

Memorandum 74-10

Subject: Study 39.120 - Creditors' Remedies (Execution)

Attached to this memorandum is a preliminary draft of a revised Title 9--Execution of Judgment in Civil Actions. Also attached are two appendices: (1) Appendix I (pink)--Code of Civil Procedure Sections 681-724e. This contains the text of the existing law and indicates the provisions of the draft statute which would supersede these sections. (2) Appendix II (yellow)--Conforming changes. These are some of the sections which must be conformed if the draft statute is adopted in its present form; however, the task of searching out all conforming changes has not been completed.

At the March meeting, we hope to review as much as possible of this preliminary draft (optimistically all of it) and receive the Commission's directions for revising these materials in the next few months with a view towards approving a tentative recommendation for distribution after the June meeting. In the absence of a background study, the staff has simply redrafted and reorganized the present title, making changes generally only in connection with matters which have previously been considered by the Commission or which we thought would be noncontroversial (not too controversial?). These changes, together with other issues which we wanted to bring to your attention, are discussed in the Comments and Notes to the respective sections. We hope that the Commissioners and Professor Riesenfeld will approach these materials with a particularly critical eye and an attitude that there is nothing that cannot be improved upon. Now, certainly, is the time when it is easiest to make any changes in general organization, form, and substance.

Respectfully submitted,

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Assistant Executive Secretary

368-242

39.120

2/25/74

DRAFT STATUTE

CODE OF CIVIL PROCEDURE

PART 2. OF CIVIL ACTIONS

TITLE 9. ENFORCEMENT OF JUDGMENTS

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TITLE 9. ENFORCEMENT OF JUDGMENTS

CHAPTER 1. GENERAL PROVISIONS

§ 701.110. Enforcement of judgments generally

701.110. (a) Any judgment for money, for the possession of real or personal property, or which requires the sale of real or personal property may be enforced by a writ of execution.

(b) Where a judgment requires the performance of any act not described in subdivision (a), a certified copy of the judgment may be served upon the party against whom the judgment is rendered or upon the person or officer required by the judgment or by law to obey the judgment and, if he disobeys the judgment, he may be punished for a contempt of court.

Comment. Section 701.110 continues the substance of former Section 684. As to the form and contents of the writ authorized by subdivision (a), see Section 704.120 (writ of execution). As to the power of the court to punish for contempt, see Section 1209(5).

Note. Past California practice has been to use a 'writ of execution' in various forms to enforce the different kinds of judgments described in subdivision (a). We have continued this approach although the Commission might wish to consider an approach which separated into more distinct categories the different types of judgments.

§ 701.120. Time for enforcement: exclusion of time stayed or enjoined; enforcement after ten years

701.120. (a) A writ or order may be issued for the execution or enforcement of a judgment at any time within 10 years after the date of entry of the judgment.

(b) If, after the entry of the judgment, its enforcement is stayed or enjoined by any judgment or order of court or by operation of law, the time

during which it is so stayed or enjoined shall be excluded from the computation of the 10 years within which execution or order may issue.

(c) After the lapse of 10 years from the date of its entry, a judgment may be enforced only by leave of the court, upon motion, and after due notice to the judgment debtor accompanied by an affidavit setting forth the reasons for failure to proceed within the period provided by subdivision (a). The failure to set forth such reasons as shall, in the discretion of the court, be sufficient shall be ground for the denial of the motion.

Comment. Section 701.120 reenacts portions of former Sections 681 and 685. Subdivisions (a) and (b) are substantively the same as the first and second sentences respectively of former Section 681. Subdivision (c) is substantively the same as the first two sentences of former Section 685. The third sentence of former Section 685 was added in 1957 to cure a transitional defect which occurred when the basic period for enforcement of a judgment was changed from five to ten years. See 32 Cal. S.B.J. 548 (1957). See also Report of Senate Interim Judiciary Committee 1957, Vol. 1, Appendix to Senate J. (1957 Reg. Sess.), at 211. This provision is no longer necessary and hence has been omitted.

The last paragraph of former Section 685 has also been omitted. Subdivision (c) now provides the exclusive procedure for revival of a judgment.

Note. We believe that Section 701.120 reenacts all that was viable of former Sections 681 and 685. As noted in the Comment, the last paragraph of former Section 685 has been omitted. That paragraph provided that a judgment could be enforced after the lapse of 10 years by a judgment founded upon supplemental proceedings. The latter provision is more than 100 years old, but we do not see that it adds anything to what would be provided by subdivision (c); accordingly, we deleted it. It should also be noted that nothing in this section precludes a judgment creditor from bringing an action on the judgment within the 10-year period prescribed by Section 337.5, thereby obtaining a new judgment for purposes of execution.

As noted, we basically preserve existing law here. We do suggest, however, for your consideration the possibility of a simplified approach under which a judgment is conclusively presumed to be satisfied after a fixed period of years with no exceptions (e.g., tolling provisions or discretionary revival or extension) and with no extensions by virtue of an action on the original judgment. The idea is suggested by the New York approach which has a

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conclusive presumption of satisfaction after 20 years although New York does apparently permit an action on the judgment within such period. See Comments to C.P.L.R. § 5230.

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§ 701.130. Stay of execution

701.130. (a) The court may stay the execution of any judgment or order without bond in the following cases:

(1) Where execution of the judgment would be stayed on appeal only if a bond were given, execution of the judgment may be stayed for no more than 10 days from the date of entry of judgment in a justice court or no more than 30 days from the date of entry of judgment in any other court.

(2) If a motion for a new trial or for judgment notwithstanding the verdict is pending, execution of the judgment may be stayed until 10 days after the determination of the motion.

(b) Notwithstanding subdivision (a), the court may, with the consent of the adverse party, stay the execution of any judgment or order without bond for the period consented to.

Comment. Section 701.130 is substantively the same as former Section 681a. See generally 5 B. Witkin, California Procedure Enforcement of Judgment § 84 at 3453 (2d ed. 1971); E. Jackson, California Debt Collection Practice § 17.65 (Cal. Cont. Ed. Bar 1968). Section 701.130 does, however, make explicit that the stay provided here is without bond and that the period provided in paragraph (1) of subdivision (a) commences on the date of entry of the judgment. Compare Garrett v. Garrett, 31 Cal. App. 173, 159 P. 1050 (1916) (order staying execution commencing on date of rendition). If a judgment debtor appeals from a judgment, he may obtain a stay of execution pending appeal although this usually requires the giving of a bond. See Section 916 et seq. See also Section 1174 (mandatory five-day stay under certain circumstances in unlawful detainer proceedings).

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Note. Existing law is unclear as to when the 10- and 30-day periods must commence. We have used the date of entry of judgment inasmuch as this is the date after which execution may be issued. See Section 704.110.

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§ 701.140. Enforcement after death of judgment creditor

701.140. Notwithstanding the death of the judgment creditor after a judgment, the judgment may be enforced upon the application of his executor or administrator or successor in interest.

Comment. Section 701.140 reenacts without substantive change paragraph 1 of former Section 686.

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§ 701.150. Enforcement after death of judgment debtor

701.150. (a) After the death of the judgment debtor, a judgment for money may only be enforced as provided by Probate Code Section 732.

(b) Notwithstanding the death of the judgment debtor after the judgment, a judgment for the possession of real or personal property or a judgment which requires the sale of such property may be enforced in the manner provided by this title.

Comment. Section 701.150 reenacts without substantive change paragraph 2 of former Section 686.

Note. Probate Code Section 732 permits claims to be filed and permits sale where levy has been made before death, but a new writ may not be issued or levy made after death. We should revise Section 732 to cure a problem of circularity caused by a reference there back to the Code of Civil Procedure; however, we plan no other revisions.

We believe that subdivision (b) reenacts without substantive change paragraph 2 of former Section 686. Query: What, if anything, should be

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done to require a personal representative to perform acts that the decedent would have been required to perform, e.g., make a conveyance of real property outside of the state.

In connection with attachment, we learned that an attachment lien does not continue after the death of the defendant. The attaching creditor must present his claim to the executor (and sue if necessary), and he obtains no priority by virtue of his former lien. The fairness of this rule was questioned at that time, and we were instructed to raise the issue again in connection with execution. Do you wish to take any action at this time?

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§ 701.160. Remedies of agency issuing warrant: jurisdiction

701.160. (a) Whenever a warrant may properly be issued pursuant to Section 1785 of the Unemployment Insurance Code or Section 6776, 7881, 9001, 10111, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code to enforce any lien arising under the provisions of the Unemployment Insurance Code or the Revenue and Taxation Code, the state agency authorized to issue the warrant shall be entitled to all of the remedies available to judgment creditors.

(b) Where jurisdiction of any court is required for enforcement of such remedies, jurisdiction is conferred upon the superior court of the State of California in and for the county where the person against whom enforcement is sought resides or the property against which enforcement is sought is situated, or if the person does not reside in this state, in any county of this state.

Comment. Section 701.160 is substantively identical to former Section 722.5. See also Section 709.140.

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§ 701.170. Rules for practice and procedure: forms

701.170. (a) The Judicial Council may provide by rule for the practice and procedure in proceedings under this title.

(b) The Judicial Council shall prescribe the form of the application, notices, orders, and other documents required by this title.

Comment. Section 701.170 imposes certain duties on the Judicial Council. Compare Section 482.030. Subdivision (b) requires the Judicial Council to prescribe the forms necessary for the purposes of this title. The Judicial Council has authority to adopt and revise forms as necessary but must act in a manner consistent with the provisions of this title.

Note. Section 701.170 is identical to Section 482.030 which appears in our recommendation relating to prejudgment attachment. The issue has been raised before whether this sort of provision represents an undesirable delegation of authority, and the Commission has decided that it does not. Hence, we have assumed you would also wish to include the provision here.

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§ 701.180. Levying officer

701.180. As used in this title, "levying officer" means the sheriff, constable, or marshal who is directed to execute a writ or order issued under this title.

Note. Section 701.180 is identical to Section 481.140 which appears in our recommendation relating to prejudgment attachment. We think that the term "levying officer" is preferable to "sheriff." However, we note that Code of Civil Procedure Section 17(10) already provides that "the word 'sheriff' shall include 'constable' and 'marshal.'"

CHAPTER 2. ENFORCEMENT OF MONEY JUDGMENT

Comment. Chapter 2 deals only with enforcement of money judgments. Chapter 3 deals with writs issued on a judgment for the delivery of possession of real or personal property.

§ 702.110. Sale of property levied upon

702.110. Except as otherwise provided by Section 702.120, upon the written instructions of the judgment creditor, or his attorney of record, after levy of a writ issued on a judgment for money, the levying officer may sell any personal property which comes into his actual custody after levy and any real property. The sale shall be conducted in the manner provided by Chapter 6 (commencing with Section 706.010). The levying officer shall apply the proceeds of the sale as provided in Section 706.140.

Comment. Section 702.110 continues the authority of the levying officer to sell property after levy of execution on a judgment for money. Such property may include such assets as securities and negotiable documents of title as well as goods, equipment, and other tangibles. See former Section 691. However, the introductory clause to this section recognizes that chattel paper and negotiable instruments--even though they are taken into actual custody by the levying officer--are not subject to sale. See Section 702.120 (chattel paper and negotiable instruments). Moreover, other debts owed by and personal property retained in the possession of a third person are not subject to sale. See Sections 702.130 (accounts receivable, choses in action, deposit accounts, or judgments) and 702.140 (property in possession of third person). This section also makes clear that sale shall be conducted in the manner provided by Chapter 6 and that the levying officer must apply the proceeds in the manner provided by Section 706.140.

Note. We have attempted in this section and in Sections 702.120 and 702.130 to provide a scheme where tangible property and property

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which we thought was relatively marketable are sold and property which we thought was better realized through collection is collected. It may be that our categories are suspect or that other approaches may appeal to you more. There a number of possibilities. For example, the judgment creditor could select either sale or collection, subject to modification by court order on a showing of hardship on the judgment debtor if the means selected are not changed. Or, we could make the scheme provided the rule, subject to modification by the court on the application of either party. However, we did want to get the issue before you, and the provisions set forth at least accomplish this end.

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§ 702.120. Collection on chattel paper or negotiable instrument

702.120. (a) Whether or not chattel paper or a negotiable instrument is taken into actual custody by the levying officer after levy of a writ issued on a judgment for money, the levying officer may not sell such property, but the account debtor or obligor shall pay to the levying officer any amount due and owing on such obligation at the time he is served with a copy of the writ [and thereafter while the levy is in effect]. The receipt of the levying officer is a sufficient discharge for the amount paid.

(b) If payment is not made pursuant to subdivision (a), the judgment creditor may proceed against the account debtor or obligor pursuant to Chapter 7 (commencing with Section 707.110) or Chapter 8 (commencing with Section 708.110).

Comment. Section 702.120 makes clear that collection, not sale, is the proper means of realization where the asset levied upon is chattel paper or a negotiable instrument. See also Section 702.130 (collection of account receivable, chose in action, judgment, and property in possession of third person). Compare former Section 691 (levying officer to execute the writ by "collecting or selling the things in action") with former Section 716 (payment by garnishee after levy). The levying officer is required to take chattel paper or a negotiable instrument in the possession of the judgment debtor into custody, and a third person in possession of such property may

also deliver such property to the levying officer. See Sections 488.380, 488.400, 704.240. Nevertheless, subdivision (a) precludes sale of such property. Sections 488.380 and 488.400 also require the officer to serve a copy of the writ on the account debtor or obligor under the instrument. Subdivision (a) of this section then requires the account debtor or obligor to pay over to the levying officer amounts due and owing at the time of service. If payment is not forthcoming, the judgment creditor may proceed pursuant to either Chapter 7 or Chapter 8. Under Chapter 7, if the account debtor or obligor admits his liability, an enforcement order may be issued pursuant to Section 707.150. If the indebtedness is denied, the judgment creditor may bring an action against the debtor or obligor pursuant to Chapter 8. Examination proceedings are not, however, a prerequisite to suit and the judgment creditor may proceed directly by action against the account debtor or obligor when payment is not made.

Note. We have included a phrase in brackets that raises the issue of collection of periodic payments. Under Section 702.120, the levying officer holds the instrument; hence, where the obligor is willing to make voluntary payments, collection does not seem to pose any serious problems. In contrast, under the next section, if we permit the collection of periodic payments by the levying officer, we will incur all the problems of priorities, life of the levy, and so on that were encountered in the wage garnishment area. We can avoid these problems by restricting the levy only to money due and owing at the time of the levy. However, this might mean that the creditor will make multiple levies with all the excessive costs and risks of failure that bothered us in connection with wage garnishment. As an alternative, subdivision 4 of Section 564 provides:

In superior courts a receiver may be appointed by the court in which an action or proceeding is pending:

* * * * *

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment; or after sale of real property under execution of a judgment . . . during the period provided by law for the redemption thereof from sale, to collect rents thereon, and to expend and disburse such rents as may be directed by the court or otherwise provided by law

Perhaps this alternative is adequate. See generally 5 B. Witkin, California Procedure Enforcement of Judgment §§ 179-182 at 3538-3540 (2d ed. 1971). In

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any event, we present the issue and earnestly solicit the views of those with experience with this problem.

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§ 702.130. Collection on account receivable, chose in action, deposit account, or judgment

702.130. (a) Where levy of a writ issued on a judgment for money is made upon an account receivable, chose in action, deposit account, or judgment, the levying officer may not sell such property, but the account debtor or obligor shall pay the levying officer any amount due and owing on such account or other obligation at the time he is served with a copy of the writ [and thereafter while the levy is in effect]. The receipt of the levying officer is a sufficient discharge for the amount paid.

(b) If payment is not made pursuant to subdivision (a), the judgment creditor may proceed against the account debtor or obligor pursuant to Chapter 7 (commencing with Section 707.110) or Chapter 8 (commencing with Section 708.110).

Comment. Section 702.130 is comparable to Section 702.120 (collection on chattel paper or negotiable instrument) but deals with accounts receivable, choses in action, deposit accounts, and judgments. The purpose of this section also is to make clear that collection, not sale, is the proper way to realize upon these assets. See Comment to Section 702.120. See also Section 705.020 (judgment not subject to execution until final).

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§ 702.140. Property in possession of third person

702.140. (a) If personal property belonging to the judgment debtor is in the possession of another person at the time of levy of a writ issued on a judgment for money, such other person may either (1) retain

possession until ordered by the court to deliver possession to the levying officer or (2) demand, at any time, that the levying officer take such property into custody.

(b) The levying officer, at the time of levy, shall request any person who retains property in his possession to give him a memorandum, describing the property and stating its value, within 10 days after such levy. If the person fails to give such memorandum within the time specified, the levying officer shall state such fact at the time he makes his return pursuant to Section 704.260. A person failing to give such memorandum within the time specified may be required to pay the costs of any proceedings taken for the purpose of obtaining the information required by such memorandum.

(c) If the person in possession demands that the levying officer take the property into custody, the levying officer may demand that the judgment creditor deposit costs in the manner provided in Section 704.220; and, if the money so demanded is not paid, the levying officer shall release the property in the manner provided in Section 488.560.

Comment. Section 702.140 had no counterpart in the former execution title. However, this section apparently codifies the former practice. See Marshal of Municipal Courts, Los Angeles County, Manual of Procedure § 404 (revised 3/4/72). Compare Section 488.080. As to proceedings for the examination of a third person holding property belonging to the judgment debtor, see Chapter 7 (commencing with Section 707.110). As to enforcement proceedings against third persons, see Chapter 8 (commencing with Section 708.110). It should be noted that special rules are provided for certain deposit accounts and safe deposit boxes. See Section 704.250.

§ 702.150. Collection of judgment where judgment debtor is creditor of
of state or political subdivision

702.150. (a) Whenever a judgment for the payment of money is rendered by any court of this state against a person to whom money is owing and unpaid by this state or by any county, city and county, city or municipality, quasi-municipality, district, or public corporation, the judgment creditor may file a duly authenticated abstract or transcript of such judgment together with an affidavit which states that he desires to avail himself of the relief provided by this section and states the exact amount then due, owing, and unpaid on the judgment.

(b) If the money is owing and unpaid by the state to the judgment debtor, the judgment creditor shall file the abstract or transcript and affidavit with the state department, board, office, or commission owing such money to the judgment debtor prior to the time the department, board, office, or commission presents the claim of the judgment debtor therefor to the State Controller. The department, board, office, or commission in presenting the claim of the judgment debtor to the State Controller shall note thereunder the fact of the filing of the abstract or transcript and affidavit and state the amount unpaid on the judgment as shown by the affidavit and shall also note any amounts advanced to the judgment debtor by, or which the judgment debtor owes to, the State of California by reason of advances for expenses or for any other purpose. The State Controller, to discharge the claim of the judgment debtor, shall pay into the court which issued the abstract or transcript, by his warrant or check payable to the court, the whole or such portion of the amount due the judgment debtor on the claim, after deducting from the claim an amount sufficient to reimburse the department, board, office, or commission for any amounts advanced to the judgment debtor or

by him owed to the State of California, as will satisfy in full or to the greatest extent the amount unpaid on the judgment and the balance thereof, if any, to the judgment debtor.

(c) If the money is owing and unpaid to the judgment debtor by any county, city and county, city or municipality, quasi-municipality, district, or public corporation, the judgment creditor shall file the abstract or transcript and affidavit with the auditor of such county, city and county, city or municipality, quasi-municipality, district, or public corporation (and in case there be no auditor then with the official whose duty corresponds to that of auditor). The auditor (or other official), to discharge the claim of the judgment debtor, shall pay into the court which issued the abstract or transcript, by his warrant or check payable to the court, the whole or such portion of the amount due the judgment debtor on the claim as will satisfy in full or to the greatest extent the amount unpaid on the judgment and the balance thereof, if any, to the judgment debtor.

(d) The judgment creditor upon filing the abstract or transcript and affidavit shall pay a fee of two dollars and fifty cents (\$2.50) to the person or agency with whom the same is filed.

(e) Whenever a court receives any money hereunder, it shall pay as much thereof as is not exempt from execution to the judgment creditor and the balance thereof, if any, to the judgment debtor. The procedure for determining the claim of exemption shall be governed by the procedure set forth in Section 705.030, and the court rendering the judgment shall be considered the levying officer for the purpose of that section.

(f) In the event the money owing to a judgment debtor by any governmental agency mentioned in this section is owing by reason of an award made in a condemnation proceeding brought by the governmental agency, such

governmental agency may pay the amount of the award to the clerk of the court in which such condemnation proceeding was tried and shall file therewith the abstract or transcript of judgment and the affidavit filed with it by the judgment creditor. Such payment into court shall constitute payment of the condemnation award within the meaning of Section 1251. Upon such payment into court and the filing with the county clerk of such abstract or transcript of judgment and affidavit, the county clerk shall notify by mail, through their attorneys, if any, all parties interested in the award of the time and place at which the court which tried the condemnation proceeding will determine the conflicting claims to the award. At such time and place, the court shall make such determination and order the distribution of the money held by the county clerk in accordance therewith.

(g) The judgment creditor may state in the affidavit any fact or facts tending to establish the identity of the judgment debtor. No public officer or employee shall be liable for failure to perform any duty imposed by this section unless sufficient information is furnished by the abstract or transcript together with the affidavit to enable him in the exercise of reasonable diligence to ascertain such identity therefrom and from the papers and records on file in the office in which he works. The word 'office' as used herein does not include any branch or subordinate office located in a different city.

(h) Nothing in this section shall authorize the filing of any abstract or transcript and affidavit against any overpayment of tax, penalty, or interest, or interest allowable with respect to such overpayment, under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

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(i) Any fees received by a state agency under this section shall be deposited to the credit of the fund from which payments were, or would be, made on account of a garnishment under this section.

(j) This section does not authorize the withholding of earnings of a public officer or employee. The earnings of a public officer or employee may be withheld only pursuant to Chapter 11 (commencing with Section 711.010).

Comment. Section 702.150 is substantively identical to former Section 710.

Note. Section 702.150 is presented here in substantially the same form as it appears in our wage garnishment recommendation.

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§ 702.160. Collection of judgment where judgment debtor is contractor on public work; subordination to claims of laborers and materialmen

702.160. (a) Where the judgment debtor named in any abstract or transcript of judgment filed under Section 702.150 is a contractor upon any public work, the cost of which is to be paid out of any public moneys voted, appropriated, or otherwise set apart for the purpose of paying therefor, only so much of the contract price shall be deemed owing to the contractor, within the meaning of Section 702.150, as may remain payable to him under the terms of his contract, upon the completion thereof, after the sums severally due and to become due to all persons who perform labor upon such work or who bestow skill or other necessary services or furnish materials, appliances, teams, or power used or consumed in the performance of such work have been ascertained and paid.

(b) In ascertaining the sums severally due or to become due to the persons who perform labor upon public works or other necessary services

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or furnish materials, appliances, teams, or power used or consumed in the performance of such work, only such claims shall be considered as are filed against the moneys due or to become due to the judgment debtor in accordance with the provisions of Chapter 4 (commencing with Section 3179) of Title 15 of Part 4 of Division 3 of the Civil Code.

(c) The controller, auditor, or other public disbursing officer whose duty it is to make payments under the provisions of the contract shall not draw his warrant in favor of the court which issued the abstract or transcript until the contract is completed and the payments above specified are made and then only for the excess, if any, of the contract price over the aggregate of the sums so paid.

Comment. Section 702.160 is substantively identical to former Section 710a.

Note. Even though this section was amended in 1969 for the single purpose of correcting the cross-reference in subdivision (b), we are not certain that the cross-reference is in fact proper, and we will reexamine this section for this purpose when time permits.

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§ 702.170. Judgment creditor of party; order granting lien; notice; intervention; extent of lien; endorsement upon judgment and abstract

702.170. (a) Upon motion of a judgment creditor of any party to an action or special proceeding made in the court in which the action or proceeding is pending upon written notice to all parties, the court may, in its discretion, order that the judgment creditor be granted a lien upon the cause of action, and upon any judgment subsequently procured in such action or proceeding, and, during the pendency of such action, may permit such judgment creditor to intervene therein.

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(b) The judgment creditor shall have a lien to the extent of his judgment upon all moneys recovered by his judgment debtor in such action or proceeding, and no compromise, settlement, or satisfaction shall be entered into by or on behalf of such debtor without the consent of such judgment creditor unless his lien is sooner satisfied or discharged.

(c) The clerk or judge of the court shall endorse upon the judgment recovered in such action or proceeding a statement of the existence of the lien, the date of the entry of the order creating the lien, and the place where entered; and any abstract issued upon the judgment shall contain, in addition to the matters set forth in Section 674, a statement of the lien in favor of such judgment creditor.

Comment. Section 702.170 is substantively identical to subdivision (a) of former Section 688.1. See generally Section 705.020 and the Comment thereto.

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§ 702.180. Contribution among judgment debtors; repayment of surety by principal; enforcement; notice, filing, and entry

702.180. (a) Whenever one of several joint judgment debtors pays more than his share of the judgment, he may compel contribution from the others.

(b) Whenever a judgment is against several, and is upon an obligation of one of them as security for another, and the surety pays the judgment or any part thereof, the surety may compel repayment from the principal.

(c) The person who pays more than his share or the surety is entitled to the benefit of the judgment, to enforce contribution or repayment, if within 10 days after his payment he files with the clerk of the court which rendered the judgment notice of his payment and claim to contribution or

repayment. Upon the filing of such notice, the clerk must make an entry thereof in the margin of the judgment-book or docket. Thereafter, the person entitled to contribution or repayment may apply on noticed motion for issuance of execution against the other judgment debtors; and, at the hearing on the motion, the court shall determine the liability, if any, of the other judgment debtors and shall issue execution accordingly.

Comment. Section 702.180 is substantively the same as former Section 709 except that the last sentence of subdivision (c) has been added to reflect the actual practice regarding issuance of an execution. See Stowers v. Fletcher, 84 Cal. App.2d Supp. 845, 190 P.2d 338 (1948). See generally 5 B. Witkin, California Procedure Enforcement of Judgment §§ 209-211 at 3563-3565 (2d ed. 1971). See also Sections 878 (contribution between joint tortfeasors) and 1059 (right to subrogation of surety on appeal bond).

Note. As indicated above, this section continues the existing law. However, we do feel that the 10-day notice provision presents an unnecessary procedural trap. We suggest that the period either be substantially increased--i.e., to six months or more--or eliminated altogether.

CHAPTER 3. ENFORCEMENT OF JUDGMENT FOR
POSSESSION OF REAL OR PERSONAL PROPERTY

§ 703.110. Enforcement of judgment for possession of personal property

703.110. The levying officer shall enforce a judgment for the possession of personal property in the manner prescribed by Section 514.010 [or as otherwise prescribed by law].

Comment. Section 703.110 is substantively identical to former Section 684.1.

Note. The bracketed phrase appears in Section 684.1, but we believe that it has no real effect and was included in an excess of caution. May it be deleted?

§ 703.120. Enforcement of judgment for possession of real property

703.120. The levying officer shall enforce a judgment for the possession of real property in the manner prescribed by Section 1174.

Comment. Section 703.120 had no counterpart under former law for the execution of judgments generally. However, Section 1174 did provide for delivery of possession of the premises following an action for unlawful detainer. These provisions are incorporated by reference here.

Note. The above Comment is self-explanatory. The applicable provisions in Section 1174 are set out below in the form in which they will appear if our landlord-tenant recommendation is passed.

* * * * *

(d)

A plaintiff, having obtained a writ of restitution of the premises pursuant to an action for unlawful detainer, shall be entitled to have the premises restored to him by officers charged with the enforcement of such writs. Promptly upon payment of reasonable costs of service, the enforcing officer shall serve or post a copy of the writ in the same manner as upon levy of writ of attachment pursuant to subdivision 1 of Section 542.

In addition, where the copy is posted on the property, another copy of the writ shall thereafter be mailed to the defendant at his business or residence address last known to the plaintiff or his attorney or, if no such address is known, at the premises.

The writ of restitution of the premises shall include a statement that personal property remaining on the premises at the time of its restitution to the landlord will be sold or otherwise disposed of in accordance with Section 1174 of the Code of Civil Procedure unless the tenant or the owner pays the landlord the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the premises are restored to the landlord.

If the tenant does not vacate the premises within five days from the date of service, or, if the copy of the writ is posted, within five days from the date of mailing of the additional notice, the enforcing officer shall remove the tenant from the premises and place the plaintiff in possession thereof. It shall be the duty of the party delivering the writ to the officer for execution to furnish the information required by the officer to comply with this section.

CHAPTER 4. WRIT OF EXECUTION

Article 1. Issuance; Form§ 704.110. Application for writ; additional writs

704.110. (a) After the entry of judgment, the party in whose favor the judgment is given may apply to the clerk of the court or, if there is no clerk, then the judge of the court which rendered the judgment for a writ of execution.

(b) Until the judgment is satisfied, additional writs may be issued upon further application whether or not a writ previously issued has been returned.

Comment. Subdivision (a) of Section 704.110 is based on the first sentence of former Section 681. Subdivision (b) is based on the second paragraph of former Section 683. These general provisions are, of course, subject to limitations provided elsewhere. See, e.g., Sections 701.120 (time for enforcement), 701.130 (stay of execution), 701.150 (enforcement after death of judgment debtor).

Note. The second paragraph of former Section 683 provided that, "if an execution is returned unsatisfied, another may be issued afterward" We see no reason why issuance of additional writs to other counties, for example, must await return of an unsatisfied execution. We would, however, provide for liability where the judgment creditor levies on an excessive amount of property. See Section 710.110(a).

§ 704.120. Writ of execution; form; contents

704.120. (a) The writ of execution shall be issued in the name of the people, sealed with the seal of the court, and subscribed by the clerk or judge. It shall be directed to the proper officer and shall identify the judgment, stating the court, the county, and, in municipal and justice courts, the judicial district, where the judgment is entered. The writ shall inform

the person upon whom it is served of his duties and rights under the execution, including any right to make a third-party claim pursuant to Chapter 9 (commencing with Section 709.110) and any right to claim an exemption pursuant to Chapter 5 (commencing with Section 705.010).

(b) If the judgment is for money, the writ shall state the amount of the judgment, and the amount actually due on the judgment, and shall require the levying officer to satisfy the judgment, with interest, out of the property of the debtor or any real property subject to a lien of judgment obtained pursuant to Section 674.

(c) If the judgment is for the delivery of the possession of real or personal property, the writ shall require the levying officer to deliver the possession of the property described to the party entitled thereto. The value of the property for which the judgment was rendered shall be specified in the writ and, if a delivery of the property cannot be had, the writ shall require the levying officer to satisfy the judgment in the manner provided in subdivision (b). The writ may also require the officer to satisfy any costs, damages, rents, or profits recovered by the judgment in the manner provided in subdivision (b).

(d) If the judgment requires the sale of real or personal property, the writ shall state the material parts of the judgment and shall require the proper officer to execute the judgment by making the sale and applying the proceeds in conformity with the judgment.

Comment. Section 704.120 is based on portions of former Sections 682 and 684. Subdivision (a) continues the formal requirements of the first paragraph of former Section 682. See also former Section 682.1. However, the requirement that the writ state the kind of money or currency in which the judgment is payable is not continued. Section 667 has been revised to require a money judgment in all cases to be made payable in dollars. See

Section 667 and Comment thereto. It should be noted, however, that Section 701.170 authorizes the Judicial Council to prescribe whatever formal requirements it believes are necessary or desirable.

Subdivision (b) is based on a portion of the first paragraph and subdivision 1 of former Section 682. However, the reference to earnings has been deleted. Levy on earnings of an employee must be made pursuant to Chapter 11 (commencing with Section 711.010) (Employees' Earnings Protection Law). See Section 711.020 (exclusive procedure for withholding earnings). In addition, subdivision (b) no longer requires levy on personalty first. The judgment creditor can designate the order of levy. The debtor can avoid any hardship that might result by voluntary satisfaction of the judgment. See also Chapter 2 (commencing with Section 702.110) (enforcement of money judgment).

Subdivision (c) is based on subdivision 4 of former Section 682. As noted immediately above, if the judgment requires the payment of money, the judgment creditor is no longer required to pursue personalty first. See also Chapter 3 (commencing with Section 703.110) (enforcement of judgment for the delivery of possession of real or personal property).

Subdivision (d) is based on a portion of former Section 684. It should be noted that the writ here is directed to the 'proper officer.' This may be a 'levying officer' as defined in Section 701.180 or a commissioner or elisor as provided in Section 726.

Note. The first two sentences of subdivision (a) of Section 704.120 are substantively identical to the first paragraph of Section 682 except for the reference to payment in a special kind of currency. We have, however, some doubt whether it is necessary or desirable to preserve these formal requirements in the statute. See Section 701.170 (Judicial Council to prescribe forms). We have not continued Section 682.1 which sets out the actual form for a writ of execution; this seems to us to be something better left to the discretion of the Judicial Council.

For the time being, we have assumed that the Employees' Earnings Protection Law will be passed; this provides an exclusive procedure for wage garnishment and repeals present Section 682.3. We have also eliminated the requirement of levy on personalty first. This change was also made recently in New York basically for the reasons that there seems to be no justification to prefer one kind of property over another and that the debtor can in effect make the choice by satisfying the judgment before levy from whatever assets he selects. See N.Y.C.P.L.R. § 5230 and Comments thereto.

Subdivision 2 of Section 682 provides that, "if it [the writ] be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants, or trustees, it must require such officer to satisfy the judgment, with interest, out of such property." We have been unable to determine what this provision would add to subdivisions (b) through (d) of Section 704.120 and have accordingly omitted it in this draft. Perhaps one of the Commissioners or Professor Riesenfeld can enlighten us.

§ 704.130. Entry on writ of amount of interest and costs: additional interest

704.130. (a) Before issuing a writ of execution, the clerk or, if there is no clerk, then the judge of the court shall enter on the face of the writ the amounts of any costs which have accrued from the date of entry of the judgment to the date of the issuance of the writ.

(b) If the judgment creditor has filed an affidavit stating the amount of interest which has accrued from the date of entry of this judgment to the date of issuance of the writ of execution, the amount of such interest shall be entered in the same manner as costs. The clerk or judge shall also enter the amount of interest which accrues daily, from the date of issuance of the writ, on the amount due on the judgment as entered.

(c) Interest on the amount of the judgment remaining unpaid as shown on the writ, from the date of issuance of the writ to the date of levy of execution, shall be computed by the levying officer and this amount plus the commissions and costs of the levying officer shall be added to the net balance actually due on the date of the issuance of the writ, as stated therein, in determining the total amount to be satisfied by execution.

Comment. Section 704.130 is substantively the same as former Section 682.2.

Note. As the Comment states, this section continues almost verbatim present law. We believe, however, that the actual practice is for the attorney for the judgment creditor to enter costs and interest to the date of

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issuance. See E. Jackson, California Debt Collection Practice § 17.17 (Cal. Cont. Ed. Bar 1968). We wonder accordingly whether this section should not be revised to provide in substance that the judgment creditor shall prepare the writ of execution in the form prescribed by the Judicial Council (or on the form provided by the court) and the writ shall include any costs or interest claimed to the date of issuance and the amount of interest which will accrue daily after the date of issuance.

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§ 704.140. Request for notice of execution sale: filing; contents; notation on writ; mailing notice

704.140. In any case in which a judgment has been entered as provided in Section 668, any person may file with the clerk a written request that he be given notice by mail of any sale under any execution issued upon such judgment. In such request, the person shall specify the title of the court, case and number of the action in which such judgment was rendered, and the date of entry thereof and shall give the address to which he desires such notice of execution sale to be mailed. Whenever a writ of execution is thereafter issued upon such judgment, it shall be the duty of the clerk to note upon such writ the fact that notice by mail has or has not been requested. If a notice by mail of any sale under any execution has been requested, the clerk shall also note upon such writ the name and address of such person as set forth in such request. It shall be the duty of any officer conducting a sale under any writ of execution upon which appears such notation to mail a copy of the notice of time and place of sale to such person at the address noted upon the writ. The copy of the notice shall be mailed at the time notice is posted pursuant to Section 706.010.

Comment. Section 704.140 is substantively identical to former Section 692a.

§ 704.150. Officer to whom issued

704.150. (a) Where a writ of execution is issued to enforce a judgment for money, it may be directed to a levying officer in any county in the state.

(b) Where a writ of execution requires the delivery of real or personal property, it shall be directed to a levying officer in the county where the property, or some part thereof, is situated.

[(c) If the judgment directs or authorizes the issuing of any process requiring the sale, or the delivery of possession of, or otherwise affecting specific real property which is then, or subsequently becomes, a part of a county other than that in which such judgment was entered, such process may be directed to, and executed by, the sheriff, or any constable, or marshal of such other county as to the property situate therein.]

(d) Several writs may be issued at the same time and directed to levying officers in different counties.

Comment. Section 704.150 is substantively the same as former Section 687.

Note. Subdivision (c) is a provision added in 1907. We do not believe that it is necessary to retain it, but we have preserved it for your consideration.

Article 2. Levy; Return; Lien of Execution

§ 704.210. Levying officer to execute writ

704.210. The judgment creditor, or his attorney of record, shall deliver the writ of execution to the levying officer to whom the writ is directed, together with written instructions containing a description of the property to be levied upon [and the order in which levy is to be made]. The levying officer shall execute the writ without delay in the manner provided in this title.

Comment. Section 704.210 is new; however, it is based on the first portion of the first sentence of former Section 691. See also subdivision (b) of Section 488.030 (introductory paragraph of former Section 542).

Note. Section 704.210 is a general provision which reflects the existing practice, i.e., that the levying officer will do nothing until the judgment creditor delivers to him the writ of execution and written instructions to levy upon specific property. We think that it might be a good idea for the creditor to also designate the order of levy. Presumably, he would like to go after the most liquid assets first, and the sheriff should comply with this request. It should be noted that present law requires satisfaction of the judgment first out of property previously attached in the action, then out of personalty, and finally out of realty. The staff proposes that this requirement be eliminated. The creditor will generally follow this order in any event, but in some cases the relative cost and delay of collection or sale may indicate that a different order is preferable. E.g., certain real property may be more easily sold than an item of special equipment, or levy of execution on a bank account not discovered until after judgment may be preferable to collection of attached accounts receivable or sale of attached tangible property. We are concerned, however, that the creditor might hold attached property for extended periods while searching for other property. To avoid this, we think that the debtor should be able to force either release of the attached property or application of such property to the satisfaction of the judgment. Section 704.215 will, we hope, accomplish this result.

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§ 704.215. Order requiring either release of attached property or its application to the satisfaction of the judgment

704.215. Notwithstanding Section 704.210, where any property of the judgment debtor is held under an attachment, the judgment debtor may apply, upon noticed motion, to the court for an order requiring that such property either be executed against and applied to the satisfaction of the judgment against him or be released from the levy and lien of attachment.

Comment. Section 704.215 is designed to avoid a potential problem caused by the elimination from this title of a fixed priority of levy. Under former law, a judgment was satisfied first out of property previously attached in the action, then out of personalty, and finally out of realty. See Sections 684.2 [presently Sections 550 and 551] and 682(1). However, under Section 704.210, the judgment creditor may designate the order in

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which levy is to be made. To avoid the danger that the creditor might hold attached property for extended periods while searching for other property, Section 704.215 provides a means by which the debtor can compel either the application of the attached property to the satisfaction of his debt or the release of such property.

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§ 704.220. Deposit of fees prior to execution of writ

704.220. (a) The levying officer may demand that the judgment creditor deposit prior to levy a sum of money sufficient to pay the costs of the officer executing the writ.

(b) As a prerequisite to the taking of possession of property by the levying officer, whether by keeper or otherwise, the judgment creditor shall be required to deposit with the levying officer a sum of money sufficient to pay the expenses of taking and keeping safely such property for a period not to exceed 15 days. In the event that further detention of the property is required, the levying officer shall, from time to time, make written demand upon the judgment creditor or his attorney of record for further deposits to cover estimated expenses for periods not to exceed 30 days each. Such demand shall be served as provided in Section 1011 or by depositing such notice in the post office in a sealed envelope, as first-class registered mail, postage prepaid, addressed to the person on whom it is served at his last known office or place of residence. In the event that the money so demanded is not paid within the time specified in the demand, the levying officer shall release the property in the manner provided by Section 488.560.

Comment. Section 704.220 had no counterpart in the former execution title. However, the section simply makes more specific the general authority to demand fees in advance. See Govt. Code §§ 24000(b), 24350.5, 26720 et seq. Compare Section 488.050 (former Section 542(4)).

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§ 704.230. Property not affected until levy is made

704.230. Until levy, no property shall be affected by issuance of a writ of execution or its delivery to the levying officer.

Comment. Section 704.230 is identical to subdivision (c) of former Section 688.

Note. The reference above to former Section 688 is to Section 688 as revised by the prejudgment attachment recommendation. Under the current law, Section 704.230 is the same in substance as a portion of the fourth sentence of that section.

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§ 704.240. Manner of levy

704.240. Except as otherwise provided in Chapter 3 (commencing with Section 703.110), the levying officer shall levy the writ of execution in the same manner as he would levy a writ of attachment on the same property except that tangible personal property in the possession of the judgment debtor shall always be levied upon in the manner provided by Section 488.320. The levying officer shall also serve copies of the writ of execution in the same manner as he would serve copies of a writ of attachment in conjunction with such levy. To levy upon any property or debt owed to the judgment debtor which is subject to execution but for which a method of levy of attachment is not provided, the levying officer shall serve the writ of execution upon the person in possession of such property or owing such debt.

Comment. Section 704.240 requires execution to be levied in the same manner as under subdivision (b) of former Section 688. For the most part, this means that an execution is levied in the same manner as an attachment. See Chapter 8 (commencing with Section 488.010) of Title 6.5 of this part. However, for attachment, some nonseizure methods of levy are utilized to

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avoid undue disturbance of the defendant's affairs prior to judgment. See, e.g., Section 488.340 (levy on equipment of going business). After judgment, seizure is a more appropriate method where tangible personal property is in the possession of the debtor; hence, this section incorporates this method by reference to Section 488.320. Moreover, the attachment title does not provide a method of levy for every type of property. Therefore, Section 704.240 also provides a garnishment procedure to levy upon any property not already provided for. Finally, the introductory clause recognizes that, where a writ of execution requires the delivery of real or personal property, the requirements of Chapter 3 (commencing with Section 703.110) must be satisfied.

Note. This section is substantively the same as subdivision (b) of Section 688 (as amended by our prejudgment attachment recommendation). We suggest that this scheme be continued for the present. If any defects are revealed when prejudgment attachment is worked over in the Legislature, these can be cured in connection with that recommendation. We might then consider having the general levy procedures incorporated into this title. In actions generally, it seems to us that attachment will be the exception rather than the rule and that the levy procedures would be more appropriately located in this title which has more general applicability.

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§ 704.250. Levy on deposit account, or contents of safe deposit box,
not wholly in name of judgment debtor

704.250. (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 levied upon:

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

(b) The judgment creditor shall provide and the levying officer shall deliver to the bank, trust company, savings and loan association, or safe

deposit corporation a bond in an amount not less than twice the amount of the judgment. The bond shall indemnify any person (other than the judgment debtor whose interest is sought to be levied upon) rightfully entitled to the property (which person need not be named specifically in the bond but may be referred to generally in the same manner as in this sentence), against actual damage by reason of the taking of the property and shall assure to such person the return of the property to him upon proof of his right thereto.

(c) Upon delivery to it of the bond, the bank, trust company, savings and loan association, or safe deposit corporation shall immediately notify any person in whose name the account stands, other than the judgment debtor, or any person to whom the safe deposit box is rented, other than the judgment debtor, by registered mail addressed to the last address of such person known to the bank, trust company, savings and loan association, or safe deposit corporation of the fact of the service of the writ and of the delivery of the bond.

(d) From the time of levy and the delivery to it of the bond, the bank, trust company, savings and loan association, or safe deposit corporation shall not honor a check or other order for the payment of money drawn against the account levied upon, shall not permit withdrawals from the account levied upon, and shall not permit the removal of any of the contents of the safe deposit vault or box levied upon for a period of 15 days from the mailing of the notice or until the levy is sooner released.

(e) After 15 days from the making of the levy and the delivery of the bond, if no proceedings excepting to the sufficiency of the sureties have been commenced, or if such proceedings have been commenced, when the sureties have justified, the bank, trust company, savings and loan association, or

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safe deposit corporation shall comply with the levy unless it has been sooner released and shall not be liable to any person by reason of such compliance or by reason of the nonpayment of any check or other order for the payment of money drawn against the account levied upon and presented while the levy is in force or by reason of the removal, pursuant to the levy, of any of the contents of the safe deposit vault or box or by reason of the refusal of the bank, trust company, savings and loan association, or safe deposit corporation to permit access to such safe deposit vault or box by the renter thereof.

(f) The bond described in subdivision (b) shall be executed, except-- tions to the sufficiency of the sureties may be taken by any person claim-- ing to be the rightful owner of property levied upon, and, when excepted to, the sureties must justify in the same manner as that provided with respect to an undertaking on attachment.

Comment. Section 704.250 continues the substance of former Section 682a. See also Fin. Code § 1650.

Note. We believe that Section 704.250 preserves the present law. However, the attachment title had a similar provision (Section 539a) which also required delivery of the bond to the bank. There, we changed this procedure and required the plaintiff to file all undertakings with the court. We do not see why the same procedure should not be followed here, but we did not want to make the change without your approval.

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§ 704.260. Return: issue of new writ: redelivery of writ for alias return

704.260. (a) The levying officer to whom the writ of execution is directed shall return the writ to the court from which it was issued. Such return shall be made promptly in accordance with the instructions given to the officer at the time the writ is delivered to him but in no event later than

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60 days after he receives the writ. When the execution is returned, the clerk shall attach it to the judgment roll or, if there is no clerk, the judge shall make the proper entry in the docket.

(b) If property has been levied upon under a writ of execution but the sale thereunder is postponed beyond or cannot be held within the return date provided by subdivision (a), after the writ has been returned to the clerk of the court in which the judgment is entered, upon request of the person in whose favor the writ runs, the court may direct the clerk to redeliver the writ to the officer to whom it was directed in order to permit the officer to make an alias return of the proceedings of the sale or levy thereon as in the case of an original return.

Comment. Section 704.260 is based on former Section 683. Subdivision (a) is substantively similar to the first paragraph of former Section 683 except that the reference to execution upon earnings has been deleted and the plaintiff can instruct the levying officer to make his return in less than 60 days. See Chapter 11 (commencing with Section 711.010) (Employees' Earnings Protection Law). Compare Section 488.070 (return of writ of attachment). Subdivision (b) is substantively the same as the third paragraph of former Section 683. The second paragraph of former Section 683 is superseded by subdivision (b) of Section 704.110 (additional writs).

Note. The levying officer's powers are derived from the writ. We are not sure, therefore, that it is desirable to have a fixed date for the return of the writ or, at least, not one that occurs less than a year from the date of issuance. The officer may still be exercising the power derived from the writ, e.g., collecting on a negotiable instrument (see Section 702.120), and it seems unnecessary to have to go through the process of return and redelivery in these circumstances. Would it be acceptable to make the return date more flexible?

405-375

§ 704.270. Lien of execution

704.270. (a) No levy shall bind any property for a longer period than one year from the date of issuance of the writ of execution under which the levy was made.

(b) Notwithstanding subdivision (a), a levy made pursuant to Section 488.430 upon an interest in personal property in the estate of a decedent shall be effective until the decree distributing the interest has become final.

Comment. Section 704.270 is substantively identical to the first sentence of subdivision (d) of former Section 688. The second sentence of that subdivision is not continued. Section 704.260 makes clear that a writ may be redelivered to the levying officer to permit him to conduct a sale and make his return thereon after an original return has been made. However, the latter procedure does not extend the effectiveness of the original levy beyond the one year provided by this section.

Note. The reference above to former Section 688 is to Section 688 as revised by the prejudgment attachment recommendation. Under the current law, Section 704.270 is the same in substance as a portion of the fourth sentence of that section.

CHAPTER 5. PROPERTY SUBJECT TO EXECUTION;
CLAIMING EXEMPTIONS; EXEMPTIONS

Article 1. Property Subject to Execution

§ 705.010. Property subject to execution

705.010. Except as otherwise provided by Section 705.020, all real and personal property of a judgment debtor, not exempt by law, is subject to execution.

Comment. Section 705.010 is substantively the same as the first sentence of former Section 688. Deletion of the reference in former law to "any interest" in property and of the enumeration of certain types of property ("goods, chattels, moneys or other property . . .") is not intended to limit in any way the scope of property subject to execution. Similarly, property which has been previously levied upon under attachment in the action is still considered to be property of the judgment debtor for the purposes of this section and is therefore subject to execution. Section 705.010 excludes from its operation property "exempt by law." See Articles 2 (commencing with Section 705.210), 3 (commencing with Section 705.610), and 4 (commencing with Section 705.710) (specific property which is exempt from execution). See also Emeric v. Gilman, 10 Cal. 404 (1858) (assets of citizen of county not liable for county debt); Health & Saf. Code § 7053 (misdemeanor to attach human remains for debt). Property in custodia legis is not subject to execution under certain circumstances. See, e.g., Robbins v. Bueno, 262 Cal. App.2d 79, 68 Cal. Rptr. 347 (1968); North v. Evans, 1 Cal. App.2d 64, 36 P.2d 133 (1934); Hawl Mill & Plantation Co. v. Leland, 56 Cal. App. 224, 205 P. 485 (1922); 5 B. Witkin, California Procedure Enforcement of Judgment §§ 21-24 at 3402-3405 (2d ed. 1971). See also Estate of Lawrence, 267 Cal. App.2d 77, 72 Cal. Rptr. 851 (1968) (spendthrift trust).

100-901

§ 705.020. Causes of action, licenses not subject to execution

705.020. (a) No cause of action which is the subject of a pending action or special proceeding is subject to execution; however, a judgment

creditor of any party to the action or special proceeding may apply pursuant to Section 702.170 for a lien upon the cause of action. No judgment owing to a judgment debtor is subject to execution until after its entry as a final judgment and the time for appeal from such judgment has expired or, if an appeal is filed, until such appeal is finally determined.

(b) Licenses issued by this state to engage in any business, profession, or activity are not subject to execution.

(c) Estates at will are not subject to execution.

(d) Property of the state as defined in Government Code Section 900.6 is not subject to execution.

(e) Property of a local public entity as defined in Government Code Section 900.4 is not subject to execution to enforce a tort judgment.

Comment. Section 705.020 provides exceptions to Section 705.010 (property subject to execution). Subdivision (a) of Section 705.020 continues the substance of a portion of former Sections 688 and 688.1. See also Sections 488.420(c) and 702.170. The purpose of the first sentence of subdivision (a) is to make Section 702.170 the exclusive method for proceeding against a cause of action which is the subject of a pending action. Prior to suit and after final judgment as provided in the second sentence of subdivision (a), levy may be made pursuant to Section 704.240 (manner of levy). See also Section 702.130 (collection on account receivable, chose in action, deposit account, or judgment). Rights acquired by such levy are not lost by the commencement of a suit. Moreover, a judgment creditor may, after levy, himself bring an action against a debtor of the judgment debtor. See Chapter 8 (commencing with Section 708.110). Section 705.020(a), however, applies where no levy has been made until suit has commenced.

Subdivision (b) of former Section 688.1 provided that an assignee by operation of law of a party to a personal injury action may not acquire any interest in or lien rights upon any money recovered by such party for general damages. This provision has not been continued because it was held unconstitutional in In re Kanter, 345 F. Supp. 1151 (S.D. Cal. 1972).

Subdivision (b) of Section 705.020 continues the substance of a portion of former Section 688.

Subdivision (c) of Section 705.020 continues the substance of a portion of former Civil Code Section 765.

Subdivision (d) recognizes that execution is not available to enforce judgments against the state. See Meyer v. State Land Settlement Board, 104 Cal. App. 577, 286 P. 743 (1930). See also Govt. Code §§ 965-965.4.

Subdivision (e) recognizes that Chapter 2 (commencing with Section 970) of Part 5 of Division 3.6 of the Government Code provides the exclusive manner of enforcing tort judgments against local public entities. See Section 705.380 (providing an exemption for property of local public entity where a nontort judgment is sought to be enforced).

Note. As the Comment to subdivision (a) indicates, the provision purporting to prevent assignees by operation of law from acquiring an interest in general damages in a personal injury action is not continued because it is unconstitutional. In Carmona v. Robinson, 336 F.2d 518 (9th Cir. 1964), the court held that the title to a pending cause of action vests in the trustee in bankruptcy under Section 688.1 of the Code of Civil Procedure and Sections 70(a)(5) and 70(c) of the Bankruptcy Act. However, in 1970, the language quoted in the Comment was added as subdivision (b) to Section 688.1. The referee in bankruptcy in the Kanter case obtained a letter from Assemblyman Z'berg, the bill's sponsor, which stated that the latter's intent was to take general damages in personal injury action out of the bankrupt estate. Z'berg wrote, "In my opinion the phrase '. . . assignee by operation of law . . .' includes only a Trustee in Bankruptcy." While there may be other assignees by operation of law, Z'berg indicated that he did not know of any and that the language was selected on advice of the Legislative Counsel in order to achieve his objective. The court in In re Kanter, 345 F. Supp. 1151 (S.D. Cal. 1972), found that the purpose of Section 688.1(b) was to deprive the trustee of such general damages and that, regardless of the intention of the subdivision, its effect was to prevent the proper administration of the Bankruptcy Act. Hence, the court found that Section 688.1(b) denied equal protection and contravened the supremacy clause.

While most licenses to conduct a business are either not transferable or are not worth transferring, liquor licenses are valuable transferable property. However, the exclusive method for transferring liquor licenses is provided by Business and Professions Code Section 24074. Liquor licenses are transferable only with the approval of the Department of Alcoholic Beverage Control. Liquor licenses are also subject to various controls concerning, for example, qualifications of licensees and the number of licenses per county, which make the normal execution sale inappropriate. See Bus. & Prof. Code § 24070 et seq. Jackson states in California Debt Collection Practice, Section 9.65 (Cal. Cont. Ed. Bar 1968), that a liquor license is considered as an asset of a bankrupt and may be sold in the bankrupt's estate but that the "buyer is confronted with the necessity of obtaining approval of the sale and of himself as a licensee by the board."

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It may be that a creditor can force a voluntary sale of the debtor's license by levying on all other nonexempt assets of the debtor. If the Commission thinks that it might be useful to allow execution against liquor licenses, the staff will further investigate the sort of procedure that would be needed to be in harmony with the statutes regarding such licenses.

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§ 705.030. Claim of exemption

705.030. (a) Except as otherwise provided in Section 705.610, if any property described as "exempt" in Article 2 (commencing with Section 705.210) or Article 3 (commencing with Section 705.610) is levied upon, the judgment debtor may claim an exemption therefor by serving on the levying officer within 10 days from the date of levy an affidavit signed by the judgment debtor or his agent, together with a copy thereof, which contains all of the following:

(1) A description of the property levied upon which is claimed to be exempt.

(2) A citation of the section in Article 2 (commencing with Section 705.210) or Article 3 (commencing with Section 705.610) or other law upon which the judgment debtor relies for his claim of exemption.

(3) A statement of facts necessary to support his claim of exemption.

(4) Points and authorities supporting any legal issues raised.

(5) The judgment debtor's name and address within this state for the purpose of permitting service by mail upon him of the counteraffidavit provided by subdivision (c) and the motion provided by subdivision (e).

(b) Upon receiving the affidavit from the judgment debtor, the levying officer shall immediately serve upon the judgment creditor a copy of the affidavit, together with a statement in writing signed by the levying officer, that the claim of exemption has been received and that the levying officer will release the property unless he receives from the judgment creditor

a counteraffidavit within five days after service of the affidavit and levying officer's statement.

(c) If the judgment creditor desires to contest the claim of exemption, he shall, within five days after service of the judgment debtor's affidavit and the levying officer's statement, file with the levying officer a counteraffidavit alleging that the property is not exempt within the meaning of the section of this chapter or other law relied upon or that the value of the property claimed to be exempt is in excess of the value stated in the applicable section. The judgment creditor shall serve a copy of the counteraffidavit on the judgment debtor and include proof of such service with the counteraffidavit filed with the levying officer.

(d) If no counteraffidavit with proof of service is filed by the judgment creditor with the levying officer within the time allowed, the levying officer shall immediately release the property.

(e) If the judgment creditor's counteraffidavit with proof of service is filed pursuant to subdivision (c), either the judgment creditor or the judgment debtor is entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the claim of exemption or the value of the property claimed to be exempt. The hearing shall be granted by the court upon motion of either party made within five days after the judgment creditor's counteraffidavit is filed with the levying officer. The hearing shall be held within 15 days after the motion is made unless continued by the court for good cause. The party making the motion for hearing shall give not less than five days' notice in writing of such hearing to the levying officer and to the other party and shall specify therein that the hearing is for the purpose of determining the claim of exemption.

(f) If neither party makes a motion for a hearing within the time allowed or if the levying officer is not served with a copy of the notice of hearing within 10 days after the filing of the counteraffidavit, the levying officer shall immediately release the property to the judgment debtor.

Comment. Section 705.030 is substantively the same as subdivisions (a)-(f) of former Section 690.50. The procedure provided in Section 705.030 is applicable where the judgment debtor desires to claim an exemption for property described as "exempt." Article 2 (commencing with Section 705.210) provides both for exemptions which must be claimed and exemptions which need not be claimed. See Section 705.210. If property which is "exempt without making a claim of exemption" is levied upon despite its exempt status, the procedure of Section 705.030 must be utilized to claim the exemption. However, as provided in Section 705.040, such a claim may be made at any time prior to sale or other disposition of the property. An important difference between a levy on property which is "exempt" and a levy on property which is "exempt without making a claim of exemption" is that, if the judgment creditor levies upon the latter, he is liable to the judgment debtor for wrongful execution. See Section 710.110 (wrongful execution). A separate procedure is provided to determine the validity of exemptions selected by the judgment debtor pursuant to Article 3 (commencing with Section 705.610) since in such cases there is no levy.

Note. Should the procedure be different where the judgment creditor mistakenly (or purposefully) levies on property which is exempt without making a claim of exemption? Would this be easier to understand if property described as "exempt without making a claim of exemption" were described as "not subject to execution"?

§ 705.040. Property exempt without making a claim; claim of exemption

705.040. If property described in Article 2 (commencing with Section 705.210) as "exempt without a claim of exemption" is levied upon, the judgment debtor may obtain its release from levy by following the

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procedure provided by Section 705.030 except that the procedure may be initiated at any time [prior to sale or other disposition of the property].

Comment. Section 705.040 provides that the procedure for claiming exemptions provided by Section 705.030 applies as well where the judgment creditor levies upon property which by statute is specifically stated to be "exempt without making a claim of exemption." Levy on such property should occur only rarely, if ever. See Section 710.110 (wrongful execution liability for levy on property exempt without making a claim). Note that the 10-day period within which a claim of exemption under Section 705.030 normally must be made is not applicable to claims under Section 705.040.

Note. Should the sale or other disposition of the property be invalid?

100-906

§ 705.050. Contest of selection

705.050. (a) If the judgment creditor desires to contest the selection or the valuation of the property selected by the judgment debtor as provided in Article 3 (commencing with Section 705.610), the judgment creditor is entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the validity of the selection of exempt property. The hearing shall be granted by the court upon motion of the judgment creditor made within 10 days after the judgment debtor makes his selection. The hearing shall be held within 15 days after the motion is made unless continued by the court for good cause. The judgment creditor shall give not less than five days' notice in writing of such hearing to the judgment debtor and shall specify therein that the hearing is for the purpose of determining the validity of the selection of exempt property.

(b) The notice provided by subdivision (a) shall be accompanied by an affidavit signed by the judgment creditor which contains all the following:

(1) A description of the property selected by the judgment debtor pursuant to Article 3 (commencing with Section 705.610) which is claimed not to be exempt.

(2) A citation of the section in Article 3 (commencing with Section 705.610) which supports the judgment creditor's claim that the property is not exempt.

(3) A statement of facts necessary to support his claim.

(4) Points and authorities supporting any legal issues raised.

(5) The judgment creditor's name and address within this state for the purpose of permitting service by mail upon him of the judgment debtor's counteraffidavit.

(c) If the judgment debtor desires to oppose the contest of selection, he shall file and serve on the judgment creditor, not less than two days before the date set for the hearing, a notice of opposition to the contest of selection, accompanied by an affidavit supporting any factual issues raised and points and authorities supporting any legal issues raised. If the judgment debtor fails to oppose the judgment creditor's contest of selection, the judgment debtor may not later claim an exemption for property claimed by the judgment creditor not to be exempt unless the judgment debtor shows changed circumstances.

Comment. Section 705.050 is new. It provides a procedure whereby the judgment creditor may challenge the validity of exemptions provided in Article 3 (commencing with Section 705.610) which allows the judgment debtor to select property of a certain type up to a maximum value--e.g., household goods (Section 705.620) and tools (Section 705.630). If the judgment debtor selects property under the provisions of Section 705.610, then the

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judgment creditor may contest such selection as provided in Section 705.050. However, if the property described in Article 3 (commencing with Section 705.610) is levied upon--whether the judgment debtor was not present when levy occurred or did not wish to exercise his right to selection--the exemption procedure provided by Section 705.030 is followed. The judgment creditor may use the procedure of Section 705.050 to contest either the validity of including certain property in the categories provided in Article 3 or to contest the value assigned to property selected.

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§ 705.060. Affidavits, counteraffidavits, pleadings, burden of proof

705.060. (a) The affidavits and counteraffidavits delivered to the levying officer shall be filed by him with the court and shall constitute the pleadings subject to the power of the court to permit an amendment in the interests of justice. The judgment debtor's affidavit provided by Section 705.030(a) shall be deemed controverted by the judgment creditor's affidavit provided by Section 705.030(c). The judgment creditor's affidavit provided by Section 705.050(a) shall be deemed controverted by the judgment creditor's affidavit provided by Section 705.050(c). All such affidavits shall be received in evidence.

(b) At any hearing under this article, the party claiming an exemption for property shall have the burden of proof.

Comment. Section 705.060 is substantively the same as part of former Section 690.50(1). The third sentence of subdivision (a) of Section 705.060 makes clear that affidavits under the new procedure provided by Section 705.050 are treated in the same manner as affidavits under Section 705.030.

Note. Should the debtor have the burden where property alleged to be exempt without making a claim of exemption is levied upon?

100-909

§ 705.070. Maintain levy until determination of claim

705.070. The levying officer shall maintain the levy on all property levied upon pending the final determination of the claim of exemption. However, no sale under execution shall be had prior to such final determination unless an order of the court hearing the claim of exemption so provides.

Comment. Section 705.070 is substantively similar to former Section 690.50(h). Section 705.070 uses the term 'maintain the levy in place of the provision of former law that the levying officer retain physical possession of the property . . . capable of physical possession' and that the levy on 'property not capable of physical possession . . . remain in full force and effect.' This usage reflects a change in levy procedures from former law. See Section 704.240. Section 705.070, as did former Section 690.50(h), simply requires the levying officer to preserve the status quo by maintaining the levy in whatever form it takes.

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§ 705.080. Orders during pendency of proceedings

705.080. At any time while the proceedings are pending, upon motion of either party or upon its own motion, the court may (1) order the sale of any perishable property held by such officer and direct disposition of the proceeds of such sale and (2) make such other orders as may be proper under the particular circumstances of the case. Any orders so made may be modified or vacated by court or judge granting the same, or by the court in which the proceedings are pending, at any time during the pendency of the proceedings upon such terms as may be just.

Comment. Section 705.080 is identical to former Section 690.50(g).

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§ 705.090. Findings; continuance for production of evidence; judgment

705.090. No findings shall be required in a proceeding under this article. When the hearing is before the court sitting without a jury and no evidence other than the affidavit and counteraffidavit is offered, the court, if satisfied that sufficient facts are shown thereby, may make its determination thereon. Otherwise, it shall order the hearing continued for the production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits. At the conclusion of the hearing, the court shall give judgment determining whether the claim of exemption shall be allowed or not, in whole or in part, which judgment shall be determinative as to the right of the judgment creditor to have the property taken and held by the officer or to subject the property to payment or other satisfaction of his judgment. In such judgment, the court shall make all proper orders for the disposition of such property or the proceeds thereof.

Comment. Section 705.090 is identical to part of former Section 690.50(1).

100-912

§ 705.100. Release or continuance of levy

705.100. (a) A copy of any judgment entered in the [trial] court shall be immediately transmitted by the clerk to the levying officer in order to permit the levying officer to either release the property levied upon or to continue the levy in order to [collect or] sell the property in accordance with the provisions of the writ. Unless an appeal from the judgment is waived or the judgment has otherwise become final, the levying officer shall maintain the levy until such judgment becomes final.

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(b) Notwithstanding subdivision (a), if a claim of exemption under Section 705.220 is allowed by such judgment, the judgment debtor is entitled to a release of the earnings so exempted at the expiration of three days unless otherwise ordered by the court or unless the levying officer is served with a copy of a notice of appeal from the judgment.

Comment. Section 705.100 is substantively identical to former Section 690.50(j).

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§ 705.110. Prohibition against levy on property determined to be exempt

705.110. If exemptions are allowed pursuant to Section 705.030 or if the judgment creditor fails to contest a selection within the time allowed by Section 705.050, the property thereby exempt may not be levied upon in any proceeding to enforce the judgment based upon which execution was sought to be levied unless the creditor shows that a change in circumstances occurring after the property was determined to be exempt makes the exemption invalid.

Comment. Section 705.110 is new. This section makes clear that the judgment creditor may not levy upon property where it has been determined to be exempt in an exemption proceeding or where he has failed to contest a judgment debtor's selection of exempt property under Article 3 (commencing with Section 705.610). See Section 705.050. Of course, the judgment creditor may never levy upon property which is not subject to execution. See Section 705.020. Section 705.110 prohibits levy upon such property only where the judgment creditor is still attempting to enforce the same judgment that provided the basis for the first levy. However, the judgment creditor may levy again on property if he shows that a change in circumstances after the exemption was allowed or after he failed to contest a selection of exemption now makes the property nonexempt.

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§ 705.120. Appeal

705.120. An appeal lies from any judgment under this article. Such appeal shall be taken in the manner provided for appeals in the court in which the proceeding is had.

Comment. Section 705.120 is substantively identical to former Section 690.50(m).

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§ 705.130. Exemptions cumulative

705.130. Except as otherwise provided by statute, the exemptions provided by Article 2 (commencing with Section 705.210), Article 3 (commencing with Section 705.610), and Article 4 (commencing with Section 705.710) are cumulative.

Comment. Section 705.130 makes clear that the judgment debtor is entitled to claim as many exemptions for his property as the law provides. Hence, for example, if a motor vehicle which the judgment debtor uses in his trade meets the criteria of the exemption provided in Section 705.240, he may obtain an exemption under that section and apply the entire \$2,500 exemption of Section 705.630 to his tools.

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§ 705.140. Exemptions from other process

705.140. Except as otherwise provided by statute, property exempt from execution pursuant to this chapter is exempt from forced sale and from levy of any other process for the collection of debts.

Comment. Section 705.140 makes clear that the exemptions provided in Article 2 (commencing with Section 705.210), Article 3 (commencing with Section 705.610), and Article 4 (commencing with Section 705.710) exempt

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property from any process for the collection of debts whatsoever unless a statute otherwise provides. See Section 487.020 (execution exemptions incorporated by Attachment Law). Section 705.150 provides an exception to this general principle where execution is issued on a judgment recovered for the purchase price of the property which would otherwise be exempt or where execution is issued upon a judgment of foreclosure of a mortgage or other lien on such property.

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§ 705.150. Exception; judgment for purchase price or foreclosure

705.150. The exemptions provided by Article 2 (commencing with Section 705.210), Article 3 (commencing with Section 705.610), and Article 4 (commencing with Section 705.710) do not apply where execution is issued upon a judgment recovered for the purchase price of the property or upon a judgment of foreclosure of a mortgage or other lien on the property.

Comment. Section 705.150 is substantively similar to former Section 690.52.

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§ 705.160. Exemptions from tax liability

705.160. Where a warrant or notice of levy is issued by the State of California, or a department or agency thereof, pursuant to Section 1755 or 1785 of the Unemployment Insurance Code, or Section 6776, 7881, 9001, 10111, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code, for the collection of tax liability owed to the state, a department or agency thereof, the tax debtor shall be entitled to the exemptions provided in Article 2 (commencing with Section 705.210), Article 3 (commencing with Section 705.610), and Article 4 (commencing with Section 705.710); and the provi-

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sions of this article shall be applicable to the assertion and determination thereof. The superior court of the county, or city and county, in which the property levied upon is located shall have jurisdiction to hear and determine the validity of the claim of exemption or the value of the property claimed exempt, whether or not the value of the property determines the right to exemption, in like manner as if the property were levied upon by writ of execution issued by such court.

Comment. Section 705.160 is substantively the same as former Section 690.51.

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§ 705.170. Jury trial; waiver

705.170. Nothing in this article shall be construed to deprive anyone of the right to a jury trial in any case where, by the Constitution, such right is given, but a jury trial may be waived in any such case in like manner as in the trial of an action.

Comment. Section 705.170 is identical to part of former Section 690.50(1).

Note. The staff plans to do further research to determine whether this provision has any meaning with a view toward deleting it if it does not.

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Article 2. Exemptions

§ 705.210. Claimed and unclaimed exemptions

705.210. (a) Where property is described in this article as 'exempt,' a claim of exemption shall be made pursuant to Section 705.030.

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(b) Where property is described in this article as "exempt without making a claim of exemption," no claim of exemption need be made pursuant to Section 705.030 except as otherwise provided by Section 705.040.

Comment. Section 705.210 is similar to subdivisions (a) and (b) of former Section 690. It explains the usage of the terms "exempt" and "exempt without making a claim of exemption" as used in this article.

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§ 705.220. Paid earnings

705.220. Earnings of the judgment debtor which have been paid to him and are retained in the form in which paid or as cash are exempt to the extent they are essential for the support of the debtor or his family.

Comment. Section 705.220 is substantively identical to former Section 690.8a.

Note. Section 690.8a is in the wage garnishment recommendation. Subdivision (c) of Section 690.6 is the current provision.

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§ 705.230. Deposit accounts in banks, savings and loan associations, and credit unions

705.230. Any combination of deposit accounts in banks, state or federal savings and loan associations, and credit unions, and shares of stock of state or federal savings and loan associations is exempt to the maximum aggregate value of [two] thousand dollars (\$[2],000) per person, whether the character of such property is separate or community.

Comment. Section 705.230 combines the substance of former Section 690.7 (\$1,000 savings deposits in, shares or other accounts in, or shares of stock of, savings and loan associations) and former Financial Code Section 15406 (\$1,500 in credit unions) and extends the exemption to bank

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accounts. Hence, under Section 705.230, \$2,000 is exempt when a claim is made pursuant to Section 705.030 regardless of whether the account or share is in a bank, savings and loan association, or credit union, or any combination thereof. See Section 705.390 (funds of prisoner).

Note. The \$2,000 limit is arbitrary. As the Comment indicates, under current law, a wise debtor with accounts properly located may exempt \$2,500 whereas a debtor with only a savings and loan account can exempt only \$1,000, and a debtor with only a bank account has no exemption.

100-923

§ 705.240. Motor vehicle; proceeds of sale

705.240. (a) One motor vehicle with a value not exceeding five hundred dollars (\$500), over all liens and encumbrances on such vehicle at the time of levy, is exempt [provided that the total value of such vehicle does not exceed one thousand dollars (\$1,000)]. The value of the motor vehicle is determined from that set forth for a motor vehicle of that year and model in established used car price guides customarily used by California automobile dealers or, if not listed in such guides, its fair market value.

(b) If such motor vehicle is sold, the proceeds of sale, after satisfaction of all liens and encumbrances on such vehicle, are exempt to a maximum amount of five hundred dollars (\$500) for a period of three months after sale.

Comment. Section 705.240 continues the substance of the first paragraph and the last sentence of former Section 690.2.

Note. The staff questions the policy behind the \$1,000 limit on total value. For example, if the debtor has a \$400 interest in a car worth \$2,000, the car should be exempt since the debtor's interest is under \$500; but, under current law, the \$2,000 total value would make it nonexempt. If the car is sold, theoretically \$1,600 would go to pay off encumbrances, and the \$400 remaining would go to the debtor. Consequently, the debtor is forced by the creditor and the law to sell his car (no doubt with some losses in the transaction) and put his \$400 in a \$1,000 (or cheaper) car. (The Commission should also consider the adequacy of the \$500 amount which dates

from 1972; before that, it was \$350.) If the policy behind the \$1,000 limit is to prevent a situation where the debtor is burdened with large or long-term car payments, it fails to achieve its goal. If the debtor ever increases his interest in the car over the \$500 level, then it may be sold regardless of its total value. The only situation where the \$1,000 limit seems to function in the best interest of either party is where the car is depreciating faster than the debtor's interest in it increases. In such cases, the creditor has an interest in preventing the debtor from pouring his money down a rathole. But the staff is not convinced that this situation occurs often enough or that, when it does, the benefit from forcing sale is sufficient to justify the \$1,000 limit.

§ 705.250. Housetrailer, mobilehome, vessel

705.250. (a) One housetrailer, mobilehome, or vessel as defined in Section 9840 of the Vehicle Code, in which the judgment debtor or his family actually resides, with a value not exceeding fifteen thousand dollars (\$15,000) over all liens and encumbrances on such housetrailer, mobilehome, or vessel, is exempt if neither the judgment debtor nor the spouse of such debtor has an existing homestead as provided by Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code.

(b) If such housetrailer, mobilehome, or vessel is sold, the proceeds of sale, after satisfaction of all liens and encumbrances on such housetrailer, mobilehome, or vessel, are exempt to a maximum amount of fifteen thousand dollars (\$15,000) for a period of three months after sale.

Comment. Subdivision (a) of Section 705.250 continues the substance of former Section 690.3 and adds an exemption for a vessel in which the judgment debtor or the debtor's family actually resides. Subdivision (b) makes applicable to such housetrailer, mobilehome, and vessels a provision protecting proceeds of sale formerly found only in the motor vehicle exemption (former Section 690.2) and the homestead exemption (Civil Code §§ 1256, 1257).

Note. The term "housetrailer" is apparently nowhere defined; "mobilehome" is defined in Civil Code Section 1797.1 and Health and Safety Code

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Sections 18008, 18817, and 18211. Since these sections define the term differently, the staff thinks that it is best not to refer to any particular definition. The cases do not indicate that there has been any difficulty arising from the lack of definition of these terms; they seem to be general enough and commonly understood to achieve their purpose. The terms of the Vehicle Code could be used in place of "housetrailer" and "mobilehome"; but then we would have to use terms such as "house car," "trailer coach," and "camp trailer" which seem somewhat artificial.

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§ 705.260. Works of art

705.260. Works of art of or by the judgment debtor or his [immediate] family are exempt. However, if the debtor or family artist sells his works of art as his primary occupation, only works of art which portray the family are exempt.

Comment. The first sentence of Section 705.260 continues the substance of the last sentence of former Section 690.1. The last sentence of Section 705.260 makes clear that, if the business of the judgment debtor or family artist is the sale of his artwork, the exemption applies only when the work of art portrays someone in the family. A work of art may also be exempt under Section 705.620 (household goods).

Note. This last sentence of Section 705.260 is derived from Comment, California's New Household Goods Exemption and the Problem of Personal Accountability, 12 Santa Clara Lawyer 155, 170-171 (1972).

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§ 705.270. Prosthetic and orthopedic appliances

705.270. All prosthetic and orthopedic appliances personally used by the judgment debtor are exempt without making a claim of exemption.

Comment. Section 705.270 is similar to former Section 690.5 except that under Section 705.270 no claim of exemption need be made.

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§ 705.280. Pews

705.280. Pews in churches or in meetinghouses used for religious purposes which are owned, claimed, or held by the judgment debtor in accordance with the rules and regulations of such churches and meetinghouses are exempt without making a claim of exemption.

Comment. Section 705.280 is nearly identical to former Section 690.25.

Note. The staff thinks that this exemption is archaic, but it has been retained at this point because it does not seem to be doing much harm.

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§ 705.290. Cemeteries, mausoleums, columbariums

705.290. (a) Any interest of an individual judgment debtor in one of the following is exempt:

(1) A lot not exceeding one-quarter of an acre in size in a burial park and all appropriate improvements thereon including railings, fences, gravestones, and monuments.

(2) A mausoleum or one or more crypts in a mausoleum and the land upon which the mausoleum is situated not exceeding one-quarter of an acre in size.

(3) A columbarium or niches in a columbarium, urns, and the land upon which the mausoleum is situated not exceeding one-quarter of an acre in size.

(b) The part of any public or private cemetery actually containing human remains and all appropriate improvements thereon including railings, fences, gravestones, monuments, mausoleums, and columbariums are exempt without making a claim.

(c) Where a religious or benevolent association or corporation is a debtor, in addition to the exemption provided by subdivision (b), unused cemetery land not exceeding five acres in size is exempt.

(d) Except as provided in subdivision (c), land held for the purpose of sale or disposition as burial lots or otherwise is not exempt under subdivision (a) or (b).

(e) Money payable or to become payable as the purchase price or on account of the purchase price of unused cemetery lands, or lands from which all remains have been removed, is exempt if used or held for use for the purposes described in Section 7925 of the Health and Safety Code.

(f) Property dedicated as a cemetery by a cemetery authority is exempt without making a claim on a debt due from an individual owner of an interment plot.

(g) For the purposes of this section, the definitions provided in Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 of the Health and Safety Code apply.

Comment. Section 705.290 is based on former Section 690.24 and has been phrased in terms of the definitions provided by Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 of the Health and Safety Code. Subdivision (a) makes clear that cemeteries composed of mausoleums and columbariums are exempt to the same extent as burial parks. Subdivision (b) is based on Peebler v. Danziger, 104 Cal. App.2d 491, 231 P.2d 895 (1951), which held that property occupied by graves of human beings cannot be sold under execution.

Note. Relevant definitions from the Health and Safety Code include the following:

7003. "Cemetery" means any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated, for cemetery purposes:

(a) A burial park, for earth interments.

(b) A mausoleum, for crypt or vault interments.

(c) A crematory, or a crematory and columbarium, for cinerary interments.

7004. "Burial park" means a tract of land for the burial of human remains in the ground, used or intended to be used, and dedicated, for cemetery purposes.

7005. Except in Part 5 of Division VIII of this code, "mausoleum" means a structure or building for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated, for cemetery purposes.

7007. Except in Part 5 of Division VIII of this code, "columbarium" means a structure, room, or other space in a building or structure containing niches for inurnment of cremated human remains in a place used, or intended to be used, and dedicated, for cemetery purposes.

7015. "Crypt" or "vault" means a space in a mausoleum of sufficient size, used or intended to be used, to entomb uncremated human remains.

7016. "Niche" means a space in a columbarium used, or intended to be used, for inurnment of cremated human remains.

7018. "Cemetery authority" includes cemetery association, corporation sole, or other person owning or controlling cemetery lands or property.

7022. "Lot," "plot," or "interment plot" means space in a cemetery, used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining graves, one or more than one adjoining crypts or vaults, or one or more than one adjoining niches.

§ 705.300. Vacation credits

705.300. Vacation credits accumulated by a state employee pursuant to Section 18050 of the Government Code or by any other public employee pursuant to any statute providing for the accumulation of vacation credits applicable to such employee are exempt without making a claim of exemption.

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Comment. Section 705.300 continues the substance of a portion of former Section 690.18(b).

Note. Should this apply only to public employees?

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§ 705.310. Escrow funds

705.310. Escrow funds and trust funds are exempt without making a claim in any claim against a licensed escrow agent or any other person acting as escrow agent or against a trustee.

Comment. Section 705.310 continues the substance of a former part of Financial Code Section 17410. However, Section 705.310 generalizes the exemption to cover all escrow or trust funds whereas the exemption formerly contained in Financial Code Section 17410 did not apply to banks, trust companies, building and loan or savings and loan associations, insurance companies, California attorneys not actively engaged in conducting an escrow agency, and persons engaged in title insurance or real estate business. Fin. Code § 17006.

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§ 705.320. Property held in trust for wages

705.320. Money and other property required to be held in trust by an employer for the payment of wages to employees are exempt without making a claim except where the money or other property is claimed by the employees of the employer.

Comment. Section 705.320 is based on former portions of Labor Code Sections 270.5 (property held in trust by logging employer) and 270.6 (property held in trust by employer of door-to-door or telephone solicitors). Section 705.320 extends the exemption of former law to any situation where an employer is similarly required to hold property in trust for the payment of employees.

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§ 705.330. Employee's bond

705.330. An employee's bond given pursuant to Article 2 (commencing with Section 400) of Chapter 3 of Part 1 of Division 2 of the Labor Code is exempt without making a claim except on claims by the employer, the employee or applicant, their successors or assigns.

Comment. Section 705.330 continues the substance of a former portion of Labor Code Section 404.

405-340

§ 705.340. Hospital endowment funds

705.340. Property granted to a trustee to endow a hospital pursuant to Division 23.5 (commencing with Section 32500) of the Health and Safety Code is exempt without making a claim after the grant is filed pursuant to Section 32502 of the Health and Safety Code.

Comment. Section 705.340 continues the substance of former Section 690.20 and of a former portion of Health and Safety Code Section 32508.

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§ 705.350. Educational endowment funds

705.350. Property granted to a trustee for educational purposes pursuant to Article 1 (commencing with Section 31051) of Chapter 2 of Division 22 of Part 4 of the Education Code is exempt without making a claim if the action under which the writ is issued is not commenced within two years after the filing of the grant pursuant to Section 31065 of the Education Code. If the action is commenced within two years after the filing of the grant, such property is exempt without making a claim if

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there is other property of the grantor subject to execution and sufficient to satisfy the judgment.

Comment. Section 705.350 is substantively the same as the first two sentences of former Section 690.28 and of former Education Code Section 31067. The last sentences of former Section 690.28 and of former Education Code Section 31067 providing that mechanics' and laborers' liens are not affected are superseded by Section 705.150.

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§ 705.360. Merchandise on vessel

705.360. In proceedings pursuant to Article 3 (commencing with Section 490) of Chapter 2 of Division 3 of the Harbors and Navigation Code, merchandise on board a vessel and trunks and other property of passengers and of persons employed on board a vessel are exempt without making a claim.

Comment. Section 705.360 is based on a portion of Harbors and Navigation Code Section 495.4.

Note. Section 495.4 of the Harbors and Navigation Code provides:

495.4. The sheriff, marshal, or constable to whom the writ is directed and delivered shall execute it without delay, and shall attach and keep in his custody the vessel, named therein, with its tackle, appurtenances, appliances, furnishings, and furniture, until discharged in due course of law; but the sheriff, marshal, or constable is not authorized by any such writ to interfere with the discharge of any merchandise on board of such vessel or with the removal of any trunks or other property of passengers, or of the captain, mate, seamen, steward, cook, or other persons employed on board.

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§ 705.370. Partnership property

705.370. The right of a partner in specific partnership property is exempt except on a claim against the partnership.

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Comment. Section 705.370 continues the substance of a former portion of subdivision (2)(c) of Section 15025 of the Corporations Code.

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§ 705.380. Local public entity

705.380. Real and personal property of a local public entity as defined in Government Code Section 900.4 acquired for, held for, or devoted to a public use is exempt.

Comment. Section 705.380 provides a general exemption for all property of a local public entity which is acquired for, held for, or devoted to a public use. See Sections 705.020(d) (state property not subject to execution), 705.020(e) (property of local public entity not subject to execution on tort claim). Section 705.380 is derived from former Section 690.22 but, unlike the former section, does not list specific examples of exempt property such as courthouses, jails, fire stations, public office buildings, armories, cemeteries, parks, furniture, books, papers, automotive and truck equipment, and the like. However, all such real or personal property is exempt under Section 705.380 if it is devoted to a public use. Section 705.380 also replaces former Sections 690.26 and 690.29, Health and Safety Code Sections 33124 and 34217, and Water Code Section 8537. Public cemeteries or part thereof are also exempt under Section 705.290. Note that, under Section 705.380, all property devoted to a public use of a housing authority is exempt whereas, under former Section 690.27 and Health and Safety Code Section 34217, only the real property of a housing authority was exempt. See Maurice L. Bein, Inc. v. Housing Authority, 157 Cal. App.2d 670, 321 P.2d 753 (1958).

Note. With the exception of the addition of an exemption for personal property of a housing authority, this section merely attempts to simplify the existing law while retaining its substance. Most of the language of Section 690.22 derives from 1872.

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§ 705.390. Funds of prison inmate

705.390. The funds of a judgment debtor who is an inmate in any prison or facility under the jurisdiction of the Department of Corrections or the Youth Authority or in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for him or to his credit in an inmate's trust account or similar account by the state, county, city, or any agency thereof, are exempt to the extent that the inmate's funds exempt under Section 705.230 are less than [two] thousand dollars (\$[2],000).

Comment. Section 705.390 provides an exemption for funds of a prisoner held by authorities of a correctional facility equal to the amount that the inmate debtor's funds exempt under Section 705.230 (accounts in banks, savings and loan associations, and credit unions) are less than \$2,000. Former Section 690.21 provided that \$40 of an inmate's trust account was exempt without filing a claim for exemption.

Note. Apparently under existing law, if an inmate has \$500 in a prison account, he will lose \$460 of it whereas if he has \$500 in a savings and loan account, he will lose none of it. The proposed Sections 705.230 and 705.390 eliminate this inequity. In effect, the prison account is treated as if it were a bank account.

405-346

§ 705.400. Aid

705.400. Aid given under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code to a judgment debtor or for his benefit prior to payment is exempt without making a claim. After payment, such aid is exempt.

Comment. Section 705.400 is based on former Section 690.19. However, Section 705.400 makes clear that all aid given under Division 9 of the Welfare and Institutions Code is exempt whereas former Section 690.19 was unclear. Section 705.400 does not continue the second sentence of former

Section 690.19 which provided that, as against the claim of the county, the property of a debtor who had received "support from public moneys" is exempt only to the extent allowed by the limited exemptions provided by Welfare and Institutions Code Section 17409. This provision of former Section 690.19 denied recipients of county aid the exemptions available to other judgment debtors and, therefore, is probably unconstitutional under the equal protection clause. Cf. James v. Strange, 407 U.S. 128 (1972) (Kansas statute imposing liability on indigent defendant for costs of counsel provided for him and denying exemptions available to other judgment debtors held unconstitutional). See Welf. & Inst. Code § 10052 (defining "aid").

Note. Welfare and Institutions Code Section 17409 is in Appendix II. Section 690.19 refers to "all aid given under a public assistance program." The staff is unable to discern whether these terms are used generally or in the sense they are used in the Welfare and Institutions Code. Apparently, the phrase "all aid given under a public assistance program" was taken directly from Welfare and Institutions Code Section 11002 on the recommendation of the State Bar in 1967 (the revision was enacted in 1970). (Section 11002 is in Appendix II.) However, the terms "aid" and "public assistance program" are defined for the purposes of Section 11002 as follows:

11052. "Aid" means financial assistance provided to or in behalf of needy persons under the terms of this division, including direct money payments, vendor payments and medical care.

10061. "Public assistance" and "public assistance programs" refer to those public social services programs provided for in Part 3 of this division.

Hence, "aid" covers all money payments and the like in Division 9 whereas "public assistance program" refers only to Part 3. If "public assistance program" is limited to its technical meaning, the following forms of aid provided by Part 3 of Division 9 are exempt: AFDC, Old Age Security, Aid to the Blind, Aid to Needy Disabled, nonmedical care facilities and supportive home care services, Medi-Cal benefits, supplemental food programs, and several others. However, Part 4 programs, including adoption and institutions for children and aged, Part 5 programs, including county aid, and Part 6 programs, including emergency programs, miscellaneous programs for the blind, children, and aging, and food stamps would not be exempt. The staff thinks that all aid should be exempt.

§ 705.410. Compensation and proceeds from public entity for dwelling

705.410. For a period of six months from the date of receipt, compensation received from a public entity which acquires for a public use

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a dwelling actually owned and occupied by the debtor and the proceeds received from a public entity pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code are exempt in the amount over all liens and encumbrances provided by Section 1260 of the Civil Code.

Comment. Section 705.410 continues the substance of former Section 690.8 (Cal. Stats. 1972, Ch. 822, § 1) and former Section 690.8 (Cal. Stats. 1972, Ch. 861, § 2).

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§ 705.420. Disability or health insurance

705.420. (a) If the annual premiums paid for disability or health insurance do not exceed five hundred dollars (\$500), all moneys, benefits, privileges, and immunities accruing or in any manner growing out of such insurance are exempt.

(b) If the annual premiums paid for any disability or health insurance exceed five hundred dollars (\$500), moneys, benefits, privileges, and immunities accruing or in any manner growing out of such insurance are exempt in the proportion that five hundred dollars (\$500) bears to the entire annual premium paid.

Comment. Section 705.420 continues the substance of former Section 690.11.

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§ 705.430. Life insurance

705.430. (a) Except as provided in subdivision (b), all moneys, benefits, privileges, and immunities accruing or in any manner growing out of

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any life insurance are exempt if the annual premiums paid do not exceed five hundred dollars (\$500). If the annual premiums for such insurance exceed five hundred dollars (\$500), such moneys, benefits, privileges, and immunities are exempt in the proportion that five hundred dollars (\$500) bears to the entire annual premium paid.

(b) Where there are multiple beneficiaries claiming an interest in such moneys, benefits, privileges, or immunities, the exemption allowed to each beneficiary is the amount of the exemption provided in subdivision (a) which is proportional to his interest in the total proceeds of the policy.

(c) In addition to the exemption provided by subdivision (a), all moneys, benefits, privileges, and immunities belonging to or inuring to the benefit of the insured's spouse or minor children growing out of any life insurance are exempt if the annual premiums paid do not exceed five hundred dollars (\$500). If the annual premiums for such insurance exceed five hundred dollars (\$500), such moneys, benefits, privileges, and immunities are exempt in the proportion that five hundred dollars (\$500) bears to the entire annual premium paid.

Comment. Subdivisions (a) and (c) of Section 705.430 continue the substance of former Section 690.9. Subdivision (b) codifies the holding in Jackson v. Fisher, 56 Cal.2d 196, 363 P.2d 479, 14 Cal. Eptr. 439 (1961).

Note. Should the amount of this exemption be higher? The \$500 amount in subdivision (a) is the same as it was in 1872. In 1947, it was proposed to raise this to \$1,000, but instead the exemption for the debtor's spouse and children in subdivision (c) was enacted.

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§ 705.440. Group life insurance

705.440. Except as provided in Sections 10203.5, 10203.6, and 10203.8 of the Insurance Code, a policy of group life insurance issued pursuant to

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Chapter 2 (commencing with Section 10200) of Part 2 of Division 2 of the Insurance Code and the proceeds thereof before payment are exempt without making a claim. After payment to the insured employee or the beneficiary, the proceeds of such insurance policy are exempt.

Comment. Section 705.440 is substantively similar to former Section 690.10. However, under Section 705.440, the judgment debtor need not make a claim for the exemption where the proceeds of the policy are in the hands of the insurer.

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§ 705.450. Public pension, annuity, retirement, disability, or death benefits

705.450. (a) Money held, controlled, or in process of distribution by the state, any county, city and county, city, or other political subdivision of the state, or by any public trust, public corporation, or public board derived from the contributions by such entity or by its officers or employees for retirement or pension purposes or the payment of disability, death, or other benefits, and all rights and benefits accrued or accruing to any person under any system established pursuant to statute by the state, county, city and county, city, or other political subdivision of the state, or any public trust, public corporation or public board for retirement, annuity, or pension purposes or payment of disability or death benefits are exempt without making a claim.

(b) Money received by any person [a resident of the state] as a pension, as an annuity, retirement, disability, death, or other benefit, or as a return of contributions, and interest thereon, from the United States, the state, any county, city and county, city, or other political subdivision of the state, from any public trust, public corporation, or public board, or

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from any retirement, disability, or annuity system established by any such entity pursuant to statute, whether such money is in the actual possession of the debtor or deposited by him, is exempt.

Comment. Section 705.450 continues the substance of subdivisions (a) and (b) of former Section 690.18. The exemption for vacation credits provided in former Section 690.18(b) is continued in Section 705.300. The exemption of benefits under the Unemployment Insurance Code provided in former Section 690.18(b) is continued in Section 705.500(b).

Note. Subdivision (a) makes the following unnecessary: parts of Educ. Code § 13808; Govt. Code §§ 9359.3, 21201, 31452, 31913, 32210; Pub. Util. Code §§ 12337, 25337, 28896, 50146, 95836, 98196 and all of Water Code § 22142. For some reason, public boards are left out of the list in the last part of Section 690.18(b); they have been included here (subdivision (a)).

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§ 705.460. Retirement system property, funds, contributions

705.460. The property of a retirement system as defined in Section 28002 of the Corporations Code, the portion of wages or salary of an employee deducted or to be deducted, the right of a participant or beneficiary to a benefit thereunder, and all his rights in the funds of the system are exempt without making a claim.

Comment. Section 705.450 continues the substance of a former portion of Corporations Code Section 28005 but makes clear that a claim of exemption need not be made.

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§ 705.470. Payment by pension or retirement plan

705.470. All periodic payments payable by a pension or retirement plan that are not otherwise exempt by law are exempt without making a claim in the amount that is exempted by Section 711.050.

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Comment. Section 705.460 continues the substance of subdivision (a) of former Section 690.23. Subdivision (b) of former Section 690.23 is not continued here. But see Section 705.130 (exemptions provided are cumulative).

Note. Section 690.23 is part of AB 101, the wage garnishment recommendation. A much more limited exemption is now provided by subdivision (c) of Section 690.18.

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§ 705.480. Workmen's compensation

705.480. Except as provided by Chapter 1 (commencing with Section 4900) of the Labor Code, a claim for workmen's compensation or compensation awarded or adjudged is exempt without filing a claim and, after payment, is exempt.

Comment. Section 705.480 continues the substance of former Section 690.15.

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§ 705.490. Unemployment compensation

705.490. Prior to payment, unemployment compensation benefits payable under Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code, unemployment compensation disability benefits payable under Part 2 (commencing with Section 2601) of Division 1 of the Unemployment Insurance Code, extended duration benefits payable under Part 3 (commencing with Section 3501) of Division 1 of the Unemployment Insurance Code, federal-state extended benefits payable under Part 4 (commencing with Section 4001) of Division 1 of the Unemployment Insurance Code, incentive payments payable under Division 2 (commencing with Section 5000) of the Unemployment Insurance Code, and payments to an individual

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under a plan or system established by an employer which makes provision for his employees generally or for a class or group of his employees for the purpose of supplementing unemployment compensation benefits are exempt without making a claim. After payment, such benefits are exempt.

Comment. Section 705.490 continues the substance of former Section 690.175.

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§ 705.500. Unemployment insurance

705.500. (a) Contributions by workers to the Unemployment Compensation Disability Fund and by employers to the Unemployment Fund are exempt without making a claim.

(b) Money held, controlled, or in the process of distribution by employers for payment of benefits to, or reimbursement of benefits paid to, employees under the provisions of the Unemployment Insurance Code is exempt without making a claim.

Comment. Subdivision (a) of Section 705.500 continues the substance of former Section 690.16 and a former portion of Unemployment Insurance Code Section 988. Subdivision (b) continues the substance of a part of former Section 690.18(b).

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§ 705.510. Fraternal organization funds for sick or unemployment benefits

705.510. Funds belonging to a fraternal organization which are used exclusively in the payment of sick or unemployment benefits to bona fide members of the organization are exempt to the maximum amount of five hundred dollars (\$500) [on claims against the organization].

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Comment. Section 705.500 is substantively the same as former Section 690.13.

Note. "Fraternal organization" is apparently not defined. This exemption does not seem to be very significant since \$500 would not go very far if more than one or two members of the organization were either sick or unemployed.

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§ 705.520. Fraternal benefit society aid

705.520. Money or other aid due from any fraternal benefit society as defined by Section 10990 of the Insurance Code, before being paid or rendered, is exempt without making a claim. Such money or other aid, after being paid or rendered, is exempt.

Comment. Section 705.520 is substantively similar to former Section 690.14 and former Insurance Code Section 11045. However, Section 705.510 makes clear that the exemption need not be claimed before the money or other aid is paid or rendered.

Note. Insurance Code Section 10990 provides:

10990. Any incorporated society, order or supreme lodge, without capital stock, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which makes provision for the payment of benefits in accordance with this chapter, is hereby declared to be a fraternal benefit society.

When used in this chapter, the word "society," unless otherwise indicated, shall mean fraternal benefit society.

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§ 705.530. Segregated benefit funds

705.530. Segregated benefit funds of a holder of a certificate of exemption issued pursuant to Section 10497 of the Insurance Code are ex-

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empt on claims against the holder of the certificate of exemption except claims for benefits.

Comment. Section 705.530 continues the substance of former Section 690.12.

Note. This section concerns certain life insurers.

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Article 3. Exemptions

§ 705.610. Selection of property exempt

705.610. (a) If the judgment debtor is present when levy is made, he may exercise a right of selection of exemptions provided by this article. The levying officer shall inform the judgment debtor [in writing], if he is present, that he has the right to select exemptions provided by this article, and the judgment debtor shall make his selection. Any selection made by the judgment debtor or by the levying officer in his presence is conclusive upon the judgment debtor but may be contested by the judgment creditor as provided by Section 705.050.

(b) If the judgment debtor is not present when levy is made or if he does not exercise his right of selection, the property described as exempt by this article shall be treated as property described as exempt in Article 2 (commencing with Section 705.210).

Comment. Section 705.610 provides an opportunity for the debtor to select which of his property he wishes to claim as exempt subject, of course, to the limitations of value and type of property as provided in Sections 705.620 (household furnishings, appliances, wearing apparel, personal effects, provisions, and fuel) and 705.630 (tools, implements, instruments, uniforms, books, equipment, vehicle, and vessel used in trade, business,

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or profession). The debtor is not required to select his property; he may leave this task to the levying officer. But, if he is present or if he selects the exemptions himself, he may not later claim an exemption for property then levied upon. Since estimates of value and categorizations of property may differ, the judgment creditor may contest any selections made by the judgment debtor as provided in Section 705.050.

Note. This procedure is modeled roughly on a selection procedure provided by Hawaii and Minnesota.

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§ 705.620. Household furnishings, appliances, wearing apparel, personal effects, provisions, and fuel

705.620. Household furnishings, appliances, wearing apparel, personal effects, provisions, and fuel, personally used or procured for use by the judgment debtor and members of his household at his principal place of residence, to a maximum aggregate cash value of [] dollars (\$) over all liens and encumbrances on such property at the time of levy are exempt.

Comment. Section 705.620 provides for exemptions similar to those provided by former Section 690.1. However, items such as a piano, radio, television receiver, shotgun, and rifle are included in the term 'personal effects' instead of being listed. Moreover, in place of requiring the judgment debtor to show that items of property are 'necessary' as provided by former Section 690.1, Section 705.620 substitutes a limit on the total value of the exemptions and allows the judgment debtor to select the items he wants. See Sections 705.610 (selection procedure) and 705.050 (contest of selection). Compare former Section 690.4 (now Section 705.630).

Note. This form of the household goods exemption is intended to avoid the result in Independence Bank v. Heller, 275 Cal. App.2d 84, 79 Cal. Rptr. 868 (1969) (see discussion in Comment, California's New Household Goods Exemption and the Problem of Personal Accountability, 12 Santa Clara Lawyer 155 (1972)).

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§ 705.630. Tools, etc., used in trade, business, or profession

705.630. Tools, implements, instruments, uniforms, books, equipment, one vehicle, one vessel, and other personal property reasonably necessary to and actually used by the debtor in the exercise of the trade, business, or profession by which the debtor earns his livelihood are exempt to the maximum aggregate cash value of two thousand five hundred dollars (\$2,500) over all liens and encumbrances on such items at the time of levy.

Comment. Section 705.630 continues the substance of former Section 690.4. However, a new procedure for selecting such exemptions is provided. See Section 705.610.

Note. 'Farming' has been left out of this section: presumably, it is included in trade or business. Section 705.630 deals with personal property generally. We did not continue Section 690.17 which also exempts certain building materials in the amount of \$1,000.

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Article 4. Homesteads

§ 705.710. Homesteads

705.710. The homestead is exempt as provided in Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code.

Comment. Section 705.710 makes clear that the homestead exemption is claimed as provided in Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code, not as provided by Sections 705.030-705.050.

Note. The staff intends to study the homestead exemption procedures to determine if they can be improved.

CHAPTER 6. SALE AND REDEMPTION
FROM SALE ON EXECUTION

Article 1. Sale on Execution

§ 706.010. Notice

707.010. (a) Before the sale of property on execution, notice of sale shall be given in the manner required by this section. The notice shall be in writing and shall describe the property and state the time and place of sale. In the case of real property, the notice shall describe the property by giving its street address or other common designation, if any; but, if a legal description of the property is given, the validity of the notice shall not be affected by the fact that the street address or other common designation recited is erroneous or that the street address or other common designation is omitted.

(b) In the case of perishable property, the notice shall be posted in three public places in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in three public places in the judicial district in which the property is to be sold, for such time as may be reasonable, considering the character and condition of the property.

(c) In the case of personal property not described in subdivision (b), the notice shall be posted in three public places in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in three public places in the judicial district in which the property is to be sold, for not less than 10 days. Not less than 10 days prior to the sale, the notice shall be delivered personally to the judgment debtor or mailed to the judgment debtor at his business or residence address last known to the judgment creditor or his attorney. It shall be the duty of the party delivering an execution to an officer for levy to furnish

the information required by the levying officer to comply with the provisions of this subdivision.

(d) In the case of real property or a leasehold estate in real property, at least 20 days before the date of sale, the notice shall be posted (1) in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the judicial district in which the property is to be sold and (2) in some conspicuous place on the property to be sold or, where a leasehold estate in real property is to be sold, on the real property in which the leasehold estate was demised. A copy of the notice shall be published once a week for the same period in some newspaper of general circulation published in the city in which the property or some part thereof is situated if any part thereof is situated in a city; if not, then in some newspaper of general circulation published in the judicial district in which the property or some part thereof is situated, or, in case no newspaper of general circulation is published in the city or judicial district, as the case may be, in some newspaper of general circulation published in the county in which the property or some part thereof is situated. At least 20 days before the date of sale, the notice shall be delivered personally to the judgment debtor or mailed [by certified mail] to the judgment debtor at his business or residence address last known to the judgment creditor or his attorney. It shall be the duty of the party delivering an execution to an officer for levy to furnish the information required by the levying officer to comply with the provisions of this subdivision. The term "newspaper of general circulation" as used herein is defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code. The term "judgment debtor" does not include a trustor or mortgagor.

Comment. Section 706.010 is substantively the same as former Section 692. However, subdivision 4 of former Section 692 is not continued. The former requirement of payment in a specific kind of money has been deleted from Section 667. See Section 667 and Comment thereto. Section 706.010 provides for notice to the judgment debtor except under subdivision (b). It should be noted, however, that other persons may request pursuant to Section 704.140 that notice also be sent to them.

Note. For the most part, Article 1 continues the existing law relating to the manner of sale. However, we are hopeful that, with your assistance, we can introduce some innovations here that will help to secure a fairer price than we believe is generally obtained under present law. We have considered the possibility of requiring court confirmation of sales, but we are reluctant to increase the judicial burden and we are doubtful that any practical advantage would obtain. Similar objections have persuaded us not to include a provision for appraisal with a requirement that no sale may be made for less than the appraised price. Perhaps modest changes, such as advertisements in the classified section of the newspaper or in trade magazines, could be made. The staff, in any event, particularly solicits your advice here.

We have not continued Sections 724a through 724e relating to the sale of franchises. These sections are derived from provisions in the Civil Code which were first enacted in 1850. They were intended to deal with franchises granted by the state, but the most recent case which we have found which even refers to one of these sections is more than 50 years old. We are inclined to believe that these sections are obsolete. If so, we suggest that they not be continued. Perhaps a good way to find out whether they do need to be continued is to not continue them and solicit comments on such action. Is this satisfactory?

§ 706.020. Sale without notice; defacing notice; penalties

706.020. (a) Any levying officer who sells property without giving the notice prescribed by Section 706.010 shall be liable to the judgment creditor, the judgment debtor, and any person who has requested notice of sale pursuant to Section 704.140 for the actual damages caused by the failure to give such notice and for the additional sum of one hundred dollars (\$100) payable to each such person regardless of whether that person has suffered any actual damage.

(b) Any person who willfully takes down or defaces a notice posted pursuant to Section 706.010 before the sale announced by such notice or, if the judgment is satisfied before the announced sale, before such satisfaction shall be liable to the judgment creditor and the judgment debtor for the sum of five hundred dollars (\$500).

Comment. Section 706.020 continues the law under former Section 693. See also Penal Code § 616 (criminal liability for defacing a legal notice).

Note. We believe that Section 706.020 continues the present law. Section 693 now provides for liability to the "aggrieved party" and the cases under the section indicate that this may include both the judgment creditor and the judgment debtor. There are no cases mentioning a person who has properly requested notice, but we have included him because we think that the section was probably intended to include him also. We do not, however, believe that the forfeitures are desirable and would prefer to eliminate them, i.e., restrict subdivision (a) to liability for actual damage and delete subdivision (b). It might be noted that Penal Code Section 616 already provides a criminal penalty (one-month imprisonment or \$100) for tearing down or destroying a legal notice.

§ 706.030. Time and place of sale; exhibition of personalty; sale of items or parcels separately or together; directions of judgment debtor

706.030. (a) All sales of property on execution shall be held in the county where the property or some part thereof is situated and shall be made at auction, to the highest bidder, between the hours of 9 in the morning and 5 in the afternoon.

(b) When the sale is of personal property capable of manual delivery, it shall be within view of those who attend the sale.

(c) All property shall be sold separately or together in such groups or lots as are likely to bring the highest price.

(d) Notwithstanding subdivision (c), [a third person who claims an interest in a portion of real property or] the judgment debtor [if present

at the sale] may direct that property be sold separately or together and may direct the order in which property shall be sold, and the sheriff shall follow such directions.

(e) After sufficient property has been sold to satisfy the execution, no more shall be sold.

Comment. Section 706.030 is based on the first paragraph of former Section 694. The third sentence of that paragraph now appears in Section 706.060. The second and last paragraph of former Section 694 is now Section 706.040. Subdivision (c) makes clear that all property should be sold in the manner which will bring the best price, whether this requires sale of separate items or parcels or sale en masse, including personal and real property together, e.g., a motel including land, improvements, and furnishings. Subdivision (d), however, makes clear that the judgment debtor has ultimate control and may not only direct the order in which property may be sold but may also direct that property be sold en masse, separately, or in such groups or parcels as he believes will bring the highest price.

Note. We believe that Section 706.030 continues the substance of existing law. Although Section 694 seemed to require that real property be sold in separate parcels, the cases under this section suggest that sale en masse constitutes at most an irregularity and that the true test is whether separate sale would produce a higher price. See 5 B. Witkin, California Procedure Enforcement of Judgment § 80 at 3451 (2d ed. 1970).

In subdivision (d), we have placed the 'third person' in brackets. There seem to be no cases under Section 694 dealing with third persons and we do not know what the sheriff would do if he received conflicting instructions from the judgment debtor and third persons. In short, we would like to delete the reference to third persons here and deal comprehensively with the rights of third persons in a separate chapter. See Chapter 9 (commencing with Section 709.110).

We have also placed the phrase 'if present at the sale' in brackets. It seems to us that the judgment debtor should be able to give directions in writing to the sheriff in advance of sale as well as give directions in person at the sale itself.

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§ 706.040. Postponement of sale

706.040. (a) The judgment debtor and judgment creditor together may request in writing that a sale on execution be postponed to an agreed day and hour. The request shall be delivered to the officer conducting the sale, and he shall by public declaration at the time and place originally fixed for the sale postpone the sale to the day and hour fixed in such request.

(b) In case of additional postponements, notice of each shall be given by public declaration by the officer at the time and place last appointed for the sale. No other notice of postponed sale need be given.

Comment. Section 706.040 is substantively identical to the last paragraph of former Section 694.

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§ 706.050. Cash payment; exception

706.050. (a) The purchaser at a sale on execution shall pay cash [or the equivalent of cash].

(b) Notwithstanding subdivision (a), the officer conducting the sale shall accept the amount of the bid of a judgment creditor as a credit on the judgment in lieu of a cash payment; however, the judgment creditor shall pay any costs and fees of the officer in cash [or the equivalent of cash].

Comment. Section 706.050 had no statutory counterpart under former law but generally continues the former practice. Subdivision (a) states the general rule that payment must be in cash. See Kelley v. Barnet, 24 Cal. App. 119, 140 P. 605 (1914). However, a certified check or cashier's check will be accepted as the equivalent of cash. See Marshal of Municipal Courts, Los Angeles County, Manual of Procedure § 423.4 (revised 3/4/72).

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Subdivision (b) states an important exception to subdivision (a). The judgment creditor may, of course, bid at the auction and, under subdivision (b), he may use his judgment as a credit to pay all or a portion of his bid where he is the high bidder; however, he must pay in cash the proper costs and fees of the officer conducting the sale. The basic exception recognizes that a transfer of cash back and forth between the judgment creditor and the officer can be dispensed with, but the rule extends only so far as the reason for the rule. Since the officer must be paid for his efforts before the judgment is satisfied, the judgment creditor must pay the officer's costs and fees in cash. It should be noted that, under subdivision (b), the sheriff must accept the judgment as a credit: under former law, the sheriff apparently had the discretion to refuse this manner of payment and require cash payment. See generally Mitchell v. Alpha Hardware & Supply Co., 7 Cal. App.2d 52, 45 P.2d 442 (1935); Kelley v. Barnet, *supra*.

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§ 706.060. Persons ineligible to purchase

706.060. Neither the levying officer holding the execution nor his deputy shall be a purchaser or be interested in any purchase at a sale on execution.

Comment. Section 706.060 is substantively identical to the third sentence of former Section 694.

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§ 706.070. Nonpayment of bid; resale; recovery from defaulting bidder

706.070. (a) If a purchaser refuses to pay the amount bid by him for property struck off to him at a sale on execution, the officer may, and at the request of the judgment creditor shall, again sell the property at any time to the highest bidder.

(b) If any loss is caused by the refusal of the high bidder to pay the amount he bid, the officer may, and at the request of the judgment creditor shall, recover the amount of such loss, with costs, from the bidder so refusing in an action in any court of competent jurisdiction.

Comment. Section 706.070 is substantively identical to former Section 695. See Bell v. Redwine, 98 Cal. App. 784, 277 P. 1050 (1929).

Note. We believe that Section 706.070 is substantively the same as Section 695. However, we ask that you consider some clarifications and modifications. First, we think subdivision (a) should permit either immediate sale, if possible, to the next highest bidder who pays the amount bid or resale at a new sale which satisfies the requirements of notice and time and place as provided in the preceding sections of this chapter. Second, we think that resale should be a prerequisite to suit against a refusing bidder. Finally, we think that either the judgment creditor or the judgment debtor should be specifically authorized to pursue the refusing bidder directly for the loss occasioned by the latter's refusal. See, e.g., Meherin v. Saunders, 131 Cal. 681, 63 P. 1084 (1901) (judgment debtor can recover from purchaser at sale who fails to pay amount bid). Moreover, the loss caused should specifically include the costs of resale and the attorney's fees incurred in pursuing the recovery under this section.

§ 706.080. Nonpayment of bid; rejection of subsequent bids of defaulting bidder on resale

706.080. When a purchaser refuses to pay the amount bid by him for property struck off to him at a sale on execution, the officer may, in his discretion, thereafter reject any subsequent bid of such person on the resale of such property.

Comment. Section 706.080 is substantively identical to former Section 696.

Note. Former Section 696 was once included in the same section as former Section 695. Hence, we believe that Section 696 was intended to permit only rejection of subsequent bids by a defaulting bidder on the same property. The section could perhaps as well permit rejection of bids by the defaulting bidder on other property at the same execution sale, but this would, we think, be an extension of the former law and might tend to inhibit bidding and hence reduce the price obtained at sale.

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§ 706.090. Nonpayment of bid; resale; liability of officer

706.090. Nothing in Sections 706.070 and 706.080 shall be construed to make the officer conducting an execution sale liable for any more than the amount bid by the subsequent purchaser and the amount collected from the purchaser refusing to pay.

Comment. Section 706.090 is substantively identical to former Section 697.

Note. We have continued the substance of former Section 697 for the present, but we do not believe that the section is necessary. See Govt. Code § 820.2 (public employee not liable for discretionary acts even where discretion is abused). Indeed, the section may be undesirable insofar as it conflicts with the statutory liability of the sheriff to levy execution and pay over the proceeds from execution. See Govt. Code §§ 26664, 26680. See also Govt. Code §§ 27823, 71265 (Sections 26664 and 26680 applicable to marshals and constables).

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§ 706.100. Personal property capable of manual delivery; delivery; certificate of sale

706.100. (a) When the purchaser of any personal property capable of manual delivery pays the purchase money, the officer making the sale shall deliver the property to the purchaser and [, if requested by the purchaser,] execute and deliver to him a certificate of sale.

(b) The certificate of sale shall convey to the purchaser all the right which the debtor had in such property on, or at any time after, the day the execution or attachment was levied.

Comment. Section 706.100 is substantively identical to former Section 698. As to personal property incapable of manual delivery, see Section 706.110. As to real property, see Section 706.120.

Note. We do not see why the purchaser should have to request a certificate of sale. The Marshal's Manual simply says that a certificate of sale shall be issued after every sale (see Section 424.1). The requirement of a

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request also presents a potential trap if the last sentence of this section is construed to make the certificate a prerequisite to obtaining any rights by purchase at an execution sale. Accordingly, we suggest that the phrase in brackets be deleted. Compare Section 706.110.

We have added the phrase "or at any time after" to subdivision (b). This was done to conform this provision to subdivision (b) of Section 706.120. We believe that the language continues the present law under Section 700.

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§ 706.110. Personal property not capable of manual delivery; certificate of sale

706.110. (a) When the purchaser of any personal property not capable of manual delivery pays the purchase money, the officer making the sale shall execute and deliver to the purchaser a certificate of sale.

(b) The certificate of sale shall convey to the purchaser all the right which the debtor had in such property on, or at any time after, the day the execution or attachment was levied.

Comment. Section 706.110 is substantively identical to former Section 699.

Note. We have conformed subdivision (b) to subdivision (b) of the preceding section. See Note to Section 706.120.

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§ 706.120. Real property; certificate of sale

706.120. (a) When the purchaser of real property pays the purchase money, the officer making the sale shall execute and deliver to the purchaser a certificate of sale and shall record a duplicate of the certificate in the office of the recorder of the county where the property is located.

(b) Except as otherwise provided by Sections 706.210 and 706.290, the certificate of sale shall convey to the purchaser all the right, title, and interest which the debtor had in such real property on, or at any time after, the day the execution or attachment was levied and, if the judgment is a lien upon the property, all the right, title, and interest which the debtor had on, or at any time after, the day such judgment became a lien on such property.

Comment. Section 706.120 continues the former law. Subdivision (a) continues a portion of the third sentence of subdivision (a) of former Section 700a. As to the contents of the certificate of sale, see Section 706.130. Subdivision (b) continues the substance of former Section 700. The introductory clause to subdivision (b) recognizes that the purchaser's title may be defeasible, i.e., may be subject to redemption, and that the judgment debtor may be entitled to remain in possession for a period of time, i.e., during the redemption period.

Note. As the Comment indicates, we have intended no substantive change here. We have, however, revised subdivision (b) in an attempt to make clear that the sale on execution conveys the title or interest which the judgment debtor has on the date of levy or date that the judgment became a lien and that which he thereafter acquires up to the date of sale (assuming the lien has been maintained throughout such period). This, we believe, is the existing law. See Kenyon v. Quinn, 41 Cal. 325 (1871); Frink v. Roe, 70 Cal. 296, 11 P. 820 (1886). Interests acquired after the execution sale are not, however, subject to the sale. See Emerson v. Sansome, 41 Cal. 552 (1871).

§ 706.130. Certificate of sale: form

706.130. The certificate of sale shall identify the judgment under which the sale on execution was made and shall contain:

- (a) A description of the property sold;
- (b) The price paid for the property. Where property is sold together in groups or lots pursuant to Section 706.030, the price paid for the en-

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tire group or lot may be stated; otherwise, the price paid for each item or parcel of property shall be separately stated.

(c) Where the property is subject to redemption, a statement to that effect.

Comment. Section 706.130 generalizes the requirements for the certificate of sale provided by subdivision (a) of former Section 700a.

Note. Section 700a provides certain requirements for a certificate of sale of real property. We have continued the substance of these requirements here and made them applicable to all certificates of sale.

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§ 706.140. Disposition of proceeds from sale

706.140. (a) Following sale, the proceeds of the sale shall be applied in the following order of priority:

(1) To the levying officer or to the judgment creditor for the reimbursement of any costs incurred in executing the writ under which sale was made or in making the sale.

(2) To the seller or holder of a purchase money security interest in the property sold.

(3) To the judgment debtor in an amount equal to his claim of exemption under Sections [listed here will be sections under which the debtor is entitled to a certain minimum dollar amount].

(4) To the holder of any lien or encumbrance which is prior to the lien under which the sale was made.

(5) To the judgment creditor.

(6) To the holder of any lien or encumbrance which is junior to the lien under which the sale was made.

(7) To the judgment debtor.

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(b) Notwithstanding subdivision (a), the officer conducting the sale shall not be liable for failing to distribute the proceeds to any third person who has not made a claim therefor pursuant to Chapter 9 (commencing with Section 709.110).

Comment. Section 706.140 continues the prior law. It is based in part on former Section 689c, the second paragraph of former Section 690.2, and portions of former Section 691.

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§ 706.150. Sale set aside; recovery of price and interest; revival of judgment

706.150. (a) If a sale on execution is set aside because the judgment on which it was based is reversed or discharged, the purchaser, or his successor in interest, may recover the price paid, with interest, from the judgment creditor.

(b) If a sale on execution is set aside because of irregularities in the proceedings concerning the sale or because the property sold was not subject to execution and sale, the purchaser, or his successor in interest, may recover the price paid, with interest, from either the judgment creditor or the judgment debtor. To recover from the judgment debtor, the purchaser may have the judgment revived in his name as provided in subdivision (c). Where the purchaser recovers any amount from the judgment creditor pursuant to this subdivision, the judgment creditor may have the judgment revived as provided in subdivision (c) to recover the amount paid to the purchaser, with interest, from the judgment debtor.

(c) After notice to the parties to the action, and on motion of a person authorized by subdivision (b), the court which issued the execution upon which the sale was based shall revive the original judgment in the

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name of such person for the amount which such person is entitled to recover from the judgment debtor. The revived judgment shall have the same force and effect as would an original judgment made on the date of revival.

Comment. Section 706.150 is based on former Section 708. However, under former Section 708, a third person--who purchased at an execution sale which was later set aside because, for example, the property attempted to be sold was exempt or belonged to one other than the judgment debtor--was authorized to pursue only the judgment debtor for his recovery. This seems unfair since the judgment debtor may be unable to satisfy a judgment; hence, subdivision (b) in these circumstances permits the third-person purchaser to recover from either the judgment debtor or the judgment creditor. Recovery from the judgment creditor restores the original parties to the relative positions they were in before the execution sale, and the judgment creditor is therefore authorized to pursue the judgment debtor afresh.

Note. We have revised Section 708 to accomplish the purpose stated above in the Comment. We believe that it is relatively rare for an execution sale to be set aside for any reason and the relatively meager case law which has developed under Section 708 would indicate that the section has operated in a satisfactory way. Accordingly, we have made the revisions in this section with some reluctance, but we believe that they are desirable.

It should be noted that subdivision (a) permits recovery by a purchaser from the judgment creditor where an execution sale is set aside because the judgment on which it is based is reversed. However, Section 908 provides for restitution of property after a reversal only "so far as such restitution is consistent with rights of third parties." Implicit in this latter provision is the rule that a sale on execution to a third person (where there has been no stay on appeal) may not be avoided after reversal. (The purported judgment debtor can, of course, recover compensation from the judgment creditor for property not restored.) However, the courts may distinguish between a judgment which is simply erroneous and one which is "void" and permit avoidance where the judgment is void. See Mills v. Laing, 38 Cal. App. 776, 177 P. 493 (1918)(dictum). Hence, we have kept the reference to reversal in subdivision (a) although it has very limited application.

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Article 2. Redemption From Execution Sale

§ 706.210. Property subject to redemption; notice of right of redemption; liability of officer

706.210. (a) Sales of personal property, and of real property where

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the estate therein is a leasehold with an unexpired term of less than two years, are absolute. In all other cases, the property is subject to redemption as provided in this article.

(b) If the property is subject to redemption, the officer shall inform the judgment debtor, by certified mail or personal service, of his right of redemption. Failure to give such notice within one week after the sale shall make the officer liable to the judgment debtor for actual damages in addition to a penalty of one hundred dollars (\$100).

Comment. Section 706.210 continues the substance of the first two sentences of subdivision (a) and all of subdivision (b) of former Section 700a.

Note. For the purposes of discussion, we have retained the substance of the provisions relating to redemption. We believe, however, that redemption is generally not of much value to the judgment debtor, that the possibility of redemption has the general tendency to remove any bidders from the execution sale except the judgment creditor, and that a sale at a fair market value is thereby precluded. Perhaps the transferability of the right of redemption to a third person tends to mitigate this effect. That is, after the sale, the judgment debtor can sell his right to redeem and, if the property has been purchased at a reduced price, this right to redeem will have some value and the debtor has an ample period of time to realize this value. Certainly, the method of sale under the present law hardly inspires confidence that a fair price will be obtained quite apart from redemption; hence, redemption may be necessary. Nevertheless, we would prefer to attempt to provide sale procedures that will make a fair price the rule rather than the exception and, if this can be accomplished, we would then substantially limit or perhaps eliminate redemption. We ask at least that you consider this possibility. For a thorough discussion of redemption, see Comment, The Statutory Right of Redemption in California, 52 Cal. L. Rev. 846 (1964).

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§ 706.220. Persons entitled to redeem; redemptioners defined

706.220. (a) Property sold subject to redemption may be redeemed by the following persons or their successors in interest:

- (1) The judgment debtor;
- (2) A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the

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property was sold. The persons described in this paragraph are referred to in this article as "redemptioners."

(b) Notwithstanding subdivision (a), neither the purchaser at the sale nor a creditor of the purchaser shall be deemed to be a successor in interest to the judgment debtor or a redemptioner for the purpose of redeeming from the sale.

Comment. Section 706.220 is substantively the same as former Section 701. However, subdivision (b) has been added to clarify an ambiguity under the former section. See Comment, The Statutory Right of Redemption in California, 52 Cal. L. Rev. 846, 856-857, 862 (1964).

Note. There is one problem which we have not dealt with under this article: the status of a purchase by the judgment debtor at the execution sale. Is it strictly a purchase like any other purchase so that junior lienors can and must redeem to protect their interests, or is it in the nature of a redemption so that the effect of the sale is terminated and junior lienholders may not redeem but their liens reattach following the sale? The problem is discussed in Comment, The Statutory Right of Redemption in California, 52 Cal. L. Rev. 846, 872-875 (1964). Apparently, there is conflicting law on the issue, and it would appear that some certainty here would be desirable. Does the Commission wish to take a position on this issue?

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§ 706.230. Instruments to be produced by redemptioner

706.230. A redemptioner shall produce to the person from whom he seeks to redeem and file with his certificate of redemption with the officer who conducted the execution sale:

(a) A copy of the judgment under which he claims the right to redeem, certified by the clerk of the court or of the county where the judgment is entered; or, if he seeks to redeem upon a mortgage or other lien, a note of the record thereof, certified by the recorder;

(b) A copy of any assignment necessary to establish his claim, verified by his affidavit, or the affidavit of a subscribing witness to the assignment; and

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(c) An affidavit by himself or his agent showing the amount then actually due on the lien.

Comment. Section 706.230 continues the substance of former Section 705.

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§ 706.240. Persons to whom payments made; tender

706.240. (a) The payments required by Sections 706.250 through 706.270 may be made to the purchaser or redemptioner, or for him, to the officer who made the sale.

(b) A tender of the money required to be paid is equivalent to payment.

Comment. Section 706.240 continues the substance of former Section 704 except that the reference to payment in a specific kind of money has been deleted to conform to the elimination from Section 667 of judgments so payable.

Note. The Comment to this section is self-explanatory. You might wish to consider a procedure under which all redemptions are required to be made through the officer conducting the sale. The virtue of such a procedure would be the elimination of any possibility of an attempted redemption from one who is not the last redemptioner. We are not aware that this is a significant problem under the present law, and requiring all payments to be made through the officer could be unnecessarily cumbersome, but we raise the thought.

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§ 707.250. Redemption from purchaser by redemptioner; time; payment; proceedings for determination of disputed amounts

706.250. (a) A redemptioner may redeem the property from the purchaser at any time within 12 months after the sale by paying the purchaser:

(1) The amount of his purchase together with interest on such amount from the date of sale;

(2) The amount of any assessment or taxes paid by the purchaser together with interest from the date of payment;

(3) Any reasonable sum paid by the purchaser for fire insurance, maintenance, upkeep, or repair of the improvements upon the property together with interest from the date of payment;

(4) Any sum paid by the purchaser on a prior obligation secured by the property to the extent such payment was necessary for the protection of the purchaser's interest together with interest from the date of payment; and

(5) If the purchaser is also a creditor, having a lien prior to that of the redemptioner other than the judgment under which the purchase was made, the amount of such lien [together with interest].

(b) In the event there is a disagreement between the purchaser and the proposed redemptioner as to whether any sum demanded by the purchaser is required to be paid by subdivision (a), the proposed redemptioner shall pay to the clerk of the court which issued the execution on which the sale was based the amount which he believes is necessary for redemption. At the same time, he shall file with the clerk a petition in writing setting forth specifically the item or items demanded to which he objects, together with his reason for such objections, and asking that the amount required to be paid be determined by the court. The clerk shall immediately fix a day, not less than five nor more than 10 days from the date of such filing, for the hearing of such objections. A copy of the petition, together with a notice of hearing giving the time and place thereof, shall be served by the proposed redemptioner, or his attorney, upon the purchaser not less than two days before the day of hearing. Upon the day fixed for hearing, the court shall determine, either upon affidavit or evidence satisfactory

to the court, the amount required for redemption and set forth its determinations in an order duly entered in the minutes of the court. When the amount has been determined, if the amount deposited with the clerk is sufficient, it shall be paid to the purchaser upon his execution of a proper certificate of redemption. If an amount in addition to that paid to the clerk is required, the redemptioner shall pay such additional amount to the clerk who shall then pay the whole amount necessary to the purchaser upon his execution of a proper certificate of redemption. The certificate of redemption so issued may be deposited with the clerk for delivery to the redemptioner or given to such person at the time of payment.

Comment. Section 706.250 is based on portions of former Section 702. However, Section 706.250 deals only with redemptioners; redemption by the judgment debtor is now provided for in Section 706.270. Subdivision (a) continues the substance of the first sentence of former Section 702 except that the interest required to be paid on all amounts shall be determined at the legal rate of interest. The second sentence of former Section 702 is continued by Section 706.290. Subdivision (b) of this section is substantively identical to the second paragraph of former Section 702.

Note. We have substituted the legal rate of interest for the special rates provided by Sections 702 (2/3 of 1% per month) and 703 (2%). Otherwise, we have made no intentional substantive changes here. However, we have placed the provision for interest in paragraph (5) of subdivision (a) in brackets because it seems to us that, even assuming that the lien should be paid, we do not see why interest should be paid (except for accrued interest which we would assume is included in the amount of the lien). Moreover, we suggest that, if a right of redemption is retained, the period for redemption be drastically reduced, i.e., to not more than 120 days. This would seem to allow sufficient time for anyone to redeem and yet not defer the date of possession for an unreasonable period with all the attendant risks of waste and deterioration. See also Section 706.270 (redemption by judgment debtor).

§ 706.260. Redemption from redemptioner by a redemptioner; time payment; proceedings for determination of disputed amounts

706.260. (a) If property is redeemed by a redemptioner, another redemptioner may, within 60 days after the last redemption but not more than one year after the sale on execution, redeem it from the last redemptioner by paying the last redemptioner:

(1) The amount paid on such last redemption together with interest on such amount from the date of the last redemption;

(2) The amount of any assessment or taxes paid by the last redemptioner together with interest from the date of payment;

(3) Any reasonable sum paid by the last redemptioner for fire insurance, maintenance, upkeep, or repair of the improvements upon the property together with interest from the date of payment.

(4) Any sum paid by the last redemptioner on a prior obligation secured by the property to the extent such payment was necessary for the protection of the last redemptioner's interest together with interest from the date of payment; and

(5) The amount of any liens held by the last redemptioner which are prior to the redemptioner's and which are not covered by the amount paid under paragraph (1) [together with interest]; however, the judgment under which the property was sold need not be paid as a lien.

(b) In the event that there is any disagreement between the last redemptioner and the redemptioner as to whether any sum demanded by the last redemptioner is required to be paid by subdivision (a), the amount to be paid shall be determined in the manner provided by Section 706.250.

(c) Property may be redeemed again and as often as there is a redemptioner who is so disposed if the requirements of subdivision (a) are satisfied.

Comment. Section 706.260 is based on the first two paragraphs of former Section 703. Subdivision (a) continues the substance of the first sentence of former Section 703 except that the interest required to be paid on all amounts shall be determined at the legal rate of interest, and the introductory clause now makes clear that a redemption must be made not only within 60 days after a previous redemption but also within one year after the sale on execution. See Comment, The Statutory Right of Redemption in California, 52 Cal. L. Rev. 846, 852-853 (1964).

Subdivisions (b) and (c) are substantively identical to the second sentence and the second paragraph, respectively, of former Section 703.

Note. We have revised this section to make clear that any redemption must be made within one year from the date of the original sale. We have also eliminated the special interest rate (2%) which applied to the amount paid under paragraph (1) of subdivision (a). We do not understand why a redemptioner is permitted to redeem from a purchaser at any time within one year from the sale but is allowed only 60 days to redeem from a redemptioner. As noted under Section 706.250, we think the basic redemption period should be shortened to not more than 120 days; if this is done, we also suggest that Sections 706.250 and 706.260 be combined so that a redemptioner can redeem from either a purchaser or a redemptioner at any time within the 120-day period.

§ 706.270. Redemption by judgment debtor; time; payment; proceedings for determination of disputed amounts

706.270. (a) The judgment debtor may redeem the property from the purchaser or the last redemptioner, if any, at any time within 12 months after the sale by paying the amounts required to be paid by a redemptioner pursuant to Section 706.250 or Section 706.260.

{(b) Notwithstanding subdivision (a), the judgment debtor shall not be required to pay the amount of any liens based on an obligation not due at the time of redemption.]

(c) In the event that there is any disagreement between the judgment debtor and the person from whom he seeks to redeem as to whether any sum demanded by such person is required to be paid by this section, the amount to be paid shall be determined in the manner provided by Section 706.250.

(d) If the judgment debtor redeems, the effect of the sale is terminated.

Comment. Section 706.270 continues the substance of portions of former Sections 702 and 703. [However, inasmuch as the policy of the redemption statute is to favor the judgment debtor, subdivision (b) provides that the judgment debtor is not required to pay the amount of any lien based on an obligation not due at the time of redemption. Such lien, of course, continues to attach to the property; payment is not forgiven but simply deferred.]

Note. Subdivision (b) is a new provision inspired by comments made many years ago by Professor Riesenfeld on this problem. We believe that subdivision (b) would be a good addition; credit for the idea should go to Professor Riesenfeld; responsibility for its inclusion rests with the staff.

§ 706.280. Certificate of redemption; recordation and filing [; notice of subsequent payments]

706.280. (a) Upon redemption, the person to whom payment is made shall execute and deliver to the person who redeemed a certificate of redemption.

(b) The certificate of redemption shall be acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property and shall be recorded in the office of the recorder of the county where the property is located. A copy of the certificate shall also be filed with the officer who conducted the execution sale.

[(c) If after redemption any taxes or assessments are paid by a redemptioner, or any sum for fire insurance, maintenance, upkeep, or repair of any improvement upon the property, is paid by a redemptioner, or any sum is necessarily paid by a redemptioner on a prior obligation secured by the property, or a redemptioner has or acquires any lien other than that upon which the redemption was made, notice thereof shall be filed with the officer and recorded with the recorder and, if such notice is

not recorded, the property may be redeemed without paying such tax, assessment, sum, or lien.]

Comment. Section 706.280 combines and continues the substance of the third and sixth paragraphs of former Section 703.

Note. We have placed subdivision (c) in brackets because we believe that it should be deleted. Basically, it requires a redemptioner to supplement the certificate of redemption with a notice of any amounts paid by him after the redemption for taxes, upkeep, after acquired liens, and so on. If he does not file the notice, these amounts do not have to be paid by a subsequent redemptioner. This seems to us to create an unnecessary procedural trap. A redemptioner from a prior redemptioner can find out from the latter what amounts should be paid and, in the event of a disagreement, there is a procedure for resolving the problem. We do not see the need for this additional requirement and recommend that it be deleted.

§ 706.290. Possession during redemption period: rents and profits: entry by purchaser or redemptioner: waste

706.290. (a) Until 12 months after the sale, the judgment debtor is entitled to the possession of property subject to redemption; however, the purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, is entitled to receive, from the person in possession, the rents of the property sold, or the value of the use and occupation thereof.

(b) Notwithstanding subdivision (a), when any rents or profits have been received by a purchaser or redemptioner pursuant to subdivision (a), the amounts of such rents or profits shall be a credit upon the amount required to be paid such person upon redemption from him. The person seeking to redeem may demand in writing a written and verified statement of the rents and profits received. Any disagreement concerning such rents and profits may be determined in the manner provided by Section 706.250.

(c) During the 12 months after the sale, the purchaser, from the time of sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, is entitled to enter the property during reasonable hours to repair and maintain the premises and is entitled to an order restraining waste on the property from the court which issued the execution on which the sale was based. Such order may be granted with or without notice in the discretion of the court. [It shall not be waste for the person entitled to possession during the period allowed for redemption to continue to use the property in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs of buildings thereon, or to use wood or timber on the property therefor, or for the repair of fences, or for fuel for his family while he occupies the property.]

Comment. Section 706.290 continues the substance of former Sections 706 and 707 and the second sentence of the first paragraph of former Section 702.

Subdivision (a) makes clear that the judgment debtor (or his successor in interest) is entitled to remain in possession of the property for a period of 12 months after the sale. See, e.g., First Nat'l Trust & Sav. Bank v. Staley, 219 Cal. 225, 25 P.2d 982 (1933). (Of course, if there is a tenant on the property under a lease which preceded the lien under which the property was sold, the purchaser at the sale acquires only the lessor's reversionary interest and his right to rents, and the tenant may remain in possession during the term of his lease.) However, the purchaser or current redemptioner is entitled to the rents from the property or the reasonable value of the use of the property. See Section 564(4) (receiver may be appointed to collect rents during redemption period).

Under subdivision (b), rents received by a purchaser or redemptioner are a credit on the amount which must be paid upon redemption from him. Former Section 707 provided a special procedure to resolve disputes concerning the existence and amount of such credit, but subdivision (b) simply incorporates the procedure provided by Section 706.250 for resolving

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similar disagreements as to the amounts required to be paid on redemption and does not extend the time for redemption where a dispute arises.

Subdivision (c) combines the substance of former Section 706 and the second sentence of former Section 702.

Note. The Comment to Section 706.290 is largely self-explanatory. We have placed the last sentence of subdivision (c) in brackets. This is an existing provision, but we do not think that it is entirely necessary or desirable. We would prefer to have the court determine on the particular facts what is and is not waste; e.g., can a judgment debtor cut down fine old shade trees out of spite but purportedly for firewood in these days of fuel shortages?

The most significant change in this section, we think, is the elimination of an extension of time for redemption when there is a dispute concerning rents. There is no extension under present law for similar disputes concerning the amount to be paid on redemption, and we do not see the need for an extension here. Of course, this is consistent with our belief that the period for redemption should be drastically curtailed.

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§ 706.300. Deed of sale

706.300. Twelve months after the sale, the purchaser, if no redemption has been made, or the last redemptioner, if a redemption has been made, shall be entitled to a deed of sale from the officer who conducted the sale.

Comment. Section 706.300 is based on the fourth paragraph of former Section 703. No change is intended by deletion of the word 'assignee': an assignee of the purchaser or last redemptioner is, of course, also entitled to a deed of sale.

CHAPTER 7. EXAMINATION OF JUDGMENT DEBTOR,
THIRD PERSON INDEBTED TO JUDGMENT DEBTOR,
AND ADDITIONAL WITNESSES

§ 707.110. Power of court commissioner and referee; qualifications of referee; disobedience of order of court commissioner or referee a contempt

707.110. (a) An order to appear and answer concerning property may be issued pursuant to Sections 707.120, 707.130, and 707.140 by a court commissioner.

(b) The examination proceedings authorized by Sections 707.120, 707.130, and 707.140 may be conducted by a court commissioner or a referee appointed by the court, and such officer may issue any order authorized by Section 707.150 or warrant authorized by Section 707.160 and shall have the same powers as the court to grant adjournments, to preserve order, and to subpoena witnesses to attend before him.

(c) Any referee appointed pursuant to the provisions of this chapter shall be an attorney duly licensed to practice law in all the courts of this state at least five years prior to the date of such appointment.

(d) If any person disobeys an order of a court commissioner or referee, properly made pursuant to this chapter, such person may be punished by the court for a contempt.

Comment. Section 707.110 reenacts the substance of portions of several former sections and supplements Sections 259 and 259a (court commissioners) and 639 (reference). Subdivision (a) codifies a rule stated in Lewis v. Neblett, 188 Cal. App.2d 290, 10 Cal. Rptr. 441 (1961). Insofar as subdivision (b) authorizes a court commissioner or referee to preside over an examination proceeding, it continues the authority provided by former Sections 714, 715, and 717. See also Sections 259 and 259a. The authority of such officer to issue an order requiring the application of property to the satisfaction of a judgment or forbidding transfer of property (Section 707.150) continues authority provided by former Sections 719 and 720. The authority of such

officer to issue a warrant to compel the appearance of a person and to control the proceeding generalizes the authority provided by former Section 723. See also former Sections 714, 715, and 717.

Subdivision (c) makes applicable to all referees the qualifications formerly required of referees appointed in a county or city and county having a population of one million or more. Compare former Section 723. See also Govt. Code § 70142.

Subdivision (d) reenacts the substance of former Section 721. It should be noted that, although a court commissioner or referee may issue a warrant of attachment pursuant to Section 707.150, only a judge of the court may punish by contempt a failure to appear.

Note. We believe that this section preserves the existing law and its division of authority between court (judge), court commissioner, and referee.

§ 707.120. Examination of judgment debtor: order; frequency

707.120. (a) Whenever an execution against property of a judgment debtor may properly be issued, whether or not an execution has been issued or returned, the judgment creditor is entitled to an order from the court requiring the judgment debtor to appear and answer concerning his property before the court at a time and place specified in the order.

(b) Notwithstanding subdivision (a), a judgment debtor may not be required to appear and answer more frequently than every four months. However, nothing in this section shall be construed to restrict the rights granted by Section 707.130,

Comment. Section 707.120 reenacts the substance of the first paragraph of former Section 714. Although Section 707.120 no longer specifically so provides, an order requiring a judgment debtor to appear for an examination may still be issued against any one (or more) of several judgment debtors. Moreover, Section 707.110 continues the authority for a court commissioner or other appointed officer both to issue an order requiring an appearance and to preside over the examination itself. See Section 707.110 and the Comment thereto. Compare

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former Section 714. Finally, the last paragraph of former Section 714 provided for the arrest of the judgment debtor where he failed to appear in compliance with an order issued under Section 714. This provision has been continued by Section 707.160 (arrest of person ordered to appear under this chapter).

Note. New York procedure provides for issuance of one or more of the following: (1) a subpoena requiring attendance for the taking of a deposition; (2) a subpoena duces tecum requiring the production of books or documents; or (3) an information subpoena (basically written interrogatories). See N.Y.C.P.L.R. §§ 5223-5224. In short, the New York procedure has attempted to remove any vestiges of a separate proceeding and is now analogous to ordinary prejudgment discovery procedures. We have not attempted to pursue such a course but offer the idea for your consideration.

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§ 707.130. Proceedings in aid of execution; examination; arrest of debtor; undertaking or imprisonment

707.130. (a) After the issuance of an execution against property of the judgment debtor, and upon proof by affidavit or otherwise to the satisfaction of the court that the judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, the court may, by an order, require the judgment debtor to appear at a specified time and place before the court to answer concerning the same.

(b) Instead of the order requiring the attendance of the judgment debtor, the court may, upon affidavit of the judgment creditor, his agent, or attorney, if it appears to him that there is danger of the debtor's absconding, order the sheriff, or a constable, or marshal to arrest the debtor and bring him before the court. Upon being brought before the court, the judgment debtor may be ordered to enter into an undertaking, with sufficient sureties, that he will attend from time to time before the court as may be directed during the pendency of proceedings and until the final determination thereof and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison.

Comment. Section 707.130 reenacts the substance of a portion of former Section 715. The authority for a commissioner or other appointed officer both to issue an order requiring an examination and to preside over the examination itself is continued in Section 707.110. The authority of the court to order the application of property of the judgment debtor toward the satisfaction of the judgment is continued in Section 707.150.

Note. We have retained subdivision (b) only for purposes of discussion. This provision was considered in connection with the civil arrest recommendation, but it was decided then to take no action until the execution topic was taken up. The staff recommends that subdivision (b) now be deleted. We believe that the contempt power is an adequate sanction for the protection of the judgment creditor and that the reasons which supported the repeal of the civil arrest remedy generally are also applicable here. See Recommendation and Study Relating to Civil Arrest, 11 Cal. L. Revision Comm'n Reports 1, 27-37 (1973). See also Section 707.160 (arrest of person ordered to appear under this chapter).

§ 707.140. Examination of debtor of judgment debtor [; exception for spouse of debtor]

707.140. After the issuance of an execution against property of the judgment debtor, and upon proof by affidavit or otherwise, to the satisfaction of the court, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars (\$50), the court may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place before the court to answer concerning the same. [The spouse of a judgment debtor to the extent provided by Sections 970 and 971 of the Evidence Code may not be required to so testify if there has not been a waiver of such provisions in the action giving rise to the judgment.]

Comment. Section 707.140 reenacts the substance of the first sentence of former Section 717. Although Section 707.140 no longer specifically so provides, an order requiring the appearance of a debtor of one (or more) of several judgment debtors may still be issued. Moreover, Section 707.110

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continues the authority for a court commissioner or other appointed officer both to issue an order requiring the appearance and to preside over the examination itself. See Section 707.110 and the Comment thereto.

[The second sentence of former Section 717 has been deleted; however, this works no change in the law. Evidence Code Sections 970 and 971 provide that a married person has a privilege not to testify or even be called to testify against his spouse in any proceeding. These privileges apply as well in the proceedings under this chapter unless, of course, the privilege has been waived earlier in the action giving rise to the judgment. See Evid. Code § 973 and Comment thereto.]

The last paragraph of former Section 717 provided for the arrest of a person where he failed to appear in compliance with an order issued under Section 717. This provision has been continued by Section 707.160.

Note. The second sentence of former Section 717 was only enacted in 1972. However, we believe that the matter can be adequately covered by a Comment. Is this approach satisfactory?

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§ 707.150. Order applying property toward satisfaction of judgment

707.150. (a) After an examination pursuant to Section 707.120, 707.130, or 707.140, the court may order any property of the judgment debtor, not exempt from execution, in the hands of the debtor or any other person or any debt due to the judgment debtor, to be applied toward the satisfaction of the judgment.

(b) Notwithstanding subdivision (a), if it appears that a person or corporation, alleged to have property of the judgment debtor or to be indebted to him, claims an interest in the property adverse to the judgment debtor or denies the debt, the court may not order that such interest or alleged debt be applied toward the satisfaction of the judgment, but the court may, by order, forbid a transfer or other disposition of such interest or debt until an action can be commenced by the judgment creditor pursuant to Section 708.110.

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Comment. Section 707.150 reenacts the substance of former Section 719 and a portion of former Section 720. Although Section 707.150 no longer refers specifically to referees, the orders authorized by this section may be made by a referee. See Section 707.110 and Comment thereto.

Note. This section provides only for orders after examination. Former law did not provide specifically for orders restraining transfer of property pending the examination proceeding. Where a writ of execution has been levied on property, the levy would bind the property; however, a levy will not always have been made, and we wonder whether specific authority for a temporary restraining order should be provided. Compare N.Y.C.P.L.R. § 5222 (T.R.O. issued by clerk or attorney for judgment creditor himself!).

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§ 707.160. Arrest of person ordered to appear under this chapter

707.160. If a person ordered to appear pursuant to Section 707.120, 707.130, or 707.140 fails to appear, and if the order requiring his appearance has been served by a levying officer or some person specially appointed by the court in the order, the court may, pursuant to a warrant, have such person brought before the court to answer for such failure to appear.

Comment. Section 707.160 reenacts the substance of the last paragraph of former Section 714 and former Section 717. [It also supersedes the authority to arrest the judgment debtor on the ex parte application of the judgment creditor which was provided by the last three sentences of former Section 715.]

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§ 707.170. Examination; attendance outside county of residence or place of business; tender of mileage fees; costs

707.170. (a) Neither a judgment debtor nor a debtor of a judgment debtor shall be required to attend before a court located outside of the county in which he resides or in which he has a place of business unless the distance is less

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than 150 miles from his place of residence or his place of business to such court.

(b) No process to require the attendance, pursuant to this chapter, of a debtor of a judgment debtor shall be effective unless, at the time of service of process, the person serving it tenders to such person mileage fees in the amount of fifteen cents (\$0.15) per mile necessary to be traveled, one way, from such person's residence to the court. Such mileage fees shall be an item of costs chargeable to the judgment debtor, and the court may, pursuant to Section 707.150, order the application of any property of the judgment debtor to the satisfaction of such costs.

Comment. Section 707.170 is substantively identical to former Section 717.1.

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§ 707.180. Supplemental proceedings in other counties

707.180. When any judgment debtor, or any person or corporation or officer or member of such corporation, does not reside or have a place of business in the county where the judgment roll is filed, or where the judgment is entered in the docket in the justice court, an order authorized to be made under any of the provisions of this chapter may be made by any court of similar jurisdiction of the county where such judgment debtor or other person resides or has a place of business or, if there be no court of similar jurisdiction in such county, by a court of higher jurisdiction therein, upon filing with the clerk or judge of said court an abstract of the judgment, in the form prescribed by Section 674 and upon presenting to such court an affidavit showing the existence of the facts required to be shown herein. At the time of filing such abstract, there shall be paid to such clerk or judge, as

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and for a filing fee, the sum of four dollars (\$4) when filed in a justice court or the sum of six dollars (\$6) when filed in a superior or municipal court.

Comment. Section 707.180 is substantively identical to former Section 722.

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§ 707.190. Witnesses

707.190. Witnesses may be required to appear and testify before the court in any proceeding under this chapter in the same manner as upon the trial of an issue.

Comment. Section 707.190 is substantively identical to former Section 718. Although Section 707.190 no longer refers specifically to referees, the proceedings authorized by this chapter may be conducted by such officers. See Section 707.110 and Comment thereto.

CHAPTER 8. CREDITOR'S SUIT AGAINST THIRD PERSON

§ 708.110. Liability of garnishee; enforcement by suit

708.110. (a) As used in this section, 'obligor' means a person who has in his possession personal property belonging to a judgment debtor, an account debtor of a judgment debtor, or a person obligated to a judgment debtor on a negotiable instrument.

(b) An obligor is liable to the judgment creditor for the value of the judgment debtor's interest in the property held by the obligor or for the amount owed to the judgment debtor at the time of service of a writ of execution upon him. Such liability continues until the execution is released or discharged or until the property is delivered or payment of the amount owed is made to the levying officer.

(c) If the obligor's liability still continues under subdivision (b) and if the obligor admits his possession of property belonging to the judgment debtor or his indebtedness to the judgment debtor, the judgment creditor may bring an action to enforce the obligor's liability at any time. If a garnishee or obligor denies, in whole or in part, his possession of property belonging to the judgment debtor or his indebtedness to the judgment debtor, or if a garnishee fails to provide the memorandum required by Section 702.140, the judgment creditor may bring an action against the garnishee or obligor only if the obligor's liability still continues under subdivision (b) and if at the time the action is brought the judgment debtor could have maintained such action. The judgment debtor shall be joined in any action under this subdivision brought by the judgment creditor against a garnishee or obligor. The period between the date of the service of the writ of execution and the date that a garnishee provides the memorandum

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required by Section 702.140 is not part of the time limited for the commencement of an action.

Note. Section 708.110 is based on Section 488.550 of the prejudgment attachment recommendation. We had originally planned on something more for this chapter; we do not want to have a single-section chapter and so we plan to incorporate this section into Chapter 7 the next time we revise these materials.

CHAPTER 9. THIRD-PARTY CLAIMS; UNDERTAKINGS

Article 1. General Provisions§ 709.110. Application of definitions; definitions

709.110. (a) Unless the provision or context otherwise requires, the definitions provided in this section govern the construction of this chapter.

(b) "Creditor" means the person in whose favor the writ runs.

(c) "Debtor" means the judgment debtor whose property has been levied upon.

(d) "Secured party" means a person holding a perfected nonpossessory security interest under Division 9 (commencing with Section 9101) of the Commercial Code.

(e) "Third person" includes both an unsecured third person and a secured party.

Comment. Section 709.110 defines certain terms as they are used in this chapter. The definition of "secured party" as one holding a perfected security interest reflects the substitution of secured transactions for the former security devices of conditional sales and chattel mortgages referred to in former Section 689b. See Com. Code §§ 1201(37, 9101 et seq.

The general term "third person" reflects the use in this article of the same procedures by both secured and unsecured third persons. Formerly, unsecured third persons pressed their claims under one section (former Section 689), and secured parties pressed their claims under another (former Section 689b).

§ 709.120. Liability of levying officer

709.120. The levying officer shall not be liable for damages to the creditor or to any third person for any action taken in accordance with the provisions of this chapter.

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Comment. Section 709.120 is based on the second sentence of the sixth paragraph of former Section 689 and the third sentence of subdivision (9) of former Section 689b.

Note. We have preserved this section here in this form as a temporary measure. We have some doubt whether the provision is necessary and, if it is, we may suggest that it be generalized so that it applies throughout this title.

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§ 709.130. General provisions relating to undertakings

709.130. The provisions of Article 1 (commencing with Section 489.010) of Chapter 9 of Title 6.5 shall apply to any undertaking given or sought to be given under this chapter.

Comment. Section 709.130 incorporates by reference the general provisions relating to undertakings in attachment proceedings.

Note. This section incorporates provisions from the Commission's recommendation relating to prejudgment attachment; this, of course, assumes the enactment of that recommendation. If that recommendation is not enacted, we can set forth the pertinent provisions in this title. It is also probable that we will relocate this section in the first chapter and make it applicable to the title generally.

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§ 709.140. Third-party claims

709.140. Where a warrant is issued by the State of California, or a department or agency thereof, pursuant to Section 1785 of the Unemployment Insurance Code or Section 6776, 7881, 9001, 10111, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code, for the collection of a tax liability owed to the state, a department or agency thereof, the procedures provided by this chapter shall be applicable to third-party claims; and the proceedings provided may be held by the superior court of the county, or city and county, in which the property levied upon is located.

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Comment. Section 709.140 continues the substance of former Section 689d.

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Article 2. Third-Party Claims

§ 709.210. Manner of making third-party claims

709.210. Any third person may claim an interest in any personal property levied upon under a writ of execution by serving upon the levying officer a verified written claim, together with a copy thereof, which contains all of the following:

(a) A description of the interest claimed including a statement of the facts upon which the interest is based.

(b) A statement of the reasonable value of the interest claimed or, in the case of a security interest, a statement of the total amount due to the secured party under the security agreement with interest to date of tender.

(c) The address in this state to which notices to the third person may be mailed.

Comment. Section 709.210, together with Sections 709.220 and 709.230, combines and continues the substance of the first paragraph of former Section 689 and the first sentence of subdivision (2) of former Section 689b.

This section uses the terminology relating to secured transactions which has replaced terms such as chattel mortgage and conditional sale. Hence, "seller or mortgagee" in former Section 689b(2) is now "secured party." See Section 709.140; Com. Code §§ 1201(37), 910i et seq. Subdivision (b) requires the secured party to state in his claim the total amount due whereas subdivision (2) of former Section 689b called for a statement of amounts due or to accrue under the contract or mortgage. This change reflects the policy that the secured party should be able to claim only what is due, not what is to accrue. However, if the security agreement

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contains an acceleration clause which comes into effect when levy occurs, the entire amount will be due under this section. See also Section 709.250(b) and Comment.

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§ 709.220. Levying officer's demand for undertaking or deposit

709.220. (a) Not later than five days after service upon him of the claim provided in Section 709.210, the levying officer shall send to the creditor by registered or certified mail both of the following:

(1) A copy of the third-party claim.

(2) A demand for either the amount of the value of the interest claimed plus interest due to the date of tender or an undertaking as provided in Section 709.270.

(b) The officer shall send the demand notwithstanding any defect, informality, or insufficiency of such claim.

Comment. Subdivision (a) of Section 709.220 continues portions of the first paragraph of former Section 689 and subdivision (3) of former Section 689b. See also Comment to Section 709.210. The alternative of giving an undertaking or making a deposit found in subdivision (3) of former Section 689b is continued and expanded to apply to all third-party claims. The creditor may, of course, deposit money in lieu of an undertaking pursuant to Section 1054a.

Subdivision (b) continues the substance of the first sentence of the sixth paragraph of former Section 689 and the second sentence of subdivision (2) of former Section 689b.

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§ 709.230. Creditor's undertaking or deposit; release of levy

709.230. (a) Not later than 10 days after a demand is sent pursuant to Section 709.220, the creditor shall deposit the amount demanded or file an undertaking pursuant to Section 709.270.

(b) If the creditor has not complied with subdivision (a) within 10 days after the officer sends his demand under Section 709.220, the levying officer shall release the property unless otherwise ordered by the court pursuant to Section 709.340.

Comment. Section 709.230 continues and combines the substance of a portion of the first paragraph of former Section 689 and subdivision (4) of former Section 689b. However, Section 709.230 increases the time within which the creditor must either give an undertaking or make a deposit from five to 10 days.

§ 709.240. Payment to third person

709.240. (a) Within five days after the levying officer receives any deposit under Section 709.230, he shall tender or pay it to the third person. If the deposit is made by check, the levying officer shall be allowed a reasonable time for the check to clear.

(b) If the tender is accepted, all right, title, and interest of the third person in the property levied upon for which payment is made shall pass to the creditor making the payment.

(c) If the tender is refused, the amount thereof shall be deposited with the county treasurer, payable to the order of the third person.

Comment. Section 709.240 is based on subdivisions (5)-(7) of former Section 689b; however, this section now permits the creditor to acquire the interest of both an unsecured third person as well as a secured party.

§ 709.250. Delay of sale until deposit or undertaking: interest of third person in property sold

709.250. (a) If a third-party claim is made pursuant to Section 709.210 prior to sale under execution, sale shall not be permitted without the written consent of such third person until a payment or deposit covering the third-party claim is made pursuant to subdivision (b) or (c) of Section 709.240 or the undertaking provided by Section 709.270 is given. After such payment or deposit is made or undertaking is given, the officer shall execute the writ in the manner provided by law unless the third person gives an undertaking to release the property as provided in Article 5 (commencing with Section 709.510). Property shall be sold free of all liens or claims of the third person for which a payment or deposit is made or undertaking is given.

(b) If no third-party claim is made pursuant to Section 709.210 prior to sale under execution, the property sold remains subject to the interest of any third person except as otherwise provided by Article 4 (commencing with Section 709.410).

Comment. Subdivision (a) of Section 709.250 is based on the seventh paragraph of former Section 689 and parts of subdivisions (8) and (9) of former Section 689b. But see Section 709.340. The last sentence of subdivision (a) makes clear that property is sold free of all liens or claims for which a payment or deposit is made or undertaking is given. However, where the interest of a secured party has not fully accrued--e.g., where there is no acceleration clause in the security agreement and, hence, the interest is not paid off completely--his interest in the collateral will continue. Moreover, a third person need not generally press his claim immediately if he does not choose to. Subdivision (b) makes clear that, if no claim is presented before sale, the property is sold subject to the third person's interest unless the creditor has resorted to the Article 4 procedure. See Section 709.410 et seq.

§ 709.260. Disposition of released property when debtor cannot be found

709.260. When property is released either because the creditor fails to make a deposit or furnish and maintain a sufficient undertaking or because the third person provides a sufficient undertaking pursuant to Article 5 (commencing with Section 709.510) and the officer is unable to find the debtor to deliver the property to him, the levying officer shall notify the debtor in writing at his last known address. If the debtor fails to demand the property from the officer within 10 days thereafter, the levying officer shall deliver the property to the third person.

Comment. Section 709.260 continues the substance of former Section 689.5.

§ 709.270. Creditor's undertaking: reliance on registered ownership

709.270. (a) Where the creditor provides an undertaking in response to the demand made pursuant to Section 709.220, such undertaking shall be made in favor of the third person in an amount equal to double the value of the interest claimed by such third person unless he agrees in writing to a lesser amount and shall indemnify the third person against any loss, liability, damages, costs, and attorney's fees by reason of such levy or its enforcement.

(b) When the property levied upon is required by law to be registered or recorded in the name of the owner and it appears that at the time of the levy the debtor was the registered or record owner of such property and the creditor caused the levy to be made and maintained in good faith and in reliance upon such registered or recorded ownership, there shall be no liability on the undertaking to the third person by the creditor, his sureties, or the levying officer for the levy itself.

Comment. Section 709.270 continues and combines the provisions regarding undertakings by the creditor under the first and second paragraphs of former Section 689 and subdivision (9) of former Section 689b. It should be noted that, where levy has been made upon a good faith reliance upon the registered or recorded ownership, there is no liability for the levy; but, after the third person makes a proper claim, his interest must be recognized and a failure to deal properly with such interest may result in liability to him. For provisions relating to undertakings generally, see Section 709.130.

Article 3. Hearing on Third-Party Claims

§ 709.310. Application for hearing; jurisdiction; stay

709.310. (a) Not later than 15 days after the delivery of the third-party claim to the levying officer, whether or not an undertaking is given or a deposit is made pursuant to Section 709.230, either the creditor or the third person may request a hearing in the court from which the writ issued to determine the proper disposition of the property which is the subject of the claim.

(b) The court from which the writ issued shall have original jurisdiction and shall set the matter for hearing within 20 days from the filing of the request. The court may continue the matter for good cause shown.

Comment. Subdivision (a) of Section 709.310 continues the substance of the first two sentences of the eighth paragraph of former Section 689 and the first two sentences of subdivision (10) of former Section 689b. Subdivision (b) continues the substance of the third and fifth sentences of the eighth paragraph of former Section 689 and the second and fourth sentences of subdivision (10) of former Section 689b.

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§ 709.320. Notice of hearing

709.320. Not less than 10 days before the day set for the hearing, the court clerk shall send notice of the time and place of the hearing to the creditor, the officer, the debtor, and the third person by first-class mail, postage prepaid. The notice shall state that the purpose of the hearing is to determine the proper disposition of the property which is the subject of the third-party claim.

Comment. Section 709.320 continues the substance of the fourth sentence of the eighth paragraph of Section 689. See also the second sentence of subdivision (10) of former Section 689b.

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§ 709.330. Pleadings; burden of proof; dismissal

709.330. (a) The levying officer shall file with the court the third-party claim delivered to him under Section 709.210. The third-party claim shall constitute the pleading of the third person, subject to the power of the court to permit an amendment in the interest of justice. The claim shall be deemed controverted by the creditor.

(b) Whenever the request for the hearing is made by the third person, neither the request nor the proceedings pursuant thereto may be dismissed without the consent of the creditor.

(c) At the hearing, the third person shall have the burden of proof as to the nature and extent of his interest.

Comment. Subdivision (a) continues the substance of the eleventh sentence of the eighth paragraph of former Section 689. Subdivision (b) continues the substance of the sixth sentence of that paragraph. Subdivision (c) continues the substance of the tenth sentence of that paragraph. See also the second sentence of subdivision (10) of former Section 689b.

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§ 709.340. Sale of perishable property; stay of execution

709.340. (a) Notwithstanding Section 709.250, the court for good cause shown:

(1) May order the sale of any perishable property held by the levying officer. The proceeds of such sale shall be deposited with the court until the proceedings under this article are concluded.

(2) May stay the release of the property or stay any sale under execution or restrain any transfer or other disposition of the property involved until these or other proceedings are concluded.

(b) The orders made pursuant to subdivision (a) may be modified or vacated by the court at any time prior to the termination of such proceedings upon such terms as may be just.

Comment. Section 709.340 continues the substance of the seventh, eighth, and ninth sentences of the eighth paragraph of former Section 689. See also the second sentence of subdivision (10) of former Section 689b.

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§ 709.350. Jury trial

709.350. Nothing in this article shall be construed to deprive any person of the right to a jury trial in any case where, by the Constitution, such right is given, but a jury trial shall be waived in any such case in a like manner as in the trial of an action.

Comment. Section 709.350 is substantively identical to the twelfth sentence of the eighth paragraph of former Section 689. See also the second sentence of subdivision (10) of former Section 689b.

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§ 709.360. Disposition of property after hearing

709.360. At the conclusion of the hearing, the court shall order such disposition of the property, and the proceeds of any property, as it deems proper. Such order shall be conclusive between the parties to the proceeding.

Comment. Section 709.360 continues the substance of the fourteenth and fifteenth sentences of the eighth paragraph of former Section 689 and the third sentence of subdivision (10) of former Section 689b.

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§ 709.370. Findings

709.370. No findings shall be required in any proceedings under this article.

Comment. Section 709.370 continues the rule under the thirteenth sentence of the eighth paragraph of former Section 689. See also the second sentence of subdivision (10) of former Section 689.

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§ 709.380. Appeal

709.380. An appeal may be taken from any judgment determining title under Section 709.360 in the manner provided for appeals from the court in which the proceeding is had.

Comment. Section 709.380 continues the rule under the seventeenth sentence of the eighth paragraph of former Section 689.

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§ 709.390. Relevy; additional writs

709.390. If property has been released pursuant to Section 709.230 and the final judgment is in favor of the creditor, the officer shall relevy upon the property if the writ under which the original levy was made is still in his hands; or, if the writ shall have been returned, another writ may be issued on which the officer may relevy upon such property.

Comment. Section 709.390 continues the substance of the sixteenth sentence of the eighth paragraph of former Section 689 and the fifth sentence of subdivision (10) of former Section 689b.

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Article 4. Levying Officer's Demand
for Third-Party Claim

§ 709.410. Levying officer's demand for third-party claim

709.410. (a) Upon receipt of the creditor's written request, the levying officer shall serve a written demand on any third person that the latter make the claim provided in Section 709.210.

(b) If the third person does not serve such claim within 30 days after the service of the demand, he shall be deemed to have waived any interest in the property levied upon.

Comment. Section 709.410 is based on a procedure provided under subdivision (8) of former Section 689b by which a creditor may demand that a third person file his claim or waive any interest in the property levied upon. It should be noted that this is a complete waiver of any interest. The third person must claim his interest in the property even though it is contingent or, in the case of a security interest, there are no amounts currently due. Subdivision (a) clarifies prior law by providing that the officer's demand for a third-party claim is to be made on the creditor's request; under former law, it was unclear who instigated the procedure.

§ 709.420. Service of demand for claim

709.420. The demand for a third-party claim shall be personally served in the manner provided for the service of summons and complaint by Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of this part. The demand may be served by the levying officer or for him by any sheriff, marshal, or constable whose office is closer to the place of service. The fees and mileage of the latter shall be paid out of the prepaid fees in the possession of the levying officer.

Comment. Section 709.420 makes clear that the demand for a third-party claim must be served in the same manner as a summons and complaint. The second and third sentences of this section continue the substance of the second sentence of subdivision (8) of former Section 689b.

Article 5. Third-Person Undertaking
to Release Property

§ 709.510. Third-party undertaking to obtain release of property

709.510. Where personal property has been levied upon under a writ issued on a judgment for money, any third person may give an undertaking, as provided in Section 709.520, to obtain the release of the personal property described in the undertaking from the lien and levy of such execution.

Comment. Section 709.510 continues the substance of former Section 710b. Although Section 709.510 does not specifically require that the third person be a claimant to the property, such is the practical result since, if it is determined that the debtor has any interest in the property levied upon, the third person and his sureties will be liable to the creditor for the value of such interest. See Section 709.520.

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§ 709.520. Contents of undertaking

709.520. The undertaking given pursuant to Section 709.510 shall be in an amount equal to the lesser of (1) double the value of the property levied upon, (2) double the amount for which the execution was levied, or (3) the amount agreed to in writing by the creditor. The undertaking shall provide that, if the debtor is finally adjudged to have had an interest in the property which was levied upon, the third person shall pay in satisfaction of the judgment on which execution was issued a sum equal to the value of such debtor's interest.

Comment. Section 709.520 is based on former Section 710c.

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§ 709.530. Filing of undertaking

709.530. The undertaking given pursuant to Section 709.510 shall be filed in the action and with the court from which the writ under which levy was made was issued. Notice of the filing of the undertaking shall be served on the creditor and the levying officer.

Comment. Section 709.530 continues the substance of former Section 711.

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§ 709.540. Release by levying officer

709.540. Unless otherwise ordered by the court in which the undertaking given pursuant to Section 709.510 is filed, 10 days after receipt of the notice of the filing of the undertaking the levying officer shall release the personal property described in the undertaking from the lien and levy of execution in the manner provided by Section 488.560.

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Comment. Section 709.540 is based on a portion of the seventh paragraph of former Section 689.

CHAPTER 10. LIABILITY FOR WRONGFUL EXECUTION

§ 710.110. Acts constituting wrongful execution

710.110. A wrongful execution consists of any of the following:

(a) The levy of a writ of execution on property possessing a value greatly in excess of the amount required to satisfy the judgment on which the execution is issued except where the judgment creditor shows that he reasonably believed that all other property of the judgment debtor was exempt from or not subject to execution.

(b) The levy of a writ of execution on property of a judgment debtor which is "exempt without making a claim of exemption."

(c) The levy of a writ of execution on property of a person other than the judgment debtor except that it is not a wrongful execution 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 judgment creditor made the levy in good faith and in reliance on the registered or recorded ownership.

Note. Sections 710.110 through 710.160 are obviously based on the comparable provisions included in the prejudgment attachment recommendation. We are not so sure that in this area any such sections are necessary or desirable; however, we have included them to stimulate and serve as a focus for discussion.

§ 710.120. Liability for wrongful execution

710.120. The liability of a judgment creditor for causing a wrongful execution includes both of the following:

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(a) All damages proximately caused to the judgment debtor or any other person by the wrongful execution, whether direct or consequential.

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

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§ 710.130. Procedure for recovery for wrongful execution

710.130. (a) A judgment debtor may recover damages for execution by motion made in the court which issued the execution without necessity of an independent action.

(b) A motion under this section shall not be filed or notice served on the judgment creditor until after entry of the final judgment in the action for which damages are sought and the time for appeal from such judgment has expired or, if an appeal is filed, until such appeal is finally determined. The motion may not be filed or notice served more than one year after the levy upon which the claim is based.

(c) The judgment debtor may join in such motion any sureties on an undertaking for wrongful execution liability, and any judgment of liability shall bind the judgment creditor and sureties jointly and severally, but the liability of a surety is limited to the amount of the undertaking.

(d) The procedure for recovery of wrongful execution damages on motion of the judgment debtor shall be as provided in Section 1058a for recovery on an undertaking.

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§ 710.140. Setoff of wrongful execution recovery

710.140. The amount of any recovery for wrongful execution shall be

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offset insofar as possible against any unsatisfied amounts owed to the judgment creditor by the judgment debtor on the judgment in the action for which wrongful execution damages are awarded.

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§ 710.150. Recovery by third-party claimants

710.150. A person not originally a party to an action whose property is executed against is entitled to intervene in the action and to recover damages for wrongful execution to the same extent and in the same manner as a judgment debtor in the action. For this purpose, the person whose property is executed against shall be deemed to be the beneficiary of any undertaking given to permit execution against such property and shall have all rights of the beneficiary, including the right to recover such damages by using the procedure provided by Section 710.130.

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§ 710.160. Common law remedies not limited

710.160. Nothing in this chapter limits the right to recover for damages caused by an execution or order on any common law theory of recovery.

CHAPTER 11. EMPLOYEES' EARNINGS PROTECTION LAW

Article 1. Definitions

§ 711.010. Short title

711.010. This chapter shall be known and may be cited as the
"Employees' Earnings Protection Law."

Note. Our present plan is to incorporate here our wage garnishment recommendation in the form, and if and when, it is enacted by the Legislature. If it is not enacted, we will still need something to replace the present provision--Section 682.3. However, these issues we have chosen to defer.

APPENDIX I--CODE OF CIVIL PROCEDURE

SECTIONS 681-724e

681.

The party in whose favor judgment is given may, at any time within 10 years after the entry thereof, have a writ or order issued for the execution or enforcement of the judgment.

[§§ 701.120(a), 704.110]

If, after the entry of the judgment, the issuing of such writ or order is stayed or enjoined by any judgment or order of court, or by operation of law, the time during which it is so stayed or enjoined must be excluded from the computation of the 10 years within which execution or order may issue.

[§ 701.120(b)]

681a.

The court, or the judge thereof, may stay the execution of any judgment or order; provided, that no court shall have power, without the consent of the adverse party, to stay the execution of any judgment or order, the execution whereof would be stayed on appeal only by the execution of a stay bond, for a longer period than 10 days in justice courts, nor for a longer period than 30 days in other courts. If a motion for a new trial or for judgment notwithstanding the verdict is pending, execution may be stayed until 10 days after the determination thereof.

[§ 701.130]

682.

The writ of execution must be issued in the name of the people, sealed with the seal of the court, and subscribed by the clerk or judge, and be directed to the sheriff, constable, or marshal, and it must intelligibly refer to the judgment, stating the court, the county, and in municipal and justice courts, the judicial district, where the judgment is entered.

[§ 704.120(a)]

and if it be for money, the amount thereof, and the amount actually due thereon.

[§ 704.120(b)]

_____ and if made payable in a specified kind of money or currency, as provided in Section 667, the execution must also state the kind of money or currency in which the judgment is payable, and must require the officer to whom it is directed to proceed substantially as follows: [Not continued.]

1. If it be against the property of the judgment debtor, it must require such officer to satisfy the judgment, with interest, out of the personal property of such debtor, [§ 704.120(b)]

_____ or if it is against the earnings of such debtor, such levy shall be made in accordance with Section 682.3.

[Not continued. See Chapter 11 (commencing with Section 711.010).]

_____ and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the abstract of judgment was filed as provided in Section 674 of this code, or at any time thereafter.

[§§ 704.120(b), 704.210]

2. If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants, or trustees, it must require such officer to satisfy the judgment, with interest, out of such property.

[Not continued.]

3. If it be issued on a judgment made payable in a specified kind of money or currency, as provided in Section 667, it must also require such officer to satisfy the same in the kind of money or currency in which the judgment is made payable, and such officer must refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment debtor, he must refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. Any such officer collecting money or currency in the manner required by this chapter, must pay to the plaintiff or party entitled to recover the same, the same kind of money or currency received by him, and in case of neglect or refusal to do so, he shall be liable on his official bond to the judgment creditor in three times the amount of the money so collected.

[Not continued.]

4. If it be for the delivery or the possession of real or personal property, it must require such officer to deliver the possession of the same, describing it, to the party entitled thereto, and may at the same time require such officer to satisfy any cost, damages, rents, or profits recovered by the same judgment, out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered to be specified therein if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of the real property, as provided in the first subdivision of this section. [§ 704.120(c)]

682a.

If the debt, credit, or other personal property sought to be levied upon is (a) any bank account, or interest therein, not standing in the name of the judgment debtor or judgment debtors or standing in the name of such judgment debtor or judgment debtors and one or more other persons who are not judgment debtors, or (b) any savings and loan association share, investment certificate, or account, or interest therein, not standing in the name of the judgment debtor or judgment debtors or standing in the name of such judgment debtor or judgment debtors and in one or more other persons who are not judgment debtors, or (c) 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 or persons other than such judgment debtor or judgment debtors or rented by it to one or more such judgment debtors and to one or more other persons who are not judgment debtors, the following provisions of this section also shall be complied with; otherwise the levy shall not be effectual for any purpose and shall be disregarded. [§ 704.250(a)]

_____ The plaintiff shall provide and concurrently with the levy the sheriff, constable, or marshal shall deliver to such bank, trust company, savings and loan association, or safe deposit corporation a bond in an amount not less than twice the amount of the judgment indemnifying the person or persons, other than the judgment debtor or judgment debtors whose interest is sought to be levied upon, rightfully entitled to such debt, credit, or other personal property (which person or persons need not be named specifically in said bond but may be referred to generally in the same manner as in this sentence), against actual damage by reason of the taking of such debt, credit, or other personal property and assuring to such person or persons the return thereof to him or them upon proof of his or their right thereto. [§ 704.250(b)]

_____ Upon delivery to it of the afore-
said bond such bank, trust company, savings and loan association, or
safe deposit corporation shall immediately notify the person in whose
name such account stands, other than the judgment debtor, or the
person to whom such safe deposit box is rented, other than the judg-
ment debtor, by registered mail addressed to the last address of such
person known to such bank, trust company, savings and loan associa-
tion or safe deposit corporation of the fact of the service of said writ
and of the delivery to it of said bond. [§ 704.250(c)]

_____ From the time of said levy
and the delivery to it of said bond such bank, trust company, sav-
ings and loan association or safe deposit corporation shall not honor
a check or other order for the payment of money drawn against the
account or other credit so levied upon, such savings and loan associa-
tion shall not permit withdrawals in respect of the share, investment
certificate, or account so levied upon, and such bank, trust company,
savings and loan association or safe deposit corporation shall not per-
mit the removal of any of the contents of the safe deposit vault or
box levied upon for a period of fifteen (15) days from the mailing
of said notice or until the levy is sooner released. [§ 704.250(d)]

_____ After fifteen (15)
days from the making of said levy and the delivery of said bond, if
no proceedings excepting to the sufficiency of the sureties have been
commenced, or if such proceedings have been commenced, when the
sureties have justified, said bank, trust company, savings and loan as-
sociation or safe deposit corporation shall comply with the levy, un-
less it has been sooner released, and shall not be liable to any person
by reason of such compliance or by reason of the nonpayment of any
check or other order for the payment of money drawn against the
account or other credit so levied upon and presented while the levy
is in force or by reason, while the levy is in force, of refusal to pay
any withdrawal in respect of the share, investment certificate or ac-
count so levied upon, or by reason of the removal, pursuant to the
levy, of any of the contents of such safe deposit vault or box or by
reason of the refusal of such bank, trust company, savings and loan
association, or safe deposit corporation to permit access to such safe
deposit vault or box by the renter thereof. [§ 704.250(e)]

_____ The bond described above shall be executed by the judgment creditor or judgment creditors with two or more sufficient sureties. Exceptions to the sufficiency of the sureties may be taken by any person claiming to be the rightful owner of the debt, credit, or other personal property levied upon, in the same manner as that provided in Section 539 of this code with respect to sureties executing undertakings on attachment and when excepted to the sureties must justify in the same manner as that provided in Section 539.

[§ 704.250(f)]

_____ The bank, trust company, savings and loan association, or safe deposit corporation to whom any such bond is delivered shall deliver it as directed by the obligees thereof.

[Not continued.]

_____ Before giving access to any safe deposit vault or box the bank, trust company, savings and loan association, or safe deposit corporation may demand payment to it of all costs and expenses of opening the safe deposit vault or box and all costs and expenses of repairing any damage to the safe deposit vault or box caused by the opening thereof.

[Fin. Code § 1650]

682.1.

A writ of execution issued on a judgment for the recovery of money must be substantially in the following form:

(Title of Court)

(Number and abbreviated title of action)

The People of the State of California:

To the Sheriff, Constable or Marshal of
the _____ County of _____ Greeting:

On _____ a judgment was entered by the
above entitled court in the above entitled

* action in favor of _____ as judgment creditor
* and against _____ as judgment debtor
and said judgment was duly entered in (referring to where entered) for

** \$ principal,
** \$ attorney fees,
** \$ interest, and
** \$ costs, making a total amount of
** \$ the judgment as entered, and

Whereas, according to an affidavit and/or a memorandum of costs after judgment filed herein, it appears that further sums have accrued since the entry of judgment, to wit:

** \$ accrued interest, and
** \$ accrued costs, together with \$ _____ fee for the issuance of this writ, making a total of
** \$ _____ as accrued costs, accrued interest, and fees.

682.2.

Whenever a writ of execution is issued, the clerk, or, if there is no clerk, then the judge of the court, shall enter on the face of the writ the amounts of any costs and interest which have accrued from the date of entry of the judgment to the date of the issuance of the writ.

[§ 704.130(a)]

The amount of interest which has accrued from the date of entry of the judgment to the date of issuance of the writ of execution shall be entered on the face of the writ in a like manner to costs if the judgment creditor has filed an affidavit as to the amount of such interest at the time of the request for the issuance of the writ. The clerk shall also enter the amount of interest which accrues daily, from the date of issuance of the writ, on the amount due on the judgment as entered.

[§ 704.130(b)]

Interest, on the amount of the judgment remaining unpaid as shown on the writ, from the date of issuance of the writ to the date of levy of execution, shall be computed by the levying officer and this amount plus the commissions and costs of the levying officer shall be added to the net balance actually due on the date of the issuance of the writ, as stated therein, in determining the total amount to be satisfied by execution.

[§ 704.130(c)]

682.3.

(a) Whenever the levy of execution is against the earnings of a judgment debtor, the employer served with the writ of execution shall withhold the amount specified in the writ from earnings then or thereafter due to the judgment debtor and not exempt under Section 690.6, and shall pay such amount, each time it is withheld, to the sheriff, constable or marshal who served the writ. If such person shall fail to pay each amount to the sheriff, constable or marshal, the judgment creditor may commence a proceeding against him for the amounts not paid. The execution shall terminate and the person served with the writ shall cease withholding sums thereunder when any one of the following events takes place:

(1) Such person receives a direction to release from the levying officer. Such release shall be issued by the levying officer in any of the following cases:

- (a) Upon receipt of a written direction from the judgment creditor.
- (b) Upon receipt of an order of the court in which the action is pending, or a certified copy of such order, discharging or recalling the execution or releasing the property. This subdivision shall apply only if no appeal is perfected and undertaking executed and filed as provided in Section 917.2 or a certificate to that effect has been issued by the clerk of the court.
- (c) In all other cases provided by law.
- (2) Such person has withheld the full amount specified in the writ of execution from the judgment debtor's earnings.
- (3) The judgment debtor's employment is terminated by a resignation or dismissal at any time after service of the execution and he is not reinstated or reemployed within 90 days after such termination.
- (4) A period of 90 days has passed since the time such person was served with the writ of execution.
- (b) At any time after a levy on his earnings the judgment debtor may proceed to claim a full exemption of his earnings in accordance with the provisions of Sections 690.6 and 690.50. The exemption so claimed shall extend to any wages withheld pursuant to the levy of execution whether or not withheld after the claim of exemption is filed.
- (c) Subject to the provisions of Section 690.50, the sheriff, constable or marshal who serves the writ of execution and receives the amounts withheld from the judgment debtor's earnings, shall account for and pay to the person entitled thereto, all sums collected under the writ, less his lawful fees and expenses at least once every 30 days, and make return on collection thereof to the court.

[Not continued. See Chapter 11 (commencing with Section 711.010).]

683.

The execution may be made returnable, at any time not less than 10 nor more than 60 days after its receipt by the officer to whom it is directed, or, if the execution is upon the earnings of the judgment debtor, upon the termination of the levy of execution as provided in Section 682.3, to the court in which the judgment is entered. When the execution is returned, the clerk must attach it to the judgment roll, or the judge must make the proper entry in the docket.

[§ 704.260. See also Chapter 11 (commencing with Section 711.010).]

If an execution is returned unsatisfied, another may be afterward issued within the time specified in this code.

[§ 704.110(b)]

If property either personal or real be levied upon under such writ of execution but the sale thereunder be postponed beyond or not held within the return date after it is received by the officer to whom it was delivered and which has been returned to the clerk of the court in which the judgment is entered, upon request of the person in whose favor the writ runs the court may direct the clerk to redeliver said execution to the officer to whom it was directed in order to permit the officer to make an alias return of the proceedings of the sale or levy thereon as in the case of an original return of execution.

[§ 704.260(b)]

684.

When the judgment is for money, or the possession of real or personal property, the same may be enforced by a writ of execution; when the judgment requires the sale of property, the same may be enforced by a writ reciting such judgment, or the material parts thereof, and directing the proper officer to execute the judgment, by making the sale and applying the proceeds in conformity therewith;

[§ 701.110(a)]

_____ when the judgment requires the performance of any other act than as above designated, a certified copy of the judgment may be served upon the party against whom the same is rendered, or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the court.

[§ 701.110(b)]

684.1.

The sheriff, constable or marshal shall enforce a judgment for the possession of personal property in the manner prescribed by Section 517 or as otherwise prescribed by law; provided that when the execution requires the delivery of possession of property used as a dwelling, such as a house trailer, mobilehome, or boat, then the sheriff, constable or marshal shall, if the property be occupied place a keeper in charge of the property, at plaintiff's expense, for at least two (2) days, and at the expiration of said period shall remove its occupants and deliver possession to the plaintiff.

[§ 703.110]

687.

Where the execution is against the property of the judgment debtor, it may be issued to the sheriff, or any constable, or marshal of any county in the State.

[§ 704.150(a)]

Where it requires the delivery of real or personal property, it must be issued to the sheriff, or a constable, or marshal of the county where the property, or some part thereof, is situated.

[§ 704.150(b)]

If the judgment directs or authorizes the issuing of any process requiring the sale, or the delivery of possession of, or otherwise affecting specific real property, which is then, or subsequently becomes, a part of a county other than that in which such judgment was entered, such process may be issued to, and executed by, the sheriff, or any constable, or marshal of such other county, as to the property situate therein.

[§ 704.150(c)]

Executions may be issued to different counties.

[§ 704.150(d)]

688.

All goods, chattels, moneys or other property, both real and personal, or any interest therein, of the judgment debtor, not exempt by law, except as provided for in Section 690.6, and all property and rights of property seized and held under attachment in the action, are liable to execution.

[§ 705.010]

Shares and interests in any corporation or company, and debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be levied upon or released from levy in like manner as like property may be attached or released from attachment, except that a copy of the complaint in the action from which the writ issued need not accompany the writ;

[§ 704.240]

_____ provided, that no cause of action nor judgment as such, nor license issued by this state to engage in any business, profession, or activity shall be subject to levy or sale on execution.

[§ 705.020(a), (b)]

_____ Gold dust must be returned by the officer as so much money collected at its current value, without exposing the same to sale.

[Not continued.]

Until a levy, the property is not affected by the execution;

[§ 704.230]

but no levy shall bind any property for a longer period than one year from the date of the issuance of the execution,

[§ 704.270(a)]

_____ except a levy on the interests or claims of heirs, devisees, or legatees in or to assets of deceased persons remaining in the hands of executors or administrators, thereof prior to distribution and payment.

[§ 704.270(b)]

_____ However, an alias execution may be issued on said judgment and levied on any property not exempt from execution.

[Not continued. See §§ 704.110(b),
704.260(b).]

688.1.

(a) Except as provided for in subdivision (b), upon motion of a judgment creditor of any party in an action or special proceeding made in the court in which the action or proceeding is pending upon written notice to all parties, the court or judge thereof may, in his discretion, order that the judgment creditor be granted a lien upon the cause of action, and upon any judgment subsequently procured in such action or proceeding, and, during the pendency of such action, may permit such judgment creditor to intervene therein.

[§ 702.170(a)]

_____ Such judgment creditor shall have a lien to the extent of his judgment upon all moneys recovered by his judgment debtor in such action or proceeding and no compromise, settlement or satisfaction shall be entered into by or on behalf of such debtor without the consent of such judgment creditor, unless his lien is sooner satisfied or discharged.

[§ 702.170(b)]

_____ The clerk or judge of the court shall endorse upon the judgment recovered in such action or proceeding a statement of the existence of the lien, the date of the entry of the order creating the lien, and the place where entered, and any abstract issued upon the judgment shall contain, in addition to the matters set forth in Section 674 of the Code of Civil Procedure, a statement of the lien in favor of such judgment creditor.

[§ 702.170(c)]

(b) Nothing in this section shall be construed to permit an assignee by operation of law of a party to a personal injury action to acquire any interest in or lien rights upon any moneys recovered by such party for general damages.

[Not continued.]

689.

If tangible or intangible personal property levied on, whether or not it be in the actual possession of the levying officer, is claimed by a third person as his property by a written claim verified by his oath or that of his agent, setting out the reasonable value thereof, his title and right to the possession thereof and delivered, together with a copy thereof, to the officer making the levy,

[§ 709.210]

_____ such officer must release the property and the levy unless the plaintiff, or the person in whose favor the writ runs, within five days

[§§ 709.230, 709.270(a)]

_____ after written demand by such officer, made by registered or certified mail within five days after being served with such verified claim,

[§ 709.220(a)]

_____ gives such officer an undertaking executed by at least two good and sufficient sureties, in a sum equal to double the value of the property levied upon.

[§§ 709.230, 709.270(a)]

Such undertaking shall be made in favor of and shall indemnify such third person against loss, liability, damages, costs and counsel fees, by reason of such levy or such seizing, taking, collecting, withholding, or sale of such property by such officer;

[§ 709.270(a)]

_____ provided, however, that where the property levied upon is required by law to be registered or recorded in the name of the owner and it appears that at the time of the levy the defendant or judgment debtor was the registered or record owner of such property and the plaintiff, or the person in whose favor the writ runs, caused the levy to be made and maintained in good faith, and in reliance upon such registered or record ownership, there shall be no liability thereunder to the third person by the plaintiff, or the person in whose favor the writ runs, or his sureties, or the levying officer.

[§ 709.270(b)]

Exceptions to the sufficiency of the sureties and their justification may be had and taken in the same manner as upon an undertaking on attachment. If they, or others in their place, fail to justify at the time and place appointed, such officer must release the property and the levy; provided, however, that if no exception is taken within five days after notice of receipt of the undertaking, the third person shall be deemed to have waived any and all objections to the sufficiency of the sureties.

If objection be made to such undertaking, by such third person, on the ground that the amount thereof is not sufficient, or if for any reason it becomes necessary to ascertain the value of the property involved, the property involved may be appraised by one or more disinterested persons, appointed for that purpose by the court in which the action is pending or from which the writ issued, or by a judge thereof, or the court or judge may direct a hearing to determine the value of such property.

If, upon such appraisal or hearing, the court or judge finds that the undertaking given is not sufficient, an order shall be made fixing the amount of such undertaking, and within five days thereafter an undertaking in the amount so fixed may be given in the same form and manner and with the same effect as the original.

[§ 709.130]

111-

The officer making the levy may demand and exact the undertaking herein provided for notwithstanding any defect, informality or insufficiency of the verified claim delivered to him.

[§ 709.220(b)]

_____ Such officer shall not be liable for damages to any such third person for the levy upon, or the collection, taking, keeping or sale of such property if no claim is delivered as herein provided, nor, in any event, shall such officer be liable for the levy upon, or the holding, release or other disposition of such property in accordance with the provisions of this section.

[§ 709.120]

If such undertaking be given, the levy shall continue and such officer shall retain any property in his possession for the purposes of the levy under the writ;

[§ 709.250(a)]

_____ provided, however, that if an undertaking be given under the provisions of Section 710b of this code, such property and the levy shall be released.

[§ 709.540]

Whenever a verified third party claim is delivered to the officer as herein provided, upon levy of execution or attachment (whether any undertaking hereinabove mentioned be given or not), the plaintiff, or the person in whose favor the writ runs, the third party claimant, or any one or more joint third party claimants, shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining title to the property in question. Such hearing must be granted by the said court upon petition therefor, which must be filed within 15 days after the delivery of the third party claim to the officer.

[§ 709.310(a)]

_____ Such hearing must be had within 20 days from the filing of such petition, unless continued as herein provided.

[§ 709.310(b)]

_____ Ten days' notice of such hearing must be given to the officer, to the plaintiff or the person in whose favor the writ runs, and to the third party claimant, or their attorneys, which notice must specify that the hearing is for the purpose of determining title to the property in question; provided, that no such notice need to be given to the party filing the petition.

[§ 709.320]

_____ The court may continue the hearing beyond the said 20-day period, but good cause must be shown for any such continuance.

[§ 709.310(b)]

_____ Whenever the petition for such hearing is filed by the third party claimant; or by any one or more joint third party claimants, neither such petition nor proceedings pursuant thereto may be dismissed without consent of the plaintiff or the person in whose favor the writ runs.

[§ 709.330(b)]

_____ The court may order the sale of any perishable property held by such officer and direct the disposition of the proceeds of such sale. The court may, by order, stay execution sale, or forbid a transfer or other disposition of the property involved, until the proceedings for the determination of such title can be commenced and prosecuted to termination, and may require, as a condition of such order, such bond as the court may deem necessary.

[§ 709.340(a)]

_____ Such orders may be modified or vacated by the judge granting the same, or by the court in which the proceeding is pending, at any time prior to the termination of such proceedings, upon such terms as may be just.

[§ 709.340(b)]

_____ At the hearing had for the purpose of determining title, the third party claimant shall have the burden of the proof.

[§ 709.330(c)]

_____ The third party claim delivered to the officer shall be filed by him with the court and shall constitute the pleading of such third party claimant, subject to the power of the court to permit an amendment in the interest of justice, and it shall be deemed controverted by the plaintiff or other person in whose favor the writ runs.

[§ 709.330(a)]

_____ Nothing herein contained shall be construed to deprive anybody of the right to a jury trial in any case where, by the Constitution, such right is given, but a jury trial shall be waived in any such case in like manner as in the trial of an action.

[§ 709.350]

No findings shall be required in any proceedings under this section.

[§ 709.370]

_____ At the conclusion of the hearing the court shall give judgment determining the title to the property in question, which shall be conclusive as to the right of the plaintiff, or other person in whose favor the writ runs, to have said property levied upon, taken, or held, by the officer and to subject said property to payment or other satisfaction of his judgment. In such judgment the court may make all proper orders for the disposition of such property or the proceeds thereof.

[§ 709.360]

_____ If the property or levy shall have been released by the officer for want of an undertaking, and final judgment shall go for the plaintiff or other person in whose favor the writ runs, the officer shall retake or levy upon the property on such writ if the writ is still in his hands, or if the writ shall have been returned, another writ may be issued on which the officer may take or otherwise levy upon such property.

[§ 709.390]

An appeal lies from any judgment determining title under this section, such appeal to be taken in the manner provided for appeals from the court in which such proceeding is had.

[§ 709.380]

689a.

Personal property in possession of the buyer under an executory agreement of sale and property on which there is a chattel mortgage may be taken under attachment or execution issued at the suit of a creditor of the buyer or mortgagor, notwithstanding any provision in the agreement or mortgage for default or forfeiture in case of levy or change of possession.

[Not continued. See Com. Code § 9311.]

689b.

(1) Where the property levied upon is a vehicle or a vessel required to be registered with the Department of Motor Vehicles, the officer shall forthwith determine from such department the name and address of the legal owner of the vehicle or vessel and shall notify any such legal owner who is not also the registered owner of such vehicle or vessel of the levy by registered mail or certified mail or personal service.

[§§ 488.350(c), 704.240]

(2) A seller or mortgagee may file with the officer levying on personal property a verified written claim, together with a copy thereof, containing a detailed statement of the sales contract or mortgage and the total amount of sums due or to accrue to him under the contract or mortgage, above setoffs, with interest to date of tender, and also stating therein his address within this state for the purpose of permitting service by mail upon him of any notice in connection with said claim.

[§ 709.210]

_____ The officer making the levy may demand and exact the payment or undertaking herein provided for, notwithstanding any defect, informality or insufficiency of the verified claim delivered to him.

[§ 709.220(b)]

(3) Within five days after being served with such verified claim the officer levying on such property must make demand by registered mail or certified mail on the plaintiff or his attorney for the amount of the claimed debt and interest due to date of tender or the delivery to the officer of an undertaking and statement as hereinafter provided, which demand shall include the copy of such claim.

[§ 709.220(a)]

(4) Within five days after receipt by the plaintiff or his attorney of such officer's demand the plaintiff shall deposit with the officer the amount of such debt and interest or deliver the undertaking and statement hereinafter provided, or the levying officer must release the property.

[§ 709.230]

(5) Within five days after receipt by him of such deposit the officer must pay or tender same to the seller or mortgagee; provided, that should such deposit be made by check the officer shall be allowed a reasonable time for check to clear.

[§ 709.240(a)]

(6) If the tender is accepted, all right, title, and interest of the seller or mortgagee in the property levied upon shall pass to the party to the action making the payment.

[§ 709.240(b)]

(7) If the tender is refused, the amount thereof shall be deposited with the county treasurer, payable to the order of the seller or mortgagee.

[§ 709.240(c)]

(8) Until such payment or deposit covering such claim is made, or the undertaking and statement herein provided delivered to the officer, the property cannot be sold under the levy;

[§ 709.250(a)]

_____ but when made (and also in case the seller or mortgagee fails to render his claim within 30 days after the personal service upon him of a written demand therefor, which service must be attested by the certificate of the serving officer, filed before the sale with the papers of the action wherein the attachment or execution was issued).

[§ 709.410(a)]

then the officer must retain the property, and, in the case of an execution sell it in the manner provided by law, free of all liens or claims of the seller or mortgagee.

[§§ 709.250(a), 709.410(b)]

_____ Such written demand of the levying officer may be served by him, or for him by any sheriff, marshal, or constable whose office is closer to the place of service, and whose fees and mileage shall be paid out of the prepaid fees in the possession of the levying officer.

[§ 709.420]

(9) When an attachment or execution creditor presents to the officer, within the time allowed from the officer's demand, a verified statement that the sales contract or mortgage is void or invalid for the reasons specified therein, and delivers to the officer a good and sufficient undertaking in double the amount of the indebtedness claimed by the seller or mortgagee or double the value of the personal property as the officer may determine and require, the officer shall retain the property and in case of an execution sell it in the manner provided by law, free of all liens or claims of the seller or mortgagee.

[§ 709.250(a)]

The undertaking shall be made to the seller or mortgagee and shall indemnify him for the taking of the property against loss, liability, damages, costs and counsel fees.

[§ 709.270(a)]

_____ Exceptions to the sufficiency of the sureties and their justification may be had and taken in the same manner as upon an undertaking on attachment.

[§ 709.130]

If such undertaking be given, such officer shall not be liable for damages to any such claimant for the taking, keeping, or sale of such property in accordance with the provisions of this code.

[§ 709.120]

(10) Whenever a verified claim herein is delivered to the officer as herein provided, upon levy of execution or attachment (whether any undertaking hereinabove mentioned be given or not), the plaintiff, or the person in whose favor the writ runs, the claimant, or any one or more such joint claimants, shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the validity of such sales contract or chattel mortgage.

[§ 709.310(a)]

Such hearing may be had and taken, and stay of execution or other order made in the same manner as on third party claims under Section 689 of this code. [§§ 709.310-709.350, 709.370-709.380]

At the conclusion of the hearing the court shall give judgment determining the validity of the claim under the sales contract or chattel mortgage which shall be conclusive between the claimant and the plaintiff, or other person in whose favor the writ runs. [§ 709.360]

_____ The court in which the action is pending, or which issued such writ, shall have original jurisdiction in all proceedings under this section. [§ 709.310(b)]

If the property shall have been released by the officer for want of an undertaking or payment, and final judgment shall go for the plaintiff or other person in whose favor the writ runs, the officer shall retake the property on such writ, if the writ shall still be in his hands, or if the writ shall have been returned, another writ may be issued on which the officer may take such property. [§ 709.390]

689c.

When the property thus taken is sold under process the officer must apply the proceeds of the sale as follows:

1. To the repayment of the sum paid to the seller or the mortgagee, or deposited to his order, with interest from the date of such payment or deposit.
2. The balance, if any, in like manner as the proceeds of sales under execution are applied in other cases. [§ 706.140]

689d.

In cases in which a warrant or notice of levy is issued by the State of California, or a department or agency thereof, pursuant to Section 1755 or 1785 of the Unemployment Insurance Code, or Section 6776, 7881, 9001, 10111, 18906, 26191, 30341 or 32365 of the Revenue and Taxation Code, for the collection of tax liability owed to said state, a department or agency thereof, a hearing, for the purpose of determining title to the property in question as provided in Section 689 of this code, may be held by the superior court of the county, or city and county, in which the property levied upon is located.

[§ 709.140]

689.5.

Whenever, under Section 689 or 689b of this code a claim has been filed as to property levied on and the plaintiff has failed to furnish or maintain a sufficient undertaking to authorize the levying officer to continue to hold the property and such officer is unable to find the defendant to deliver the property, the levying officers shall notify the defendant in writing at his last known address, and if within ten (10) days thereafter the levying officer is unable to locate the defendant he must return the property to the party filing the third party claim.

[§ 709.260]

690.

(a) Except as otherwise specifically provided, the property mentioned in Sections 690.1 to 690.29, inclusive, is exempt from execution or attachment, when claim for exemption is made to the same by the judgment debtor or defendant as hereinafter in Section 690.50 provided.

(b) Whenever it is specifically provided in Sections 690.1 to 690.29, inclusive, that the filing of a claim of exemption is not required, the property so mentioned in each such section shall not be subject to levy of attachment or execution in any manner.

[§ 705.210]

(c) As used in Sections 690.1 to 690.29, inclusive, "debtor" means debtor, claimant, defendant, cross-defendant, or judgment debtor.

[Not continued.]

(d) As used in Sections 690.1 to 690.29, inclusive, "creditor" means the plaintiff or the person in whose favor the writ runs.

[Not continued.]

690.1.

Necessary household furnishings and appliances and wearing apparel, ordinarily and reasonably necessary to, and personally used by, the debtor and his resident family, including, but not limited to, one piano; one radio and one television receiver; provisions and fuel actually provided for the debtor and his resident family's use, sufficient for three months; one shotgun and one rifle.

[§ 705.620]

Works of art shall not be exempt unless of or by the debtor and his resident family.

[§ 705.260]

690.2.

One motor vehicle with a value not exceeding five hundred dollars (\$500), over and above all liens and encumbrances on such motor vehicle, provided that the value of such motor vehicle, as set forth in established used car price guides customarily used by California automobile dealers, or, if not listed in such guides, fair market value, for a motor vehicle of that year and model, shall not exceed one thousand dollars (\$1,000).

[§ 705.240(a)]

In the event of execution sale, the proceeds of the sale must be applied in the following order of priority: first, to the seller or the mortgagee pursuant to subdivision (1) of Section 689c; second, to the exemption claimant to the amount of the motor vehicle exemption; and third the balance, if any, in accord with subdivision (2) of Section 689c.

[§ 706.140]

Further, the money paid to the claimant shall be entitled, for a period of three months thereafter, to the same protection against legal process which the law gives to the motor vehicle exemption.

[§ 705.240(b)]

690.3.

One housetrailer or mobilehome in which the debtor, or the family of such debtor, actually resides, of a value not exceeding fifteen thousand dollars (\$15,000) over and above all liens and encumbrances on that house-trailer or mobilehome, provided neither such debtor nor the spouse of such debtor has an existing homestead as provided by Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code.

[§ 705.250(a)]

690.4.

To the maximum aggregate actual cash value of two thousand five hundred dollars (\$2,500), over and above all liens and encumbrances of such items at the time of any levy of attachment or execution thereon, any combination of the following: tools, implements, instruments, uniforms, furnishings, books, equipment, one commercial fishing boat and net, one commercial motor vehicle reasonably necessary to and actually used in a commercial activity, and other personal property ordinarily and reasonably necessary to, and personally owned and used by, the debtor exclusively in the exercise of the trade, calling, or profession by which he earns his livelihood.

[§ 705.630]

690.5.

All prosthetic and orthopedic appliances personally used by the debtor.

[§ 705.270]

690.6.

(a) Except as provided in Section 11489 of the Welfare and Institutions Code,

[Not continued.]

all of the earnings of the debtor received for his personal services shall be exempt from levy of attachment without filing a claim for exemption as provided in Section 690.50.

[§ 487.020]

(b) One-half or such greater portion as is allowed by statute of the United States, of the earnings of the debtor received for his personal services rendered at any time within 30 days next preceding the date of a withholding by the employer under Section 682.3, shall be exempt from execution without filing a claim for exemption as provided in Section 690.50.

(c) All earnings of the debtor received for his personal services rendered at any time within 30 days next preceding the date of a withholding by the employer under Section 682.3, if necessary for the use of the debtor's family residing in this state and supported in whole or in part by the debtor, unless the debts are:

(1) Incurred by the debtor, his wife, or his family for the common necessities of life.

(2) Incurred for personal services rendered by any employee or former employee of the debtor.

(d) The court shall determine the priority and division of payment among all of the creditors of a debtor who have levied an execution upon nonexempt earnings upon such basis as is just and equitable.

(e) Any creditor, upon motion, shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the priority and division of payment among all the creditors of the debtor who have levied an execution upon nonexempt earnings pursuant to this section.

[See Chapter 11 (commencing with Section 711.010). See also § 705.220.]

690.7.

(a) To the maximum aggregate value of one thousand dollars (\$1,000), any combination of the following: savings deposits in, shares or other accounts in, or shares of stock of, any state or federal savings and loan association; [§ 705.230]

_____ "savings deposits" shall include "investment certificates" and "withdrawable shares" as defined in Section 5061 and 5067 of the Financial Code, respectively. [Not continued.]

(b) Such exemption set forth in subdivision (a) shall be a maximum of one thousand dollars (\$1,000) per person, whether the character of the property be separate or community. [§ 705.230]

690.8.

For a period of six months from the date of receipt, the compensation received from a public entity which acquires for a public use a dwelling actually owned and occupied by the debtor; and the proceeds received from a public entity pursuant to Chapter 16 (commencing with Section 7260), Division 7, Title 1 of the Government Code or Article 4.5 (commencing with Section 170), Chapter 1, Division 1 of the Streets and Highways Code for displacement from a dwelling. Such compensation and proceeds shall be exempt in the amount, over and above all liens and encumbrances, provided by Section 1260 of the Civil Code.

[§ 705.410]

690.8.

For a period of six months from the date of receipt, the proceeds received from a public entity pursuant to Chapter 16 (commencing with Section 7260), Division 7, Title 1 of the Government Code for displacement from a dwelling.

[§ 705.410]

690.9.

(a) All moneys, benefits, privileges, or immunities, accruing or in any manner growing out of any life insurance, if the annual premiums paid do not exceed five hundred dollars (\$500), or if they exceed that sum a like exemption shall exist which shall bear the same proportion to the moneys, benefits, privileges, and immunities so accruing or growing out of such insurance that such five hundred dollars (\$500) bears to the whole annual premium paid.

[§ 705.430(a)]

(b) In addition to the foregoing, all moneys, benefits, or privileges belonging to or inuring to the benefit of the insured's spouse or minor children growing out of life insurance purchased with annual premiums not exceeding five hundred dollars (\$500), or if such annual premiums exceeded that sum, a like exemption shall exist in favor of such persons which shall bear the same proportion to the moneys, benefits, or privileges growing out of such insurance that five hundred dollars (\$500) bears to the whole annual premiums paid.

[§ 705.430(c)]

690.10.

Except as provided in Sections 10203.5, 10203.6, and 10203.8 of the Insurance Code, a policy of group life insurance, or the proceeds thereof, either before or after payment, paid to the insured employee or the beneficiary.

[§ 705.440]

690.11.

All moneys, benefits, privileges, or immunities, accruing or in any manner growing out of any disability or health insurance, if the annual premiums do not exceed five hundred dollars (\$500), and if they exceed that sum a like exemption shall exist which shall bear the same proportion to the moneys, benefits, privileges, and immunities so accruing or growing out of such insurance that such five hundred dollars (\$500) bears to the whole.

[§ 705.420]

690.12.

The segregated benefit funds of a holder of a certificate of exemption issued pursuant to Section 10497 of the Insurance Code against the holder of a certificate of exemption, except that such funds shall not be exempt from process issued to enforce a claim of benefit.

[§ 705.530]

690.13.

All moneys belonging to a fraternal organization not exceeding the sum of five hundred dollars (\$500), and which moneys are used exclusively in the payment of sick or unemployment benefits to bona fide members of such fraternal organizations.

[§ 705.510]

690.14.

Money or other aid paid or rendered by any fraternal benefit society as defined in Section 10990 of the Insurance Code, either before or after payment.

[§ 705.520]

690.15.

Any claim for workmen's compensation or compensation awarded, adjudged, or paid, except as provided in the Labor Code. Such claim or award, prior to actual payment, shall be exempt without filing a claim of exemption as provided in Section 690.50. [§ 705.480]

690.16.

Contributions by workers, payable to the Unemployment Compensation Disability Fund, and by employers, payable to the Unemployment Fund are exempt without filing a claim of exemption as provided in Section 690.50.

[§ 705.500(a)]

690.17.

All material not exceeding one thousand dollars in value, purchased in good faith for use in the construction, alteration or repair of any building, mining claim or other improvement as long as in good faith the same is about to be applied to the construction, alteration or repair of such building, mining claim or other improvement.

[Not continued. But see § 705.630.]

690.175.

State unemployment compensation benefits or extended duration benefits or federal-state extended benefits or unemployment compensation disability benefits, incentive payments provided by Division 2 (commencing with Section 5000) of the Unemployment Insurance Code, and payments to an individual under a plan or system established by an employer which makes provision for his employees generally, or for a class or group of his employees, for the purpose of supplementing unemployment compensation benefits. Such benefits or payments, prior to actual payment, shall be exempt without filing a claim of exemption, as provided in Section 690.50.

[§ 705.490]

§ 690.18.

(a) All money received by any person, a resident of the state, as a pension, or as an annuity or retirement or disability or death or other benefit, or as a return of contributions and interest thereon, from the United States government, or from the state, or any county, city, or city and county, or other political subdivision of the state, or any public trust, or public corporation, or from the governing body of any of them, or from any public board or boards, or from any retirement, disability, or annuity system established by any of them pursuant to statute, whether the same shall be in the actual possession of such pensioner or beneficiary, or deposited by him.

[§ 705.450(b)]

(b) All money held, controlled, or in process of distribution by the state, or a city, city and county, county, or other political subdivision of the state, or any public trust or public corporation, or the governing body of any of them, or by any public board or boards, derived from the contributions by the state or such city, county, city and county, or other political subdivision, or such public trust, public corporation, governing body, or public board or boards, or by any officer or employee thereof, for retirement or pension purposes or the payment of disability, death, or other benefits, or the payment of benefits payable to, or the reimbursement of benefits paid to, employees thereof under the provisions of the Unemployment Insurance Code, and all rights and benefits accrued or accruing to any person under any system established pursuant to statute by the state, city, city and county, county, or other political subdivision of the state, or any public trust or public corporation for retirement, annuity, or pension purposes or payment of disability or death benefits.

[§§ 705.450(a), 705.500(b)]

_____ and all vacation credits accumulated by a state employee pursuant to the provisions of Section 18050 of the Government Code, or any other public employee pursuant to any law for the accumulation of vacation credits applicable to such employee.

[§ 705.300]

_____ Such moneys, benefits, and credits shall be exempt without filing a claim of exemption as provided in Section 690.50.

[§ 705.450(a)]

(c) All money held, controlled, or in process of distribution by any private retirement plan, including, but not limited to, union retirement plans, or any profit-sharing plan designed and used for retirement purposes, or the payment of benefits as an annuity, pension, retirement allowance, disability payment or death benefit from such retirement or profit-sharing plans, and all contributions and interest thereon returned to any member of any such retirement or profit-sharing plan, are exempt from execution, attachment, or garnishment in any bankruptcy proceeding. This subdivision shall not apply to any moneys held in any retirement program established pursuant to the federal "Self-Employed Individuals Tax Retirement Act of 1962" (P.L. 87-792; 76 Stat. 809), nor to any moneys received in any manner by persons from any such retirement program so established.

[See §§ 705.460, 705.470]

690.19.

All aid given under a public assistance program to a debtor or for his benefit. However, as against the claim of the county, the real and personal property of a debtor who has received support from public moneys shall be exempt only to the extent provided by and in accordance with the provisions of Section 17409 of the Welfare and Institutions Code. Such aid, prior to payment, shall be exempt without filing a claim of exemption, as provided in Section 690.50.

[\$ 705.400]

690.20.

To the extent provided for in Section 32508 of the Health and Safety Code, property, of any nature, given to endow an endowment hospital.

[\$ 705.340]

690.21.

The funds of any person confined in any prison or facility under the jurisdiction of the Department of Corrections or the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for him, or to his credit, in an inmate's trust account or similar account by the state, county, or city, or any agency thereof, not to exceed the sum of forty dollars (\$40), shall be exempt from attachment or execution without filing a claim for exemption as provided in Section 690.50.

[\$ 705.390]

No property dedicated as a cemetery by a cemetery authority shall be subject to execution or attachment because of debts due from an individual owner of an interment plot.

[§ 705.290(f)]

All money payable or to become payable as the purchase price or on account of the purchase price of unused cemetery lands, or lands from which all remains have been removed, is not subject to attachment or execution if used for the purpose enumerated in Section 7925 of the Health and Safety Code.

[§ 705.290(e)]

690.25.

All pews in churches and meetinghouses, used for religious purposes, owned and claimed by any person, or held, in accordance with the rules and regulations of such churches shall be exempt without filing a claim of exemption as provided in Section 690.50.

[§ 705.280]

690.26.

The property of the Reclamation Board and the Sacramento and San Joaquin Drainage District.

[§ 705.380]

690.27.

The real property of a housing authority, as defined in Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code.

[§§ 705.020(e), 705.380]

690.28.

Any property granted to a trustee for educational purposes, pursuant to Section 31051 of the Education Code, if the action under which the execution or attachment is issued, or the proceeding under which the sale is ordered, is not commenced within two years of the filing for record of the grant. No property shall be subject to execution or forced sale under any judgment obtained in any proceeding instituted within two years, if there is other property of the grantor subject to execution or forced sale sufficient to satisfy the judgment. [§ 705.350]

Nothing in this section shall be construed to affect mechanics' or laborers' liens. [§ 705.150]

690.29.

All property of a redevelopment agency, including funds, owned or held by it for the purposes of Chapter 2 (commencing with Section 33100) of Part 1 of Division 24 of the Health and Safety Code. [§ 705.380]

690.50.

(a) If the property mentioned in Sections 690.1 to 690.29, inclusive, shall be levied upon under writ of attachment or execution, the defendant or judgment debtor (herein referred to as "the debtor"), in order to avail himself of his exemption rights as to such property, shall within 10 days from the date such property was levied upon deliver to the levying officer an affidavit of himself or his agent, together with a copy thereof, alleging that the property levied upon, identifying it, is exempt, specifying the section or sections of this code on which he relies for his claim to exemption, and all facts necessary to support his claim, and also stating therein his address within this state for the purpose of permitting service by mail upon him of the counteraffidavit and any notice of the motion herein provided. [§ 705.030(a)]

(e) If such counteraffidavit, with such proof of service, is so filed, either the creditor or the debtor shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the claim to exemption,

[§ 705.030(e)]

_____ the priority or division of payment between one or more creditors from nonexempt earnings under the provisions of Section 690.6

[See Chapter 11 (commencing with Section 711.010).]

_____ or the value of the property claimed to be exempt. Such hearing shall be granted by the court upon motion of either party made within five days after the counteraffidavit is filed with the levying officer, and such hearing must be had within 15 days from the date of the making of such motion unless continued by the court for good cause. The party making the motion for hearing shall give not less than five days' notice in writing of such hearing to the levying officer and to the other party, and specify therein that the hearing is for the purpose of determining the claim to exemption. The notice may be of motion or of hearing and upon the filing of the notice with the clerk of court, the motion is deemed made.

[§ 705.030(e)]

(f) If neither party makes such motion within the time allowed, or if the levying officer shall not have been served with a copy of the notice of hearing within 10 days after the filing of the counteraffidavit, the levying officer shall forthwith release the property to the debtor.

[§ 705.030(f)]

(g) At any time while the proceedings are pending, upon motion of either party or upon its own motion, the court may (1) order the sale of any perishable property held by such officer and direct disposition of the proceeds of such sale, and (2) make such other orders as may be proper under the particular circumstances of the case. Any orders so made may be modified or vacated by the court or judge granting the same, or by the court in which the proceedings are pending, at any time during the pendency of the proceedings, upon such terms as may be just.

[§ 705.080]

(h) The levying officer in all cases shall retain physical possession of the property levied upon if it is capable of physical possession, or in the case of property not capable of physical possession, the levy shall remain in full force and effect, pending the final determination of the claim to exemption. However, no sale under execution shall be had prior to such final determination unless an order of the court hearing the claim for exemption shall so provide.

[§ 705.070]

(i) At such hearing, the party claiming the exemption shall have the burden of proof.

[§ 705.060(b)]

_____ The affidavits and counteraffidavits shall be filed by the levying officer with the court and shall constitute the pleadings, subject to the power of the court to permit an amendment in the interests of justice. The affidavit of exemption shall be deemed controverted by the counteraffidavit and both shall be received in evidence.

[§ 705.060(a)]

_____ Nothing herein shall be construed to deprive anyone of the right to a jury trial in any case where, by the Constitution, such right is given, but a jury trial may be waived in any such case in like manner as in the trial of an action.

[§ 705.170]

No findings shall be required in a proceeding under this section. When the hearing is before the court sitting without a jury, and no evidence other than the affidavit and counteraffidavit is offered, the court, if satisfied that sufficient facts are shown thereby, may make its determination thereon. Otherwise, it shall order the hearing continued for the production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits. At the conclusion of the hearing, the court shall give judgment determining whether the claim to exemption shall be allowed or not, in whole or in part.

[§ 705.090]

_____ and may give judgment determining the priority or division of payment between one or more creditors from non-exempt earnings under the provisions of Section 690.6,

[See Chapter 11 (commencing with Section 711.010).]

_____ which judgment shall be determinative as to the right of the creditor to have the property taken and held by the officer or to subject the property to payment or other satisfaction of his judgment. In such judgment the court shall make all proper orders for the disposition of such property or the proceeds thereof.

[§ 705.090]

(j) A copy of any judgment entered in the trial court shall be forthwith transmitted by the clerk to the levying officer in order to permit such officer to either release the property attached or to continue to hold it to sell it, in accordance with the provisions of the writ previously delivered to him. Such officer, unless an appeal from the judgment is waived, or the judgment has otherwise become final, shall continue to hold such property under attachment or execution, continuing the sale of any property held under execution until such judgment becomes final.

[§ 705.100(a)]

_____ However, if a claim to exemption under Section 690.6 is allowed by such judgment, the debtor shall be entitled to a release of the earnings so exempted at the expiration of three days, unless otherwise ordered by the court, or unless the levying officer shall have been served with a copy of a notice of appeal from the judgment.

[§ 705.100(b)]

(k) When any documents required hereunder are served by mail, the provisions of this code relating to service by mail shall be applicable thereto.

[Not continued.]

(l) Whenever the time allowed for an act to be done hereunder is extended by the court, written notice thereof shall be given promptly to the opposing party, unless such notice be waived, and to the levying officer.

[Not continued.]

(m) An appeal lies from any judgment under this section. Such appeal to be taken in the manner provided for appeals in the court in which the proceeding is had.

[§ 705.120]

690.51.

In cases in which a warrant or notice of levy is issued by the State of California, or a department or agency thereof, pursuant to Section 1755 or 1785 of the Unemployment Insurance Code, or Section 6776, 7881, 9001, 10111, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code, for the collection of tax liability owed to the state, a department or agency thereof, the tax debtor shall be entitled to the exemptions provided in Sections 690.1 to 690.29, inclusive, and all the provisions of Section 690.50 shall be applicable to the assertion and determination thereof. The superior court of the county, or city and county, in which the property levied upon is located shall have jurisdiction to hear and determine the validity of the claim of exemption or the value of the property claimed exempt, whether or not the value of the property determines the right to exemption, in like manner as if the property were levied upon by writ of execution issued by such court.

[§ 705.160]

690.52.

No article, however, or species of property, mentioned in Sections 690.1 to 690.29, inclusive, of this code is exempt from execution issued upon a judgment recovered for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon.

[§ 705.150]

691.

The officer to whom the writ is directed, must execute the writ against the property of the judgment debtor, by levying on a sufficient amount of property, if there be sufficient; [§ 704.210]

_____ collecting or selling
the things in action, and selling the other property,

[§§ 702.110, 702.120-702.140]

_____ and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be returned to the judgment debtor, unless otherwise directed by the judgment or order of the court. [§ 706.140]

_____ When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of such officer, he must levy only on such part of the property as the judgment debtor may indicate, if the property indicated be amply sufficient to satisfy the judgment and costs. [Not continued.]

692.

Before the sale of property on execution, notice thereof must be given as follows:

[§ 706.010(a)]

1. In case of perishable property: by posting written notice of the time and place of sale in three public places in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in three public places in the judicial district in which the property is to be sold, for such time as may be reasonable, considering the character and condition of the property.

[§ 706.010(b)]

2. In case of other personal property: by posting a similar notice in three public places in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in three public places in the judicial district in which the property is to be sold, for not less than 10 days and also, not less than 10 days prior to the sale, by mailing a notice of the time and place of the sale to the judgment debtor at his business or residence address last known to the judgment creditor or his attorney or delivering such notice to the judgment debtor. It shall be the duty of the party delivering an execution to an officer for levy to furnish the information required by such levying officer to comply with the provisions of this subdivision.

[§ 706.010(c)]

3. In case of real property or a leasehold estate therein: by posting a similar notice particularly describing the property at least 20 days before the date of sale, in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the judicial district in which the property is to be sold and publishing a copy thereof once a week for the same period, in some newspaper of general circulation published in the city in which the property or the real property in which such a leasehold estate was demised or some part thereof is situated, if any part thereof is situated in a city, if not, then in some newspaper of general circulation published in the judicial district in which the property or some part thereof is situated, or, in case no newspaper of general circulation is published in the city or judicial district, as the case may be, in some newspaper of general circulation published in the county in which the property or some part thereof is situated and at least 20 days before the date of sale by mailing by certified mail a notice of the time and place of sale to the judgment debtor at his business or residence address last known to the judgment creditor or his attorney or delivering such notice to the judgment debtor. It shall be the duty of the party delivering an execution to an officer for levy to furnish the information required by the levying officer to comply with the provisions of this subdivision. Where real property is to be sold under execution upon a judgment a copy of said notice shall be posted in some conspicuous place on the property to be sold, at least 20 days before date of sale, and where a leasehold estate in real property is to be sold under execution upon a judgment a copy of said notice shall be posted in some conspicuous place on the real property in which such a leasehold estate was demised, at least 20 days before date of sale.

[§ 706.010(d)]

In addition to particularly describing the property, the notice shall describe the property by giving its street address, if any, or other common designation, if any; but, if a legal description of the property is given, the validity of the notice shall not be affected by the fact that the street address or other common designation recited is erroneous or that the street address or other common designation is omitted.

[§ 706.010(a)]

The term newspaper of general circulation as used herein is as defined in Article 1 (commencing with Section 6000) of Chapter 1, Division 7, Title 1 of the Government Code. The term "judgment debtor" does not include a trustor or mortgagor.

[§ 706.010(d)]

4. When the judgment under which the property is to be sold is made payable in a specified kind of money or currency, the several notices required by this section must state the kind of money or currency in which bids may be made at such sale, which must be the same as that specified in the judgment.

[Not continued.]

692a.

In any case in which a judgment has been entered as provided in Section 668 of the Code of Civil Procedure, any person may file with the clerk a written request that he be given notice by mailing of any sale under any execution issued upon said judgment. In any such request such person shall specify the title of the court, case and number of the action in which such judgment was rendered and the date of entry thereof and shall give the address to which he desires such notice of execution sale to be mailed. Whenever a writ of execution is thereafter issued upon such judgment, it shall be the duty of the clerk to note upon such writ the fact that notice by mailing has or has not been requested. If a notice by mailing of any sale under any execution has been requested, the clerk shall also note upon such writ the name and address of such person as set forth in such request. It shall be the duty of any officer conducting a sale under any writ of execution upon which appears such notation to mail a copy of the notice of time and place of sale to such person at the address noted upon the writ. The copy of the notice shall be mailed at the time notice is posted pursuant to Section 692 of the Code of Civil Procedure. [§ 704.140]

693.

An officer selling without the notice prescribed by the last section forfeits one hundred dollars (\$100) to the aggrieved party, in addition to his actual damages;

[§ 706.020(a)]

_____ and a person wilfully taking down or defacing the notice posted, if done before the sale or the satisfaction of judgment (if the judgment be satisfied before sale), forfeits five hundred dollars (\$500).

[§ 706.020(b)]

694.

All sales of property under execution must be held in the county where said property or some part thereof is situated, and must be made at auction, to the highest bidder, between the hours of 9 in the morning and 5 in the afternoon.

[§ 706.030(a)]

After sufficient property has been sold to satisfy the execution, no more can be sold.

[§ 706.030(e)]

Neither the officer holding the execution nor his deputy can become a purchaser or be interested in any purchase, at such sale.

[§ 706.060]

When the sale is under execution and is of personal property, capable of manual delivery, it must be within view of those who attend the sale, and

[§ 706.030(b)]

be sold in such parcels as are likely to bring the highest price; and when the sale is under execution and is of real property, consisting of several known lots or parcels, they must be sold separately;

[§ 706.030(c)]

or when a portion of said real property is claimed by a third person, and he requires it to be sold separately, such portion can be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately and the sheriff must follow such direction.

[§ 706.030(d)]

Whenever a request in writing signed by the debtor and creditor for a postponement of the sale to an agreed date and hour, is given to the officer conducting the sale under execution, such officer shall thereupon by public declaration postpone the sale to the day and hour so fixed in such request to be held at the place originally fixed by the officer for the sale.

[§ 706.040(a)]

In case of postponements, notice of each thereof must be given by public declaration by the officer at the time and place last appointed for the sale. No other notice of postponed sale need be given.

[§ 706.040(b)]

695.

If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder,

[§ 706.070(a)]

_____ and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, from the bidder so refusing, in any Court of competent jurisdiction.

[§ 706.070(b)]

696.

When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such person.

[§ 706.080]

697.

THESE TWO SECTIONS NOT TO MAKE OFFICER LIABLE, ETC. The two preceding sections must not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser, and the amount collected from the purchaser refusing to pay.

[§ 706.090]

698.

PERSONAL PROPERTY CAPABLE OF MANUAL DELIVERY, HOW DELIVERED TO PURCHASER. When the purchaser of any personal property capable of manual delivery pays the purchase money, the officer making the sale must deliver to the purchaser the property, and, if desired, execute and deliver to him a certificate of the sale.

[§ 709.100(a)]

Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

[§ 706.100(b)]

699.

PERSONAL PROPERTY NOT CAPABLE OF MANUAL DELIVERY, HOW SOLD AND DELIVERED. When the purchaser of any personal property not capable of manual delivery pays the purchase money, the officer making the sale must execute and deliver to the purchaser a certificate of sale.

[§ 706.110(a)]

Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

[§ 706.110(b)]

700.

Upon a sale of real property, the purchaser is substituted to and acquires all the right, title, interest, and claim of the judgment debtor thereto on the date of the levy of the execution thereon, where such judgment is not a lien upon such property; if the judgment is a lien upon the real property the purchaser is substituted to and acquires all the right, title, interest, and claim of the judgment debtor on or at any time after the day such judgment became a lien on such property; and in case property, real or personal, has been attached in the action, the purchaser is substituted to and acquires all the right, title, interest and claim of the judgment debtor on or at any time after the day the attachment was levied upon such property.

[§ 706.120(b). See also §§ 706.100(b),
706.110(b).]

700a.

(a) Sales of personal property, and of real property, when the estate therein is less than a leasehold of two years' unexpired term, are absolute. In all other cases the property is subject to redemption, as provided in this chapter.

[§ 706.210(a)]

 The officer must give to the purchaser a certificate of sale, and file a duplicate thereof for record in the office of the county recorder of the county,

[§ 706.120(a)]

 which certificate must state the date of the judgment under which the sale was made and the names of the parties thereto, and contain:

1. A particular description of the real property sold;
2. The price bid for each distinct lot or parcel;
3. The whole price paid;
4. If the property is subject to redemption, the certificate must so declare,

[§ 706.130(a), (b)]

 and if the redemption can be effected only in a particular kind of money or currency, that fact must be stated.

[Not continued.]

(b) If the property is subject to redemption the officer shall inform the judgment debtor, by certified mail or personal service, of his right of redemption. Failure to give such notice within one week after the sale shall make the officer liable to the judgment debtor for actual damages, in addition to a penalty of one hundred dollars (\$100).

[§ 706.210(b)]

701.

REAL PROPERTY SO SOLD, BY WHOM IT MAY BE REDEEMED. Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

1. The judgment debtor, or his successor in interest, in the whole or any part of the property;
2. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are, in this Chapter, termed redemptioners.

[§ 706.220(a)]

702.

The judgment debtor, or redemptioner, may redeem the property from the purchaser any time within 12 months after the sale on paying the purchaser the amount of his purchase, with two-thirds of 1 percent per month thereon in addition, up to the time of redemption, together with the amount of any assessment or taxes, and any reasonable sum for fire insurance, maintenance, upkeep, or repair of the improvements upon the property, and any sum paid on a prior obligation secured by the property to the extent such payment was necessary for the protection of his interest, which the purchaser may have paid thereon after purchase, and interest on such amounts, and if the purchaser be also a creditor, having a prior lien to that of the redemptioner, other than the judgment under which said purchase was made, the amount of such lien with interest.

[§§ 706.250(a)(redemptioner), 706.270(a)
(judgment debtor)]

703.

If property be so redeemed by a redemptioner, another redemptioner may, within 60 days after the last redemption, again redeem it from the last redemptioner on paying the sum paid on such last redemption, with 2 percent thereon in addition, and the amount of any assessment or taxes, and any reasonable sum for fire insurance, maintenance, upkeep, or repair of any improvements upon the property, and any sum paid on a prior obligation secured by the property to the extent such payment was necessary for the protection of his interest, which the last redemptioner may have paid thereon after the redemption by him, with interest on such amounts, and, in addition, the amount of any liens held by such redemptioner prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien.

[§ 706.260(a)]

_____ In the event there shall be a dispute or disagreement as to whether any sum demanded by the last redemptioner is a proper charge to be added to the amount required to be paid by the subsequent redemptioner, the amount to be paid shall be determined in a like manner as provided in Section 702 for the determination of such amount in the event of disagreement between the original redemptioner and purchaser.

[§ 706.260(b)]

The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within 60 days after the last redemption, on paying the sum paid on the past previous redemption, with 2 percent thereon in addition, and the amounts of any assessments or taxes, and any reasonable sum for fire insurance, maintenance, upkeep, or repair of any improvements upon the property, and any sum paid on a prior obligation secured by the property to the extent such payment was necessary for the protection of his interest, which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own with interest. In the event there shall be a dispute or disagreement as to whether any sum demanded by the last redemptioner to be added to the amount required to be paid by the subsequent redemptioner, the amount to be paid shall be determined in a like manner as provided in Section 702 for the determination of such amount in the event of disagreement between the original redemptioner and purchaser.

[§ 706.260(c)]

Written notice of redemption must be given to the sheriff and a duplicate recorded with the recorder of the county,

[§ 706.280(b)]

_____ and if any taxes or assessments are paid by the redemptioner, or if any sum for fire insurance, maintenance, upkeep, or repair of any improvement upon the property, is paid by the redemptioner, or if any sum is necessarily paid by the redemptioner on a prior obligation secured by the property, or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and recorded with the recorder; and if such notice be not recorded, the property may be redeemed without paying such tax, assessment, sum, or lien.

[§ 706.280(c)]

If no redemption be made within 12 months after the sale, the purchaser, or his assignee, is entitled to a conveyance; or if so redeemed, whenever 60 days have elapsed and no other redemption has been made, and notice thereof given and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to a sheriff's deed; but, in all cases, the judgment debtor shall have the entire period of 12 months from the date of the sale to redeem the property.

[§ 706.300]

If the judgment debtor redeem, he must make the same payments as are required to effect a redemption by a redemptioner.

[§ 706.270(a)]

_____ If the debtor redeem, the effect of the sale is terminated, and he is restored to his estate.

[§ 706.270(c)]

Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption,

[§ 706.280(a)]

acknowledged or proved before an officer authorized to take acknowledgements of conveyances of real property. Such certificate must be recorded in the office of the recorder of the county in which the property is situated.

[§ 706.280(b)]

704.

IN CASES OF REDEMPTION, TO WHOM THE JUDGMENTS ARE TO BE MADE. The payments mentioned in the last two sections may be made to the purchaser or redemptioner, or for him, to the officer who made the sale.

[§ 706.240(a)]

When the judgment under which the sale has been made is payable in a specified kind of money or currency, payments must be made in the same kind of money or currency,

[Not continued.]

and a tender of the money is equivalent to payment.

[§ 706.240(b)]

705.

A redemptioner must produce to the officer or person from whom he seeks to redeem and serve with his notice to the sheriff making the sale, or his successor in office;

1. A copy of the judgment under which he claims the right to redeem, certified by the clerk of the court, or of the county where the judgment is entered; or, if he redeems upon a mortgage or other lien, a note of the record thereof, certified by the recorder;

2. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto;

3. An affidavit by himself or his agent, showing the amount then actually due on the lien.

[§ 706.230]

706.

UNTIL THE EXPIRATION OF REDEMPTION TIME, COURT MAY RESTRAIN WASTE ON THE PROPERTY. WHAT CONSIDERED WASTE. Until the expiration of the time allowed for redemption, the Court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it is not waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel in his family, while he occupies the property.

[§ 706.290(a), (c)]

707.

RENTS AND PROFITS. The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, is entitled to receive, from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof.

[§ 706.290(a)]

But when any rents or profits have been received by the judgment creditor or purchaser, or his or their assigns, from the property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; and if the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor, or his assigns; a written and verified statement of the amounts of such rents and profits thus received, the period for redemption is extended five days after such sworn statement is given by such purchaser or his assigns, to such redemptioner or debtor. If such purchaser or his assigns shall, for a period of one month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may bring an action in any Court of competent jurisdiction, to compel an accounting and disclosure of such rents and profits, and until fifteen days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor.

[§ 706.290(b); see also § 706.250(b).]

708.

IF PURCHASER OF REAL PROPERTY BE EVICTED FOR IRREGULARITIES IN SALE, WHAT HE MAY RECOVER, AND FROM WHOM. WHEN JUDGMENT TO BE REVIVED. PETITION FOR THE PURPOSE, HOW AND BY WHOM MADE. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor.

[§ 706.150(a)]

_____ If the purchaser of property at Sheriff's sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the Court having jurisdiction thereof must, after notice and on motion of such party in interest, or his attorney, revive the original judgment in the name of the petitioner, for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and the judgment so revived has the same force and effect as would an original judgment of the date of the revival, and no more.

[§ 706.150(b), (c)]

709.

PARTY WHO PAYS MORE THAN HIS SHARE MAY COMPEL CONTRIBUTION. When property, liable to an execution against several persons, is sold thereon, and more than a due proportion of the judgment is satisfied out of the proceeds of the sale of the property of one of them, or one of them pays, without a sale, more than his proportion, he may compel contribution from the others;

[§ 702.180(a)]

_____ and when a judgment is against several, and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal.

[§ 702.180(b)]

In such case, the person so paying or contributing is entitled to the benefit of the judgment, to enforce contribution or repayment, if, within ten days after his payment, he file with the Clerk of the Court where the judgment was rendered, notice of his payment and claim to contribution or repayment. Upon a filing of such notice, the Clerk must make an entry thereof in the margin of the docket.

[§ 702.180(c)]

710,

(a) Whenever a judgment for the payment of money is rendered by any court of this state against a defendant to whom money is owing and unpaid by this state or by any county, city and county, city or municipality, quasi-municipality, district or public corporation, the judgment creditor may file a duly authenticated abstract or transcript of such judgment together with an affidavit stating the exact amount then due, owing and unpaid thereon and that he desires to avail himself of the provisions of this section in the manner as follows:

[§ 702.150(a)]

1. If such money, wages or salary is owing and unpaid by this state to such judgment debtor, said judgment creditor shall file said abstract or transcript and affidavit with the state department, board, office or commission owing such money, wages or salary to said judgment debtor prior to the time such state department, board, office or commission presents the claim of such judgment debtor therefor to the State Controller. Said state department, board, office or commission in presenting such claim of such judgment debtor to said State Controller shall note thereunder the fact of the filing of such abstract or transcript and affidavit and state the amount unpaid on said judgment as shown by said affidavit and shall also note any amounts advanced to the judgment debtor by, or which the judgment debtor owes to, the State of California by reason of advances for expenses or for any other purpose. Thereupon the State Controller, to discharge such claim of such judgment debtor, shall pay into the court which issued such abstract or transcript by his warrant or check payable to said court the whole or such portion of the amount due such judgment debtor on such claim, after deducting from such claim an amount sufficient to reimburse the state department, board, office or commission for any amounts advanced to said judgment debtor or by him owed to the State of California, and after deducting therefrom an amount equal to one-half or such greater portion as is allowed by statute of the United States, of the earnings owing to the judgment debtor for his personal services to the state rendered at any time within 30 days next preceding the filing of such abstract or transcript, as will satisfy in full or to the greatest extent the amount unpaid on said judgment and the balance thereof; if any, to the judgment debtor.

[§ 702.150(b)]

2. If such money, wages or salary is owing and unpaid to such judgment debtor by any county, city and county, city or municipality, quasi-municipality, district or public corporation, said judgment creditor shall file said abstract or transcript and affidavit with the auditor of such county, city and county, city or municipality, quasi-municipality, district or public corporation (and in case there be no auditor then with the official whose duty corresponds to that of auditor). Thereupon said auditor (or other official) to discharge such claim of such judgment debtor shall pay into the court which issued such abstract or transcript by his warrant or check payable to said court the whole or such portion of the amount due on such claim of such judgment debtor, less an amount equal to one-half or such greater portion as is allowed by statute of the United States, of the earnings of the debtor owing by the county, city and county, city, municipality, quasi-municipality, district or public corporation to the judgment debtor for his personal services to such public body rendered at any time within 30 days next preceding the filing of such abstract or transcript, as will satisfy in full or to the greatest extent the amount unpaid on said judgment and the balance thereof, if any, to the judgment debtor.

[§ 702.150(c)]

(b) The judgment creditor upon filing such abstract or transcript and affidavit shall pay a fee of two dollars and fifty cents (\$2.50) to the person or agency with whom the same is filed.

[§ 702.150(d)]

(c) Whenever a court receives any money hereunder, it shall pay as much thereof as is not exempt from execution under this code to the judgment creditor and the balance thereof, if any, to the judgment debtor. The procedure for determining the claim of exemption shall be governed by the procedure set forth in Section 690.50 of this code, and the court rendering the judgment shall be considered the levying officer for the purpose of that section.

[§ 702.150(e)]

(d) In the event the moneys owing to a judgment debtor by any governmental agency mentioned in this section are owing by reason of an award made in a condemnation proceeding brought by the governmental agency, such governmental agency may pay the amount of the award to the clerk of the court in which such condemnation proceeding was tried, and shall file therewith the abstract or transcript of judgment and the affidavit filed with it by the judgment creditor. Such payment into court shall constitute payment of the condemnation award within the meaning of Section 1251 of this code. Upon such payment into court and the filing with the county clerk of such abstract or transcript of judgment and affidavit, the county clerk shall notify by mail, through their attorneys, if any, all parties interested in said award of the time and place at which the court which tried the condemnation proceeding will determine the conflicting claims to said award. At said time and place the court shall make such determination and order the distribution of the money held by the county clerk in accordance therewith.

[§ 702.150(f)]

(e) The judgment creditor may state in the affidavit any fact or facts tending to establish the identity of the judgment debtor. No public officer or employee shall be liable for failure to perform any duty imposed by this section unless sufficient information is furnished by the abstract or transcript together with the affidavit to enable him in the exercise of reasonable diligence to ascertain such identity therefrom and from the papers and records on file in the office in which he works. The word "office" as used herein does not include any branch or subordinate office located in a different city.

[§ 702.150(g)]

(f) Nothing in this section shall authorize the filing of any abstract or transcript and affidavit against: (1) any wages, or salary owing to the Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, and Attorney General, or (2) any overpayment of tax, penalty or interest, or interest allowable with respect to such overpayment, under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

[§ 702.150(h)]

(g) Any fees received by a state agency under this section shall be deposited to the credit of the fund from which payments were, or would be, made on account of a garnishment under this section. For the purpose of this paragraph, payments from the State Pay Roll Revolving Fund shall be deemed payments made from the fund out of which moneys to meet such payments were transferred to said revolving fund.

[§ 702.150(i)]

(h) (1) In the event the moneys owing to a judgment debtor by any governmental agency mentioned in this section are for wages or salary, the judgment creditor shall mail under a separate cover at the time of filing the affidavit with the governmental agency, in an envelope marked "Personal and Confidential", a copy of the affidavit and a Notice to Judgment Debtor as provided in paragraph (2) of this subdivision, addressed to the judgment debtor at his place of employment.

(2) The Notice to Judgment Debtor shall be in 10-point bold type, and in substantially the following form:

You may be entitled to file a claim exempting your salary or wages from execution. You may seek the advice of any attorney or may, within 10 days from the date your salary or wages were levied upon, deliver an affidavit to the court rendering the judgment to exempt such salary or wages, as provided in Section 690.50 of the Code of Civil Procedure.

[§ 702.150(j)]

710c.

Such undertaking, with two sureties, shall be executed by the person, corporation, partnership or association, claiming in whole or in part, the property upon which execution is levied in double the estimated value of the property claimed by the person, corporation, partnership or association; provided, in no case need such undertaking be for a greater sum than double the amount for which the execution is levied; and where the estimated value of the property so claimed by the person, corporation, partnership or association is less than the sum for which such execution is levied, such estimated value shall be stated in the undertaking. Said undertaking shall be conditioned that if the property claimed by the person, corporation, partnership or association is finally adjudged to be the property of the judgment debtor, said person, corporation, partnership or association will pay of said judgment upon which execution has issued a sum equal to the value, as estimated in said undertaking, of said property claimed by said person, corporation, partnership or association, and said property claimed shall be described in said undertaking.

[§ 709.520; see also § 709.130.]

711.

Said undertaking shall be filed in the action in the court in which said execution issued, and a copy thereof served upon the judgment creditor or his attorney in said action.

[§ 709.530]

711½.

Within ten days after the service of the copy of undertaking, the judgment creditor may object to such undertaking on the ground of inability of the sureties, or either of them, to pay the sum for which they become bound in said undertaking, and upon the ground that the estimated value of property therein is less than the market value of the property claimed. Such objection to the undertaking shall be made in writing, specifying the ground or grounds of objection, and if the objection is made to the undertaking that the estimated value therein is less than the market value of the property claimed. Such objection shall specify the judgment creditor's estimate of the market value of the property claimed. Such written objection shall be served upon the person, partnership, corporation or association giving such undertaking and claiming the property therein described.

[§ 709.130]

712.

When the sureties, or either of them, are objected to, the surety or sureties so objected to shall justify before the court out of which such execution issued, upon ten days' notice of the time when they will so justify being given to the judgment creditor or his attorney. Upon the hearing and examination into the sufficiency of a surety, witnesses may be required to attend and evidence may be procured and introduced in the same manner as in trial of civil cases. Upon such hearing and examination, the court shall make its order, in writing, approving or disapproving the sufficiency of the surety or sureties on such undertaking. In case the court disapproves of the surety or sureties on any undertaking, a new undertaking may be filed and served, and to any undertaking given under the provisions of this section the same objection to the sureties may be made, and the same proceedings had as in case of the first undertaking filed and served.

[§ 709.130]

712½.

When objection is made to the undertaking upon the ground that the estimated value of the property claimed, as stated in the undertaking, is less than the market value of the property claimed, the person, corporation, partnership or association may accept the estimated value stated by the judgment creditor in said objection, and a new undertaking may be at once filed with the judgment creditor's estimate stated therein as the estimated value, and no objection shall thereafter be made upon that ground; if the judgment creditor's estimate of the market value is not accepted, the person, corporation, partnership or association giving the undertaking shall move the court in which the execution issued, upon ten days' notice to the judgment creditor, to estimate the market value of the property claimed and described in the undertaking, and upon the hearing of such motion witnesses may be required to attend and testify, and evidence be produced in the same manner as in the trial of civil actions. Upon the hearing of such motion, the court shall estimate the market value of the property described in the undertaking, and if the estimated value made by the court exceeds the estimated value as stated in the undertaking, a new undertaking shall be filed and served, with the market value determined by the court stated therein as the estimated value.

[§ 709.130]

713.

The sureties shall justify on the undertaking as required by section one thousand and fifty-seven of the Code of Civil Procedure.

[§ 709.130]

713^{1/2}.

The undertaking shall become effective for the purpose herein specified ten days after service of copy thereof on the judgment creditor, unless objection to such undertaking is made as herein provided, and in case objection is made to the undertaking filed and served, then the undertaking shall become effective for such purposes when an undertaking is given as herein provided.

[§ 709.130; see also § 709.540.]

CHAPTER 2. PROCEEDINGS SUPPLEMENTAL TO EXECUTION

714.

When an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, may properly be issued, whether or not such execution has been issued or returned, the judgment creditor is entitled to an order from a judge of the court, requiring such judgment debtor to appear and answer concerning his property before such judge, or a referee appointed by him, at a time and place specified in the order.

[§§ 707.110(b), 707.120(a)]

However, a judgment debtor may not, pursuant to this section, be required to appear and answer more frequently than every four months. This section shall not be construed to restrict the rights granted by Section 715.

[§ 707.120(b)]

If the judgment debtor ordered to appear pursuant to this section fails to do so, and if such order has been served by a sheriff, constable, marshal, or some person specially appointed by the court in the order, the judge may, pursuant to a warrant, have such debtor brought before the court to answer for such failure to appear.

[§ 707.160]

715.

After the issuing of an execution against property, and upon proof, by affidavit of a party or otherwise, to the satisfaction of a judge of the court, that any judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, such judge may, by an order, require the judgment debtor to appear, at a specified time and place, before such judge or a referee appointed by him, to answer concerning the same;

[§§ 707.110(b), 707.130(a)]

_____ and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution.

[§ 707.150]

_____ Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the sheriff, or a constable, or marshal to arrest the debtor and bring him before such judge. Upon being brought before the judge, he may be ordered to enter into an undertaking, with sufficient sureties, that he will attend from time to time before the judge; or referee, as may be directed during the pendency of proceedings and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to prison.

[§ 707.130(b)]

716.,

After the issuing of an execution against property, and before its return, any person indebted to the judgment debtor may pay to the sheriff, constable, or marshal having such execution the amount of his debt, or so much thereof as may be necessary to satisfy the execution; and such officer's receipt is a sufficient discharge for the amount so paid.

[§§ 702.120, 702.130]

717.

After the issuing or return of an execution against property of the judgment debtor, or of any one of the several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars (\$50), the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same. The spouse of a judgment debtor to the extent provided by Sections 970 and 971 of the Evidence Code may not be required to so testify, if there has not been a waiver of such provisions in the action giving rise to the judgment.

[§§ 707.110(b), 707.140]

If the person ordered to appear pursuant to this section fails to do so, and if the order requiring his appearance has been served by a sheriff, constable, marshal, or some person specially appointed by the court in the order, the judge may, pursuant to a warrant, have such person brought before the court to answer for such failure to appear.

[§ 707.160]

717.1.

Neither a judgment debtor nor a debtor of a judgment debtor shall be required to attend before a judge or referee outside of the county in which he resides or in which he has a place of business unless the distance is less than 150 miles from his place of residence or his place of business to the place of trial.

[§ 707.170(a)]

No process to require the attendance, pursuant to this chapter, of a debtor of a judgment debtor, shall be effective unless, at the time of service of process, the person serving same tenders to such person mileage fees in the amount of fifteen cents (\$0.15) per mile necessary to be traveled, one way, from such person's residence to the court or other place where attendance is sought. Such mileage fees shall be an item of costs chargeable to the judgment debtor, and the court may, pursuant to Section 719, order the application of any property of the judgment debtor to the satisfaction of such costs.

[§ 707.170(b)]

718.

Witnesses may be required to appear and testify before the judge or referee, upon any proceeding under this chapter, in the same manner as upon the trial of an issue. [§§ 707.110(b), 707.190]

719.

The judge or referee may order any property of the judgment debtor, not exempt from execution, in the hands of such debtor, or any other person, or due to the judgment debtor, to be applied toward the satisfaction of the judgment; [§ 707.150(a)]

_____ but no such order can be made as to money or property in the hands of any other person or claimed to be due from him to the judgment debtor, if such person claims an interest in the property adverse to the judgment debtor or denies the debt.

[§ 707.150(b)]

720.

If it appears that a person or corporation, alleged to have property of the judgment debtor, or to be indebted to him, claims an interest in the property adverse to him, or denies the debt, the judgment creditor may maintain an action against such person or corporation for the recovery of such interest or debt; and the judge or referee may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge or referee granting the same, or the court in which the action is brought, at any time, upon such terms as may be just.

[§§ 707.150(b), 708.110]

721.

If any person, party, or witness disobey an order of the referee, properly made, in the proceedings before him under this chapter, he may be punished by the court or judge ordering the reference, for a contempt.

[§ 707.110(d)]

722.

When any judgment debtor, or any person or corporation or officer or member of such corporation, does not reside or have a place of business in the county where the judgment roll is filed, or where the judgment is entered in the docket in the justice court, an order authorized to be made under any of the provisions of this chapter may be made by any judge of a court of similar jurisdiction of the county where such judgment debtor or other person resides or has a place of business, or if there be no court of similar jurisdiction in such county, by a court of higher jurisdiction therein, upon filing with the clerk or judge of said court an abstract of the judgment, in the form prescribed by Section 674 of this code and upon presenting to the judge of such court an affidavit showing the existence of the facts required to be shown herein. At the time of filing such abstract, there shall be paid to such clerk or judge, as and for a filing fee, the sum of four dollars (\$4) when filed in a justice court; the sum of six dollars (\$6) when filed in a superior or municipal court.

[§ 707.180]

722.5.

Whenever a warrant may properly be issued pursuant to Section 1785 of the Unemployment Insurance Code or Sections 6776, 7881, 9001, 10111, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code to enforce any lien arising under the provisions of the Unemployment Insurance Code or the Revenue and Taxation Code, the state agency authorized to issue the warrant shall be entitled to all of the remedies available to judgment creditors.

[§ 701.160(a)]

Where jurisdiction of any court is required for enforcement of such remedies, jurisdiction is conferred upon the superior court of the State of California in and for the county where the person against whom enforcement is sought resides or the property against which enforcement is sought is situated, or if the person does not reside in this State, in any county of this State.

[§ 701.160(b)]

723.

A referee appointed by a judge of the superior court of a county or city and county having a population of one million inhabitants or more, pursuant to the provisions of this chapter, must be an attorney duly licensed to practice law in all the courts of this State at least five years prior to the date of such appointment, and said referee of the superior court of such county or city and county of the State shall have the same powers as the court to grant adjournments, to preserve order, to subpoena witnesses to attend before him and to compel the attendance of witnesses by attachment. [§ 707.110(c)]

Chapter 3

SALE OF FRANCHISES

724a.

For the satisfaction of any judgment against any person, company, or corporation having any franchise other than the franchise of being a corporation, such franchise, and all the rights and privileges thereof, may be levied upon and sold under execution, in the same manner, and with the same effect, as any other property.

724b.

The purchaser at the sale must receive a certificate of purchase of the franchise, and be immediately let into the possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof, and must thereafter conduct the business of such corporation, with all its powers and privileges, and subject to all its liabilities, until the redemption of the same, which redemption may be had as provided in this code in the case of redemption from sales of real estate on execution.

724c.

The purchaser or his assignee is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages or other causes, occurring during the time he holds the same, and may use the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had is a bar to any subsequent action by or on behalf of the corporation for the same.

724d.

The person, company, or corporation whose franchise is sold, as in this chapter provided, in all other respects retains the same powers, is bound to the discharge of the same duties, and is liable to the same penalties and forfeitures, as before such sale.

724e.

The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business, or in which the property, or some portion thereof is situated.

[Chapter 3 is not continued; see Note to Section 706.010.]

APPENDIX II

CONFORMING CHANGES

Civil Code § 765 (amended)

Sec. . Section 765 of the Civil Code is amended to read:

765. _____ Estates of inheritance and for life are called estates of freehold; estates for years are chattels real; and estates at will are chattel interests, ~~but are not liable as such to sale on execution.~~

Comment. The provision that estates at will are "not liable as such to sale on execution" is superseded by subdivision (c) of Section 705.020 of the Code of Civil Procedure.

Corporations Code § 15025 (amended)

Sec. . Section 15025 of the Corporations Code is amended to read:

15025.

(1) _____ A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

(2) _____ The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) ~~A partner's right in specific partnership property is not subject to attachment, or execution, except on a claim against the partnership.~~ When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin, and is not community property.

Comment. The exemption from attachment and execution of a partner's right in specific partnership property, except on claims against the partnership, has been superseded by Code of Civil Procedure Section 705.370.

Corporations Code § 28005 (amended)

Sec. . Section 28005 of the Corporations Code is amended to read:

^{28005.}
~~The property of a retirement system, the portion of wages or salary of an employee deducted or to be deducted, the right of a participant or beneficiary to a benefit thereunder, and all his rights in the funds of the system, shall be exempt from taxation, attachment, garnishment, execution, and from the operation of any law relating to bankruptcy or insolvency.~~

Comment. The exemption from attachment, garnishment, and execution provided by Section 28005 has been superseded by Code of Civil Procedure Section 750.460. The exemption from bankruptcy is repealed as unnecessary. See Bankruptcy Act § 6, 11 U.S.C. § 24 (1970).

Note. This section is from the Retirement Systems Disclosure Law (Section 28000 et seq.).

Education Code § 13808 (amended)

Sec. . Section 13808 of the Education Code is amended to read:

^{13808.}
~~The right of a person to an annuity, a retirement salary, or a retirement allowance, to the return of contributions, the annuity, retirement salary, or retirement allowance itself, any optional benefit, any other right or benefit accrued or accruing to any person under this chapter, and the money in the fund created under this chapter ~~shall be exempt from attachment, garnishment, execution, and from the operation of any law relating to bankruptcy or insolvency~~ and are unassailable except as specifically provided in this chapter.~~

Comment. The exemption from execution, garnishment, attachment, or any other process provided by Section 13803 has been superseded by Code of Civil Procedure Section 705.490. See Code Civ. Proc. § 705.140.

Note. This is from the State Teachers' Retirement Law (Section 13801 et seq.).

Education Code § 31067 (repealed)

Sec. . Section 31067 of the Education Code is repealed.

~~31067.~~

~~The property conveyed by the grant shall not, after a lapse of two years from the date of the filing for record of the grant, be subject to forced sale, under execution, or judicial proceedings of any kind, against the grantor or his privies, unless the action under which the execution is issued, or the proceedings under which the sale is ordered, has been commenced within two years after the grant has been filed for record. No property shall be subject to execution or forced sale under any judgment obtained in any proceedings instituted within two years, if there is other property of the grantor, subject to execution or forced sale sufficient to satisfy the judgment. Nothing in this section contained shall be construed to affect mechanics' or laborers' lien.~~

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STRIKEOUT

Comment. Section 31067 has been superseded by Code of Civil Procedure Sections 705.150 and 705.350. It relates to private grants for educational institutions, museums, art galleries, and parks.

Financial Code § 15406 (repealed)

Sec. . Section 15406 of the Financial Code is repealed.

~~15406. The shares and certificates for funds received of members of any credit union and all the accumulation on such shares and certificates are exempt from sale on execution and proceedings supplementary thereto, to the amount of one thousand five hundred dollars (\$1,500). The procedure set forth in Section 690.50 of the Code of Civil Procedure shall be followed in claiming the exemption from execution pursuant to this section.~~

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STRIKEOUT

Comment. Section 15406 is superseded by Section 705.230 of the Code of Civil Procedure.

Government Code § 31452 (amended)

Sec. . Section 31452 of the Government Code is amended to read:

31452.

The right of a person to a disability annuity, retirement allowance, return of contributions, the purchase annuity, or retirement allowance, any optional benefits, any other benefits accrued or accruing to any person under this chapter, the money in the fund created or continued under this chapter, and any property purchased for investment purposes pursuant to this chapter, are exempt from taxation, including any inheritance tax, whether state, county, municipal, or district, and ~~from any law relating to bankruptcy or insolvency. They are not subject to execution, garnishment, attachment, or any other process of court whatsoever, and are unassignable except as specifically provided in this chapter.~~

Comment. The exemption from execution, garnishment, attachment, or any other process provided by Section 31452 has been superseded by Code of Civil Procedure Section 705.450. See also Code Civ. Proc. § 705.140. The exemption from bankruptcy is repealed as unnecessary. See Bankruptcy Act § 6, 11 U.S.C. § 24 (1970).

Note. This is from the County Employees' Retirement Law of 1937 (Section 31450 et seq.).

Government Code § 31913 (amended)

Sec. . Section 31913 of the Government Code is amended to read:

31913.

That portion of the wages of any peace officer deducted or to be deducted under this chapter, the right of a peace officer or other person to an annuity or pension, and all his rights in the fund are exempt from taxation ~~and from the operation of any law relating to bankruptcy or insolvency and shall not be attached or taken upon execution or other process of any court.~~ An assignment of any right in or to the funds or to any pension or annuity is void.

Comment. The exemption from execution, garnishment, attachment, or any other process provided by Section 31913 has been superseded by Code of Civil

Procedure Section 705.450. See also Code Civ. Proc. § 705.140. The exemption from bankruptcy is repealed as unnecessary. See Bankruptcy Act § 6, 11 U.S.C. § 24 (1970).

Note. This is from the County Peace Officers' Retirement Law (Section 31900 et seq.).

Government Code § 32210 (amended)

Sec. . Section 32210 of the Government Code is amended to read:

32210.

The title to all property acquired pursuant to this chapter shall be taken in the name of the county. The title to any money which becomes due to any member shall not pass from the county or county fire protection district to him until he is entitled thereto under this chapter. That portion of the wages of any member deducted or to be deducted under this chapter, the right of a member or other person to an annuity or pension, and all of his rights in the fund are exempt from taxation ~~and from the operation of any law relating to bankruptcy or insolvency and shall not be attached or taken upon execution or other process of any court.~~ An assignment of any right in or to the funds, or to any pension or annuity is void.

Comment. The exemption from execution, garnishment, attachment, or any other process provided by Section 32210 has been superseded by Code of Civil Procedure Section 705.450. See also Code Civ. Proc. § 705.140. The exemption from bankruptcy is repealed as unnecessary. See Bankruptcy Act § 6, 11 U.S.C. § 24 (1970).

Note. This is from the County Fire Service Retirement Law (Section 32200 et seq.).

Health & Safety Code § 7925 (amended)

Sec. . Section 7925 of the Health and Safety Code is amended to read:

7925.

Money payable or to become payable as the purchase price or on account of the purchase price of unused lands, or lands from which all remains have been removed ~~is not subject to garnishment, attachment or execution, but~~ shall be used exclusively for any or all of the following purposes:

(a) Acquisition of lands and improvements for cemetery purposes.

(b) Disinterment, removal, and reinterment of bodies, pursuant to this chapter.

(c) Endowment care of graves, markers, and cemetery embellishments.

(d) The payment of expenses incidental to the disinterment, removal, and reinterment.

(e) Any other purpose consistent with the objects for which the cemetery authority owning the cemetery is created or organized.

Comment. The exemption from garnishment, attachment, or execution provided by Section 7920 has been superseded by Code of Civil Procedure Section 705.290.

Health & Safety Code § 8561 (amended)

Sec. . Section 8561 of the Health and Safety Code is amended to read:

8561.

All property dedicated pursuant to this chapter, including roads, alleys, and walks, is exempt from public improvement assessments, ~~and is not liable to be sold on execution or applied in payment of debts due from individual owners of interment plots.~~

Comment. The exemption from execution provided by Section 8561 has been superseded by Code of Civil Procedure Section 705.290. See also Code Civ. Proc. § 705.140.

Health & Safety Code § 32508 (amended)

Sec. . Section 32508 of the Health and Safety Code is amended to read:

32508.

No suit, action, or proceeding shall be commenced or maintained by any person to set aside, annul, or affect the conveyance or the title to the property conveyed, or the right to the possession, rents, issues, and profits thereof, unless it is commenced within two years after the date of filing the grant for record. Nor in any suit, action, or proceeding commenced by the trustee named in the grant, his successor, privy, or any person holding under him shall any defense be made involving the legality of the grant, or affecting the title to the property

thereby conveyed, the right to its possession, or the rents, issues, and profits thereof, unless the suit, motion, or proceeding is commenced within two years after the date of the death of the person to whom the property shall have been conveyed or devised.

Comment. The exemption from execution and forced sale of property granted pursuant to this division which was provided by Section 32508 has been superseded by Code of Civil Procedure Section 705.240. See also Code Civ. Proc. § 705.140.

Note. Section 32508 relates to grants to endow a hospital.

Health & Safety Code § 33124 (repealed)

Sec. . Section 33124 of the Health and Safety Code is repealed.

~~33124.~~

~~All property of an agency, including the funds, owned or held by it for the purposes of this part shall be exempt from levy and sale by virtue of an execution or other judicial process. Execution or other judicial process shall not issue against such property of an agency nor shall any judgment against an agency be a charge or lien upon such property. This section does not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage, deed of trust, or other encumbrance of an agency or the right of obligees to pursue any remedies for the enforcement of any charge or lien given by an agency on its real property.~~

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Comment. Section 33124 has been superseded by Code of Civil Procedure Sections 705.150 and 705.230. See also Code Civ. Proc. § 705.140.

Health & Safety Code § 34217 (repealed)

Sec. . Section 34217 of the Health and Safety Code is repealed.

~~34217.~~

~~Execution or other judicial process shall not issue against the real property of an authority nor shall any judgment against an authority be a charge or lien upon its real property. This section does not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of an authority or the right of obligees to pursue any remedies for the enforcement of any charge or lien given by an authority on its real property.~~

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Comment. Section 34217 has been superseded by Code of Civil Procedure Sections 705.150 and 705.380. See Code Civ. Proc. § 705.140.

Insurance Code § 10213 (amended)

Sec. . Section 10213 of the Insurance Code is amended to read:

10213.

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~~Except as provided by Sections 10203.5, 10203.6 and 10203.8, a policy of group life insurance or the proceeds thereof paid to the insured employee or the beneficiary thereunder shall not be liable, either before or after payment, to be applied by any legal or equitable process to pay any liability of any person having a right under the policy. The proceeds thereof when not made payable to a named beneficiary, shall not constitute a part of the estate of the employee for the payment of his debts.~~

of a policy of
group life
insurance,

Comment. The exemption from legal or equitable process provided by Section 10213 has been superseded by Code of Civil Procedure Section 705.440. See also Code Civ. Proc. § 705.140.

Insurance Code § 10498.5 (amended)

Sec. . Section 10498.5 of the Insurance Code is amended to read:

10498.5.

If a holder of a certificate of exemption receives or maintains funds for any purpose other than administering and providing the benefits that make it subject to this article, it shall segregate and maintain separately all funds received by it for the purpose of administering and providing such benefits.

~~When so segregated and maintained separately such benefit funds shall not be liable to attachment, garnishment, execution, or other process by or on behalf of creditors against the holder of a certificate of exemption, except that such funds shall not be exempt from process issued to enforce a claim for benefits.~~

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Comment. The second paragraph of Section 10498.5, which provided an exemption from attachment, garnishment, execution, or other process, has been superseded by Code of Civil Procedure Section 705.530. See also Code Civ. Proc. § 705.140.

Insurance Code § 11045 (repealed)

Sec. . Section 11045 of the Insurance Code is repealed.

~~11045.~~

~~Moneys on this account or proceeds of any such account shall not be made either before or after payment, to attachment, or in any other way, subject to the claims or demands of any creditor of the insured.~~

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Comment. Section 11045 has been superseded by Code of Civil Procedure

Section 705.510. See Code Civ. Proc. § 705.140.

Labor Code § 270.5 (amended)

Sec. . Section 270.5 of the Labor Code is amended to read:

270.5.

No person, agent or officer thereof, or logging contractor, or sawmill operations contractor, engaged in the business of logging or operating a sawmill for converting logs into lumber, except in the case of logging or sawmill operations of persons having a free and unencumbered title to the fee of real property in this State, of a market value sufficient to pay the wages of every person employed in connection with such operations in any period for which a single payment of wages is made, shall fail or neglect, before commencing work in any period for which such single payment of wages is made, or for four calendar weeks, whichever is the longer, (a) to have on hand or on deposit with a bank or trust company, in the county where such business is conducted, or if there is no bank or trust company in the county, then in the bank or trust company nearest such operations, cash or readily salable securities of a market value sufficient to pay the wages of every person employed in connection with such operations for such period, or (b) to deposit with the Labor Commissioner the bond of a surety company authorized to do business within the State, acceptable to him, conditioned upon the payment of all wages found by the Labor Commissioner to be due and unpaid in connection with such operations.

The cash and securities on deposit hereinafore referred to shall not be commingled with other deposits, securities or property of the employer and shall be held in trust and shall not be used for any other purpose than paying the wages due employees. ~~Such moneys so held in trust shall not be subject to garnishment, attachment or execution by any other creditor of the employer.~~

Any person, agent or officer thereof, or logging contractor, or sawmill operations contractor, who violates this section is guilty of a misdemeanor.

Comment. The exemption of moneys held in trust from garnishment, attachment, or execution provided by Section 270.5 has been superseded by Code of Civil Procedure Section 705.320.

Labor Code § 270.6 (amended)

Sec. . Section 270.6 of the Labor Code is amended to read:

270.6.

No person or agent or officer thereof, without a permanent and fixed place of business or residence in this state who uses or employs any person in the conduct of selling of any merchandise, or in any similar itinerant activity, or in any telephone solicitation, shall fail or neglect before commencing work in any period for which any single payment of wages is made or for four calendar weeks, whichever is longer.

(a) To have on hand or on deposit with a bank or trust company in the county where such business is conducted, or if there is no bank or trust company in the county, then in the bank or trust company nearest such operations, cash or readily salable securities of a market value sufficient to pay the wages of every person employed in connection with such operations for such period, or

(b) To deposit with the Labor Commissioner the bond of a surety company authorized to do business within the state, acceptable to him, conditioned upon the payment of all wages found to be due and unpaid in connection with such operations under any provision of this code, or

(c) To deposit with the Labor Commissioner a time certificate of deposit indicating that the person, agent or officer subject to the provisions of this section has deposited with a bank or trust company cash payable to the order of the Labor Commissioner sufficient to pay the wages of every person employed in connection with such operations for such period.

The cash and securities on deposit hereinbefore referred to shall not be commingled with other deposits, securities, or property of the employer and shall be held in trust and shall not be used for any other purpose than paying the wages due employees. ~~Such moneys so held in trust shall not be subject to garnishment, attachment or execution by any other creditor of the employer.~~

Any person, or agent or officer thereof, who violates this section is guilty of a misdemeanor.

Comment. The exemption of moneys held in trust from garnishment, attachment, or execution provided by Section 270.6 has been superseded by Code of Civil Procedure Section 705.320.

Labor Code § 404 (amended)

Sec. . Section 404 of the Labor Code is amended to read:

404.

~~(Any money put up as a bond under sections 401, 402 and 403 shall be subject to garnishment, attachment or execution only by the employer, the employee or applicant, or his heirs or assigns, and shall be returned to the employee or applicant together with accrued interest thereon, immediately upon the return of the money or property entrusted to the employee or applicant and upon the fulfillment of the agreement, subject only to the deduction necessary to balance accounts between the employer and employee or applicant.)~~

Comment. The exemption of money put up as a bond from garnishment, attachment, or execution provided by Section 404 has been superseded by Code of Civil Procedure Section 705.330.

Labor Code § 4901 (repealed)

Sec. . Section 4901 of the Labor Code is repealed.

4901.

~~No claim for compensation nor compensation awarded, adjudged, or paid, is subject to be taken for the debts of the party entitled to such compensation except as hereinafter provided.~~

Comment. Section 4901 is repealed. Its substance is continued by Code of Civil Procedure Section 705.480. See Code Civ. Proc. § 705.140.

Public Utilities Code § 12337 (amended)

Sec. . Section 12337 of the Public Utilities Code is amended to read:

12337. All money received by any person as an annuity, pension, retirement allowance, disability payment, or death benefit from the retirement system, and all contributions and interest thereon returned to any member of the retirement system, whether in the actual possession of such person or deposited, loaned, or invested by him, is unassignable, and is exempt from execution and attachment as provided in Section 690.18 of the Code of Civil Procedure.

Comment. The exemption from execution and attachment provided by Section 12337 has been superseded by Code of Civil Procedure Section 705.450.

Note. This is from the Municipal Utility District Act (Section 11501 at seq.).

Public Utilities Code § 25337 (amended)

Sec. . Section 25337 of the Public Utilities Code is amended to read:

25337.

All money received by any person as an annuity, pension, retirement allowance, disability payment, or death benefit from the retirement system, and all contributions and interest thereon returned to any member of the retirement system, whether in the actual possession of such person or deposited, loaned, or invested by him, is unassignable, ~~and is exempt from execution and attachment pursuant to Section 690.18 of the Code of Civil Procedure.~~

Comment. The exemption from execution and attachment provided by Section 25337 has been superseded by Code of Civil Procedure Section 705.450.

Note. This is from the Transit District Law (Alameda and Contra Costa Counties--Section 24501 at seq.).

Public Utilities Code § 28896 (amended)

Sec. . Section 28896 of the Public Utilities Code is amended to read:

28896.

All money received by any person as an annuity, pension, retirement allowance, disability payment, or death benefit from the retirement system, and all contributions and interest thereon returned to any member of the retirement system, whether in the actual possession of such person or deposited, loaned, or invested by him, ~~is exempt from execution, garnishment, or attachment and~~ is unassignable.

Comment. The exemption from execution, garnishment, or attachment provided by Section 28896 has been superseded by Code of Civil Procedure Section 705.450.

Note. This section is from the San Francisco Bay Area Rapid Transit District Act (Section 28500 et seq.).

Public Utilities Code § 50146 (amended)

Sec. . Section 50146 of the Public Utilities Code is amended to read:

50146.

All money received by any person as an annuity, pension, retirement allowance, disability payment, or death benefit from the retirement system, and all contributions and interest thereon returned to any member of the retirement system, whether in the actual possession of such person or deposited, loaned, or invested by him, ~~is exempt from execution, garnishment, or attachment and~~ is unassignable.

Comment. The exemption from execution, garnishment, or attachment provided by Section 50146 has been superseded by Code of Civil Procedure Section 705.450.

Note. This section is from the Stockton Metropolitan Transit District Act of 1963 (Section 50000 et seq.).

Public Utilities Code § 95836 (amended)

Sec. . Section 95836 of the Public Utilities Code is amended to read:

95836.

All money received by any person as an annuity, pension, retirement allowance, disability payment or death benefit, from the retirement system, and all contributions and interest thereon returned to any member of the retirement system, whether in the actual possession of such member or deposited, loaned, or invested by him, ~~is exempt from execution, garnishment, or attachment and~~ is unassignable.

Comment. The exemption from execution, garnishment, or attachment provided by Section 95830 has been superseded by Code of Civil Procedure Section 705.450.

Note. This section is from the Santa Barbara Metropolitan Transit District Act of 1965 (Section 97000 et seq.).

Public Utilities Code § 98196 (amended)

Sec. . Section 98196 of the Public Utilities Code is amended to read:

98196.

All money received by any person as an annuity, pension, retirement, allowance, disability payment or death benefit, from the retirement system, and all contributions and interest thereon returned to any member of the retirement system, whether in the actual possession of such member or deposited, loaned, or invested by him, ~~is exempt from execution, garnishment, or attachment and~~ is unassignable.

Comment. The exemption from execution, garnishment, or attachment provided by Section 98196 has been superseded by Code of Civil Procedure Section 705.450.

Note. This section is from the Santa Cruz Metropolitan Transit District Act of 1967 (Section 98000 et seq.).

Unemployment Insurance Code § 988 (amended)

Sec. . Section 988 of the Unemployment Insurance Code is amended to read:

988.

Contributions by workers, payable as provided in this article, shall be exempt from attachment and execution pursuant to Section 690.16 of the Code of Civil Procedure, and from garnishment or any other remedy for the collection of debts, and in the event of the insolvency or bankruptcy of an employer shall not be considered any part of his assets and shall be paid to the director prior to the payment of any other claim against the employer.

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Comment. The exemption from attachment, execution, and any other remedy for the collection of debts provided by Section 988 has been superseded by Code of Civil Procedure Section 705.500. See also Code Civ. Proc. § 705.140. The exemption from bankruptcy of contributions under this article is repealed since it is unnecessary. See Bankruptcy Act § 6, 11 U.S.C. § 24 (1970).

Unemployment Insurance Code § 1342 (amended)

Sec. . Section 1342 of the Unemployment Insurance Code is amended to read:

1342. Any waiver by any person of any benefit or right under this code is invalid. Benefits under this code, incentive payments provided by Division 2 (commencing with Section 5000), and payments to an individual under a plan or system established by an employer which makes provisions for his employees generally, or for a class or group of his employees, for the purpose of supplementing unemployment compensation benefits, are not subject to assignment, release, or commutation, ~~and are exempt from attachment and execution pursuant to Sections 690.175 and 690.18 of the Code of Civil Procedure.~~ Any agreement by any individual in the employ of any person or concern to pay all or any portion of the contributions required of his employer under this division is void.

Comment. The exemption from attachment and execution provided by Section 1342 has been superseded by Code of Civil Procedure Section 705.490.

Note. This section was enacted by Cal. Stats. 1973, Ch. 1206, § 58, and by Cal. Stats. 1973, Ch. 1207, § 58.

Water Code § 8537 (repealed)

Sec. . Section 8537 of the Water Code is repealed.

~~8537.~~

~~The property of the board and of the drainage district is exempt from execution or attachment.~~

Comment. Section 8537 has been superseded by Code of Civil Procedure Section 705.380.

Note. "Board" means Reclamation Board (Section 8521) and "drainage district" means Sacramento and San Joaquin Drainage District (Section 8522).

Water Code § 22142 (repealed)

Sec. . Section 22142 of the Water Code is repealed.

~~All money received by employee or member of family pension, retirement allowance, disability payment or death benefit from the retirement or pension plan or system and all contributions and interest thereon, or from any member of such plan or system, whether or not the actual possession of such pension or disability benefit or interest is transferred to the employee or member of family, shall be exempt from execution and attachment.~~

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Comment. Section 22142 has been superseded by Code of Civil Procedure Section 705.450.

Note. This section is from the Irrigation District Law (Section 20500 et seq.).

Welfare & Institutions Code § 11002 (amended)

Sec. . Section 11002 of the Welfare and Institutions Code is amended to read:

11002.

All aid given under a public assistance program shall be absolutely inalienable by any assignment, sale, or otherwise, ~~and in case of bankruptcy the aid shall not pass through any trustee or other person acting on behalf of creditors, and no claim for execution and attachment pursuant to Section 699.19 of the Code of Civil Procedure.~~

Comment. The exemption from execution and attachment provided by Section 11002 has been superseded by Code of Civil Procedure Section 705.400. The exemption from bankruptcy proceedings has been repealed because it is unnecessary. See Bankruptcy Act § 6, 11 U.S.C. § 24 (1970).

Welfare & Institutions Code § 14115.5 (amended)

Sec. . Section 14115.5 of the Welfare and Institutions Code is amended to read:

14115.5.

Monies payable or rights existing under this chapter shall be subject to any claim, lien or offset of the State of California, and any claim of the United States of America made pursuant to federal stat-

~~ute, but shall not otherwise be subject to execution, levy, attachment, garnishment, or other legal process, and no transfer or assignment, at law or in equity, of any right or a provider of health care to any payment shall be enforceable against the state, a fiscal intermediary or carrier.~~

No

Comment. The exemption from "execution, levy, attachment, garnishment, or other legal process" provided by Section 14115.5 has been superseded by Code of Civil Procedure Section 705.400. See also Code Civ. Proc. § 705.140.

Note. The chapter referred to in Section 14115.5 is Chapter 7 (Basic Health Care--Section 14000 et seq.) of Part 3 of Division 9.

Welfare & Institutions Code § 17409 (amended)

Sec. . Section 17409 of the Welfare and Institutions Code is amended to read:

17409.

There shall be exempt from the transfers and grants authorized by Section 17109 ~~and from attachment and execution on claims under Section 17403 against property acquired by persons for the support of whom public moneys have been expended~~ all of the following property:

- (a) Cash to the amount of fifty dollars (\$50).
- (b) Personal effects and household furniture to the value of five hundred dollars (\$500).
- (c) An interment space, crypt, or niche intended for the interment of the applicant or recipient of aid.
- (d) Funds placed in trust for funeral or burial expenses to the extent that such funds do not exceed the sum of five hundred dollars (\$500).
- (e) Insurance policies having an actual cash surrender value of not to exceed five hundred dollars (\$500).
- (f) Real or personal property of a recipient of public assistance, with respect to aid or county hospital care granted after May 21, 1963.

No county shall withhold emergency medical or hospital care from any person pending his giving security for reimbursement to the county for the care or hospitalization to be provided to him.

Comment. Section 17409 has been amended to delete the reference to execution on claims by the county under Section 17403 to recover money where a former aid recipient has later acquired property. The effect of this amendment is to make applicable to such actions the general exemptions from execution provided in Chapter 5 (commencing with Section 705.010) of the Code of Civil Procedure. See Code Civ. Proc. § 705.400 and Comment.