft of a tentative recommendation relating to dismissal of civil actions for lack of prosecution. The Commission approved the tentative recommendation for distribution for comment after deleting the provision for an automatic one-year extension of time to bring the action to trial on motion of the plaintiff and after deleting the provision for assessment of a fine or penalty against the plaintiff or the plaintiff's attorney. The Commission determined not to propose legislation to enable the courts to dismiss cases early on their own motion, but the letters received from the trial courts on this matter will be transmitted to the Judicial Council.

Superior Court of the State of California

County of Orange

Santa Ana, California

ALAN SLATER
Executive Officer/Jury Commissioner

June 23, 1981

LOUIS A. BRIZZOLARA
Assistant
Executive Officer/Jury Commissioner

California Law Revision Commission
4000 Middlefield Road, Rm. D-2
Palo Alto, CA 94306

Attn: Nathaniel Sterling

Dear Mr. Sterling:

This is in response to your letter wherein you inquired of our policies and procedures regarding dismissals pursuant to Civil Code of Procedure Section 581(a) and 583. I apologize for the lateness of this response, however, I trust the information is still of interest to you.

Dormant civil cases are a problem only to the extent that they are counted as part of the civil backlog (if an at-issue memo has been filed) for purposes of the Judicial Council's monthly calendar reports. Consequently, those figures are somewhat inflated.

Manpower and expense is a definite factor in "weeding out" these dormant cases. Currently, one clerk spends approximately four hours per week reviewing five-year cases and setting them on the dismissal calendar. The Court routinely dismisses 45-55 cases per week in this manner. Although this represents only a fraction of the cases that could be dismissed, once the Court's automated information and calendaring system is fully operational, five-year cases will automatically and routinely be purged from the civil active list.

From a calendar management perspective, dismissing cases at the end of five years has little impact on relieving Court congestion. The earlier cases can be dismissed, the greater the benefit to the Court. Consequently, if a Court had the capability (automated systems) to set cases for an OSC re dismissal for lack of prosecution in all cases that show no activity for a period of one year following the answer, courts could weed out "dead wood" much earlier and significantly improve caseflow. Our system has this capability and once sufficient data entry is available, we anticipate utilizing it.

Superior Court of the State of California

County of Orange

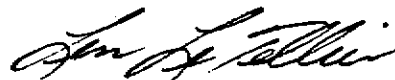
California Law Revision Commission

June 23, 1981

Page Two

I hope this response will be of some assistance to you in conducting your study. If you have any further questions please feel free to contact me.

Very truly yours,



Len LeTellier
Civil Courts Coordinator

LL:kap

SAN BERNARDINO COUNTY MUNICIPAL COURT DISTRICT

CHAMBERS OF
DAN L. RANKINS
Judge of the Municipal Court

CENTRAL DIVISION
County Courthouse, 2nd Floor
San Bernardino, CA 92415
(714) 383-2378

June 26, 1981

Mr. Nathaniel Sterling
Ass't. Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Dear Mr. Sterling:

The following information is provided in response to the questions contained in your letter of April 28, 1981:

- (1) No, due to use of a terminal digit filing system in Central Division, dormant civil cases pose no problem. We keep all cases in one central file whether active or inactive until the retention period for destruction has passed. If this court were to set up a periodic dismissal procedure, it would make no difference in the number of cases on file.

Those courts that segregate cases into two categories within their filing system probably would have many cases in their active file which should be in the inactive status file.

- (2) No, we do not have any local rule to segregate closed cases. Further, we do not have the manpower available to put such a rule into practice.
- (3) Such a system would be helpful in those courts that use the dual filing system mentioned in (1) above provided they had sufficient positions to handle the extra work required by such a system.

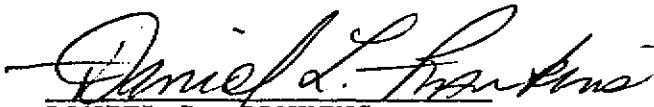
Although this procedure can be initiated by the court on its own motion, it, nevertheless, is a responsibility which should be borne by the parties to the action.

June 26, 1981
Mr. Nathaniel Sterling
Page 2

- (4) Continued education of all attorneys as to their responsibilities in this area by use of Bar Association bulletins, articles or direct mailing of information by your commission.

If you have need for further information on this subject, feel free to contact me at any time.

Sincerely,



DANIEL L. RANKINS
Supervising Judge

DLR:RLC:fg

STUDY L-601 - NONPROBATE TRANSFERS (AB 325)

The Commission considered Memorandum 81-26 together with Exhibit 1 to the Memorandum (a letter from attorney Ronald E. Gother on behalf of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section) and Exhibit 2 (staff-proposed amendments to AB 325). The staff recommended amendments were approved. These amendments limit proposed Civil Code Section 6107 (which would permit creditors of a deceased party to a multiple-party account to reach funds in the account if the estate of the deceased party is inadequate to satisfy creditors' claims) so that the section would apply to Totten trust accounts and pay-on-death accounts but not to a joint account. This change recognizes that there is substantial opposition to Section 6107 in its present form from members of the Assembly Judiciary Committee and the Estate Planning, Trust and Probate Section of the State Bar. The amendments also defer the operative date of AB 325 to July 1, 1983. This is necessary since the bill is now a two-year bill.

STUDY L-602 - PROBATE CODE (INTESTATE SUCCESSION)

General Background

The Commission considered Memorandum 81-27 (general background) and the attached exhibits for background on intestate succession generally.

Intestate Share of Surviving Spouse

The Commission considered Memorandum 81-35. The following decisions were made.

Community property. Uniform Probate Code Section 2-102A was approved insofar as it gives all community property to the surviving spouse. This continues existing California law. The Commission determined not to change existing law to give any portion of the community property to children of the deceased spouse, even where there are children of a prior marriage of the deceased spouse.

Separate property. The UPC provision (UPC § 2-102A) insofar as it relates to the intestate share of the surviving spouse in separate property of the decedent was approved as modified. Under the modified rule, the surviving spouse will take all of the deceased spouse's separate property unless there are children of a prior marriage of the

decedent. Where there are children of a prior marriage of the decedent, the surviving spouse would take half, and the other half would be divided among all of the decedent's issue.

The modified rule insofar as it applies where there are no children of a prior marriage of the decedent will significantly reduce the cost of probate. It avoids the need to determine which property of a deceased spouse is community and which is separate, avoids the need to determine the value of separate property and the need to divide separate property, and avoids the need to establish guardianships for minor children who otherwise might receive some of the separate property.

Family maintenance legislation. The Commission decisions noted above were made with the understanding that the Commission will review at a later time the question of protecting minor children by support out of the estate, whether the decedent dies testate or intestate. A provision for support of children out of the estate will be useful where the surviving spouse takes community property or separate property and there are children in need of support. The provision will be especially useful where the surviving spouse owes no duty of support to the children as where they are children of a prior marriage of the deceased spouse that were not adopted by the surviving spouse. The staff is to review family maintenance legislation and to prepare draft legislation to ensure that minor children can be protected by support payable out of the decedent's estate. The Bennett Commission in New York has recently studied this matter and has published a useful report on family maintenance legislation.

Per Stirpes or Per Capita Distribution

The Commission considered Memorandum 81-34. The UPC rule of representation (UPC § 2-106) was approved. The Waggoner proposal was rejected. The UPC rule will govern representation in the case of collateral heirs as well as in the case of lineal descendants of the decedent.

Ancestral Property Doctrine

The Commission considered Memorandum 81-36 and the attached exhibit (a manuscript by Professor William Reppy concerning Probate Code Section 229). The following decisions were made.

The ancestral property doctrine in all of its variants should be abolished. Inheritance should be based on the relationship of possible successors to the decedent, not on the source of the property. Also, this will eliminate the necessity of sorting out all of the decedent's property to determine what property must pass by a special rule of succession based on the source of title. Specifically, Probate Code Sections 227 and 254 and subdivisions (a), (b), and (c) of Probate Code Section 229 should not be continued. UPC Section 2-107 (relatives of the half blood inherit the same share they would inherit if they were of the whole blood) will replace Probate Code Section 254.

As to subdivisions (d) and (e) of Probate Code Section 229, see the discussion immediately below.

Cutting Off the "Laughing Heir"

The Commission considered Memorandum 81-37. The Commission approved with a modification the UPC scheme (see UPC §§ 2-103 and 2-105) which eliminates inheritance by persons more remote than lineal descendants of the decedent, parents of the decedent and their descendants, and grandparents of the decedent and their descendants. This will greatly simplify the administration of estates by avoiding the delay and expense of attempting to find remote missing heirs and by minimizing problems of service of notice. It will also eliminate the standing of remote heirs to bring will contests and to coerce an unjust settlement.

The UPC scheme should be modified to include a provision (based on subdivisions (d) and (e) of Probate Code Section 229) which would avoid escheat by giving the property to certain relatives of a predeceased spouse when there are no relatives of the decedent entitled to take the property. The relatives of the most recent predeceased spouse of the decedent should be entitled to take the property if they are issue of the predeceased spouse or the parents or issue of the parents of the predeceased spouse and there are no relatives of the decedent entitled to take the property. This will minimize administration problems in the same way that cutting off remote heirs of the decedent will do.

Miscellaneous Provisions

The Commission considered Memorandum 81-38 (miscellaneous provisions). The following UPC provisions were approved:

(1) The provision, that a potential heir must survive the decedent by 120 hours in order to take by intestacy (UPC § 2-104).

(2) The provision that relatives of the decedent conceived before the decedent's death but born thereafter inherit as if they had been born in the lifetime of the decedent (UPC § 2-108).

(3) The provision which permits an adopted child, in the case of an adoption by the spouse of a natural parent (i.e., a stepparent adoption), to inherit both from the adoptive parent and also from or through the natural parent who gave up the child for adoption (UPC § 2-109). The UPC provision would replace Section 257 of the Probate Code.

(4) The provision concerning advancements, which would (1) require the writing by the donor declaring the gift to be an advancement to be contemporaneous with the gift, and (2) would not treat the gift as an advancement to issue of the donee if the donee predeceases the donor (UPC § 2-110). The UPC provision would replace Section 1050 of the Probate Code.

(5) The provision to the effect that a debt owed to the decedent is not charged against the intestate share of any person except the debtor, and specifically is not charged against the shares of the debtor's issue if the debtor predeceases the decedent (UPC § 2-111). At present, California has no statutory provision governing the matter.

(6) The provision to the effect that aliens are not disqualified to inherit (UPC § 2-112).

(7) The provision to the effect that one related to the decedent through two lines is entitled only to a single share based on the relationship that would entitle him or her to the larger share (UPC § 2-114).

UPC Section 2-113 (abolishing dower and curtesy) was not adopted, since the matter should continue to be covered in the California Family Law Act (Civil Code § 5129).

STUDY L-603 - PROBATE CODE (WILLS)

Holographic Wills

The Commission considered Memorandum 81-28 and the attached law review article. UPC provision on holographic wills (UPC § 2-503) was

adopted with the addition of a sentence concerning dating of the instrument, to read in substance:

A will which does not comply with the requirements for an attested will is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator. If such a will does not contain a statement as to the time of its execution and if such failure results in doubts as to whether it was executed before or after some other instrument having testamentary effect, it is invalid unless the time of its execution can be established by other evidence.

This provision would replace present Section 53 of the Probate Code.

This proposal will be submitted to the Legislature in 1982 as a separate recommendation along with the proposal on nuncupative wills described below. The staff was requested to prepare a tentative recommendation for review by the Commission at the next meeting.

Nuncupative Wills

The Commission considered Memorandum 81-29. Nuncupative wills should be abolished in California by repealing Sections 54, 55, and 325 of the Probate Code. This proposal would be included in the proposal to adopt a modified UPC rule with respect to holographic wills.

Execution of Witnessed Wills

The Commission considered Memorandum 81-30 and the attached exhibits. The following decisions were made.

(1) UPC Section 2-502 should be adopted in place of Probate Code Section 50. This will substantially relax the formal requirements for execution of an attested will.

(2) UPC Section 2-505 should be adopted in place of Probate Code Sections 51 and 52. This will make an interested witness (that is, one who benefits under the will) competent to act as a witness to execution of the will without the need to forfeit any will benefits.

The doctrine of "substantial compliance" should be codified for the purpose of wills law to avoid invalidation of wills for technical non-compliance with formal requirements. The argument in favor of this doctrine is elaborated in Langbein, Substantial Compliance With the Wills Act, 88 Harv. L. Rev. 489 (1975).

The Commissioners and consultants expressed doubt about the view expressed in Memorandum 81-30 that UPC Section 2-502 might permit the testator to sign the will, acknowledge this fact by telephone to two

friends, and then mail them the will for their signatures as witnesses. It was felt that the requirement of UPC Section 2-502 that the witnesses shall have "witnessed" either the signing or the testator's acknowledgment implies that the witnesses must be personally present for either of these events. It was concluded that this question ought not to be addressed in the legislation or official Comment, and that if there is any question concerning the meaning of the UPC provision, the question will ultimately be resolved in litigation in some UPC jurisdiction.

Effect of Marriage or Divorce on Prior Will

The Commission considered Memorandum 81-31. The Commission adopted the UPC rule that divorce or annulment revokes any disposition made by will to the former spouse unless the will expressly provides otherwise (UPC § 2-508). The adoption of the UPC rule requires repeal of recent California legislation on this subject which reaffirmed the California case law to the effect that divorce or annulment has no effect on will provisions benefiting the former spouse. See Civil Code § 4352.

The staff is to research the conflict of laws question posed by the following hypothetical: Testator makes a will in a UPC state which contains provisions benefiting the spouse; then testator divorces the spouse in that state and, pursuant to the UPC rule extant in that state, the will provisions benefiting the former spouse are revoked; then testator moves to California and dies here. Under applicable choice of law rules, would existing California law (viz., no revocation by divorce) apply so as to "revive" the "revoked" will? If the answer is "yes," the Commission viewed this as an undesirable state of the law, and as a compelling argument in favor of a nationally-uniform rule and therefore in support of the Commission's decision to adopt UPC Section 2-508 (viz., divorce generally does partially revoke).

UPC Section 2-301 was adopted in place of Probate Code Section 70, both of which give an intestate share to a spouse who is omitted from a will made prior to the marriage. Although the UPC and California provisions are similar, the UPC provision was thought to be preferable in some of its detail (for example, by permitting a showing that the testator provided for the omitted spouse by a transfer outside the will in lieu of a testamentary provision for the spouse).

Minutes
July 9-11, 1981

APPROVED AS SUBMITTED _____

APPROVED AS CORRECTED _____ (for corrections, see Minutes of next meeting)

Date

Chairperson

Executive Secretary