

Memorandum 81-45

Subject: Study D-330 - Attachment

Attached to this memorandum is a staff draft of a Tentative Recommendation Relating to Attachment. This draft incorporates policy decisions made at the July meeting and makes additional changes as outlined in the text of the draft recommendation to conform it to the proposed Enforcement of Judgments Law.

The staff proposes that the Commission approve this recommendation for printing and introduction in the 1982 session of the Legislature, subject to any revisions made at the September meeting. We do not think we should delay its printing and introduction until it can be distributed for comment because of the time available and the need to amend the Attachment Law at the same time the Enforcement of Judgments Law is enacted. Before the attached draft is published, it will undergo a thorough cite check. We will send the recommendation to interested persons for their review, and if any changes are needed, the bill can be amended.

Respectfully submitted,

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STAFF DRAFT

TENTATIVE RECOMMENDATION

relating to

ATTACHMENT

Introduction

This recommendation proposes revision of the Attachment Law (Code of Civil Procedure Sections 481.010-493.060)¹ to:

(1) Deal with problems that have come to the Commission's attention since the Attachment Law was last amended.²

(2) Bring the Attachment Law into conformity with the separately recommended Enforcement of Judgments Law.³

1. Unless otherwise indicated, all statutory citations in this recommendation are to the Code of Civil Procedure.
2. For Commission recommendations on attachment, see Recommendation Relating to Prejudgment Attachment, 11 Cal. L. Revision Comm'n Reports 701 (1973), enacted as 1974 Cal. Stats. ch. 1516; Recommendation Relating to Revision of Attachment Law, 13 Cal. L. Revision Comm'n Reports 801 (1976), enacted as 1976 Cal. Stats. ch. 437; Recommendation Relating to the Attachment Law--Effect of Bankruptcy Proceedings, Effect of General Assignments for the Benefit of Creditors, 14 Cal. L. Revision Comm'n Reports 61 (1978), enacted as 1977 Cal. Stats. ch. 499; Recommendation Relating to Court Commissioners Under the Attachment Law, 14 Cal. L. Revision Comm'n Reports 93 (1978), enacted as 1978 Cal. Stats. ch. 151; Recommendation Relating to Technical Revisions in the Attachment Law--Unlawful Detainer Proceedings, Bond for Levy on Joint Deposit Account or Safe Deposit Box, Definition of "Chose in Action", 14 Cal. L. Revision Comm'n Reports 241 (1978), enacted as 1978 Cal. Stats. ch. 273; Recommendation Relating to Effect of New Bankruptcy Law on the Attachment Law, 15 Cal. L. Revision Comm'n Reports 1043 (1980), enacted as 1979 Cal. Stats. ch. 77. See also Recommendation Relating to Enforcement of Obligations After Death, 15 Cal. L. Revision Comm'n Reports 1327 (1980) (attachment not terminated by death of defendant whose property has been attached), enacted as 1980 Cal. Stats. ch. 124.
3. See Tentative Recommendation Proposing the Enforcement of Judgments Law, 15 Cal. L. Revision Comm'n Reports 2001 (1980). Assembly Bills 707 (Enforcement of Judgments Law) and 798 (conforming changes) were introduced in the 1981 legislative session to effectuate the Commission's proposals.

(3) Make other changes of a minor or technical nature.⁴

The recommended legislation would become operative only if and when the proposed Enforcement of Judgments Law is enacted and becomes operative.

Manner of Service

Section 482.070 provides for the manner of service under the Attachment Law. The proposed Enforcement of Judgments Law provides much more detailed rules governing (1) the service of writs, notices, orders, and other papers, (2) whether a party's attorney must or may be served, (3) the extension of time where service is by mail, and (4) the manner of proof of service. The proposed legislation makes the provisions of the proposed Enforcement of Judgments Law generally applicable to service under the Attachment Law.⁵

Amount Secured by Attachment

Under existing law, the amount for which a writ of attachment may issue is the "amount of the defendant's indebtedness over and above all claims which would diminish the amount of the plaintiff's recovery."⁶ This language might be construed to allow the defendant to seek to reduce the amount of the attachment by the amount of a tort claim, even though attachment is available only on a "claim or claims for money, each of which is based upon a contract, express or implied, where the total amount of such claim or claims is a fixed or readily ascertainable amount not less than five hundred dollars."⁷ A tort claim of the defendant that has not been reduced to judgment should not be permitted to offset the attachment claim of the plaintiff. Such a tort claim is likely to

4. Some changes of a minor or technical nature are noted in the following discussion; others are noted in the Comments which follow the text of each section of the recommended legislation.
5. The provisions of the proposed Enforcement of Judgments Law apply to service under the Attachment Law subject to three qualifications:
 - (1) A defendant who has not appeared in the action must be served under the Attachment Law in the manner provided for service of summons.
 - (2) If the defendant has an attorney of record in the action, service under the Attachment Law must be made on the attorney rather than the defendant (except for a subpoena or other process to require the attendance of the defendant or a paper to bring the defendant into contempt).
 - (3) Service may be made personally or by mail under the Attachment Law unless otherwise provided.
6. Sections 484.020(b), 484.320(b), 485.520(b).
7. Section 483.010(a).

be speculative and may be contrived for the purpose of delaying issuance of the writ of attachment. The proposed legislation makes clear that the amount of the attachment may be reduced only by (1) legal offsets against the plaintiff's claim and (2) the amount of any indebtedness of the plaintiff that the defendant has claimed in a cross-complaint filed in the action where the defendant's claim is one upon which an attachment could be issued.

Dwelling Exemption

Existing law provides a number of methods by which a defendant can protect his or her dwelling from attachment. Since all property exempt from execution is exempt from attachment,⁸ the defendant whose dwelling is attached may claim the exemption which is available when execution is levied upon real or personal property used as the dwelling of the debtor or the family of the debtor.⁹ This exemption may be waived if it is not timely claimed.¹⁰ As an alternative, the defendant may defeat a prior attachment lien by recording a homestead declaration.¹¹ The protection provided by both of these methods is limited to the amount of the exemption established by statute.¹² The defendant may also be able to exempt his or her dwelling under a special exemption provided by the Attachment Law which exempts from attachment property that is necessary for the support of the individual defendant or the defendant's family supported in whole or in part by the defendant.¹³

The proposed Enforcement of Judgments Law does not continue the declared homestead procedure.¹⁴ Accordingly, if the proposed Enforcement of Judgment Law is enacted, the most useful method now available for protection of the defendant's dwelling from attachment will be lost. In

8. Section 487.020(a).

9. See Sections 690.3, 690.31.

10. See Sections 484.070, 484.350, 484.530, 485.610. See also Section 482.100 (claim of exemption under changed circumstances). The proposed law makes clear that a failure to claim an exemption for real property under these procedures is not a waiver of the exemption.

11. *Becker v. Lindsay*, 16 Cal.3d 188, 545 P.2d 260, 127 Cal. Rptr. 348 (1976); *Jacobson v. Pope & Talbot*, 214 Cal. 758, 7 P.2d 1017 (1932).

12. See Civil Code § 1260; Code Civ. Proc. §§ 690.3, 690.31(a).

13. See Section 487.020(b).

14. See Tentative Recommendation Proposing the Enforcement of Judgments Law, 15 Cal. L. Revision Comm'n Reports 2001, 2087-95 (1980).

addition, the existing provision permitting the attachment of any of the defendant's real property¹⁵ is an exception to the general rule that only property of a commercial type is subject to attachment.¹⁶ The attachment lien on the defendant's home may last as long as eight years¹⁷ if the defendant's equity in the home exceeds the limited amount of protection provided by the execution exemption. During this time, the defendant will be unable to sell his or her dwelling if a change of residence is required. The proposed law avoids this result by permitting the defendant to obtain release of the attachment lien on his or her principal dwelling at any time before judgment, without regard to the value of the dwelling.

Time for Claiming Real Property Exemption

Under existing law, an exemption is generally waived if the defendant does not claim it under the applicable procedure within the time allowed.¹⁸ To avoid inadvertent failure to claim the exemption for a dwelling, the proposed legislation permits the defendant to claim an exemption for real property at any time before judgment.

Property Subject to Attachment

The proposed legislation makes clear that the community property, including the interest of the spouse of the defendant, is subject to attachment if it is of a type that is subject to attachment where the defendant is a natural person.¹⁹ This provision incorporates the rules in the Civil Code governing the liability of community property²⁰ and is consistent with a provision in the proposed Enforcement of Judgments Law.

Terminology

The proposed Enforcement of Judgments Law uses the terminology of the Commercial Code to the extent practicable. Although the existing

15. See Section 487.010(c)(1).

16. See Section 487.010(c)(2)-(10).

17. See Section 488.510.

18. See Sections 484.070, 484.350, 484.530, 485.610.

19. See Section 487.010(c) (property of natural person subject to attachment).

20. See Civil Code §§ 5100-5132.

Attachment Law is generally consistent with Commercial Code terminology, some terms used in the Attachment Law are not consistent with the Commercial Code.²¹ The proposed legislation conforms the Attachment Law more closely to the Commercial Code terminology and makes revisions needed because of recent changes in the Commercial Code.²² To the extent practicable, the proposed legislation incorporates by reference the appropriate sections of the Commercial Code rather than duplicating the text of the Commercial Code definitions. This avoids the need to amend the definitions when changes are made in the Commercial Code.

Levy Procedures

The proposed legislation generally replaces the existing statutory provisions governing the methods of levy of attachment with new provisions that incorporate the methods of levy under a writ of execution under the proposed Enforcement of Judgments Law.²³ Special provisions governing attachment levies on particular types of property are retained where appropriate. The important changes are as follows:

Growing crops and timber to be cut. The Attachment Law provides for the attachment of growing crops and timber to be cut by filing a notice on a form prescribed by the Secretary of State with the county recorder where the crops or timber are located.²⁴ Upon recording, the plaintiff is given the rights of a secured party who perfects a security interest in such crops or timber by recording a financing statement. The proposed legislation provides for levy by recording a copy of the

21. For example, "choses in action" which is defined in Section 481.050 is not used in the Commercial Code; the proposed legislation revises the Attachment Law to substitute "general intangibles" as defined in Commercial Code Section 9106 for "choses in action." Additionally, under the proposed legislation, a nonnegotiable instrument is considered an "instrument" as defined in Commercial Code Section 9105 rather than a "choses in action" as now provided by Section 481.050.

22. For example, since "honey" has been deleted from the list of "farm products" in Commercial Code Section 9109(3), the proposed legislation deletes "honey" from the definition of "farm products" in Section 481.110.

23. See Tentative Recommendation Proposing the Enforcement of Judgments Law, 15 Cal. L. Revision Comm'n Reports 2001, 2062-73 (1980).

24. Section 488.360(c).

writ of attachment and a notice of attachment. The recording provides constructive notice making the attachment lien good against any later transferee or encumbrancer of the attached property. The provision of Section 488.360 giving the plaintiff a lien on identifiable cash proceeds of the crops or timber is not continued in the proposed legislation since it does not provide much protection to the plaintiff. The plaintiff would lose the lien whenever the crops or timber are harvested and then sold since a security interest in farm products (as distinct from growing crops or timber to be cut) is perfected by filing with the Secretary of State, not by recording with the county recorder.²⁵

Minerals to be extracted. The proposed legislation adds a new provision permitting the attachment (in the same manner as growing crops) of minerals and the like (including oil and gas) to be extracted and accounts receivable resulting from the sale thereof at the wellhead or minehead. This is consistent with the proposed Enforcement of Judgments Law and the manner of perfection of a security interest in such property.²⁶

Tangible personal property already in custody of levying officer. The proposed legislation incorporates the provision in the proposed Enforcement of Judgments Law governing levy on property already in the custody of a levying officer,²⁷ such as under another attachment. The Attachment Law currently contains no special provisions governing this type of levy.

Vehicle, vessel, mobilehome, or commercial coach that is equipment. The proposed legislation contains a provision that recognizes that jurisdiction over the registration of mobilehomes and commercial coaches has been transferred to the Department of Housing and Community Development.²⁸ The method of levy remains the same, i.e., by filing a notice of attachment with the Department of Motor Vehicles or Department of Housing and Community Development, whichever is appropriate.²⁹

25. See Com. Code §§ 9306(3) (security interest in proceeds), 9401(1) (place of filing).

26. See Com. Code §§ 9103(5), 9401(1)(b).

27. See Tentative Recommendation Proposing the Enforcement of Judgments Law, 15 Cal. L. Revision Comm'n Reports 2001, 2063-64 (1980).

28. See, e.g., Health & Safety Code §§ 18075, 18075.29, 18076.21, 18077.1-18077.3.

29. See Section 488.350 (attachment of equipment consisting of motor vehicle or vessel by filing with Department of Motor Vehicles).

Farm products and inventory of going business. The proposed legislation retains the scheme of the existing statute that permits the plaintiff to attach farm products and inventory of a going business either by installing a keeper or by filing with the Secretary of State.³⁰ However, the provision that the keeper be installed for 10 days unless the defendant objects is limited to situations where the defendant is a natural person since such a defendant should be able to claim an exemption for property necessary for the support of the defendant and the defendant's family³¹ before the business is closed down. If the defendant is not a natural person and thus is not entitled to claim an exemption, the keeper period is limited to two days in the proposed legislation. If the plaintiff elects to attach by filing with the Secretary of State, the proposed legislation makes clear that the attachment lien automatically covers identifiable cash proceeds consistent with the Commercial Code,³² whereas existing law requires specific authorization in the writ or a court order.

Personal property used as a dwelling. Existing law provides no special rules governing attachment of personal property used as a dwelling. The proposed legislation adopts the applicable provisions in the proposed Enforcement of Judgments Law.³³

Property in safe deposit box. Existing law provides no special rules governing attachment of property in a safe deposit box, although a special undertaking is required where a safe deposit box to be attached does not stand in the name of the defendant exclusively.³⁴ The proposed legislation provides a special procedure for attaching property in a safe deposit box drawn from the proposed Enforcement of Judgments Law.³⁵

30. See Section 488.360.

31. See Section 487.020(b) (necessities exemption).

32. See Com. Code §§ 9203(3), 9306(3)(b).

33. See Tentative Recommendation Proposing the Enforcement of Judgments Law, 15 Cal. L. Revision Comm'n Reports 2001, 2065-66 (1980).

34. See Section 489.240.

35. See Tentative Recommendation Proposing the Enforcement of Judgments Law, 15 Cal. L. Revision Comm'n Reports 2001, 2070 (1980).

Property that is subject of pending action or proceeding. The proposed legislation provides rules governing the effect of attachment of property that is the subject of a pending action or proceeding based on the new provision proposed in the Enforcement of Judgments Law.³⁶ These rules make ineffective a levy on tangible personal property not in the possession of the defendant or a levying officer or on intangible personal property but permit a lien to be obtained in the pending action or proceeding.

Final money judgment. Under existing Section 488.420, a final judgment may be attached by both filing in the action and serving the defendant's judgment debtor. The proposed legislation provides that the levy is made by filing with the court clerk consistent with the manner of levy in the proposed Enforcement of Judgments Law.³⁷ The defendant's judgment debtor is to receive notice of attachment, but this is not a prerequisite to a valid attachment.

Interest in personal property of estate of decedent. Existing Section 488.430 permits attachment of the interest of the defendant in personal property in the estate of a decedent by filing with the court clerk where the estate is being administered and serving the personal representative of the decedent. The proposed legislation eliminates the requirement of filing in the office of the court clerk.

Personal property located in private place. Existing law provides no special rules governing attachment of personal property in a private place. The proposed legislation adopts the applicable provisions in the proposed Enforcement of Judgments Law.³⁸

Attachment Lien

Section 488.500 provides with one exception that an attachment lien is valid against all subsequent transferees of the property. This provision is defective insofar as it conflicts with the rights of a holder in due course of a negotiable instrument, a holder to whom a negotiable document has been duly negotiated, a bona fide purchaser of a security, 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, or a buyer in the ordinary course of business.

36. See id., at 2070-71.

37. See id., at 2072.

38. See, id., at 2058.

The proposed legislation incorporates the rules in the proposed Enforcement of Judgments Law governing the effect of an execution lien.³⁹ Special rules are provided in the proposed legislation governing the effect of an attachment lien on equipment, farm products, and inventory created by filing with the appropriate state agency.

Duties and Liabilities of Third Persons

The proposed legislation adopts by reference the provisions of the proposed Enforcement of Judgments Law relating to the duties and liabilities of third persons after levy.⁴⁰ This will provide necessary detail and certainty in place of the incomplete provisions of the Attachment Law.

Attachment by Registered Process Server

The proposed legislation would permit registered process servers to levy under a writ of attachment in cases where the following types of property are to be attached: (1) real property, (2) growing crops, timber to be cut, and minerals and the like (including oil and gas) to be extracted and accounts receivable resulting from the sale thereof at the wellhead or minehead, (3) personal property in custody of a levying officer, (4) personal property used as a dwelling where levy is by posting or serving an occupant, (5) equipment of a going business, (6) farm products and inventory of a going business levied upon by filing, (7) deposit accounts, (8) property in a safe deposit box, (9) accounts receivable, (10) general intangibles, (11) final money judgments, and (12) the interest of an heir, devisee, or legatee in personal property in the estate of a decedent. This provision is drawn from a comparable provision in the proposed Enforcement of Judgments Law.⁴¹ After levy and any other required service or posting are accomplished, the registered process server is required by the proposed legislation to file the writ with the levying officer along with an affidavit stating the activities of the registered process server. The remaining duties are performed by

39. See id., at 2048-50.

40. See id., at 2073-75. These rules will supersede Sections 488.080(b) (garnishee's memorandum), 488.330(b) (custody of property in third person's possession), 488.540 (payment by account debtor), 488.550(b) (liability of obligor).

41. See Tentative Recommendation Proposing the Enforcement of Judgments Law, 15 Cal. L. Revision Comm'n Reports 2001, 2057-61 (1980).

the levying officer. The fee of the registered process server is not a recoverable cost of collection under the proposed legislation.

Determination of Adverse Claim in Examination Proceeding

Sections 491.010 to 491.040 of existing law provide for the examination of a third person who is indebted to the defendant or has possession or control of property of the defendant. The proposed legislation would completely replace these sections with new provisions drawn from the procedure for examination of a third person in the proposed Enforcement of Judgments Law.⁴² A third person who is indebted to the defendant could not be examined unless the amount of the debt exceeds \$250. Existing law contains no qualifying amount. The proposed legislation would permit the court at an examination to determine the third person's adverse claim in appropriate cases. Under existing law, if the third person makes an adverse claim, the court is without power to proceed and the plaintiff is relegated to bringing an action against the third person.⁴³

Creditor's Suit

The proposed legislation provides a more detailed scheme governing an action by the plaintiff against a third person who has possession or control of property of the defendant or who is indebted to the defendant where the property or debt has been subjected to an attachment lien. Existing law permits the plaintiff to bring such an action at any time if the third person admits possession or liability or only when the defendant could bring such an action if the third person denies possession or liability.⁴⁴ The proposed law adopts the rules governing the time for bringing a creditor's suit in the proposed Enforcement of Judgments Law⁴⁵ under which the plaintiff may bring an action when the defendant may sue the third person concerning the property or debt or, if a lien is created on the property or debt within such time, the plaintiff may bring an action within one year following creation of the lien.

42. See id., at 2121-26.

43. See Section 491.010(d).

44. See Section 488.550.

45. See Tentative Recommendation Proposing the Enforcement of Judgments Law, 15 Cal. L. Revision Comm'n Reports 2001, 2128-29 (1980).

Review of Issuance of Attachment

The Attachment Law provides for review of the issuance of right to attach orders and writs of attachment that are issued ex parte or against nonresident defendants, but not where the right to attach order and writ are issued on noticed motion.⁴⁶ Code of Civil Procedure Sections 904.1(e) and 904.2(f), which provide for an appeal from an "order discharging or refusing to discharge an attachment," do not provide specifically for the taking of an appeal from issuance of an attachment on noticed motion.⁴⁷ The proposed legislation revises Sections 904.1 and 904.2 to permit an appeal from an order granting the issuance of a right to attach order and writ of attachment on noticed motion.

46. See Section 485.240 (application to set aside ex parte right to attach order).

47. Until the decision in *Randone v. Appellate Dep't*, 5 Cal.3d 536, 488 P.2d 13, 96 Cal. Rptr. 709 (1971), held the attachment statute unconstitutional, a writ of attachment was issued by the court clerk without prior court approval. The defendant could seek the discharge of the writ of attachment and the release of any attached property on the grounds that the writ was improperly or irregularly issued by a motion under former Section 556--hence the wording of Sections 904.1(e) and 904.2(f) relating to an appeal from an order discharging or refusing to discharge an attachment.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 481.020, 481.030, 481.040, 481.080, 481.090, 481.110, 481.170, 482.060, 482.070, 482.080, 482.100, 483.010, 483.020, 484.020, 484.050, 484.070, 484.090, 484.100, 484.110, 484.320, 484.340, 484.350, 484.530, 485.520, 485.610, 486.020, 486.060, 486.080, 486.110, 487.010, 487.020, 489.320, 490.010, 490.020, 492.010, 492.040, 492.070, 493.010, 493.040, 904.1, and 904.2 of, to add Sections 481.055, 481.113, 481.115, 481.117, 481.175, 481.195, 481.203, 481.205, 481.207, 481.223, 481.225, 483.015, 488.015, and 487.030 to, to add Article 4 (commencing with Section 484.610) to Chapter 4 of Title 6.5 of Part 2 of, Chapter 8 (commencing with Section 488.010) to Title 6.5 of Part 2 of, and Chapter 11 (commencing with Section 49b.110) to Title 6.5 of Part 2 of, to repeal Sections 481.050, 481.150, 481.160, 481.230, 489.240, and 490.050 of, and to repeal Chapter 8 (commencing with Section 488.010) of, and Chapter 11 (commencing with Section 49b.010) of, Title 6.5 of Part 2 of, the Code of Civil Procedure, and to amend Section 9409 of the Commercial Code, relating to attachment.

The people of the State of California do enact as follows:

4260 4260

Code of Civil Procedure § 481.020 (technical amendment): Account debtor

SECTION 1. Section 481.020 of the Code of Civil Procedure is amended to read:

481.020. "Account debtor" means the person who is obligated on an account receivable chattel paper, or whose debt is an "account debtor" as defined in Section 9105 of the Commercial Code.

Comment. Section 481.020 is amended to conform to Section 680.120 (Enforcement of Judgments Law).

Code of Civil Procedure § 481.030 (technical amendment). Account receivable

SEC. 2. Section 481.030 of the Code of Civil Procedure is amended to read:

481.030. "Account receivable" means any right to payment which has been earned for goods sold or leased or for services rendered which is not evidenced by a negotiable instrument, a security, or chattel paper "account" as defined in Section 9106 of the Commercial Code .

Comment. Section 481.030 is amended to conform to Section 680.130 (Enforcement of Judgments Law).

4275

Code of Civil Procedure § 481.040 (technical amendment). Chattel paper

SEC. 3. Section 481.040 of the Code of Civil Procedure is amended to read:

481.040. "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper. As used in this section, "instrument" means a negotiable instrument, or a security, or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in the ordinary course of business transferred by delivery with any necessary indorsement or assignment "chattel paper" as defined in Section 9105 of the Commercial Code .

Comment. Section 481.040 is amended to conform to Section 680.140 (Enforcement of Judgments Law).

8331

Code of Civil Procedure § 481.050 (repealed). Chose in action

SEC. 4. Section 481.050 of the Code of Civil Procedure is repealed.

481.050. "Chose in action" means any right to payment which arises out of the conduct of any trade, business, or profession and which (a) is not conditioned upon further performance by the defendant or upon any event other than the passage of time, (b) is not an account receivable, (c) is not a deposit account, and (d) is not evidenced by a negotiable instrument, security, chattel paper, or judgment. The term includes a right to payment on a nonnegotiable instrument which is otherwise negotiable within Division 3 (~~commencing with Section 3101~~) of the Commercial Code but which is not payable to order or to bearer.

Comment. Section 481.050 is repealed. The term "chose in action" is generally replaced by the term "general intangibles" in this title for consistency with Title 9 (commencing with Section 680.010) (Enforcement of Judgments Law). See Section 481.115 ("general intangibles" defined). See also Section 481.117 ("instrument" defined).

8348

Code of Civil Procedure § 481.055 (added). Costs

SEC. 5. Section 481.055 is added to the Code of Civil Procedure, to read:

481.055. "Costs" means costs and disbursements, including but not limited to statutory fees, charges, commissions, and expenses.

Comment. Section 481.055 is new and is the same as Section 680.150 (Enforcement of Judgments Law). See the Comment to Section 680.150.

13610/NZ

Code of Civil Procedure § 481.080 (technical amendment). Deposit account

SEC. 6. Section 481.080 of the Code of Civil Procedure is amended to read:

481.080. "Deposit account" means any of the following: "deposit account" as defined in Section 9105 of the Commercial Code.

(a) An account in any "bank" described in Section 102 of the Financial Code.

(b) An account in any state or federal savings and loan association. As used in this paragraph, "account" includes investment certificate, share account, and withdrawable share.

(c) An account for funds received from a member of a credit union.

Comment. Section 481.080 is amended to conform to Section 680.170 (Enforcement of Judgments Law).

27940

Code of Civil Procedure § 481.090 (technical amendment). Document of title

SEC. 7. Section 481.090 of the Code of Civil Procedure is amended to read:

481.090. "~~Document~~" "Document of title" means a "~~document of title~~" "document" as defined by ~~subdivision (15) of~~ in Section ~~1204~~ 9105 of the Commercial Code. A document of title is negotiable if is negotiable within the meaning of Section 7104 of the Commercial Code.

Comment. Section 481.090 is amended to conform to Section 680.180 (Enforcement of Judgments Law).

28295

Code of Civil Procedure § 481.110 (technical amendment). Farm products

SEC. 8. Section 481.110 of the Code of Civil Procedure is amended to read:

481.110. "Farm products" means crops or livestock or supplies used or produced in farming operations or products of crops or livestock in their unmanufactured states (such as ginned cotton, wool clip, maple syrup, ~~honey,~~ milk, and eggs), while in the possession of a defendant engaged in raising, fattening, grazing, or other farming operations. If tangible personal property is a farm product, it is neither equipment nor inventory.

Comment. Section 481.110 is amended to delete honey from the list of farm products, consistent with the amendment of Section 9109 of the Commercial Code. See 1974 Cal. Stats. ch. 997, § 12.

§ 481.113
8357

Code of Civil Procedure § 481.113 (added). Financial institution

SEC. 9. Section 481.113 is added to the Code of Civil Procedure, to read:

481.113. "Financial institution" means a state or national bank, state or federal savings and loan association or credit union, or like organization, and includes a corporation engaged in a safe deposit business.

Comment. Section 481.113 is new and is the same as Section 680.200 (Enforcement of Judgments Law).

9928

Code of Civil Procedure § 481.115 (added). General intangibles

SEC. 10. Section 481.115 is added to the Code of Civil Procedure, to read:

481.115. "General intangibles" means "general intangibles" as defined in Section 9106 of the Commercial Code.

Comment. Section 481.115 is the same as Section 680.210 (Enforcement of Judgments Law) and supersedes former Section 481.050 ("chose in action" defined). The limitation to debts arising out of the conduct of a trade, business, or profession found in former Section 481.050 is continued in Section 487.010(c)(2) (property subject to attachment).

34724

Code of Civil Procedure § 481.117 (added). Instrument

SEC. 11. Section 481.117 is added to the Code of Civil Procedure, to read:

481.117. "Instrument" means "instrument" as defined in Section 9105 of the Commercial Code, but does not include a security.

Comment. Section 481.117 is the same as Section 680.220 (Enforcement of Judgments Law) and supersedes a portion of former Section 481.050 ("chose in action" includes nonnegotiable instrument) and former Section 481.160 ("negotiable instrument" defined).

35093

Code of Civil Procedure § 481.150 (repealed). Motor vehicle

SEC. 12. Section 481.150 of the Code of Civil Procedure is repealed.

~~481.150.~~ "Motor vehicle" means a "motor vehicle" as defined by Section 415 of the Vehicle Code.

Comment. Section 481.150 is repealed because it is unnecessary.

29193

Code of Civil Procedure § 481.160 (repealed). Negotiable instrument

SEC. 13. Section 481.160 of the Code of Civil Procedure is repealed.

~~481.160.~~ "Negotiable instrument" means a "negotiable instrument" as defined by Section 3104 of the Commercial Code.

Comment. Section 481.160 is superseded by Section 481.117 ("instrument" defined).

29194

Code of Civil Procedure § 481.170 (technical amendment). Person

SEC. 14. Section 481.170 of the Code of Civil Procedure is amended to read:

481.170. "Person" includes an ~~individual~~, a natural person, a corporation, a partnership or other unincorporated association, and a public entity.

Comment. Section 481.170 is amended to conform to Section 680.280 (Enforcement of Judgments Law).

67721

Code of Civil Procedure § 481.175 (added). Personal property

SEC. 15. Section 481.175 is added to the Code of Civil Procedure, to read:

481.175. "Personal property" includes both tangible and intangible personal property.

Comment. Section 481.175 is new and is the same as Section 680.290 (Enforcement of Judgments Law).

Code of Civil Procedure § 481.195 (added). Property

SEC. 16. Section 481.195 is added to the Code of Civil Procedure, to read:

481.195. "Property" includes real and personal property and any interest therein.

Comment. Section 481.195 is new and is the same as Section 680.310 (Enforcement of Judgments Law).

29185

Code of Civil Procedure § 481.203 (added). Real property

SEC. 17. Section 481.203 is added to the Code of Civil Procedure, to read:

481.203. "Real property" includes any right in real property, including but not limited to a leasehold interest in real property.

Comment. Section 481.203 is new and is the same as Section 680.320 (Enforcement of Judgments Law).

29186

Code of Civil Procedure § 481.205 (added). Registered process server

SEC. 18. Section 481.205 is added to the Code of Civil Procedure, to read:

481.205. "Registered process server" means a person registered as a process server pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code.

Comment. Section 481.205 is new and is the same as Section 680.330 (Enforcement of Judgments Law).

29192

Code of Civil Procedure § 481.207 (added). Secured party

SEC. 19. Section 481.207 is added to the Code of Civil Procedure, to read:

481.207. "Secured party" means "secured party" as defined in Section 9105 of the Commercial Code.

Comment. Section 481.207 is new and is the same as Section 680.340 (Enforcement of Judgments Law).

15645

Code of Civil Procedure § 481.223 (added). Security interest

SEC. 20. Section 481.223 is added to the Code of Civil Procedure to read:

481.223. "Security interest" means "security interest" as defined in Section 1201 of the Commercial Code.

Comment. Section 481.223 is new and is the same as Section 680.360 (Enforcement of Judgments Law).

29189

Code of Civil Procedure § 481.225 (added). Tangible personal property

SEC. 21. Section 481.225 is added to the Code of Civil Procedure, to read:

481.225. "Tangible personal property" includes chattel paper, documents of title, instruments, securities, and money.

Comment. Section 481.225 is new and is the same as Section 680.370 (Enforcement of Judgments Law).

29188

Code of Civil Procedure § 481.230 (repealed). Vessel

SEC. 22. Section 481.230 of the Code of Civil Procedure is repealed.

~~481.230.~~ "Vessel" means a numbered vessel as that term is used in Division 3-5 (commencing with Section 9840) of the Vehicle Code.

Comment. Section 481.230 is repealed because it is unnecessary.

2792

Code of Civil Procedure § 482.060 (technical amendment). Subordinate judicial duties performable by appointed officers

SEC. 23. Section 482.060 of the Code of Civil Procedure is amended to read:

482.060. (a) Except as otherwise provided in subdivision (b), the judicial duties to be performed under this title are subordinate judicial

duties within the meaning of Section 22 of Article VI of the California Constitution and may be performed by appointed officers such as court commissioners.

(b) The judicial duties to be performed in the determination of the following matters are not subordinate judicial duties:

- (1) A contested claim of exemption.
- (2) A contested motion for determination of the liability and damages for wrongful attachment.
- (3) A contested ~~third party~~ third-party claim.
- (4) A contested ~~action~~ proceeding to enforce a garnishee's third person's liability.

(c) Nothing in subdivision (b) limits the power of a court to appoint a temporary judge pursuant to Section 21 of Article VI of the California Constitution.

Comment. Subdivision (b)(4) of Section 482.060 is revised to make clear its application to proceedings under Sections 488.600, 488.610, 491.170, and 491.310.

404/375

Code of Civil Procedure § 482.070 (amended). Manner of service

SEC. 24. Section 482.070 of the Code of Civil Procedure is amended to read:

482.070. (a) Except as otherwise provided in this title, a writ, notice, order, or other paper required or permitted to be served under this title may be served personally or by mail.

(b) Except as otherwise provided in this section, service of a writ, notice, order, or other paper under this title is governed by Article 1 (commencing with Section 684.010) and Article 2 (commencing with Section 684.110) of Chapter 4 of Division 1 of Title 9, including the provisions of Section 684.120 extending time when service is made by mail.

(c) For the purpose of subdivision (b), in Article 1 (commencing with Section 684.010) and Article 2 (commencing with Section 684.110) of Chapter 4 of Division 1 of Title 9:

(1) References to the "judgment debtor" shall be deemed references to the defendant.

(2) References to the "judgment creditor" shall be deemed references to the plaintiff.

(3) References to a "writ" shall be deemed references to a writ of attachment.

(4) References to a "notice of levy" shall be deemed references to a notice of attachment.

(d) If the person to be served defendant has not appeared in the action and a writ, notice, order, or other paper is required to be personally served on the defendant under this title, service under this title shall be accomplished made in the same manner provided for the service of as a summons and complaint by Article 3 (commencing with Section 415.10) of is served under Chapter 4 (commencing with Section 413.10) of Title 5. If the person to be served has appeared in the action, service shall be accomplished in the manner provided by Chapter 5 (commencing with Section 4010) of Title 14.

(e) Except for service of a subpoena or other process to require the attendance of the defendant or service of a paper to bring the defendant into contempt, if the defendant has an attorney of record in the action, service shall be made on the attorney rather than on the defendant.

(f) Proof of service under this title is governed by Article 3 (commencing with Section 684.210) of Chapter 4 of Division 1 of Title 9.

Comment. Section 482.070 is amended to incorporate generally the detailed provisions in the Enforcement of Judgments Law governing the manner of service, the persons to be served, and proof of service. See Sections 684.010-684.220.

2179

Code of Civil Procedure § 482.080 (technical amendment). Turnover order in aid of attachment

SEC. 25. Section 482.080 of the Code of Civil Procedure is amended to read:

482.080. (a) If a writ of attachment is issued, the court may also issue an order directing the defendant to transfer to the levying officer either or both of the following :

(1) Possession of the property to be attached where such if the property is sought to be attached by taking it into custody.

(2) Possession of any documentary evidence of title to any property of or any a debt owed to the defendant which that is sought to be attached. An order for the transfer of possession of documentary evidence of title issued pursuant to this paragraph may be enforced by the levying officer served when the property or debt is levied upon or at any time thereafter.

(b) The order shall be personally served on the defendant and shall contain a notice to the defendant that failure to comply with the order may subject the defendant to being held in arrest and punishment for contempt of court.

Comment. Section 482.080 is amended to make clear that personal service of the order is required. See also Sections 482.070 (manner of service) and 684.030 (service on defendant rather than defendant's attorney required).

31057

Code of Civil Procedure § 482.100 (technical amendment). Claim of exemption

SEC. 26. Section 482.100 of the Code of Civil Procedure is amended to read:

482.100. (a) The defendant may claim an exemption provided in Section 487.020 for property levied upon pursuant to a writ issued under this title if the right to the exemption is the result of a change in circumstances occurring after (1) the denial of a claim of exemption for the property earlier in the action or (2) the expiration of the time for claiming the exemption earlier in the action.

(b) A claim of exemption under this section shall follow the procedure provided in ~~Section 699.50~~ Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 except that, subject to subdivision (a), the defendant may claim the exemption at any time. ~~References in Section 699.50 to "the~~ For this purpose, references in Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 to the "judgment debtor" shall be deemed references to the defendant, and ~~references in Section 699.50 to "the~~ to the "judgment creditor" shall be deemed references to the plaintiff.

(c) The exemption provided by subdivision (b) of Section 487.020 may be claimed at the defendant's option either pursuant to subdivision (b) of this section or by following the procedure provided in this sub-

division. The claim shall be made by filing with the court and serving on the plaintiff a notice of motion. Service on the plaintiff shall be made not less than three days prior to the date set for the hearing. The hearing shall be held not more than five days after the filing of the notice of motion unless, for good cause shown, the court orders otherwise. The notice of motion shall state the relief requested and shall be accompanied by an affidavit supporting any factual issues raised and points and authorities supporting any legal issues raised. At the hearing on the motion, the defendant has the burden of showing that the property is exempt pursuant to subdivision (b) of Section 487.020. Upon such showing and the showing required by subdivision (a), the court shall order the release of such property.

Comment. Section 482.100 is amended to substitute a reference to the provisions that replaced former Section 690.50 and to make other conforming revisions. See also Section 482.070 (manner of service).

2180

Code of Civil Procedure § 483.010 (technical amendment). Cases in which attachment authorized

SEC. 27. Section 483.010 of the Code of Civil Procedure is amended to read:

483.010. (a) Except as otherwise provided by statute, an attachment may be issued only in an action on a claim or claims for money, each of which is based upon a contract, express or implied, where the total amount of such claim or claims is a fixed or readily ascertainable amount not less than five hundred dollars (\$500) exclusive of costs, interest, and attorney's fees.

(b) An attachment may not be issued on a claim which is secured by any interest in real or personal property arising from agreement, statute, or other rule of law (including any mortgage or deed of trust of realty, any security interest subject to Division 9 (commencing with Section 9101) of the Commercial Code, and any statutory, common law, or equitable lien). However, an attachment may be issued (1) where the claim was originally so secured but, without any act of the plaintiff or the person to whom the security was given, such security has become valueless or has decreased in value to less than the amount then owing on the claim, in which event the amount for which such attachment may issue

shall not exceed the lesser of the amount of such decrease or the difference between the value of the security and the amount then owing on the claim, or (2) where the claim was secured by a nonconsensual possessory lien but such lien has been relinquished by the surrender of the possession of the property.

(c) If the action is against ~~an individual~~, a defendant who is a natural person, an attachment may be issued only on a claim which arises out of the conduct by the ~~individual~~ defendant of a trade, business, or profession. An attachment may not be issued on a claim against an ~~individual~~ which a defendant who is a natural person if the claim is based on the sale or lease of property, a license to use property, the furnishing of services, or the loan of money where the property sold or leased, or licensed for use, the services furnished, or the money loaned was used by the ~~individual~~ defendant primarily for personal, family, or household purposes.

(d) An attachment may be issued pursuant to this section whether or not other forms of relief are demanded.

Comment. Section 483.010 is amended to make technical revisions consistent with Section 481.170 as amended ("person" defined).

15644

Code of Civil Procedure § 483.015 (added). Amount to be secured by attachment

SEC. 28. Section 483.015 is added to the Code of Civil Procedure, to read:

483.015. (a) Subject to subdivision (b) and to Section 483.020, the amount to be secured by an attachment is the sum of the following:

(1) The amount of the defendant's indebtedness claimed by the plaintiff for which an attachment may issue.

(2) Any additional amount included by the court under Section 482.110.

(b) The amount described in subdivision (a) shall be reduced by the sum of the following:

(1) The amount of any legal offset to the plaintiff's claim.

(2) The amount of any indebtedness of the plaintiff that the defendant has claimed in a cross-complaint filed in the action if the defendant's claim is one upon which an attachment could be issued.

Comment. Section 483.015 is a new provision that governs the amount for which an attachment may issue. This section supersedes former portions of subdivision (b) of Section 484.020 and subdivision (b) of Section 484.320. The former provisions referred to the amount of defendant's indebtedness over and above all claims which would diminish the amount of the plaintiff's recovery. Subdivision (b) of Section 483.015 provides a more limited rule under which, for example, the amount to be secured by the attachment is not reduced by a tort claim that has not been reduced to judgment. For special rules applicable in unlawful detainer proceedings, see Section 483.020.

15638

Code of Civil Procedure § 483.020 (technical amendment). Attachment in unlawful detainer proceeding

SEC. 29. Section 483.020 of the Code of Civil Procedure is amended to read:

483.020. (a) Subject to ~~subdivision~~ subdivisions (d) and (e), the amount to be secured by the attachment in an unlawful detainer proceeding is the sum of the following:

(1) The amount of the rent due and unpaid as of the date of filing the complaint in the unlawful detainer proceeding.

(2) Any additional amount included by the court under subdivision (c).

(3) Any additional amount included by the court under Section 482.110.

(b) In an unlawful detainer proceeding, the plaintiff's application for a right to attach order and a writ of attachment pursuant to this title may include (in addition to the rent due and unpaid as of the date of the filing of the complaint and any additional estimated amount authorized by Section 482.110) an amount equal to the rent for the period from the date the complaint is filed until the estimated date of judgment or such earlier estimated date as possession has been or is likely to be delivered to the plaintiff, such amount to be computed at the rate provided in the lease.

(c) The amount to be secured by the attachment in the unlawful detainer proceeding may, in the discretion of the court, include an additional amount equal to the amount of rent for the period from the

date the complaint is filed until the estimated date of judgment or such earlier estimated date as possession has been or is likely to be delivered to the plaintiff, such amount to be computed at the rate provided in the lease.

(d) Notwithstanding subdivision (b) of Section 483.010, an attachment may be issued in an unlawful detainer proceeding where the plaintiff has received a payment or holds a deposit to secure the payment of rent or the performance of other obligations under the lease. If the payment or deposit secures only the payment of rent, the amount of the payment or deposit shall be subtracted in determining the amount to be secured by the attachment. If the payment or deposit secures the payment of rent and the performance of other obligations under the lease or secures only the performance of other obligations under the lease, the amount of the payment or deposit shall not be subtracted in determining the amount to be secured by the attachment.

(e) The amount to be secured by the attachment as otherwise determined under this section shall be reduced by the amounts described in subdivision (b) of Section 483.015.

Comment. Section 483.020 is amended to make clear that the amount of any legal offsets or cross-complaints specified in Section 483.015(b) are to be subtracted from the amount claimed by the plaintiff in an unlawful detainer case under this section.

2184

Code of Civil Procedure § 484.020 (technical amendment). Execution and contents of application

SEC. 30. Section 484.020 of the Code of Civil Procedure is amended to read:

484.020. The application shall be executed under oath and shall include all of the following:

(a) A statement showing that the attachment is sought to secure the recovery on a claim upon which an attachment may be issued.

(b) A statement of the amount the plaintiff seeks to recover from the defendant (the amount of defendant's indebtedness over and above all claims which would diminish the amount of the plaintiff's recovery) or, if an attachment is sought for only a part thereof, such partial amount to be secured by the attachment.

(c) A statement that the attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.

(d) A statement that the applicant has no information or belief that the claim is discharged in a proceeding under the National Bankruptcy Act Title 11 of the United States Code (Bankruptcy) or that the prosecution of the action is stayed in a proceeding under the National Bankruptcy Act Title 11 of the United States Code (Bankruptcy) .

(e) A description of the property to be attached under the writ of attachment and a statement that the plaintiff is informed and believes that such property is subject to attachment. Where the defendant is a corporation, a reference to "all corporate property which is subject to attachment pursuant to subdivision (a) of Code of Civil Procedure Section 487.010" satisfies the requirements of this subdivision. Where the defendant is a partnership, a reference to "all partnership property which is subject to attachment pursuant to subdivision (b) of Code of Civil Procedure Section 487.010" satisfies the requirements of this subdivision. Where the defendant is an individual a natural person , the description of the property shall be reasonably adequate to permit the defendant to identify the specific property sought to be attached.

Comment. Subdivision (b) of Section 484.020 is amended to reflect the addition of Section 483.015 which provides for the calculation of the amount to be secured by the attachment. Subdivision (d) is amended to provide references to the new Bankruptcy Code. The amendment of subdivision (e) is nonsubstantive.

31055

Code of Civil Procedure § 484.050 (amended). Contents of notice of application and hearing

SEC. 31. Section 484.050 of the Code of Civil Procedure is amended to read:

484.050. The notice of application and hearing shall inform the defendant of all of the following:

(a) A hearing will be held at a place and at a time, to be specified in the notice, on plaintiff's application for a right to attach order and a writ of attachment.

(b) The order will be issued if the court finds that the plaintiff's claim is probably valid and the other requirements for issuing the order

are established. The hearing is not for the purpose of determining whether the claim is actually valid. The determination of the actual validity of the claim will be made in subsequent proceedings in the action and will not be affected by the decisions at the hearing on the application for the order.

(c) The amount to be secured by the attachment will be reduced by any amount found by the court to be (1) the amount of any legal offset to the plaintiff's claim or (2) the amount of any indebtedness of the plaintiff claimed by the defendant in a cross-complaint in the action if the defendant's claim is one upon which an attachment would be issued.

~~(e)~~ (d) If the right to attach order is issued, a writ of attachment will be issued to attach the property described in the plaintiff's application unless the court determines that such property is exempt from attachment or that its value clearly exceeds the amount necessary to satisfy the amount to be secured by the attachment. However, additional writs of attachment may be issued to attach other nonexempt property of the defendant on the basis of the right to attach order.

~~(d)~~ (e) If the defendant desires to oppose the issuance of the order, he the defendant shall file with the court and serve on the plaintiff a notice of opposition and supporting affidavit as required by Section 484.060 not later than five days prior to the date set for hearing.

~~(e)~~ (f) If the defendant claims that the personal property described in the application, or a portion thereof, is exempt from attachment, he the defendant shall include such claim in the notice of opposition filed and served pursuant to Section 484.060 or file and serve a separate claim of exemption with respect to the property as provided in Section 484.070. If he the defendant does not do so, the claim of exemption will be barred in the absence of a showing of a change in circumstances occurring after the expiration of the time for claiming exemptions.

~~(f)~~ (g) The defendant may obtain a determination at the hearing whether real or personal property not described in the application or real property described in the application is exempt from attachment by including such claim in the notice of opposition filed and served pursuant to Section 484.060 or by filing and serving a separate claim of exemption with respect to the property as provided in Section 484.070 ,

but the failure to so claim that such property ~~not so~~ described is exempt from attachment will not preclude him the defendant from making a claim of exemption with respect to such property at a later time.

~~(g)~~ (h) Either the defendant or ~~his~~ the defendant's attorney or both of them may be present at the hearing.

~~(h)~~ (i) The notice shall contain the following statement: "You may seek the advice of an attorney as to any matter connected with the plaintiff's application. Such attorney should be consulted promptly so that he the attorney may assist you before the time set for hearing."

Comment. Section 484.050 is amended to add a new subdivision (c) to conform to subdivision (b) of Section 483.015. Subdivisions (f) and (g) are revised to conform to amended Section 484.070. The other changes are nonsubstantive.

2188

Code of Civil Procedure § 484.070 (amended). Claim of exemption

SEC. 32. Section 484.070 of the Code of Civil Procedure is amended to read:

484.070. (a) If the defendant claims that the personal property described in the plaintiff's application, or a portion of such property, is exempt from attachment, the defendant shall claim such exemption as provided in this section. If the defendant fails to make such claim or makes such claim but fails to prove that the personal property is exempt, he the defendant may not later claim such exemption except as provided in Section 482.100.

(b) If the defendant desires to claim at the hearing that real or personal property not described in the plaintiff's application or real property described in the plaintiff's application is exempt from attachment, in whole or in part, the defendant shall claim such exemption as provided in this section. Failure to make such claim does not preclude the defendant from later claiming the exemption. If the claim is made as provided in this section but the defendant fails to prove that the property is exempt from attachment, he the defendant may not later claim that the property, or a portion thereof, is exempt except as provided in Section 482.100.

(c) The claim of exemption shall:

(1) Describe the property claimed to be exempt.

(2) Specify the statute section supporting the claim.

(d) The claim of exemption shall be accompanied by an affidavit supporting any factual issues raised by the claim and points and authorities supporting any legal issues raised.

(e) The claim of exemption, together with any supporting affidavit and points and authorities, shall be filed and served on the plaintiff not less than five days before the date set for the hearing.

(f) If the plaintiff desires to oppose the claim of exemption, he the plaintiff shall file and serve on the defendant, not less than two days before the date set for the hearing, a notice of opposition to the claim of exemption, accompanied by an affidavit supporting any factual issues raised and points and authorities supporting any legal issues raised. If the plaintiff does not file and serve a notice of opposition as provided in this subdivision, no writ of attachment shall be issued as to the property claimed to be exempt. If all of the property described in the plaintiff's application is claimed to be exempt and the plaintiff does not file and serve a notice of opposition as provided in this subdivision, no hearing shall be held and no right to attach order or writ of attachment shall be issued and any temporary protective order issued pursuant to Chapter 6 (commencing with Section 486.010) immediately expires.

(g) If the plaintiff files and serves a notice of opposition to the claim as provided in this section, the defendant has the burden of proving that the property is exempt from attachment.

Comment. Subdivision (a) of Section 484.070 is amended to make clear that the defendant is not required to claim an exemption for real property (Section 487.020) at the hearing on issuance of the right to attach order and writ of attachment. Consequently, if the defendant's real property dwelling is sought to be attached, a failure to claim an exemption (see subdivision (e) of Section 487.020) for it does not constitute a waiver of the exemption. However, subdivision (b) permits the defendant to claim an exemption in real property at the hearing on issuance of the right to attach order if the defendant so desires. If the plaintiff who has attached a dwelling recovers judgment in the action and levies on the dwelling under a writ of execution, the exemption may then be determined as provided in Sections 704.710-704.840 (Enforcement of Judgments Law). The other changes in Section 484.070 are technical. See Section 482.070 (manner of service).

Code of Civil Procedure § 484.090 (amended). Hearing; order and findings

SEC. 33. Section 484.090 of the Code of Civil Procedure is amended to read:

484.090. (a) At the hearing, the court shall consider the showing made by the parties appearing and shall issue a right to attach order, which shall state the amount to be secured by the attachment, if it finds all of the following:

(1) The claim upon which the attachment is based is one upon which an attachment may be issued.

(2) The plaintiff has established the probable validity of the claim upon which the attachment is based.

(3) The attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.

(4) The amount of any legal offset that the defendant has shown to the plaintiff's claim.

(5) The amount of any indebtedness of the plaintiff that the defendant has claimed in a cross-complaint if the defendant has established the probable validity of the claim and the defendant's claim is one upon which an attachment could be issued.

(b) If, in addition to the findings required by subdivision (a), the court finds that the defendant has failed to prove that all the property sought to be attached is exempt from attachment, it shall order a writ of attachment to be issued upon the filing of an undertaking as provided by Sections 489.210 and 489.220.

(c) If the court determines that property of the defendant is exempt from attachment, in whole or in part, the right to attach order shall describe such property and prohibit attachment of such property.

(d) The court's determinations shall be made upon the basis of the pleadings and other papers in the record; but, upon good cause shown, the court may receive and consider at the hearing additional evidence, oral or documentary, and additional points and authorities, or it may continue the hearing for the production of such additional evidence or points and authorities.

Comment. Paragraphs (4) and (5) are added to subdivision (a) of Section 484.090 to reflect subdivision (b) of Section 483.015. The defendant may object to the amount sought to be secured by the attachment

in a notice of opposition under Section 484.060 on the ground that a legal offset exists or on the ground that the defendant has a claim in a cross-complaint against the plaintiff upon which an attachment could be issued. If a cross-complaint is filed after the right to attach order is issued, the defendant may apply pursuant to Sections 484.610-484.640 to have the amount secured by the attachment reduced.

31051

Code of Civil Procedure § 484.100 (amended). Effect of determinations

SEC. 34. Section 484.100 of the Code of Civil Procedure is amended to read:

484.100. The court's determinations under this chapter shall have no effect on the determination of any issues in the action other than issues relevant to proceedings under this chapter nor shall they affect the rights of the plaintiff or defendant in any other action arising out of the same claim of the plaintiff or defendant. The court's determinations under this chapter shall not be given in evidence nor referred to at the trial of any such action.

Comment. Section 484.100 is amended to reflect that the defendant may seek to reduce the amount to be secured by the attachment on the ground that the defendant has a claim in a cross-complaint against the plaintiff upon which an attachment would be issued in an action brought by the defendant. See Sections 484.090 and 484.610-484.640.

30966

Code of Civil Procedure § 484.110 (amended). Effect of failure to oppose or rebut evidence

SEC. 35. Section 484.110 of the Code of Civil Procedure is amended to read:

484.110. (a) Neither the failure of the defendant to oppose the issuance of a right to attach order under this chapter nor the defendant's failure to rebut any evidence produced by the plaintiff in connection with proceedings under this chapter shall constitute a waiver of any defense to the plaintiff's claim in the action or any other action or have any effect on the right of the defendant to produce or exclude evidence at the trial of any such action.

(b) Neither the failure of the plaintiff to oppose the issuance of an order reducing the amount to be secured by the attachment under this

chapter nor the plaintiff's failure to rebut any evidence produced by the defendant in connection with proceedings under this chapter shall constitute a waiver of any defense to defendant's claim in the action or any other action or have any effect on the right of the plaintiff to produce or exclude evidence at the trial of any such action.

Comment. Section 484.110 is amended to recognize that the defendant may seek to reduce the amount to be secured by the attachment on the ground that defendant has a claim in a cross-complaint against the defendant upon which an attachment would be issued in an action brought by the defendant. See Sections 484.090 and 484.610-484.640.

2181

Code of Civil Procedure § 484.320 (technical amendment). Contents of application

SEC. 36. Section 484.320 of the Code of Civil Procedure is amended to read:

484.320. The application shall be executed under oath and shall include all of the following:

(a) A statement that the plaintiff has been issued a right to attach order under Article 1 (commencing with Section 484.010) or that the court has found pursuant to Section 485.240 that the plaintiff is entitled to a right to attach order.

(b) A statement of the amount the plaintiff seeks to recover from the defendant (the amount of defendant's indebtedness over and above all claims which would diminish the amount of the plaintiff's recovery) or, if an attachment is sought for only a part thereof, such partial amount to be secured by the attachment .

(c) A description of the property to be attached under the writ of attachment and a statement that the plaintiff is informed and believes that such property is subject to attachment. The description shall satisfy the requirements of Section 484.020.

(d) A statement that the applicant has no information or belief that the claim is discharged in a proceeding under the ~~National Bankruptcy Act~~ Title 11 of the United States Code (Bankruptcy) or that the prosecution of the action is stayed in a proceeding under the ~~National Bankruptcy Act~~ Title 11 of the United States Code (Bankruptcy) .

Comment. Subdivision (b) of Section 484.320 is amended to reflect the addition of Section 483.015 which provides for the calculation of the amount to be secured by the attachment. Subdivision (d) is amended to provide references to the new Bankruptcy Code.

Code of Civil Procedure § 484.340 (amended). Notice to defendant

SEC. 37. Section 484.340 of the Code of Civil Procedure is amended to read:

484.340. The notice of application and hearing shall inform the defendant of all of the following:

(a) The plaintiff has applied for a writ of attachment to attach the property described in the application.

(b) A hearing will be held at a place and at a time, to be specified in the notice, to determine whether the plaintiff is entitled to the writ.

(c) A writ of attachment will be issued to attach the property described in the plaintiff's application unless the court determines that such property is exempt from attachment or that its value clearly exceeds the amount necessary to satisfy the amount to be secured by the attachment.

(d) If the defendant claims that the property described in the application, or a portion thereof, is exempt from attachment, ~~he shall~~ the defendant may file with the court and serve on the plaintiff a claim of exemption with respect to the property as provided in Section 484.350 not later than five days prior to the date set for hearing. ~~If he does not do so, the claim of exemption will be barred~~ the defendant fails to make such claim with respect to personal property, the defendant may not later claim the exemption in the absence of a showing of a change in circumstances occurring after the expiration of the time for claiming exemptions.

(e) Either the defendant or ~~his~~ the defendant's attorney or both of them may be present at the hearing.

(f) The notice shall contain the following statement: "You may seek the advice of an attorney as to any matter connected with the plaintiff's application. Such attorney should be consulted promptly so that ~~he~~ the attorney may assist you before the time set for hearing."

Comment. Subdivision (d) of Section 484.340 is amended to conform to amended Section 484.350. See the Comment to Section 484.350.

Code of Civil Procedure § 484.350 (amended). Claim of exemption

SEC. 38. Section 484.350 of the Code of Civil Procedure is amended to read:

484.350. (a) If the defendant claims that the property described in the plaintiff's application, or a portion of such property, is exempt from attachment, the defendant ~~shall~~ may claim such exemption as provided in this section. If the defendant fails to make such claim with respect to personal property, or makes such claim with respect to real or personal property but fails to prove that the property is exempt, he the defendant may not later claim such exemption except as provided in Section 482.100.

(b) The claim of exemption shall:

(1) Describe the property claimed to be exempt.

(2) Specify the statute section supporting the claim.

(c) The claim of exemption shall be accompanied by an affidavit supporting any factual issues raised by the claim and points and authorities supporting any legal issues raised.

(d) The claim of exemption, together with any supporting affidavit and points and authorities, shall be filed and served on the plaintiff not less than five days before the date set for the hearing.

Comment. Subdivision (a) of Section 484.350 is amended to make clear that the defendant does not waive an exemption for real property by failure to claim it at the hearing on issuance of the writ. See the Comment to Section 484.070. See also Section 482.070 (manner of service).

3031

Code of Civil Procedure § 484.530 (amended). Claim of exemption

SEC. 39. Section 484.530 of the Code of Civil Procedure is amended to read:

484.530. (a) The defendant may claim an exemption as to real or personal property levied upon pursuant to a writ issued under this article by following the procedure set forth in ~~Section 690-50~~ Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9, except that the defendant shall claim the exemption as to personal property not later than 30 days after the levying officer serves the defendant with the notice of attachment describing such property. For this purpose, references in ~~Section 690-50 to "the Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 to the~~

"judgment debtor" shall be deemed references to the defendant, and references ~~in Section 690.50 to "the to the~~ "judgment creditor" shall be deemed references to the plaintiff.

(b) The defendant may claim the exemption provided by subdivision (b) of Section 487.020 within the time provided by subdivision (a) of this section either (1) by following the procedure set forth in ~~Section 690.50~~ Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 or (2) by following the procedure set forth in subdivision (c) of Section 482.100 except that the requirement of showing changed circumstances under subdivision (a) of Section 482.100 does not apply.

(c) Notwithstanding subdivisions (a) and (b), a claim of exemption shall be denied if such claim has been denied earlier in the action and there is no change in circumstances affecting such claim.

Comment. Subdivision (a) of Section 484.530 is amended to make clear that the defendant does not waive an exemption for real property by failure to claim it within the time prescribed. See Section 487.020(e). The other changes in Section 484.530 are technical.

2787

Code of Civil Procedure §§ 484.610-484.640 (added). Modification of right to attach order to reduce amount to be secured by the attachment

SEC. 40. Article 4 (commencing with Section 484.610) is added to Chapter 4 of Title 6.5 of Part 2 of the Code of Civil Procedure, to read:

Article 4. Modification of Right to Attach
Order to Reduce Amount to be Secured
by Attachment

2791

§ 484.610. Application for order

484.610. (a) The defendant may apply, by filing an application with the court in which the action is brought, for an order modifying the right to attach order to reduce the amount secured by the attachment if all of the following requirements are satisfied:

(1) The plaintiff has been issued a right to attach order under this chapter.

(2) The defendant has filed a cross-complaint in the action after the notice of hearing on the application for the right to attach order was served on the defendant.

(3) The defendant claims in the cross-complaint that the plaintiff is indebted to the defendant and the defendant's claim is one upon which an attachment could be issued.

(b) The application shall be supported by an affidavit showing that the defendant on the facts presented would be entitled to a judgment on the claim made in the cross-complaint.

Comment. Section 484.610 permits the defendant to apply for an order reducing the amount secured by an attachment where the defendant files a cross-complaint after the notice of hearing on the application for the right to attach order is served on the defendant. The section recognizes that the amount to be secured by the attachment is required to be reduced by the amount of any indebtedness of the plaintiff claimed by the defendant in a cross-complaint in the action in which the right to attach order was obtained if the defendant's claim is one on which an attachment could be issued. See Section 483.015(b). If the cross-complaint is filed before the defendant is served with notice of hearing on the application for the right to attach order, the defendant may object to the amount sought to be secured by the attachment in a notice of opposition under Section 484.060. See also Section 484.090(a)(5).

2793

§ 484.620. Service on plaintiff

484.620. At least 20 days prior to the hearing on the application, the plaintiff shall be served with all of the following:

(a) A notice of hearing on the application.

(b) A copy of the application and of any affidavit in support of the application.

Comment. Section 484.620 is drawn from Section 484.040.

2799

§ 484.630. Continuance

484.630. (a) At the time set for the hearing, the defendant shall be ready to proceed. If the defendant is not ready, the court may either deny the application or, for good cause shown, grant the defendant a continuance for a reasonable period.

(b) The court may, in its discretion and for good cause shown, grant the plaintiff a continuance for a reasonable period to enable the plaintiff to oppose the application.

Comment. Section 484.630 is drawn from Section 484.080.

§ 484.640. Hearing; findings and orders

484.640. (a) At the hearing, the court shall consider the showing made by the parties appearing and shall modify the right to attach order to reduce the amount secured by the attachment by the amount claimed in the cross-complaint if the court finds all of the following:

(1) The defendant has filed a cross-complaint in the action after the notice of hearing on the application for the right to attach order was served on the defendant.

(2) The defendant's claim against the plaintiff in the cross-complaint is one upon which an attachment could be issued.

(3) The defendant has established the probable validity of the claim stated in the cross-complaint.

(b) The court's determinations shall be made upon the basis of the pleadings and other papers in the record; but, upon good cause shown, the court may receive and consider at the hearing additional evidence, oral or documentary, and additional points and authorities, or it may continue the hearing for the production of such additional evidence or points and authorities.

Comment. Section 484.640 is drawn from Section 484.090(a),(d).

Code of Civil Procedure § 485.520 (amended). Contents of application

SEC. 41. Section 485.520 of the Code of Civil Procedure is amended to read:

485.520. The application shall be executed under oath and shall include all of the following:

(a) A statement that the plaintiff has been issued a right to attach order and writ of attachment pursuant to Article 2 (commencing with Section 485.210) in the action.

(b) A statement of the amount the plaintiff seeks to recover from the defendant (amount of defendant's indebtedness over and above all claims which would diminish the amount of the plaintiff's recovery) or, if an attachment is sought for only a part thereof, such partial amount to be secured by the attachment under the right to attach order.

(c) A description of the property to be attached under the writ of attachment and a statement that the plaintiff is informed and believes that such property is not exempt from attachment. The description shall satisfy the requirements of Section 484.020.

(d) A statement showing that the requirement of Section 485.010 has been satisfied.

Comment. Section 485.520 is amended to reflect the addition of Section 483.015 which provides for the calculation of the amount to be secured by the attachment.

3033

Code of Civil Procedure § 485.610 (amended). Claim of exemption

SEC. 42. Section 485.610 of the Code of Civil Procedure is amended to read:

485.610. (a) The defendant may claim an exemption as to real or personal property levied upon pursuant to a writ of attachment issued under this chapter by following the procedure set forth in Section 690.50 Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9, except that the defendant shall claim the exemption as to personal property not later than 30 days after the levying officer serves the defendant with the notice of attachment describing such property. For this purpose, references in Section 690.50 Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 to the "debtor" "judgment debtor" shall be deemed references to the defendant, and references in Section 690.50 to the "creditor" "judgment creditor" shall be deemed references to the plaintiff.

(b) The defendant may claim the exemption provided by subdivision (b) of Section 487.020 within the time provided by subdivision (a) of this section either (1) by following the procedure set forth in Section 690.50 Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 or (2) by following the procedure set forth in

subdivision (c) of Section 482.100 except that the requirement of showing changed circumstances under subdivision (a) of Section 482.100 does not apply.

Comment. Subdivision (a) of Section 485.610 is amended to make clear that the defendant does not waive an exemption for real property by failure to claim it within the time prescribed. The other changes in Section 484.530 are technical.

043/191

Code of Civil Procedure 486.020 (amended). Issuance of order if required findings are made

SEC. 42.5. Section 486.020 of the Code of Civil Procedure is amended to read:

486.020. The court shall examine the application, supporting affidavit, and other papers on record and shall issue a temporary protective order, which shall state the amount sought to be secured by the attachment under the application for the right to attach order, upon the filing of an undertaking as provided by Sections 489.210 and 489.220, if it finds all of the following:

(a) The claim upon which the application for attachment is based is one upon which an attachment may be issued.

(b) The plaintiff has established the probable validity of the claim upon which the application for the attachment is based.

(c) The order is not sought for a purpose other than the recovery upon the claim upon which the application for the attachment is based.

(d) The plaintiff will suffer great or irreparable injury (within the meaning of Section 485.010) if the temporary protective order is not issued.

Comment. Section 486.020 is amended to add the requirement that the temporary protective order state the amount sought to be secured by the attachment under the application for the right to attach order. This addition implements subdivision (c)(1) of Section 486.060 and subdivision (b) of Section 489.320.

Code of Civil Procedure § 486.060 (amended). Authority of defendant
to issue checks

SEC. 43. Section 486.060 of the Code of Civil Procedure is amended to read:

486.060. (a) Notwithstanding any terms of the temporary protective order, the defendant may issue any number of checks against any of ~~his bank~~ the defendant's accounts in a financial institution in this state to the extent permitted by this section.

(b) The defendant may issue any number of checks in any amount for the following purposes:

(1) Payment of any payroll expense (including fringe benefits and taxes and premiums for workers' compensation and unemployment insurance) falling due in the ordinary course of business prior to the levy of a writ of attachment.

(2) Payment for goods thereafter delivered to the defendant C.O.D. for use in ~~his~~ the defendant's trade, business, or profession.

(3) Payment of taxes if payment is necessary to avoid penalties which will accrue if there is any further delay in payment.

(4) Payment of reasonable legal fees and reasonable costs and expenses required for the representation of the defendant in the action.

(c) In addition to the checks permitted to be issued by subdivision (b), the defendant may issue any number of checks for any purpose so long as the total amount of such checks does not exceed the greater of the following:

(1) The amount by which the total amount on deposit exceeds the sum of the amount of ~~the plaintiff's claim~~ sought to be secured by the attachment and the amounts permitted to be paid pursuant to subdivision (b).

(2) One thousand dollars (\$1,000).

Comment. Subdivision (a) of Section 486.060 is amended to recognize that checks may be issued against accounts in financial institutions (defined in Section 481.113) other than banks. The amendment to subdivision (c)(1) is clarifying. See Section 486.020(e).

Code of Civil Procedure § 486.080 (amended). Service on defendant

SEC. 44. Section 486.080 of the Code of Civil Procedure is amended to read:

486.080. The temporary protective order shall be personally served on the defendant together with the documents referred to in Section 484.040.

Comment. Section 486.060 is amended to make clear that personal service on the defendant is required. Since the temporary protective order binds only the defendant (Section 486.070), it is enforced by contempt proceedings and hence must be served on the defendant rather than the defendant's attorney. See Sections 482.070 and 684.030.

34723

Code of Civil Procedure § 486.110 (amended). Lien of temporary protective order

SEC. 45. Section 486.110 of the Code of Civil Procedure is amended to read:

486.110. (a) The service upon the defendant of a temporary protective order pursuant to Section 486.080 creates a lien upon any property, or the proceeds thereof, which is described in the order, is owned by the defendant at the time of such service, and is subject to the levy of a writ of attachment pursuant to this title. ~~The lien is not valid as against a bona fide purchaser or encumbrancer for present value or a transferee in the ordinary course of business~~ continues on property subject to the lien, notwithstanding the transfer or encumbrance of the property subject to the lien, unless the person receiving the property is a person listed in Section 697.740 .

(b) The lien terminates upon the date of expiration of the temporary protective order except with respect to property levied upon which under a writ of attachment issued upon application of the plaintiff has been levied during that period. The levy of a writ of attachment perfects the lien created by the service of the temporary protective order while the temporary protective order is in effect .

Comment. Subdivision (a) of Section 486.110 is amended for consistency with the Enforcement of Judgments Law. See also Section 488.500 (attachment lien). The provision formerly contained in subdivision (b) governing the interplay between the lien of the temporary protective order and the attachment lien is superseded by Section 488.500(e).

Code of Civil Procedure § 487.010 (amended). Property subject to attachment

SEC. 46. Section 487.010 of the Code of Civil Procedure is amended to read:

487.010. The following property of the defendant is subject to attachment:

(a) Where the defendant is a corporation, all corporate property for which a method of levy is provided by Article 2 (commencing with Section ~~488.310~~ 488.300) of Chapter 8.

(b) Where the defendant is a partnership or other unincorporated association, all partnership or association property for which a method of levy is provided by Article 2 (commencing with Section ~~488.310~~ 488.300) of Chapter 8.

(c) Where the defendant is ~~an individual~~ a natural person, all of the following property:

(1) Interests in real property except leasehold estates with unexpired terms of less than one year.

(2) Accounts receivable, chattel paper, and ~~choses in action~~ general intangibles arising out of the conduct by the defendant of a trade, business, or profession, except any such individual claim with a principal balance of less than one hundred fifty dollars (\$150).

(3) Equipment.

(4) Farm products.

(5) Inventory.

(6) ~~Judgments~~ Final money judgments arising out of the conduct by the defendant of a trade, business, or profession.

(7) Money on the premises where a trade, business, or profession is conducted by the defendant and, except for the first one thousand dollars (\$1,000), money located elsewhere than on such premises and deposit accounts, but, if the defendant has more than one deposit account or has at least one deposit account and money located elsewhere than on the premises where a trade, business, or profession is conducted by the defendant, the court, upon application of the plaintiff, may order that the writ of attachment be levied so than an aggregate amount of one thousand dollars (\$1,000) in the form of such money and in such accounts remains free of levy.

(8) Negotiable documents of title .

(9) Negotiable instruments Instruments .

(10) Securities.

(11) Minerals or the like (including oil and gas) to be extracted.

(d) In the case of a defendant described in subdivision (c), community property of a type described in subdivision (c) is subject to attachment as provided in Title 8 (commencing with Section 5100) of Part 5 of Division 4 of the Civil Code. Unless the provision or context otherwise requires, if community property that is subject to attachment is sought to be attached:

(1) Any provision of this title that applies to the property of the defendant or to obligations owed to the defendant also applies to the community property interest of the spouse of the defendant and to obligations owed to either spouse that are community property.

(2) Any provision of this title that applies to property in the possession or under the control of the defendant also applies to community property in the possession or under the control of the spouse of the defendant.

Comment. Subdivisions (a) and (b) of Section 487.010 are amended to correct cross-references. Subdivision (c) is amended to conform to Sections 481.090 ("document of title" defined), 481.115 ("general intangibles" defined), 481.117 ("instrument" defined), 481.170 ("person" defined), 488.325 (levy on minerals and the like to be extracted), and 488.480 (levy on final money judgment).

Subdivision (d) is new and is analogous to Section 695.020 in the Enforcement of Judgments Law.

2182

Code of Civil Procedure § 487.020 (amended). Property exempt from attachment

SEC. 47. Section 487.020 of the Code of Civil Procedure is amended to read:

487.020. The following property is exempt from attachment:

(a) All property exempt from ~~execution~~ enforcement of a money judgment .

(b) Property which is necessary for the support of ~~an individual~~ a defendant who is a natural person or the defendant's family of such defendant supported in whole or in part by the defendant.

(c) All compensation paid or payable to a defendant employee by an employer for personal services performed by such employee whether denominated as wages, salary, commission, bonus, or otherwise "Earnings" as defined by Section 706.011.

(d) All property not subject to attachment pursuant to Section 487.010.

(e) The defendant's principal dwelling, as defined by subdivision (a) of Section 704.710, without regard to value, if both of the following requirements are met:

(1) The defendant's principal dwelling consists of real property.

(2) The property claimed as exempt under this subdivision was the defendant's principal dwelling at the time the attachment lien attached to the property or at the time a copy of an application describing the property as property to be attached under a writ of attachment was served on the defendant, whichever is the earlier time.

Comment. Subdivision (a) of Section 487.020 is amended for consistency with the Enforcement of Judgments Law. See, e.g., Section 703.010. The amendment of subdivision (b) is not substantive. Subdivision (c) is amended to incorporate the definition of earnings provided in the Wage Garnishment Law; this amendment makes no substantive change.

Subdivision (e) is a new provision that provides an exemption for the defendant's principal dwelling. This exemption is not subject to any value limitation such as that provided after judgment by Section 704.730.

404/163

Code of Civil Procedure § 487.030 (added). Claim of exemption for real property

SEC. 48. Section 487.030 is added to the Code of Civil Procedure, to read:

487.030. (a) At any time prior to the entry of judgment in the action, the defendant may claim the exemption provided by subdivision (e) of Section 487.020 for property levied upon pursuant to a writ issued under this title by following the procedure set forth in Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9. A claim of exemption under this subdivision shall be denied if such claim has been denied earlier in the action.

(b) At any time prior to the entry of judgment in the action, the defendant may claim the exemption provided by subdivision (b) of Section 487.020 with respect to real property either (1) by following the procedure set forth in Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 or (2) by following the procedure set forth in subdivision (c) of Section 482.100 except that the requirement of showing changed circumstances under subdivision (a) of Section 482.100 does not apply. A claim of exemption under this subdivision shall be denied if such claim has been denied earlier in the action and there is no change in circumstances affecting such claim.

(c) For the purposes of this section, references in Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 to the "judgment debtor" shall be deemed references to the defendant, and references to the "judgment creditor" shall be deemed references to the plaintiff.

(d) Nothing in this section limits the right to claim after the entry of judgment a homestead exemption for real property under Article 4 (commencing with Section 704.710) of Chapter 4 of Division 2 of Title 9 unless prior to entry of judgment the defendant has claimed the exemption provided by subdivision (e) of Section 487.020 and the claim has been denied.

Comment. Section 487.030 provides a procedure for claiming an exemption for real property under this title. This procedure supplements the other provisions of this title that permit, but do not require, the defendant to claim an exemption for real property. See Sections 484.070, 484.350, 484.530, 485.610.

404/955

Code of Civil Procedure §§ 488.010-488.570 (repealed). Levy procedures; lien of attachment; management and disposition of attached property

SEC. 49. Chapter 8 (commencing with Section 488.010) of Title 6.5 of Part 2 of the Code of Civil Procedure is repealed.

Comment. Former Chapter 8 (commencing with Section 488.010) is superseded by new Chapter 8 (commencing with Section 488.010). The disposition of the various provisions of former Chapter 8 is indicated in the table below.

[Set out table]

Code of Civil Procedure §§ 488.010-488.740 (added). Levy procedures; lien of attachment; management and disposition of attached property

SEC. 50. Chapter 8 (commencing with Section 488.010) is added to Title 6.5 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 8. LEVY PROCEDURES; LIEN OF ATTACHMENT;
MANAGEMENT AND DISPOSITION OF ATTACHED PROPERTY

Article 1. General Provisions

§ 488.010. Contents of writ of attachment

488.010. The writ of attachment shall include the following information:

- (a) The date of issuance of the writ.
- (b) The title of the court that issued the writ and the cause and number of the action.
- (c) The name and address of the plaintiff and the name and last known address of the defendant.
- (d) The amount to be secured by the attachment.
- (e) A description of the property to be levied upon to satisfy the attachment.

Comment. Section 488.010 supersedes former Section 488.010 and conforms more closely to Section 699.520 (contents of writ of execution). The notice of attachment contains a description of the specific property which is sought to be attached. See Section 488.060. The provisions of former Section 488.010 which required the writ of attachment to identify persons (other than the defendant) in whose name real property, growing crops, or timber sought to be attached stands on the records of the county is not continued. The procedure for levy on such property requires this information to be in the notice of attachment. See Sections 488.315 and 488.325 (incorporating levy procedure of Enforcement of Judgments Law).

043/180

§ 488.020. Delivery and execution of writ

488.020. (a) A writ of attachment shall be directed to a levying officer in the county in which property of the defendant described in the writ may be located.

(b) Upon the receipt of written instructions from the plaintiff's attorney of record or, if the plaintiff has no attorney of record, from

the plaintiff, the levying officer to whom the writ is directed and delivered shall levy the writ without delay in the manner provided in this chapter on the property described in the writ or so much thereof as is clearly sufficient to satisfy the amount to be secured by the attachment. The levying officer is not liable for a determination made in good faith under this subdivision.

(c) Where a copy of the summons and complaint has not previously been served on the defendant, the instructions to the levying officer shall instruct the levying officer to make such service at the same time the levying officer serves the defendant with a copy of the writ of attachment.

Comment. Section 488.020 continues the substance of former Section 488.030.

406/236

§ 488.030. Instructions to levying officer

488.030. (a) The plaintiff shall give the levying officer instructions in writing. The instructions shall be signed by the plaintiff's attorney of record or, if the plaintiff does not have an attorney of record, by the plaintiff. The instructions shall contain the information needed or requested by the levying officer to comply with the provisions of this title, including but not limited to:

- (1) An adequate description of any property to be levied upon.
- (2) A statement whether the property is a dwelling.
- (3) If the property is a dwelling, whether it is real or personal property.

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

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

Comment. Section 488.030 supersedes a portion of the instruction provision formerly included in Section 488.010(a) and is drawn from Section 687.010 (Enforcement of Judgments Law). See also Section 488.040 (instructions to include name and address of persons to be served) and Section 488.020 (instructions concerning service of copy of summons and complaint).

§ 488.040. Instructions to include name and address of persons to be served

488.040. (a) If the levying officer is required by any provision of this title to serve any writ, order, notice, or other paper on any person, the plaintiff shall include in the instructions to the levying officer the correct name and address of the person. The plaintiff shall use reasonable diligence to ascertain the correct name and address of the person.

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

Comment. Section 488.040 supersedes a portion of the instruction provision formerly included in Section 488.010(a) and is drawn from Section 684.130 (Enforcement of Judgments Law).

09597

§ 488.050. Deposit of levying officer's costs

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

(1) As a prerequisite to the performance by the levying officer of a duty under this title, the plaintiff shall deposit a sum of money with the levying officer sufficient to pay the costs of performing the duty.

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

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

Comment. Section 488.050 supersedes former Section 488.050 and conforms to Section 685.100 (Enforcement of Judgments Law). See the Comment to Section 685.100. The provisions of former Section 488.050 requiring release of property to the defendant are not continued. Property is released to the proper person as prescribed by Section 488.730. See also Section 481.055 ("costs" defined). Subdivision (b) continues the substance of former subdivision (a) of Section 488.060.

992/931

§ 488.060. Notice of attachment

488.060. The notice of attachment shall inform the person notified of all of the following:

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

Comment. Section 488.060 continues the substance of former Section 488.020. The former section has been revised to correct a cross-reference and to make other nonsubstantive changes. The notice of attachment also must identify any person (other than the defendant) in whose name real property or growing crops, timber to be cut, or minerals and the like stands upon the records of the county. See Section 700.015 (adopted by reference by Section 488.315) and Section 700.020 (adopted by reference by Section 488.325).

043/177

§ 488.070. Attachment of property in private place

488.070. If a writ of attachment has been issued and personal property sought to be attached under the writ is located in a private place of the defendant:

- (a) The levying officer shall comply with the provisions of Section 699.030 (Enforcement of Judgments Law).
- (b) The plaintiff may obtain the relief provided under Section 699.030 in the manner and subject to the requirements of that section.

Comment. Section 488.070 is new and adopts by reference the procedure provided in the Enforcement of Judgments Law.

3034

§ 488.080. Levy of attachment by registered process server

488.080. (a) A registered process server may levy under a writ of attachment on the following types of property:

- (1) Real property, pursuant to Section 488.315.
- (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, pursuant to Section 488.325.
- (3) Personal property in the custody of a levying officer, pursuant to Section 488.355.
- (4) Equipment of a going business, pursuant to Section 488.375.
- (5) Motor vehicles, vessels, mobilehomes, or commercial coaches used as equipment of a going business, pursuant to Section 488.385.
- (6) Farm products or inventory of a going business, pursuant to Section 488.405.
- (7) Personal property used as a dwelling, pursuant to subdivision (a) of Section 700.080.
- (8) Deposit accounts, pursuant to Section 488.455 or 488.465.
- (9) Property in a safe deposit box, pursuant to Section 488.460 or 488.465.
- (10) Accounts receivable or general intangibles, pursuant to Section 488.470.
- (11) Final money judgments, pursuant to Section 488.480.
- (12) Interest of an heir, devisee, or legatee in personal property in the estate of a decedent, pursuant to Section 488.485.

(b) If a registered process server levies on property pursuant to subdivision (a), the registered process server shall do all of the following:

- (1) Comply with the applicable levy, posting, and service provisions of Article 2 (commencing with Section 488.300).
- (2) Deliver any undertaking required by Section 488.465.
- (3) Request any third person served to give a garnishee's memorandum to the levying officer in compliance with Section 488.610.

(c) Within five days after levy under this section, all of the following shall be filed with the levying officer:

- (1) The writ of attachment.
- (2) An affidavit of the registered process server stating the manner of levy performed.
- (3) Proof of service of the writ and notice of attachment on other persons as required by Article 2 (commencing with Section 488.300).
- (4) Instructions in writing, as required by the provisions of Section 488.030.

(d) Upon receipt of the fee provided by Section 26721 of the Government Code, the levying officer shall perform all other duties under the writ as if the levying officer had levied under the writ and shall return the writ to the court.

(e) The fee for services of a registered process server under this section is not a recoverable cost of collection.

Comment. Section 488.080 is new and is drawn from Section 699.080 (Enforcement of Judgments Law). See the Comment to Section 699.080. See also Section 481.205 ("registered process server" defined).

969/000

§ 488.090. Manner of custody

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

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

Comment. Section 488.090 supersedes former Section 488.045 and conforms to Section 487.030 (Enforcement of Judgments Law).

§ 488.100
36271

§ 488.100. Levying officer's lien

488.100. 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.

Comment. Section 488.100, which continues the substance of a portion of former Civil Code Section 3057, is the same as Section 687.050 (Enforcement of Judgments Law).

404/167

§ 488.110. Third-party claims

488.110. A third person shall claim an interest in property attached in the manner provided for third-party claims under Division 4 (commencing with Section 720.010) of Title 9.

Comment. Section 488.110 continues the substance of former Section 488.090.

35099

§ 488.120. Effect of failure to give notice of attachment

488.120. In any case where property has been levied upon and, pursuant to a levy, a copy of the writ of attachment and a notice of attachment are required by statute to be posted or to be served on or mailed to the defendant or other person, failure to post, serve, or mail the copy of the writ and the notice does not affect the attachment lien created by the levy.

Comment. Section 488.120 is drawn from Section 699.550 (Enforcement of Judgments Law). See the Comment to Section 699.550. Section 488.120 continues the substance of portions of former Sections 488.310-488.430.

29105

§ 488.130. Return of writ

488.130. (a) The levying officer to whom the writ of attachment is delivered shall return the writ to the court from which the writ issued, together with a report of the levying officer's actions. The return shall be made promptly in accordance with the plaintiff's instructions

given to the levying officer but in no event later than 60 days after the levying officer receives the writ.

(b) The levying officer shall make a full inventory of property attached and return such inventory with the writ.

Comment. Section 488.130 supersedes former Section 488.070 and is consistent with a portion of Section 699.560 (Enforcement of Judgments Law). Subdivision (b) continues the substance of a provision that appeared in former Section 488.080.

09728

§ 488.140. Liability of levying officer

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

(b) Unless the levying officer is negligent in the care or handling of the property, the levying officer is not liable to either the plaintiff or the defendant for loss by fire, theft, injury, or damage of any kind to personal property while (1) in the possession of the levying officer either in a warehouse or other storage place or in the custody of a keeper or (2) in transit to or from a warehouse or other storage place.

Comment. Section 488.140 supersedes a portion of former Section 488.060 and is consistent with Section 687.040 (Enforcement of Judgments Law).

404/185

Article 2. Methods of Levy

§ 488.300. Incorporated terms

488.300. If the method of levy under a writ of execution is incorporated by this article, for the purposes of this article references in Article 4 (commencing with Section 700.010) of Chapter 3 of Division

2 of Title 9 to:

- (a) "Judgment creditor" shall be deemed references to the plaintiff.
- (b) "Judgment debtor" shall be deemed references to the defendant.
- (c) "Notice of levy" shall be deemed references to a notice of attachment.
- (d) "Writ" shall be deemed references to a writ of attachment.

Comment. Section 488.300 facilitates the incorporation by reference in this article to the applicable method of levy under a writ of execution provided in the Enforcement of Judgments Law.

8372

§ 488.305. Service of writ and notice of attachment on defendant

488.305. At the time of levy pursuant to this article or promptly thereafter, the levying officer shall serve a copy of the writ of attachment and a notice of attachment on the defendant.

Comment. Section 488.305 is drawn from Section 700.010 (Enforcement of Judgments Law). Section 488.305 continues the requirement of former Sections 488.310-488.430 that the defendant be given notice of attachment. The requirement of former law that notice be given within 15 days (see former Section 488.310) or 45 days (see former Section 488.330) is superseded by the requirement of Section 488.305 that notice be given promptly after levy. For the manner of service, see Section 482.070. Under Section 482.070, service may be made personally or by mail.

404/281

§ 488.315. Real property

488.315. To attach real property, the levying officer shall comply with Section 700.015 and the recorder shall index the copy of the writ and notice of attachment as provided in that section.

Comment. Section 488.315 is new and supersedes former Section 488.310. See also Sections 481.203 ("real property" defined), 488.300 (incorporated terms). For the effect of the attachment lien created under this section, see Section 488.500(c).

2198

§ 488.325. Growing crops, timber to be cut, minerals to be extracted

488.325. (a) To attach (1) growing crops, (2) timber to be cut, or (3) minerals or the like (including oil and gas) to be extracted or

accounts receivable resulting from the sale thereof at the wellhead or minehead, the levying officer shall comply with Section 700.020 and the recorder shall index the copy of the writ and notice of attachment as provided in that section.

Comment. Section 488.325 is new and supersedes a portion of former Section 488.360(c). See also Section 488.300 (incorporated terms). The provisions in Section 488.325 relating to attachment of minerals or the like (including oil and gas) to be extracted and accounts receivable resulting from the sale thereof at the wellhead or minehead were not found in prior attachment law. See the Comment to Section 700.020. Once the crops are harvested, the timber is cut, or the minerals are extracted, the property may be attached pursuant to Sections 488.335-488.365 (tangible personal property), 488.395 (keeper for farm products), or 488.405 (lien on farm products), whichever is appropriate. The levying officer or a receiver may cultivate, care for, harvest, pack, and sell the attached property, if necessary, pursuant to court order under Section 488.700. See also Sections 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant), 482.070 (manner of service).

968/716

§ 488.335. Tangible personal property in possession of defendant

488.335. Unless another method of attachment is provided by this article, to attach tangible personal property in the possession or under the control of the defendant, the levying officer shall take the property into custody.

Comment. Section 488.335 is drawn from Section 700.030 (Enforcement of Judgments Law) and continues the substance of former Section 488.320(a). See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.300 (incorporated terms), 488.305 (service of notice of attachment on defendant).

405/392

§ 488.345. Tangible personal property in possession of third person

488.345. Unless another method of attachment is provided by this article, to attach tangible personal property in the possession or under the control of a third person, the levying officer shall comply with Section 700.040.

Comment. Section 488.345 supersedes subdivisions (a) and (d) of former Section 488.330. The method of levy provided by Section 700.040(a) continues the substance of former Section 488.330(a). Subdivision (b)

of Section 700.040 supersedes former Section 488.330(d). See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.300 (incorporated terms), 488.305 (service of notice of attachment on defendant).

404/360

§ 488.355. Personal property in custody of levying officer

488.355. (a) To attach personal property in the custody of a levying officer, the plaintiff or levying officer shall comply with subdivision (a) of Section 700.050.

(b) The levying officer having custody of the property shall comply with the writs in the order they are received and is not subject to provisions of Article 4 (commencing with Section 488.600) (duties and liabilities of third persons after levy).

Comment. Section 488.355 is new. Subdivision (b) is drawn from Section 700.050(b). See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.300 (incorporated terms), 488.305 (service of notice of attachment on defendant).

404/361

§ 488.365. Bailed goods not covered by negotiable document of title

488.365. To attach goods in the possession of a bailee (as defined in Section 7102 of the Commercial Code) other than one who has issued a negotiable document of title therefor, the levying officer shall comply with Section 700.060.

Comment. Section 488.365 is new. Attachment of property in the possession of a third person was formerly governed by Section 488.330. See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.300 (incorporated terms), 488.305 (service of notice of attachment on defendant).

69411

§ 488.375. Equipment of going business

488.375. (a) Except as provided by Section 488.385, to attach equipment of a going business in the possession or under the control of the defendant, the levying officer shall file with the office of the

Secretary of State a notice of attachment, in the form prescribed by the Secretary of State, which shall contain all of the following:

- (1) The name and mailing address of the plaintiff.
- (2) The name and last known mailing address of the defendant.
- (3) The title of the court where the action is pending and the cause and number of the action.
- (4) A description of the specific property attached.
- (5) A statement that the plaintiff has acquired an attachment lien on the specified property of the defendant.

(b) Upon presentation of a notice of attachment under this section for filing and tender of the filing fee to the office of the Secretary of State, the notice of attachment shall be filed, marked, and indexed in the same manner as a financing statement. The fee for filing in the office of the Secretary of State is the same as the fee for filing a financing statement in the standard form.

(c) Upon the request of any person, the Secretary of State shall issue a certificate showing whether there is on file in that office on the date and hour stated therein any notice of attachment filed against the equipment of a particular person named in the request. If a notice of attachment is on file, the certificate shall state the date and hour of filing of each such notice and the name and address of the plaintiff. The fee for the certificate issued pursuant to this subdivision is the same as the fee for a certificate issued pursuant to Section 9407 of the Commercial Code. Upon request, the Secretary of State shall furnish a copy of any notice of attachment or notice affecting a notice of attachment for the fee for a copy prescribed by subdivision (2) of Section 9407 of the Commercial Code.

(d) The fee for filing, indexing, and furnishing filing data for a notice of extension of attachment is the same as the fee for a continuation statement under Section 9403 of the Commercial Code. The fee for filing, indexing, and furnishing filing data for a notice of release of attachment is the same as the fee for a notice of release under Section 9405 of the Commercial Code.

Comment. Subdivision (a) of Section 488.375 continues the substance of former Section 48S.340(a). See Section 481.100 ("equipment" defined). As under former law, if there is doubt whether the property is equipment or a fixture, the plaintiff may desire to attach pursuant

to both this section and Section 488.315 (real property). Since this section is limited to the attachment of equipment of a going business, Section 488.335 (tangible personal property in defendant's possession) provides the appropriate method of levy where the business has failed or ceased to operate. For the effect of a lien created under this section, see Section 488.500(c). See also Sections 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant).

Subdivision (b) is drawn from Section 697.570 (filing notice of judgment lien on personal property) and supersedes a portion of former Section 488.340(c). Subdivision (c) continues the substance of the first, second, and fourth sentences of former Section 488.340(d) and is drawn from Section 697.580. See also Com. Code § 9409 (combined certificate). Subdivision (d) supersedes a portion of former Section 488.340(c) and is drawn from a portion of Section 697.650(c). Subdivisions (b), (c), and (d) incorporate the fee provisions in the Commercial Code rather than provide specific fees as did former Section 488.340 for the sake of consistency.

9947

§ 488.385. Vehicle, vessel, mobilehome, or commercial coach that is equipment

488.385. (a) To attach a vehicle or vessel for which a certificate of ownership has been issued by the Department of Motor Vehicles, or a mobilehome or commercial coach for which a certificate of title has been issued by the Department of Housing and Community Development, which is equipment of a going business in the possession or under the control of the defendant, the levying officer shall file with the appropriate department a notice of attachment, in the form prescribed by the appropriate department, which shall contain all of the following:

- (1) The name and mailing address of the plaintiff.
- (2) The name and last known mailing address of the defendant.
- (3) The title of the court where the action is pending and the cause and number of the action.
- (4) A description of the specific property attached.
- (5) A statement that the plaintiff has acquired an attachment lien on the specific property of the defendant.

(b) Upon presentation of a notice of attachment, notice of extension, or notice of release under this section for filing and tender of the filing fee to the appropriate department, the notice shall be filed and indexed. The fee for filing and indexing the notice is three dollars (\$3).

(c) Upon the request of any person, the department shall issue its certificate showing whether there is on file in that department on the date and hour stated therein any notice of attachment filed against the property of a particular person named in the request. If a notice of attachment is on file, the certificate shall state the date and hour of filing of each such notice of attachment and any notice affecting any such notice of attachment and the name and address of the plaintiff. The fee for the certificate issued pursuant to this subdivision is three dollars (\$3). Upon request, the department shall furnish a copy of any notice of attachment or notice affecting a notice of attachment for a fee of one dollar (\$1) per page.

Comment. Subdivision (a) of Section 488.385 continues the substance of former Section 488.350(a) and recognizes the transfer of jurisdiction over mobilehomes and commercial coaches to the Department of Housing and Community Development. See, e.g., Health & Safety Code §§ 18075, 18075.29, 18076.21, 18077.1-18077.3. See also Veh. Code §§ 6300, 6301 (motor vehicles), 9919, 9920 (vessels). For the effect of a lien created under this section, see Section 488.500(d). Section 488.385 governs attachment of vehicles, vessels, mobilehomes, and commercial coaches that are equipment; this section does not deal with inventory (see Sections 488.395 and 488.405) or such items that are neither equipment nor inventory. See Sections 481.100 ("equipment" defined), 488.335 (levy on tangible personal property in defendant's possession), 488.345 (levy on tangible personal property in third person's possession), 488.355 (levy on property in custody of levying officer). See also Sections 487.010 (property subject to attachment), 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant), 488.425 (notice to legal owner), 488.500 (attachment lien).

Subdivision (b) is drawn from Section 697.570 (filing notice of judgment lien on personal property) and continues the first sentence of former Section 488.350(f). Subdivision (c) continues the substance of the second, third, and fourth sentences of former Section 488.350(f), but the fee for a certificate under subdivision (c) is raised from \$2 to \$3.

27421

§ 488.395. Keeper for farm products, inventory, and cash proceeds of going business

488.395. Except as provided by Sections 488.325 and 488.405:

(a) To attach farm products or inventory of a going business in the possession or under the control of the defendant, the levying officer

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

(b) Subject to subdivision (c), the period during which the business may continue to operate under the keeper is:

(1) Ten days, if the defendant is a natural person and the writ of attachment has been issued ex parte pursuant to Article 3 (commencing with Section 484.510) of Chapter 4 or pursuant to Chapter 5 (commencing with Section 485.010).

(2) Two days, in cases not described in paragraph (1).

(c) Unless some other disposition is agreed upon by the plaintiff and the defendant, the levying officer shall take the farm products or inventory into exclusive custody at the earlier of the following times:

(1) At any time the defendant objects to placement of a keeper in charge of the business.

(2) At the conclusion of the applicable period prescribed by subdivision (b).

(d) A defendant described in paragraph (1) of subdivision (b) may claim an exemption pursuant to subdivision (b) of Section 487.020 by following the procedure set forth in subdivision (c) of Section 482.100 except that the requirement of showing changed circumstances under subdivision (a) of Section 482.100 does not apply. Upon a showing that the property is exempt pursuant to subdivision (b) of Section 487.020, the court shall order the release of the exempt property and may make such further order as the court deems appropriate to protect against frustration of the collection of the plaintiff's claim. The order may permit the plaintiff to attach farm products or inventory of the going business and proceeds or after-acquired property, or both, by filing pursuant to Section 488.405 and may provide reasonable restrictions on the disposition of the property previously attached.

Comment. Section 488.395 supersedes subdivisions (a) and (b) of former Section 488.360. See Sections 481.110 ("farm products" defined), 481.120 ("inventory" defined). The introductory clause of Section 488.395 recognizes exceptions to the method of levy provided by this section. Section 488.325 provides the exclusive method of attaching growing crops and timber to be cut. Section 488.405 provides an alternative method of attaching farm products and inventory and their cash proceeds by filing with the Secretary of State.

Subdivisions (a)-(c) of Section 488.395 continue the substance of former Section 488.360(a), except that subdivision (b) provides new rules governing the length of the keeper period. Former Section 488.360(a) provided a 10-day keeper in all cases, whereas subdivision (b) of this section limits the 10-day keeper to defendants who may have the need to claim an exemption, i.e., natural persons who have not had the opportunity at a noticed hearing to claim the necessities exemption provided by Section 487.020(b). Subdivision (d) continues the substance of former Section 488.360(b) but incorporates the procedure of Section 482.100(c).

404/369

§ 488.405. Alternative method of attaching farm products or inventory of going business by filing with Secretary of State

488.405. (a) This section provides an alternative method of attaching farm products or inventory of a going business in the possession or under the control of the defendant, but this section does not apply to property described in Section 488.325 (growing crops, timber to be cut, minerals and the like). This section applies if the plaintiff instructs the levying officer to attach the farm products or inventory under this section.

(b) To attach under this section farm products or inventory of a going business in the possession or under the control of the defendant, the levying officer shall file a notice of attachment with the Secretary of State.

(c) Except as provided in subdivisions (d) and (e), the filing of the notice of attachment gives the plaintiff an attachment lien on all of the following:

- (1) The farm products or inventory described in the notice.
- (2) Identifiable cash proceeds (as that term is used in Section 9306 of the Commercial Code).
- (3) If permitted by the writ of attachment or court order, after-acquired property.

(d) The attachment lien created by the filing of the notice of attachment under this section does not extend to either of the following:

- (1) A vehicle or vessel required to be registered with the Department

of Motor Vehicles or a mobilehome or commercial coach required to be registered pursuant to the Health and Safety Code.

(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 attachment 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 an attachment lien under this section becomes a fixture (as defined in Section 9313 of the Commercial Code), the attachment lien under this section is extinguished.

(c) The notice of attachment shall be in the form prescribed by the Secretary of State and shall contain all of the following:

- (1) The name and mailing address of the plaintiff.
- (2) The name and last known mailing address of the defendant.
- (3) The title of the court where the action is pending and the cause and number of the action.
- (4) A description of the farm products and inventory attached.
- (5) A statement that the plaintiff has acquired an attachment lien on the described property and on identifiable cash proceeds (as that term is used in Section 9306 of the Commercial Code), and, if permitted by the writ of attachment or court order, on after-acquired property.

(g) Upon presentation of a notice of attachment under this section for filing and tender of the filing fee to the office of the Secretary of State, the notice of attachment shall be filed, marked, and indexed in the same manner as a financing statement. The fee for filing in the office of the Secretary of State is the same as the fee for filing a financing statement in the standard form.

(h) Upon the request of any person, the Secretary of State shall issue a certificate showing whether there is on file in that office on the date and hour stated therein any notice of attachment filed against

the farm products or inventory of a particular person named in the request. If a notice of attachment is on file, the certificate shall state the date and hour of filing of each such notice of attachment and any notice affecting any such notice of attachment and the name and address of the plaintiff. The fee for the certificate issued pursuant to this subdivision is the same as the fee for a certificate issued pursuant to Section 9407 of the Commercial Code. Upon request, the Secretary of State shall furnish a copy of any notice of attachment or notice affecting a notice of attachment for the fee for a copy prescribed by subdivision (2) of Section 9407 of the Commercial Code.

(i) The fee for filing, indexing, and furnishing filing data for a notice of extension of attachment is the same as the fee for a continuation statement under Section 9403 of the Commercial Code. The fee for filing, indexing, and furnishing filing data for a notice of release of attachment is the same as the fee for a notice of release under Section 9405 of the Commercial Code.

Comment. Section 488.405 supersedes former Section 488.360(c). See Sections 481.110 ("farm products" defined), 481.120 ("inventory" defined). This section provides an alternate to the method of attaching farm products and inventory under Section 488.395 (keeper levy). As under former Section 488.360(c), Section 488.405 provides the plaintiff with a floating lien on the defendant's farm products or inventory, cash proceeds, and after-acquired property. Subdivision (c) provides for the automatic coverage of identifiable cash proceeds, consistent with Commercial Code Sections 9203(3) and 9306(3)(b). Former Section 488.360(c) required specific authorization in a writ or order before identifiable cash proceeds were covered by the lien. Subdivisions (d) and (e) prescribe limitations on the property covered by the lien. These limitations are the same as those applicable to a judgment lien on personal property. See Section 697.530(d)(e). For a limitation on the coverage of the lien in insolvency proceedings, see Section 697.620 (incorporated by Section 488.500(c)). See also Sections 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant).

Subdivision (g) continues the substance of a portion of the sixth sentence of former Section 488.360(c) and is analogous to Section 697.570 (filing notice of judgment lien on personal property). Subdivision (h) continues the substance of the seventh, eighth, and tenth sentences of former Section 488.360(c) and is analogous to Section 697.580. See also Com. Code § 9409 (combined certificate). Subdivision (i) supersedes a portion of the sixth sentence of former Section 488.360(c) and is drawn from a portion of Section 697.650(c). Subdivisions (g), (h), and (i) incorporate the fee provisions in the Commercial Code rather than provide specific fees as did former Section 488.360(c).

§ 488.415. Personal property used as dwelling

488.415. To attach personal property used as a dwelling, the levying officer shall comply with Section 700.080.

Comment. Section 488.415 is new. See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.300 (incorporated terms), 488.305 (service of notice of attachment on defendant).

404/355

§ 488.425. Vehicle, vessel, mobilehome, or commercial coach for which certificate of ownership issued

488.425. If a vehicle or vessel is attached and a certificate of ownership has been issued by the Department of Motor Vehicles for such vehicle or vessel and the certificate of ownership is still in effect, or if a mobilehome or commercial coach is attached and a certificate of title has been issued by the Department of Housing and Community Development for such mobilehome or commercial coach and the certificate of title is still in effect, the levying officer shall comply with Section 700.090.

Comment. Section 488.425 supersedes former Section 488.350(c). See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.300 (incorporated terms), 488.305 (service of notice of attachment on defendant).

404/346

§ 488.435. Chattel paper

488.435. (a) To attach chattel paper, the levying officer shall comply with Section 700.100.

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

Comment. Section 488.435 supersedes former Section 488.380. See Section 481.040 ("chattel paper" defined). Subdivision (a) of Section 700.100 continues the method of levy provided by former Section 488.380(a). Subdivision (b) of Section 700.100 supersedes former Section 488.380(c) and provides new preconditions for giving notice of attachment to the account debtor. Subdivision (b) of Section 488.435 is the same as Section 700.100(c). See also Sections 482.070 (manner of service),

488.120 (effect of failure to give notice of attachment), 488.300 (incorporated terms), 488.305 (service of notice of attachment on defendant).

045/152

§ 488.440. Instruments

488.440. To attach an instrument, the levying officer shall comply with Section 700.110.

Comment. Section 488.440 supersedes the portions of former Section 488.400 relating to attachment of negotiable instruments. See Section 481.117 ("instrument" defined). Subdivision (a) of Section 700.110 continues the method of levy provided by former Section 488.400(a). Subdivision (b) of Section 700.110 supersedes former Section 488.400(c) and provides new preconditions for giving notice of attachment to the obligor. See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.300 (incorporated terms), 488.305 (service of notice of attachment on defendant).

043/198

§ 488.445. Negotiable documents of title

488.445. To attach a negotiable document of title, the levying officer shall comply with Section 700.120.

Comment. Section 488.445 continues the substance of a portion of former Section 488.400(a) relating to the method of attachment of negotiable documents. See also Sections 481.090 ("document" defined), 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.300 (incorporated terms), 488.305 (service of notice of attachment on defendant).

8352

§ 488.450. Securities

488.450. To attach a security, the levying officer shall comply with Section 8317 of the Commercial Code.

Comment. Section 488.450 supersedes former Section 488.410 and is drawn from Section 700.130 (Enforcement of Judgments Law). See Section 481.210 ("security" defined). The substance of former Section 488.410 relating to attachment of securities is prescribed in Commercial Code Section 8317. See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant).

§ 488.455. Deposit accounts

488.455. (a) To attach a deposit account, the levying officer shall personally serve a copy of the writ of attachment and a notice of attachment on the financial institution with which the deposit account is maintained,

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

(c) Subject to Section 488.465, during the time the attachment lien is in effect, the financial institution shall not honor a check or other order for the payment of money drawn against, and shall not pay a withdrawal from, the deposit account that would reduce the deposit account to an amount less than the amount attached. 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.

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

- (1) Performance of the duties of a garnishee under the attachment.
- (2) Nonpayment of a check or other order for the payment of money drawn or presented against the deposit account where such nonpayment is pursuant to the requirements of subdivision (c).
- (3) Refusal to pay a withdrawal from the deposit account where such refusal is pursuant to the requirements of subdivision (c).

Comment. Section 488.455 supersedes former Section 488.390 and is drawn from Section 700.140 (Enforcement of Judgments Law). Subdivision (a) continues the substance of former Section 488.390(a) relating to the method of attachment of deposit accounts. A deposit account evidenced by a negotiable certificate of deposit is a negotiable instrument and may be attached pursuant to Section 488.440, not pursuant to this section. See Sections 481.080 (incorporating definition of "deposit account" in Commercial Code Section 9105) and 481.117 (incorporating definition of "instrument" in Commercial Code Section 9105 which includes a "negotiable instrument" as defined by Commercial Code Section 3104).

Subdivision (b) continues the substance of a portion of former Section 488.390(b). See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant).

Subdivision (c) is a new provision that was not found in former attachment law. It is comparable to Section 700.140(c). The introductory clause of subdivision (c) recognizes that special rules apply where the deposit account stands in the name of a third person.

Subdivision (d) continues the substance of former Section 488.390(c).

2191

§ 488.460. Safe deposit boxes

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

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of attachment and a notice of attachment on any third person in whose name the safe deposit box stands.

(c) Subject to Section 488.465, during the time the attachment lien is in effect, the financial institution shall not permit the removal of any of the contents of the safe deposit box except pursuant to the attachment.

(d) The levying officer may first give the person in whose name the safe deposit box stands an opportunity to open the safe deposit box to permit the removal pursuant to the attachment of the attached property. The financial institution may refuse to permit the forcible opening of the safe deposit box to permit the removal of the attached property unless the plaintiff pays in advance the cost of forcibly opening the safe deposit box and of repairing any damage caused thereby.

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

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

Comment. Section 488.460 is new and is drawn from Section 700.150 (Enforcement of Judgments Law). Former law providing methods of attachment did not provide special rules governing attachment of property in a safe deposit box, unless the box was rented to a person other than the defendant.

See former Section 489.240. See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant).

3038

§ 488.465. Deposit accounts and safe deposit boxes not exclusively in name of defendant

488.465. (a) The provisions of this section apply in addition to the provisions of Sections 488.455 and 488.460 if any of the following property is attached:

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

(2) Property in a safe deposit box standing in the name of a third person or in the names of both the defendant and a third person.

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

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

(d) Notwithstanding Article 4, (commencing with Section 488.600), from the time of levy and delivery of the undertaking to the financial institution until 15 days after the notice is mailed or delivered under subdivision (c) if no objection to the undertaking is made or, if such objection is made, until the court determines that the undertaking is sufficient, the financial institution shall not do any of the following:

(1) Honor a check or other order for the payment of money drawn against, or pay a withdrawal from, the deposit account the would reduce the deposit account to less than the amount attached. 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.

(2) Permit the removal of any of the contents of the safe deposit box except pursuant to the writ.

(e) The financial institution is not liable to any person for any of the following during the period prescribed in subdivision (d):

(1) Nonpayment of a check or other order for the payment of money drawn or presented against the deposit account where such nonpayment is pursuant to the requirements of subdivision (d).

(2) Refusal to pay a withdrawal from the deposit account where such refusal is pursuant to the requirements of subdivision (d).

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

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

(f) An objection to the undertaking may be made by any person claiming to be rightfully entitled to the property attached. The objection shall be made in the manner provided by Article 1 (commencing with Section 489.010) of Chapter 9.

(g) Upon the expiration of the period prescribed in subdivision (d), the financial institution shall comply with the attachment and Sections 488.455 and 488.460 apply.

Comment. Section 488.465 continues the substance of former Section 489.240 and contains additional provisions drawn from Section 700.160 (Enforcement of Judgments Law). Subdivision (a) of Section 488.465 continues the substance of former Section 489.240(a). See also Section

481.113 ("financial institution" defined). Subdivision (b) continues the substance of former Section 489.240(b). Subdivision (f) continues the substance of former Section 489.240(c).

3028

§ 488.470. Accounts receivable and general intangibles

488.470. (a) Unless another method of attachment is provided by this article, to attach an account receivable or general intangible, the levying officer shall personally serve a copy of the writ of attachment and a notice of attachment on the account debtor.

(b) If an attachment is made under subdivision (a) and payments on the account receivable or general intangible are made to a person other than the defendant (whether pursuant to a security agreement, assignment for collection, or otherwise), the levying officer shall, if so instructed by the plaintiff, personally serve a copy of the writ of attachment and a notice of attachment on such third person. Service of the copy of the writ and notice of attachment on such third person is an attachment of any amounts owed to the defendant by such third person.

Comment. Section 488.470 supersedes former Section 488.370 and is drawn from Section 700.170 (Enforcement of Judgments Law). Section 488.465 uses the term "general intangible" in place of "choses in action" which was used in former Section 488.370. See Section 481.115 ("general intangibles" defined). Subdivision (a) continues the method of levy provided by former Section 488.370(a). Subdivision (b) supersedes a portion of former Section 488.370(b) providing for service on a co-obligee. See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant).

9420

§ 488.475. Attachment of property that is subject of pending action or proceeding

488.475. (a) The following property may be attached 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 defendant 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), attachment of property that is the subject of an action or special proceeding pending at the time of the attachment is not effective.

(c) If attachment is attempted but is ineffective under subdivision (b) and the levying officer has requested a garnishee's memorandum under Section 488.610 in connection with the ineffective attachment, the garnishee's memorandum shall include the following information in addition to that required by Section 488.610:

(1) A statement that the attachment of the property is not effective because the property is the subject of a pending action or special proceeding.

(2) The title of the court and the cause and number of the pending action or proceeding.

(d) For the purpose of this section, an action or proceeding is pending from the time the action or proceeding is commenced until judgment has been entered and the time for appeal has expired or, if an appeal is filed, until the appeal has been finally determined.

(e) Nothing in this section affects or limits the right of the plaintiff to obtain a lien pursuant to Article 3 (commencing with Section 491.410) of Chapter 11.

Comment. Section 488.475 is new and is drawn from Section 700.180 (Enforcement of Judgments Law). See also Section 491.410-491.460 (lien in pending action or proceeding).

3029

§ 488.480. Final money judgments

488.480. (a) As used in this section, "final money judgment" means a money judgment after the time for appeal from the judgment has expired or, if an appeal is filed, after the appeal has been finally determined.

(b) To attach a final money judgment, the levying officer shall file a copy of the writ of attachment and a notice of attachment with the clerk of the court that entered the final money judgment. The court clerk shall endorse upon the judgment a statement of the existence of

the attachment lien and the time it was created. If an abstract of the judgment is issued, it shall include a statement of the attachment lien in favor of the plaintiff.

(c) At the time of levy or promptly thereafter, the levying officer shall personally serve a copy of the writ of attachment and a notice of attachment on the judgment debtor obligated to pay the final money judgment attached. The filing with the court clerk pursuant to subdivision (b) is not, of itself, notice to the judgment debtor obligated to pay the attached judgment so as to invalidate any payments made by him or her that would otherwise be applied to the satisfaction of the attached judgment.

Comment. Section 488.480 supersedes former Section 488.420 and is drawn from Section 700.190 (Enforcement of Judgments Law). Subdivision (a) continues the substance of former Section 488.420(c). Subdivision (b) supersedes former Section 488.420(a) which required both filing and service on the defendant's judgment debtor to attach a judgment. Subdivision (c) provides for notice to the defendant's judgment debtor, but such notice is not a prerequisite of a valid attachment. See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant).

9419

§ 488.485. Interests in personal property of estate of decedent

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

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

(c) Promptly after the property is delivered to the levying officer pursuant to subdivision (b), the levying officer shall serve a notice describing the property on the defendant. Notwithstanding Sections

484.070, 484.350, 484.530, and 485.610, a claim of exemption for the property described in the notice may be made within 10 days after the notice was served on the defendant.

Comment. Section 488.485 supersedes former Section 488.430 and is drawn from Section 700.200(a)-(c) (Enforcement of Judgments Law). Subdivision (a) does not continue the requirement of former Section 488.430 that the writ and notice be filed in the office of the court clerk as a condition of a valid attachment. See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant).

968/623

Article 3. Lien of Attachment

§ 488.500. Attachment lien

488.500. (a) A levy on property under a writ of attachment creates an attachment lien on the property from the time of levy until the expiration of the time provided by Section 488.510.

(b) Except as provided in subdivisions (c) and (d), if property subject to an attachment lien is transferred or encumbered, the property transferred or encumbered remains subject to the lien after the transfer or encumbrance to the same extent that the property would remain subject to an execution lien pursuant to Sections 697.720 to 697.750, inclusive.

(c) Except as otherwise provided in this title, if equipment is attached pursuant to Section 488.375 or farm products or inventory is attached pursuant to Section 488.405, the attachment lien on the property covered by the attachment lien has the same force and effect as a judgment lien on personal property created at the same time would have pursuant to Sections 697.590 to 697.620, inclusive.

(d) If equipment consisting of a vehicle, vessel, mobilehome, or commercial coach is attached pursuant to Section 488.385, the attachment lien on the specified property does not affect the rights of a person who is a bona fide purchaser or encumbrancer and obtains possession of both the property and its certificate of ownership issued by the Department of Motor Vehicles or its certificate of title or registration card issued by the Department of Housing and Community Development. If the levying officer obtains possession of the certificate of ownership or certificate of title or registration card, the attachment lien has the

priority of the lien of a lien creditor under Section 9301 of the Commercial Code as of the time possession is obtained by the levying officer. . If the levying officer does not obtain possession of the certificate of ownership or certificate of title or registration card, the attachment lien has the same force and effect as an unperfected security interest filed at the same time and place as the notice of attachment was filed.

(e) If an attachment lien is created on property that is subject to the lien of a temporary protective order, the priority of the attachment lien relates back to the date the lien of the temporary protective order was created. Nothing in this subdivision affects priorities or rights of third persons established while the lien of the temporary protective order was in effect as determined under the law governing the effect of a lien of a temporary protective order.

Comment. Section 488.500 supersedes former Section 488.500. Subdivision (a) states the effective date of attachment liens provided in subdivisions (b)-(h) of the former section. This is consistent with Section 697.710 (Enforcement of Judgments Law). The provision of subdivision (a) of former Section 488.500 concerning the effect of an attachment lien is superseded by subdivisions (b), (c), and (d).

Subdivision (b) provides the general rule which incorporates the provisions governing the effect of execution liens. See the Comments to Sections 697.720-697.750.

Subdivision (c) supersedes the eleventh sentence of subdivision (c) of former Section 488.360 (farm products and inventory). Note that the lien on inventory under Section 488.405 does not attach (1) to vehicles, vessels, mobilehomes, or commercial coaches required to be registered or (2) to inventory of a retail merchant unless the inventory consists of durable goods having a unit retail value of at least \$500. See subdivision (d) of Section 488.405. Likewise, the lien does not continue if the property becomes a fixture. See Section 488.405(e). The provision pertaining to the attachment lien on equipment is new; former Section 488.340 provided no special rules governing the effect of an attachment lien on equipment.

Subdivision (d) continues the substance of subdivision (d) of former Section 488.350 and provides new rules governing the effect and priority of an attachment lien depending upon whether the levying officer has obtained possession of the certificate of ownership of a vehicle or boat or the certificate of title or registration card of a mobilehome or commercial coach. Possession of the certificate may be obtained in an appropriate case by a turnover order issued pursuant to Section 482.080. See also Health & Safety Code §§ 18077.1, 18077.2; Veh. Code §§ 6300, 6301, 9919, 9920.

Subdivision (e) continues the substance of subdivision (i) of former Section 488.500 and a provision formerly contained in subdivision (b) of Section 486.110. As to the effect of a lien of a temporary protective order, see Section 486.110.

§ 488.510. Duration of lien

488.510. (a) Unless sooner released or discharged, any attachment shall cease to be of any force or effect, and the property levied upon shall be released from the operation of such attachment, at the expiration of three years from the date of issuance of the writ of attachment under which such levy was made.

(b) Notwithstanding subdivision (a), upon motion of the plaintiff, made not less than 10 or more than 60 days before the expiration of the three-year period and upon notice of not less than five days to the defendant whose property is attached, the court in which the action is pending may, by order filed prior to the expiration of the period and for good cause, extend the time of such attachment for a period not exceeding one year from the date on which the attachment would otherwise expire.

(c) The levying officer shall serve notice of such order upon any person holding property pursuant to an attachment and shall record or file such notice in any office where the writ and notice of attachment are recorded or filed prior to the expiration of the period described in subdivision (a) or any extension thereof. Where the attached property is real property, the plaintiff or the plaintiff's attorney, instead of the levying officer, may record the required notice.

(d) Any attachment may be extended from time to time in the manner herein prescribed, but the maximum period of the attachment, including such extensions, shall not exceed eight years from the date of issuance of the writ of attachment under which the levy of attachment was made.

(e) The death of the defendant whose property is attached does not terminate the attachment.

Comment. Section 488.510 continues former Section 488.510 without change.

043/175

Article 4. Duties and Liabilities
of Third Persons After Levy

§ 488.600. Duties and liabilities of third persons

488.600. (a) Sections 701.010, 701.020, 701.040, 701.050, and 701.060 (Enforcement of Judgments Law) prescribe duties and liabilities

of a third person under a levy made under this title.

(b) For the purposes of this section, references in Sections 701.010, 701.020, 701.040, 701.050, and 701.060 to:

(1) "Amount required to satisfy the judgment" shall be deemed references to the amount required to satisfy the amount to be secured by the attachment.

(2) "Execution lien" or "lien" shall be deemed references to the attachment lien.

(3) "Judgment creditor" shall be deemed references to the plaintiff.

(4) "Judgment debtor" shall be deemed references to the defendant.

(5) "Levy" shall be deemed references to levy of attachment.

(6) "Notice of levy" shall be deemed references to notice of attachment.

(7) "Release" of property shall be deemed references to release of property pursuant to this title.

(8) "Satisfaction or discharge of the judgment" shall be deemed references to the satisfaction or termination of the attachment.

(9) "Writ" or "writ of execution" shall be deemed references to a writ of attachment.

Comment. Section 488.600 makes applicable to attachment the provisions of the Enforcement of Judgments Law governing the duties and liabilities of third persons after levy. See also Section 488.610 (garnishee's memorandum).

404/663

§ 488.610. Garnishee's memorandum

488.610. (a) At the time of service of a copy of the writ of attachment and a notice of attachment on a third person, the levying officer shall request the third person to give the levying officer a garnishee's memorandum containing the information required by this section. Within 10 days after the request is made, the third person shall mail or deliver the garnishee's memorandum to the levying officer whether or not the levy is effective.

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

(1) A description of any property of the defendant sought to be attached that is not delivered to the levying officer and the reason for not delivering the property.

(2) A statement of the amount and terms of any obligation to the defendant sought to be attached that is due and payable and is not paid to the levying officer and the reason for not paying the obligation.

(3) A statement of the amount and terms of any obligation to the defendant sought to be attached that is not due and payable at the time of levy.

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

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

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

(e) Notwithstanding subdivision (a), where a deposit account or property in a safe deposit box is attached, the financial institution need not give a garnishee's memorandum to the levying officer if the financial institution fully complies with the levy 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.

(f) Notwithstanding subdivision (a), the third person need not give a garnishee's memorandum to the levying officer if both of the following conditions are satisfied:

(1) The third person has delivered to the levying officer all of the property sought to be attached.

(2) The third person has paid to the levying officer the amount due at the time of levy on any obligation to the defendant that was attached and there is no additional amount that thereafter will become payable on the obligation levied upon.

Comment. Section 488.610 supersedes former Section 488.080(b) and is drawn from Section 701.030 (Enforcement of Judgments Law). See the Comment to Section 701.030. Subdivision (a) continues the substance of a portion of the first sentence and the second sentence of former Section 488.080(b). Subdivision (b) supersedes the portion of former Section 488.080(b) that prescribed the information to be given by the garnishee. Subdivision (b) does not require the garnishee to state the amount owed, if the entire debt is paid over to the levying officer. Subdivision (c) continues the substance of the fourth sentence of former Section 488.080(b). Subdivision (d) continues the substance of the last sentence of former Section 488.080(b); the liability for attorney's fees is new to the Attachment Law. Subdivisions (e) and (f) are consistent with the comparable provisions of Section 701.030 (Enforcement of Judgments Law).

368/253

Article 5. Management and Disposition of
Attached Property

§ 488.700. Sale or receiver for attached property

488.700. (a) If property has been or is sought to be attached, the court may appoint a receiver or order the levying officer to take any action the court orders that is necessary to preserve the value of the property attached or to be attached, including but not limited to selling the property, if the court determines that the property is perishable or will greatly deteriorate or greatly depreciate in value or that for some other reason the interests of the parties will be best served by the order. An order may be made under this subdivision upon application of the plaintiff, the defendant, or a person who has filed a third-party claim pursuant to Division 4 (commencing with Section 720.010) of Title 9. The application shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, the application may be made ex parte.

(b) If the levying officer determines that property attached or to be attached is extremely perishable or will greatly deteriorate or greatly depreciate in value before a court order pursuant to subdivision (a) could be obtained, the levying officer may take any action necessary to preserve the value of the property or may sell the property. The levying officer is not liable for a determination made in good faith under this subdivision.

(c) Except as otherwise provided by order of the court, a sale of such property pursuant to this section shall be made in the manner

provided by Article 6 (commencing with Section 701.510) of Chapter 3 of Division 2 of Title 9 and the proceeds shall be deposited in the court to abide the judgment in the action. Notwithstanding subdivisions (b) and (d) of Section 701.530, notice of sale shall be posted and served at a reasonable time before sale, considering the character and condition of the property.

(d) If a receiver is appointed, the court shall fix the daily fee of the receiver and may order the plaintiff to pay the fees and expenses of the receiver in advance or may direct that the whole or any part of the fees and expenses be paid from the proceeds of any sale of the property. Except as otherwise provided in this section, the provisions of Chapter 5 (commencing with Section 564) and Chapter 5a (commencing with Section 571) of Title 7 govern the appointment, qualifications, powers, rights, and duties of a receiver appointed under this section.

Comment. Section 488.700 supersedes former Section 488.530 and is drawn from Section 699.070 (Enforcement of Judgments Law).

405/437

§ 488.710. Endorsement and collection of certain instruments by
levying officer

488.710. (a) As used in this section, "instrument" means a check, draft, money order, or other order for the withdrawal of money from a financial institution, the United States, any state, or any public entity within any state.

(b) If an instrument is payable to the defendant on demand and comes into the possession of a levying officer pursuant to this title, the levying officer shall promptly endorse and present the instrument for payment.

(c) The levying officer shall endorse the instrument by writing on the instrument (1) the name of the defendant, (2) the name and official title of the levying officer, and (3) the title of the court and the cause in which the writ was issued. The endorsement is as valid as if the instrument were endorsed by the defendant. No financial institution or public entity on which the instrument is drawn is liable to any person for payment of the instrument to the levying officer rather than to the defendant by reason of the endorsement. No levying officer is liable by reason of endorsing, presenting, and obtaining payment of the

instrument. The funds or credit resulting from the payment of the instrument shall be held by the levying officer subject to the lien of attachment.

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

Comment. Section 488.710 supersedes former Section 488.520 and is drawn from Section 687.020 (Enforcement of Judgments Law). The provision in subdivision (d) for the return of an instrument to the maker after 30 days in certain circumstances is new to attachment law.

043/174

§ 488.720. Release of property in excess of that needed to satisfy amount secured

488.720. (a) The defendant may apply by noticed motion to the court in which the action is pending or in which the judgment in the action was entered for an order releasing the attachment of property to the extent that the value of the defendant's interest in the property clearly exceeds the amount necessary to satisfy the amount to be secured by the attachment.

(b) The notice of motion shall state the grounds on which the motion is based and shall be accompanied by an affidavit supporting any factual issues raised and points and authorities supporting any legal issues raised.

(c) At the hearing on the motion, the court shall determine the value of the defendant's interest in the property and order the release of the attachment of the property to the extent that the value of the defendant's interest in the property attached clearly exceeds the amount necessary to satisfy the amount to be secured by the attachment. After entry of judgment in the action in which the property was attached, the

court shall also take into consideration in determining whether the attachment is clearly excessive, the value of any property not attached in the action that (1) has been levied upon pursuant to a writ of execution issued to satisfy the judgment in the action or (2) otherwise has been sought to be applied to the satisfaction of the judgment in the action.

(d) The court's determinations shall be made upon the basis of the pleadings and other papers in the record; but, upon good cause shown, the court may receive and consider at the hearing additional evidence, oral or documentary, and additional points and authorities, or it may continue the hearing for the production of such additional evidence or points and authorities.

Comment. Section 488.720 continues the substance of former Section 488.555, but the second sentence of subdivision (c) is new.

27944

§ 488.730. Release of attached property

488.730. (a) The levying officer shall release attached property when the levying officer receives a written direction to release the property from the plaintiff's attorney of record or, if the plaintiff does not have an attorney of record, from the plaintiff or when the levying officer receives a certified copy of a court order for release or when otherwise required to release the property. The release extinguishes any attachment lien in favor of the plaintiff on the property released.

(b) If the property to be released has been taken into custody under the levy, it shall be released to the person from whom it was taken unless otherwise ordered by the court. If the person does not claim the property to be released, the levying officer shall retain custody of the property and shall serve on such person a notice of where possession of the property may be obtained. Service shall be made personally or by mail. If the person does not claim the property within 30 days after the notice is served, the levying officer shall sell the property (other than cash or its equivalent) in the manner provided by Article 6 (commencing with Section 701.510) of Chapter 3 of Division 2 of Title 9. The levying officer shall deposit the proceeds of sale and

cash or its equivalent, after first deducting the levying officer's costs, with the county treasurer of the county where the property is located payable to the order of the person. 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.

(c) If the property to be released has not been taken into custody under the levy, the levying officer shall release the attachment by issuing a written notice of release and serving it on the person who was served with a copy of the writ and a notice of attachment to create the lien. Service shall be made personally or by mail.

(d) If the property to be released was levied upon by recording or filing a copy of the writ and a notice of attachment, the levying officer shall record or file a written notice of release in the same office.

(e) The levying officer is not liable for releasing an attachment in accordance with this section nor is any other person liable for acting in conformity with the release.

Comment. Section 488.730 supersedes former Section 488.560 and is drawn from Section 699.060 (Enforcement of Judgments Law). See also Sections 481.055 ("costs" defined), 482.070 (manner of service).

043/173

§ 488.740. Release on judgment for defendant

488.740. If the defendant recovers judgment against the plaintiff and no timely motion for vacation of judgment or for judgment notwithstanding the verdict or for a new trial is filed and served and is pending and no appeal is perfected and undertaking executed and filed as provided in Section 921, any undertaking received from the defendant in the action, all the proceeds of sales and money collected by the levying officer, and all the property attached remaining in the levying officer's hands shall be delivered to the person from whom it was collected or taken, unless otherwise ordered by the court; and the court shall order the discharge of any attachment made in the action and the release of any property held thereunder.

Comment. Section 488.740 continues former Section 488.570.

Code of Civil Procedure § 489.240 (repealed). Deposit account or safe deposit box not exclusively in name of defendant

SEC. 51. Section 489.240 of the Code of Civil Procedure is repealed.
~~489.240.~~ (a) In addition to any other provision of law, the provisions of this section shall be complied with where any of the following personal property is sought to be attached:

(1) A deposit account, or interest therein, not standing in the name of the defendant alone.

(2) Property in a safe/deposit vault or box maintained by a bank, trust company, savings and loan-association, or other corporation authorized and empowered to conduct a safe-deposit business and rented by it to a person other than a defendant.

(b) The amount of an undertaking filed to obtain a writ of attachment of property described in subdivision (a) shall be an amount not less than twice the amount sought to be recovered by the plaintiff in the action in which the writ is sought or, if a lesser amount is sought to be levied upon, not less than twice the lesser amount. The undertaking shall secure the payment of any recovery for wrongful attachment by any person, other than the defendant whose interest is sought to be attached, rightfully entitled to such property (which person need not be named specifically in the undertaking but may be referred to generally in the same manner as in this sentence).

(c) Objections to the undertaking may be made by any person claiming to be the rightful owner of the property sought to be levied upon.

Comment. The substance of former Section 489.240 is continued in Section 488.465. See the Comment to Section 488.465.

404/289

Code of Civil Procedure § 489.320 (amended). Application to terminate temporary protective order

SEC. 52. Section 489.320 of the Code of Civil Procedure is amended to read:

489.320. (a) A defendant who has been served with a temporary protective order and who has appeared in the action may apply by noticed motion to the court in which the action is pending for an order terminating the temporary protective order with respect to such defendant.

(b) The defendant shall file an undertaking to pay the plaintiff the amount of any judgment recovered by the plaintiff in the action against such defendant. The amount of the undertaking filed pursuant to this section shall be equal to the amount ~~of the plaintiff's claim~~ sought to be secured by the attachment . The court shall issue the order terminating the temporary protective order with respect to such defendant upon the condition that a sufficient undertaking be filed.

Comment. The amendment to Section 489.320 is clarifying. See Section 486.020(e).

404/291

Code of Civil Procedure § 490.010 (amended). Wrongful attachment

SEC. 53. Section 490.010 of the Code of Civil Procedure is amended to read:

490.010. A wrongful attachment consists of any of the following:

(a) The levy of a writ of attachment or the service of a temporary protective order in an action in which attachment is not authorized, except that it is not a wrongful attachment if both of the following are established:

(1) The levy was not authorized solely because of the prohibition of subdivision (c) of Section 483.010.

(2) The person who sold or leased, or licensed for use, the property, furnished the services, or loaned the money reasonably believed that it would not be used primarily for personal, family, or household purposes.

(b) The levy of a writ of attachment or the service of a temporary protective order in an action in which the plaintiff does not recover judgment.

(c) The levy of a writ of attachment obtained pursuant to Article 3 (commencing with Section 484.510) of Chapter 4 or Chapter 5 (commencing with Section 485.010) on property exempt from attachment except where the plaintiff shows that he the plaintiff reasonably believed that the property attached was not exempt from attachment.

(d) The levy of a writ of attachment on property of a person other than the person against whom the writ was issued except that ~~it is not a wrongful attachment if all of the following exist:~~

(1) The property levied on is required by law to be registered or recorded in the name of the owner.

(2) It appeared that, at the time of the levy, the person against whom the writ was issued was such registered or record owner.

(3) The plaintiff made the levy in good faith and in reliance on the registered or recorded ownership.

Comment. Section 490.010 is amended to delete subdivision (d) which related to wrongful attachment of property of third persons. A third person whose property is levied upon may resort to the remedies provided by Division 4 (commencing with Section 720.010) of Title 9 (third-party claim) or to common law remedies.

404/293

Code of Civil Procedure § 490.020 (amended). Liability for wrongful attachment

SEC. 54. Section 490.020 of the Code of Civil Procedure is amended to read:

490.020. (a) The liability of a plaintiff for causing a wrongful attachment under Section 490.010 includes both of the following:

(1) All damages proximately caused to the defendant or any other person by the wrongful attachment.

(2) All costs and expenses, including attorney's fees, reasonably expended in defeating the attachment.

(b) The liability of a plaintiff for wrongful attachment pursuant to Section 490.010 is limited by the amount of the undertaking.

Comment. Section 490.020 is amended to make clear that only the defendant may recover for a wrongful attachment pursuant to Section 490.010. A third person is entitled to protection pursuant to Division 4 (commencing with Section 720.010) of Title 9 (third-party claims). See also Section 488.465 (objection by third person to undertaking where joint account or safe deposit box in name of third person).

404/294

Code of Civil Procedure § 490.050 (repealed). Intervention

SEC. 55. Section 490.050 of the Code of Civil 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.

Comment. Section 490.050 is repealed to conform to the deletion of subdivision (d) of Section 490.010.

09043

Code of Civil Procedure §§ 491.010-491.040 (repealed). Examination of third person

SEC. 56. Chapter 11 (commencing with Section 491.010) of Title 6.5 of Part 2 of the Code of Civil Procedure is repealed.

Comment. Sections 491.010-491.040 are superseded by Sections 491.110-491.200.

Section 491.010. The first and third sentences of subdivision (a) of former Section 491.010 are superseded by Section 491.110(a). The second sentence of subdivision (a) is superseded by Section 491.140 (appearance at examination by representatives of organizations). Subdivision (b) of former Section 491.010 is superseded by Section 491.110(b) (10 days' notice to defendant). The substance of subdivision (c) of former Section 491.010 is continued in Section 491.160(a)(1) (failure to appear for examination). Subdivision (d) of former Section 491.010 is superseded by Sections 491.170 (determination of third person's adverse claim) and 491.190 (order for attachment, delivery, or payment).

Section 491.020. The substance of former Section 491.020 is continued in Section 491.150(b).

Section 491.030. The substance of former Section 491.030 is continued in Section 491.150(c)-(d).

Section 491.040. The substance of former Section 491.040 is continued in Section 491.120.

09577

Code of Civil Procedure §§ 491.110-491.200 (added). Examination of third person

SEC. 57. Chapter 11 (commencing with Section 491.110) is added to Title 6.5 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 11. ATTACHING PLAINTIFF'S MISCELLANEOUS REMEDIES

Article 1. Examination of Third Person

§ 491.110. Examination of third person

491.110. (a) Upon ex parte application by the plaintiff and proof by the plaintiff by affidavit or otherwise to the satisfaction of the proper court that the plaintiff has a right to attach order and that a third person has possession or control of property in which the defendant has an interest or is indebted to the defendant in an amount exceeding two hundred fifty dollars (\$250), the court shall make an order directing the third person to appear before the court, or before a referee appointed by the court, at a time and place specified in the order, to answer concerning such property or debt. The affidavit in support of the plaintiff's application may be based on the affiant's information and belief.

(b) Not less than 10 days prior to the date set for the examination, a copy of the order shall be:

- (1) Served personally on the third person.
- (2) Served personally or by mail on the defendant.

(c) If the property or the debt is described in the affidavit or application for an order under subdivision (a) in a manner reasonably adequate to permit it to be identified, service of the order on the third person creates a lien on the defendant's interest in the property in the third person's possession or control or on the debt owed by the third person to the defendant. The lien continues for a period of one year from the date of the order unless extended or sooner terminated by the court.

(d) The order shall contain the following statement in 14-point boldface type if printed or in capital letters if typed: "NOTICE TO PERSON SERVED. If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court and the court may make an order requiring you to pay the reasonable attorney's fees incurred by the plaintiff in this proceeding."

(e) The order is not effective unless, at the time it is served on the third person, the person serving the order tenders to the third person fees for the mileage necessary to be traveled from the third person's residence to the place of examination. The fees shall be in the same amount generally provided for witnesses when legally required.

to attend civil proceedings in the court where the examination proceeding is to be conducted.

Comment. Section 491.110 supersedes the first sentence of subdivision (a) and all of subdivision (b) of former Section 491.010. Section 491.010 is drawn from subdivisions (a), (b), (c), (e)(1), and (f) of Section 708.120 (Enforcement of Judgments Law). See also Section 482.070 (manner of service). The provision in subdivision (a) limiting examinations to third persons owing more than \$250 and the provisions of subdivisions (c), (d), and (e) are new in the Attachment Law. Consistent with former law, Section 491.110 does not permit the general examination of the defendant.

09729

§ 491.120. Witnesses

491.120. In any proceeding for the examination of a third person under this article, witnesses, including the defendant, may be required to appear and testify before the court or referee in the same manner as upon the trial of an issue.

Comment. Section 491.120 continues the substance of former Section 491.040.

09731

§ 491.130. Powers and qualifications of referee

491.130. (a) The examination proceedings authorized by this article may be conducted by a referee appointed by the court. The referee may issue, modify, or vacate an order authorized by Section 491.190, may make a protective order authorized by Section 491.180, and may issue a warrant authorized by Section 491.160, and has the same power as the court to grant adjournments, to preserve order, and to subpoena witnesses to attend the examination, but only the court that ordered the reference has power to do any of the following:

- (1) Punish for contempt for disobeying an order of the referee.
- (2) Make an award of attorney's fees pursuant to Section 491.160.
- (3) Determine a third party's claim under Section 491.170.

(b) Only a member of the State Bar of California is eligible for appointment as a referee pursuant to this article.

(c) Nothing in subdivision (a) limits the power of a court to appoint a temporary judge pursuant to Section 21 of Article VI of the California Constitution.

Comment. Section 491.130 is new and is drawn from Section 708.140 (Enforcement of Judgments Law).

09736

§ 491.140. Appearance at examination by representatives of organizations

491.140. (a) If a corporation, partnership, association, trust, or other organization is served with an order to appear for an examination, it shall designate to appear and be examined one or more officers, directors, managing agents, or other persons who are familiar with its property and debts.

(b) If the order to appear for an examination requires the appearance of a specified individual, the specified individual shall appear for the examination and may be accompanied by one or more officers, directors, managing agents, or other persons familiar with the property and debts of the corporation, partnership, association, trust, or other organization.

(c) If the order to appear for the examination does not require the appearance of a specified individual, the order shall advise the corporation, partnership, association, trust, or other organization of its duty to make a designation under subdivision (a).

Comment. Section 491.140 supersedes the second sentence of subdivision (a) of former Section 491.010 and is drawn from Section 708.150 (Enforcement of Judgments Law). See the Comment to Section 708.150.

10030

§ 491.150. Proper court for examination; examination outside county where judgment entered

491.150. (a) Except as otherwise provided in this section, the proper court for examination of a person under this article is the court that issued the writ of attachment.

(b) A person sought to be examined may not be required to attend an examination before a court located outside the county in which the person resides or has a place of business unless the distance from the

person's place of residence or place of business to the place of examination is less than 150 miles.

(c) If a person sought to be examined does not reside or have a place of business in the county where the court that issued the writ is located, a court of similar jurisdiction in the county where the person resides or has a place of business is a proper court for examination of the person. If there is no court of similar jurisdiction in the county, a court of higher jurisdiction is a proper court.

(d) If the plaintiff seeks an examination of a person before a court other than the court that issued the writ, the plaintiff shall do all of the following:

(1) File with the court from which the order is sought a certified copy of the complaint in the pending action.

(2) Present to the court an affidavit in support of the application for the order stating the place of residence or place of business of the person sought to be examined.

(3) Make any necessary affidavit or showing for the examination as required by Section 491.110.

(4) At the time of filing the application for the order, pay a filing fee of twelve dollars (\$12). No law library fee shall be charged.

Comment. Section 491.150 is drawn from Section 708.160 (Enforcement of Judgments Law). Subdivision (b) continues the substance of former Section 491.020. Subdivisions (c) and (d) continue the substance of former Section 491.030.

10032

§ 491.160. Failure to appear for examination; penalty for unjustified arrest

491.160. (a) If an order requiring a person to appear for an examination was served by a sheriff, marshal, constable, a person specially appointed by the court in the order, or a registered process server, and the person fails to appear:

(1) The court may, pursuant to a warrant, have the person brought before the court to answer for the failure to appear and may punish the person for contempt.

(2) If the person's failure to appear is without good cause, the plaintiff shall be awarded reasonable attorney's fees incurred in the examination proceeding.

(b) A person who willfully makes an improper service of an order for an examination which subsequently results in the arrest pursuant to subdivision (a) of the person who fails to appear is guilty of a misdemeanor.

Comment. Subdivision (a)(1) of Section 491.160 continues the substance of former Section 491.010(c); the remainder of Section 491.160 is new and is consistent with Section 708.170 (Enforcement of Judgments Law). See also Section 481.205 ("registered process server" defined). The substance of the provision of Section 708.170 (relating to attorney's fees awarded against the debtor) is not included in Section 491.160 since the defendant is not permitted to be directly examined under this chapter.

10033

§ 491.170 Determination of third person's adverse claim

491.170. (a) Subject to subdivision (b), if a third person examined pursuant to this article claims an interest in the property adverse to the defendant or denies the debt, the court may, if the plaintiff so requests, determine the interests in the property or the existence of the debt. Such a determination is conclusive as to the plaintiff, the defendant, and the third person, but an appeal may be taken from the determination in the manner provided for appeals from the court in which the proceeding takes place. The court may grant a continuance for a reasonable time for discovery proceedings, the production of evidence, or other preparation for the hearing.

(b) The court may not make the determination provided in subdivision (a) if the third person's claim is made in good faith and any of the following conditions is satisfied:

(1) The court would not be a proper court for the trial of an independent civil action (including a creditor's suit) for the determination of the interests in the property or the existence of the debt, and the third person objects to the determination of the matter under subdivision (a).

(2) At the time an order for examination pursuant to this article is served on the third person a civil action (including a creditor's suit) is pending with respect to the interests in the property or the existence of the debt.

(3) The court determines that the interests in the property or the existence of the debt should be determined in a creditor's suit.

(c) Upon application of the plaintiff made ex parte, the court may make an order forbidding transfer of the property to the defendant or payment of the debt to the defendant until the interests in the property or the existence of the debt is determined pursuant to subdivision (a) or until a creditor's suit may be commenced and an order obtained pursuant to Section 491.340. An undertaking may be required in the discretion of the court. The court may modify or vacate the order at any time with or without a hearing on such terms as are just.

(d) Upon application of the plaintiff upon noticed motion, the court may, if it determines that the defendant probably owns an interest in the property or that the debt probably is owed to the defendant, make an order forbidding the transfer or other disposition of the property to any person or forbidding payment of the debt until the interests in the property or the existence of the debt is determined pursuant to subdivision (a) or until a creditor's suit may be commenced and an order obtained pursuant to Section 491.340. The court shall require the plaintiff to furnish an undertaking as provided in Section 529. The court may modify or vacate the order at any time after notice and hearing on such terms as are just.

Comment. Section 491.170 is new and is drawn from Section 708.180 (Enforcement of Judgments Law). See the Comment to Section 708.180. Under former Section 491.010, the court was not permitted in an examination proceeding to determine an adverse claim of a third person to the property sought to be attached. See also Sections 491.190 (order attaching property or for payment of debt or delivery of property to levying officer), 491.310 (creditor's suit).

35092

§ 491.180. Protective orders

491.180. In any proceeding under this article, the court may, on motion of the person to be examined or on its own motion, make such protective orders as justice may require.

Comment. Section 491.180 is new and is drawn from Section 708.200 (Enforcement of Judgments Law).

§ 491.190. Order for attachment, delivery, or payment

491.190. (a) Except as provided in subdivision (b), at the conclusion of a proceeding pursuant to this article, the court may order the defendant's interest in the property in the possession or under the control of the third person or a debt owed by the third person to the defendant to be attached in the manner and under the conditions provided by this title or to be delivered or paid to the levying officer. Such an order creates a lien on the property or debt.

(b) If a third person examined pursuant to this article claims an interest in the property adverse to the defendant or denies the debt and the court does not determine the matter as provided in subdivision (a) of Section 491.170, the court may not order the property or debt to be attached or to be delivered or paid to the levying officer, but may make an order pursuant to subdivision (c) or (d) of Section 491.170 forbidding transfer or payment to the extent authorized by that section.

Comment. Section 491.190 supersedes former Section 491.010(d) and is drawn from Section 708.205 (Enforcement of Judgments Law). See the Comment to Section 708.205. Under Section 491.190, the court may make an appropriate order for the disposition of the property which may include an order that the property be held by the third person under the writ of attachment or that the property be delivered to or the debt paid to the levying officer.

38654

Article 2. Creditor's Suit

§ 491.310. Creditor's suit

491.310. If a third person has possession or control of property in which the defendant has an interest or is indebted to the defendant and the property or debt has been subjected to an attachment lien, the plaintiff may bring an action against the third person to enforce the third person's liability under this title.

Comment. Section 491.310 supersedes a portion of subdivision (c) of former Section 488.550 and is drawn from Section 708.210 (Enforcement of Judgments Law). Section 491.310 retains the requirement of former Section 488.550 that the property or debt have been attached.

§ 491.320. Joinder of defendant

491.320. The defendant shall be joined in an action brought pursuant to this article but is not an indispensable party. The residence of the defendant may not be considered in the determination of proper venue unless otherwise provided by contract between the defendant and the third person.

Comment. Section 491.320 supersedes the third sentence of subdivision (c) of former Section 488.550 and is drawn from Section 708.220 (Enforcement of Judgments Law). See the Comment to Section 708.220.

38664

§ 491.330. Time for bringing creditor's suit

491.330. (a) Except as provided in subdivision (b), an action shall be commenced pursuant to this article before the expiration of the later of the following times:

(1) The time when the defendant may bring an action against the third person concerning the property or debt.

(2) One year after creation of an attachment lien on the property or debt pursuant to this title if the lien is created at the time when the defendant may bring an action against the third person concerning the property or debt.

(b) An action may not be commenced pursuant to this article after the attachment lien has expired.

(c) If an action is commenced pursuant to this article within the time permitted in this section, the action may be prosecuted to judgment.

Comment. Section 491.330 supersedes a portion of subdivision (c) of former Section 488.550 and is drawn from Section 708.230 (Enforcement of Judgments Law).

69419

§ 491.340. Order forbidding transfer of property or payment of debt

491.340. The plaintiff may apply to the court in which an action under this article is pending for either or both of the following:

(a) An order restraining the third person from transferring the attached property to the defendant or from paying the attached debt to

the defendant. The order shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, the order may be made on ex parte application. The order shall remain in effect until judgment is entered in the action or until such earlier time as the court may provide in the order. An undertaking may be required in the discretion of the court. The court may modify or vacate the order at any time with or without a hearing on such terms as are just.

(b) A temporary restraining order or a preliminary injunction or both, restraining the third person from transferring to any person or otherwise disposing of the attached property, pursuant to Chapter 3 (commencing with Section 525) of Title 7, and the court may make, dissolve, and modify such orders as provided therein.

Comment. Section 491.340 is new and is drawn from Section 708.240 (Enforcement of Judgments Law).

4450

§ 491.350. No right to jury trial

491.350. There is no right to a jury trial in an action under this article.

Comment. Section 491.350 is new and is the same as Section 708.270 (Enforcement of Judgments Law). See the Comment to Section 708.270.

4454

§ 491.360. Judgment in creditor's suit

491.360. If the plaintiff establishes the liability of the third person, the court shall render judgment accordingly. The court may order that the property or debt be subjected to the attachment in favor of the plaintiff or be delivered or paid to the levying officer or the court may render judgment against the third person in the amount of the third person's liability.

Comment. Section 491.360 is new. The amount of the liability of the third person is determined under Section 488.610 which incorporates by reference the provisions of the Enforcement of Judgments Law, including subdivision (a) of Section 701.020.

§ 491.370. Costs

491.370. (a) The plaintiff may not recover costs against the third person in an action under this article if the third person does not claim an interest in the property or does not deny the debt to the defendant.

(b) Costs incurred by or taxed against the plaintiff in an action under this article may not be recovered from the defendant.

Comment. Section 491.370 is new and is analogous to Section 708.290 (Enforcement of Judgments Law).

31071

Article 3. Lien in Pending Action
or Proceeding

§ 491.410. Plaintiff's lien in pending action or proceeding

491.410. (a) If the plaintiff has obtained a right to attach order and the defendant is a party to a pending action or special proceeding, the plaintiff may obtain a lien under this article, to the extent required to satisfy the amount to be secured by the attachment, on both of the following:

(1) Any cause of action of such defendant for money or property that is the subject of the other action or proceeding.

(2) The rights of such defendant to money or property under any judgment subsequently procured in the other action or proceeding.

(b) To obtain a lien under this article, the plaintiff shall file a notice of lien and a copy of the right to attach order in the other pending action or special proceeding.

(c) At the time of the filing under subdivision (b) or promptly thereafter, the plaintiff shall serve on all parties who, prior thereto, have made an appearance in the other action or special proceeding a copy of the notice of lien and a statement of the date when the notice of lien was filed in the other action or special proceeding. Service shall be made personally or by mail. Failure to serve all parties as required by this subdivision does not affect the lien created by the filing under subdivision (b), but the rights of a party are not affected by the lien until the party has notice of the lien.

(d) For the purpose of this article, an action or special proceeding is pending until the time for appeal from the judgment has expired or, if an appeal is filed, until the appeal has been finally determined.

Comment. Section 491.410 is new and is drawn from Section 708.410 (Enforcement of Judgments Law). See also Section 482.070 (manner of service).

31073

§ 491.420. Contents of notice of lien

491.420. The notice of lien under Section 491.410 shall contain all of the following:

(a) A statement that a lien has been created under this article and the title of the court, and the cause and number of the pending action or proceeding in which the notice of lien is filed.

(b) The name and last known address of the defendant.

(c) The name and address of the plaintiff.

(d) The title of the court where the plaintiff's action against the defendant is pending and the cause and number of the action.

(e) The amount required to satisfy the amount to be secured by the attachment at the time the notice of lien is filed in the action or proceeding.

(f) A statement that the lien attaches to any cause of action of the defendant that is the subject of such action or proceeding and to the defendant's rights to money or property under any judgment subsequently procured in such action or proceeding.

(g) A statement that no compromise, dismissal, settlement, or satisfaction of such pending action or proceeding or any of the defendant's rights to money or property under any judgment procured therein may be entered into by or on behalf of the defendant, and that the defendant may not enforce the defendant's rights to money or property under any judgment procured in such action or proceeding by a writ or otherwise, unless one of the following requirements is satisfied:

(1) The prior approval by order of the court in which such action or proceeding is pending has been obtained.

(2) The written consent of the plaintiff has been obtained or the plaintiff has released the lien.

(3) The amount to be secured by the attachment has been satisfied.

Comment. Section 491.420 is drawn from Section 708.420(a)-(g) (Enforcement of Judgments Law).

§ 491.430. Intervention; plaintiff deemed a party for certain purposes

491.430. (a) The court in which the action or special proceeding subject to the lien under this article is pending may permit the plaintiff who has obtained the lien to intervene in the action or proceeding pursuant to Section 387.

(b) For the purpose of Section 491.460, a plaintiff shall be deemed to be a party to the action or special proceeding even though the plaintiff has not become a party to the action or proceeding under subdivision (a).

Comment. Section 491.430 is drawn from Section 708.430 (Enforcement of Judgments Law).

§ 491.440. Enforcement, compromise, dismissal, settlement, satisfaction

491.440. (a) Except as provided in subdivision (c) of Section 491.410, unless the amount to be secured by the attachment is first satisfied or the lien is released, the judgment recovered in the action or special proceeding in favor of the defendant may not be enforced by a writ or otherwise, and no compromise, dismissal, settlement, or satisfaction of the pending action or special proceeding or the judgment procured therein may be entered into by or on behalf of the defendant, without the written consent of the plaintiff or authorization by order of the court obtained under subdivision (b).

(b) The court in which the action or special proceeding subject to the lien under this article is pending or the judgment procured therein is entered may, in its discretion, after a hearing, make an order described in subdivision (a) that may include such terms and conditions as the court deems necessary. The defendant may apply for an order under this subdivision on noticed motion. The notice of motion shall be served on the plaintiff.

Comment. Section 491.440 is drawn from Section 708.440 (Enforcement of Judgments Law). See also Section 482.070 (manner of service).

34270

§ 491.450. Endorsement of lien on judgment and abstract

491.450. (a) If a lien is created pursuant to this article, the court clerk shall endorse upon the judgment recovered in the action or special proceeding a statement of the existence of the lien and the time it was created.

(b) Any abstract issued upon the judgment shall include a statement of the lien in favor of the plaintiff.

Comment. Section 491.450 is drawn from Section 708.460 (Enforcement of Judgments Law).

35056

§ 491.460. Orders in action or special proceeding to enforce lien

491.460. (a) If the defendant is entitled to money or property under the judgment in the action or special proceeding and a lien created under this article exists, upon application of any party to the action or special proceeding, the court may order that the defendant's rights to money or property under the judgment be applied to the satisfaction of the lien created under this article as ordered by the court. Application for an order under this section shall be on noticed motion. The notice of motion shall be served on all other parties. Service shall be made personally or by mail.

(b) If the judgment determines that the defendant has an interest in property, the court may order the party having custody or control of the property not to transfer the property until it can be attached or otherwise applied to the satisfaction of the lien created under this article.

(c) If the court determines that a party other than the defendant has transferred property that was subject to a lien created under this article, or that the party having notice of the lien created under this article has paid the amount owing to the defendant, the court shall render judgment against the party in an amount equal to the lesser of the following:

(1) The value of the defendant's interest in the property or the amount paid the defendant.

(2) The amount of the plaintiff's lien created under this article.

Comment. Section 491.460 is drawn from Section 708.470 (Enforcement of Judgments Law). See also Section 482.070 (manner of service).

404/337

Code of Civil Procedure § 492.010 (technical amendment). Attachment in action against nonresident

SEC. 58. Section 492.010 of the Code of Civil Procedure is amended to read:

492.010. Notwithstanding subdivision (a) of Section 483.010, an attachment may be issued in any action for the recovery of money brought against any of the following:

(a) ~~An individual~~ A natural person who does not reside in this state.

(b) A foreign corporation not qualified to do business in this state under the provisions of Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(c) A foreign partnership which has not filed a designation pursuant to Section 15700 of the Corporations Code.

Comment. Section 492.010 is amended for consistency with Section 481.170 ("person" defined).

043/187

Code of Civil Procedure § 492.040 (technical amendment). Property subject to attachment

SEC. 59. Section 492.040 of the Code of Civil Procedure is amended to read:

492.040. Notwithstanding Sections 487.010 and 487.020, a writ of attachment issued under this chapter may be levied upon any property of a defendant for which a method of levy is provided by Article 2 (commencing with Section ~~488.310~~ 488.300) of Chapter 8. However, after the defendant has filed a general appearance in the action, only nonexempt property of the defendant may be levied upon and property previously levied upon

which is exempt under Section 487.020 shall be released upon order of the court.

Comment. Section 492.040 is amended to correct the reference to Article 2 of Chapter 8.

043/186

Code of Civil Procedure § 492.070 (technical amendment). Application for additional writ

SEC. 60. Section 492.070 of the Code of Civil Procedure is amended to read:

492.070. The application shall be executed under oath and shall include all of the following:

(a) A statement that the plaintiff has been issued a right to attach order and writ of attachment pursuant to Section 492.030.

(b) A statement of the amount ~~the plaintiff seeks to recover from the defendant or, if an attachment is sought for only a part thereof, such partial amount~~ to be secured by the attachment .

(c) A description of the property to be attached under the writ of attachment and a statement that the plaintiff is informed and believes that such property is subject to attachment pursuant to Section 492.040. The description shall satisfy the requirements of Section 484.020.

Comment. The amendment to Section 492.070 is clarifying and conforms to the amendments made to Sections 484.020, 484.320, and 485.520.

405/336

Code of Civil Procedure § 493.010 (technical amendment). General assignment for benefit of creditors

SEC. 61. Section 493.010 of the Code of Civil Procedure is amended to read:

493.010. As used in this chapter, "general assignment for the benefit of creditors" means an assignment which satisfies all of the following requirements:

(a) The assignment is an assignment of all the defendant's assets that are transferable and not exempt from ~~execution~~ enforcement of a money judgment .

(b) The assignment is for the benefit of all the defendant's creditors.

(c) The assignment does not itself create a preference of one creditor or class of creditors over any other creditor or class of creditors, but the assignment may recognize the existence of preferences to which creditors are otherwise entitled.

Comment. Section 493.010 is amended to conform to the terminology of Title 9 (commencing with Section 680.010) (Enforcement of Judgments Law). See, e.g., Section 703.010.

405/337

Code of Civil Procedure § 493.040 (technical amendment). Release in
bankruptcy

SEC. 62. Section 493.040 of the Code of Civil Procedure is amended to read:

493.040. (a) Where a lien of attachment terminates pursuant to Section 493.030, the assignee under a general assignment for the benefit of creditors or, in the case of a bankruptcy, the trustee, interim trustee, or the debtor in possession if there is no trustee or interim trustee, may secure the release of the ~~attachment~~ attached property by filing with the levying officer a request for release of attachment stating the grounds for release and describing the property to be released, executed under oath, together with a copy thereof.

(b) In the case of an assignee, the request shall include two copies of the general assignment for the benefit of creditors.

(c) In the case of a trustee, interim trustee, or debtor in possession, the request shall include a certified copy of the petition in bankruptcy, together with a copy thereof.

(d) If immediate release of the attachment is sought, the request shall be accompanied by an undertaking to pay the plaintiff any damages resulting from an improper release of the attachment, in the amount of the plaintiff's claim to be secured by the attachment, executed by a corporate surety possessing a certificate of authority from the Insurance Commissioner as provided by Section 1056.

(e) Within five days after the filing of the request for release of attachment, the levying officer shall mail to the plaintiff:

(1) A copy of the request for release of the attachment, including the copy of the document filed pursuant to subdivision (b) or (c).

(2) If an undertaking has not been given, a notice that the attachment will be released pursuant to the request for release of attachment unless otherwise ordered by a court within 10 days after the date of mailing the notice.

(3) If an undertaking has been given, a notice that the attachment has been released.

(f) Unless otherwise ordered by a court, if an undertaking has not been given, the levying officer shall release the attachment pursuant to the request for release of attachment after the expiration of 10 days from the date of mailing the papers referred to in subdivision (e) to the plaintiff. If an undertaking has been given, the levying officer shall immediately release the attachment pursuant to the request for release of attachment.

(g) Where the attached property has been taken into custody, it shall be released to the person making the request for release of attachment or some other person designated in the request. Where the attached property has not been taken into custody, it shall be released as provided in subdivision (c) or (d) of Section ~~488.560~~ 488.730.

(h) The levying officer is not liable for releasing an attachment in accordance with this section nor is any other person liable for acting in conformity with the release.

Comment. Section 493.040 is amended to insert a reference to Section 488.730 which replaced former Section 488.560.

27852

Code of Civil Procedure § 904.1 (amended). Appeal in superior court

SEC. 63. Section 904.1 of the Code of Civil Procedure is amended to read:

904.1. An appeal may be taken from a superior court in the following cases:

(a) From a judgment, except (1) an interlocutory judgment, other than as provided in subdivisions (h), (i) and (j), (2) a judgment of contempt which is made final and conclusive by Section 1222, or (3) a judgment on appeal from a municipal court or a justice court of a small claims court.

(b) From an order made after a judgment made appealable by subdivision (a).

(c) From an order granting a motion to quash service of summons or granting a motion to stay or dismiss the action on the ground of inconvenient forum.

(d) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(e) From an order discharging or refusing to discharge an attachment or granting a right to attach order .

(f) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(g) From an order appointing a receiver.

(h) From an interlocutory judgment, order, or decree, hereafter made or entered in an action to redeem real or personal property from a mortgage thereof, or a lien thereon, determining such right to redeem and directing an accounting.

(i) From an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made.

(j) From an interlocutory judgment of dissolution of marriage, including the provisions thereof determining the separate, community, or quasi-community character of the parties' properties, regardless of whether the court in such judgment has reserved jurisdiction pursuant to Section 4800 of the Civil Code to value or divide all or a portion of the community or quasi-community property.

(k) From an order or decree made appealable by the provisions of the Probate Code.

Comment. Subdivision (e) of Section 904.1 is amended to make clear that an appeal may be taken from issuance of a right to attach order. See, e.g., Section 484.090.

27817

Code of Civil Procedure § 904.2 (amended). Appeal in municipal or justice court

SEC. 64. Section 904.2 of the Code of Civil Procedure is amended to read:

904.2. An appeal may be taken from a municipal or justice court in the following cases:

(a) From a judgment, except (1) an interlocutory judgment, or (2) a judgment of contempt which is made final and conclusive by Section 1222.

(b) From an order made after a judgment made appealable by subdivision (a).

(c) From an order changing or refusing to change the place of trial.

(d) From an order granting a motion to quash service of summons or granting a motion to stay or dismiss the action on the ground of inconvenient forum.

(e) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(f) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(g) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(h) From an order appointing a receiver.

(i) From a judgment of the small claims court as provided in Chapter 5A (commencing with Section 116) of Title 1 of Part 1 of this code.

Comment. Subdivision (f) of Section 904.2 is amended to make clear that an appeal may be taken from issuance of a right to attach order. See, e.g., Section 484.090.

67704

Commercial Code § 9409 (technical amendment). Combined certificate of Secretary of State

SEC. 65. Section 9409 of the Commercial Code is amended to read:

9409. (a) Upon request of any person, the Secretary of State shall issue a combined certificate showing the information as to financing statements as specified in Section 9407 of this code, the information as to the state tax liens as specified in Section 7226 of the Government Code, the information as to attachment liens as specified in ~~Section 488.340~~ Sections 488.375 and 488.405 of the Code of Civil Procedure, the information as to judgment liens as specified in Section 697.580 of the Code of Civil Procedure, and, if the name requested appears to be other than an individual, the information as to federal liens as specified in

Section 2103 of the Code of Civil Procedure. The fee for such a combined certificate is five dollars (\$5).

(b) The Secretary of State shall construe a request for a certificate as one for a combined certificate pursuant to this section unless the request is specifically limited to federal liens, state tax liens, judgment liens, or attachment liens.

Comment. Section 9409 is amended to correct the cross-references to provisions relating to attachment liens.

968/702

Operative Date

SEC. 66. This act shall become operative only if Assembly Bill No. 707 is chaptered and becomes effective January 1, 1983, and in such case this act shall become operative on July 1, 1983, the same as Assembly Bill No. 707.