

## Memorandum 79-67

Subject: Study D-300 - Enforcement of Judgments (Property Subject to Enforcement of Judgments and Exemptions--revision of comprehensive statute)

Attached to this memorandum is a redrafted version of the portion of the enforcement of judgments statute governing exemptions of property from execution. The redraft incorporates changes made by the Commission at the October meeting in response to comments received on the tentative recommendation and questions raised by the staff.

Although the revised provisions reflect the Commission decisions, the staff is still not comfortable with the Commission decision on the bank account exemption. The Commission decided to preserve the existing \$1,000 savings and loan exemption and \$1,500 credit union exemption, and to add a \$500 bank account exemption. Each exemption would be reduced by other exempt funds in the account, and each would be available only to the extent the debtor does not have funds in the others. The staff sees little sense in varying the amount of the exemption with the type of account merely because existing law provides savings and loan and credit union exemptions. The staff believes that the existing exemptions are of little benefit to the ordinary judgment debtor who only has a checking account, and possibly a small bank savings account, on which to live. The staff believes a uniform \$500 exemption for any type of deposit account would be more fair, and reduction of the \$1,000 and \$1,500 exemptions to \$500 would help induce creditors to support such a uniform exemption.

Respectfully submitted,

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## EXEMPTIONS FROM ENFORCEMENT OF MONEY JUDGMENTS

### Introduction

Since 1851 California law has provided that certain property of judgment debtors is exempt from enforcement of a money judgment.<sup>1</sup> These exemptions are among the most generous in the United States.<sup>2</sup> In general, exemption laws are intended to reserve an amount of property sufficient to support the judgment debtor and the judgment debtor's family and to facilitate the financial rehabilitation of the judgment debtor.<sup>3</sup> They also serve to shift the cost of social welfare from the community to judgment creditors.<sup>4</sup>

The substantive exemptions were extensively revised in 1970 in response to a 1967 report by the State Bar Committee on Debtor and Creditor.<sup>5</sup> Both the substantive exemptions and the procedural provisions are in need of further revision. Important factors prompting the proposals in this recommendation include the dramatic inflation occurring over the past several years, the enactment of the Bankruptcy Reform Act of 1978 containing new exemption provisions<sup>6</sup> and the approval of a

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1. 1851 Cal. Stats. ch. 123, § 219.
  2. D. Cowans, Bankruptcy Law and Practice § 589, at 326 (1963); Committee on Debtor and Creditor of State Bar of California, Modernization of Statutory Exemptions, 42 Cal. St. B.J. 869, 873 (1967).
  3. Bailey v. Superior Court, 215 Cal. 548, 554, 11 P.2d 865, 867 (1932); see generally Vukowich, Debtors' Exemption Rights, 62 Geo. L.J. 779, 782-88 (1974). It has also been suggested that early exemptions were enacted to attract settlers in newly admitted states. See Haskins, Homestead Exemptions, 63 Harv. L. Rev. 1289, 1290 (1950).
  4. See Comment, Bankruptcy Exemptions: Critique and Suggestions, 68 Yale L.J. 1459, 1497-1502 (1959). Although it has been suggested that no property should be exempt and that insolvent debtors should rely on social welfare legislation, this alternative is undesirable because of the cost to the community of providing welfare and the low level of available benefits, because most creditors are in a position to control their extension of credit, and because the lack of exemptions would drive greater numbers of debtors into bankruptcy. See id.
  5. See Committee on Debtor and Creditor of State Bar of California, Modernization of Statutory Exemptions, 42 Cal. St. B.J. 869 (1967).
  6. See Pub. L. No. 95-598, codified in 11 U.S.C. § 522. See also Report of the Commission on the Bankruptcy Laws of the United States, House Doc. No. 93-137, Part I, 93d Cong., 1st Sess. (1973).

Uniform Exemptions Act by the National Conference of Commissioners on Uniform State Laws in 1976.

### Exempt Property

The substantive exemption provisions should accommodate both the interest of the judgment debtor in maintaining a basic standard of living and the interest of the judgment creditor in satisfying a money judgment. Accordingly, the general approach of the proposed law is to protect income and property needed for the subsistence of the judgment debtor and his or her family, such as a dwelling, household furnishings, clothes, provisions, a motor vehicle, tools of a trade, wages, insurance benefits, retirement benefits, unemployment benefits, and aid. The Commission's recommendations are also tempered with the knowledge that exemption laws are controversial.<sup>7</sup>

In drafting the proposed exemptions, the Commission has sought to strike a balance between designating specific items as exempt (such as a table, refrigerator, or stove) and creating general categories of exempt property (such as household furnishings).<sup>8</sup> Specific exemptions result in more certainty but can be overly restrictive and are more likely to be rendered obsolete over time. General exemptions provide greater flexibility and equality of treatment but are more difficult to administer.

The following material discusses the major statutory exemptions of existing law and the more important revisions proposed by the Commission.<sup>9</sup>

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7. The Advisory Committee in charge of the revision of New York laws on enforcement of money judgments gave as a reason for declining to recommend changes in exemption provisions "that they are the result of legislative compromise; that they reflect the diverse pulls of various groups within the state." 6 J. Weinstein, H. Korn, & A. Miller, *New York Civil Practice* ¶ 5205.01 (1976).
  8. See generally Joslin, Debtors' Exemption Laws; Time for Modernization, 34 Ind. L.J. 355, 356-57 (1959); Note, Debtor Exemptions in Personal Property--Proposals for Modernization, 52 Kent. L.J. 456, 457-58, 465 (1964); Rombauer, Debtors' Exemption Statutes--Revision Ideas, 36 Wash. L. Rev. 484, 490-95 (1961).
  9. The more technical revisions are discussed in the Comments sections in the Proposed Legislation infra and in the Comments to the repealed sections in the Appendix infra.

### Household Furnishings, Wearing Apparel, and Personal Effects

Existing law provides a general exemption for necessary household furnishings, appliances, and wearing apparel, and a specific exemption for a piano, radio, television receiver, shotgun, rifle, provisions and fuel for three months, and works of art by the debtor or the judgment debtor's resident family.<sup>10</sup> Under this provision, the courts have applied a "station-in-life" test resulting in the exemption of substantial amounts of personal property.<sup>11</sup>

The proposed law provides a more restrictive exemption for this type of property. It would protect household furnishings, appliances, wearing apparel, provisions, and other personal effects reasonably necessary for an average household and personally used or procured for use by the judgment debtor and members of the debtor's household at their principal residence. The limitation to goods reasonably necessary for an "average" household will ensure that the judgment debtor protects a basic living standard.

A limited exemption, not subject to the necessity standard, is provided for jewelry, heirlooms, works of art, and other items of special sentimental or psychological value to the judgment debtor if the court determines it would be inequitable to subject them to enforcement of a money judgment. This exemption is intended to protect a few special items regardless of their value and regardless of their necessity.

### Motor Vehicle

Existing law provides an exemption for one motor vehicle with a value, over all liens and encumbrances on the vehicle, not exceeding \$500.<sup>12</sup> The value of the vehicle is required to be determined from used car price guides customarily used by California automobile dealers or,

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10. Section 690.1.

11. See *Independence Bank v. Heller*, 275 Cal. App. 84, 79 Cal. Rptr. 868 (1969) (furniture worth over \$22,000 held exempt); *Newport Nat'l Bank v. Adair*, 2 Cal. App.3d 1043, 83 Cal. Rptr. 1 (1969) (furniture for 14-room apartment held exempt); Comment, California's New Household Goods Exemption and the Problem of Personal Accountability, 12 Santa Clara Law. 155 (1972).

12. Section 690.2. Section 690.4 also provides an exemption for a commercial motor vehicle used in the judgment debtor's trade, calling, or profession.

if not listed, by fair market value. If the judgment debtor's equity in the motor vehicle exceeds \$500, it may be sold at an execution sale, but the proceeds remaining after satisfaction of liens and encumbrances are exempt in the amount of \$500 for a period of 90 days.

The proposed law increases the motor vehicle exemption to \$1,000 in light of the increased value of motor vehicles generally. The exemption for proceeds is extended to proceeds from a voluntary sale or from insurance or other indemnification received for the damage or destruction of the vehicle;<sup>13</sup> this fills a gap in existing law.

#### Tools of a Trade

Existing law provides an exemption for tools and other items, including one commercial fishing boat and one commercial motor vehicle, ordinarily and reasonably necessary for the use of the judgment debtor in the exercise of the trade, calling, or profession by which the judgment debtor earns a livelihood, to the maximum aggregate actual cash value of \$2,500 in excess of liens and encumbrances on such items.<sup>14</sup> The proposed law continues this exemption and includes building materials for which existing law provides a separate exemption in the amount of \$1,000.<sup>15</sup> The proposed law would also exempt proceeds from the sale or indemnification for the loss, damage, or destruction of such items in the amount of \$2,500 for a period of 90 days after a voluntary sale or, in other cases, after receipt of the proceeds or indemnification.<sup>16</sup>

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13. Section 9(a) of the Uniform Exemptions Act (1976) provides a similar exemption traceable for 18 months.

14. Section 690.4.

15. Section 690.17. The proposed law also exempts building materials that are not a tool of trade where they have been purchased by a homeowner for the repair or improvement of the home.

16. Section 9(a) of the Uniform Exemptions Act (1976) provides a similar exemption traceable for 18 months. The 90 day limitation on the protection of proceeds is the same as that provided by Section 690.2(e) in the case of a motor vehicle.

### Health Aids

Existing law provides an exemption for prosthetic and orthopedic appliances personally used by the debtor.<sup>17</sup> This exemption is too narrow<sup>18</sup> and should be expanded to include health aids reasonably necessary to enable the judgment debtor or the spouse or dependents of the judgment debtor to work or sustain health.<sup>19</sup> This provision would permit the exemption of items such as a wheel chair for a person unable to walk to work, an air conditioner for a person afflicted with asthma, or an elevator for a person unable to climb stairs, but would not exempt a swimming pool, sauna, bicycle, golf clubs, or gymnastic equipment merely because their use is conducive to good health.

### Deposit Accounts

Existing law provides exemptions for \$1,000 in a savings and loan association account<sup>20</sup> and \$1,500 in a credit union account.<sup>21</sup> An account into which social security benefits are directly deposited is protected from levy to the extent of \$500 if there is one recipient and \$750 if there are two or more recipients, and is exempt to the extent that additional amounts consist of social security payments.<sup>22</sup> There is

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17. Section 690.5.

18. "Prosthesis" is defined as the "addition to the human body of some artificial part, as a leg, eye, or tooth." Webster's New Collegiate Dictionary 678 (1956). "Orthopedics" is defined as the "correction or prevention of deformities, esp. in children." *Id.* at 593.

19. This provision is derived from Section 5(2) of the Uniform Exemptions Act (1976).

20. Section 690.7.

21. Fin. Code § 15406.

22. Section 690.30. Section 690.30 requires the judgment creditor to initiate the exemption proceedings to determine whether nonexempt amounts reside in the account. At the hearing, however, the judgment debtor has the burden of proof. This provision, enacted by 1976 Cal. Stats. ch. 810, § 1, limits the application of the rule in *Phillips v. Bartholomie*, 46 Cal. App.3d 346, 121 Cal. Rptr. 56 (1975), which held that a judgment debtor is not entitled to a hearing before social security, AFDC, county welfare, and veterans' benefits in a bank account could be levied upon. Of course, such benefits are exempt when a claim is made under general principles regarding tracing of exempt benefits. See *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 416-17 (1973) (disability benefits in

no specific exemption for savings or checking accounts in banks.<sup>23</sup>

There is no justifiable reason for discriminating against judgment debtors who happen to have bank accounts rather than savings and loan or credit union accounts. Under the proposed law, deposit accounts in banks are exempt in the aggregate amount of \$500. The bank, savings and loan, and credit union exemptions would be mutually exclusive--each would be available only to the extent the judgment creditor does not have funds in the others. And each would be reduced to the extent there are other exempt funds from exempt sources in the account. This scheme will ensure that a judgment debtor having a bank account receives the exemption, but will preclude judgment debtors from accumulating substantial exempt amounts to the detriment of judgment creditors.

#### Life Insurance

Existing law exempts benefits growing out of life insurance in an amount resulting from payment of a \$500 annual premium and provides an additional exemption in the same amount in favor of the insured's spouse or minor children.<sup>24</sup> Certain types of group life insurance are completely exempt.<sup>25</sup> The life insurance exemption shields benefits from

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bank account); *Kruger v. Wells Fargo Bank*, 11 Cal.2d 352, 367, 521 P.2d 441, \_\_\_, 113 Cal. Rptr. 449, \_\_\_ (1974) (unemployment benefits in checking account). Section 690.30 provides an additional protection since it shields a certain portion of the account from the reach of creditors without the necessity of making a claim of exemption.

23. Exempt amounts may be traced into bank accounts under existing law. See the discussion under "Tracing Exempt Amounts" infra.
24. Section 690.9. The exemption also applies to endowment and annuity policies. See *Hing v. Lee*, 37 Cal. App. 313, 318, 174 P. 356, \_\_\_ (1918). Where there are multiple beneficiaries entitled to claim the exemption, each beneficiary is entitled to assert an exemption in proportion to the total proceeds of the policy. *Jackson v. Fisher*, 56 Cal.2d 196, 201, 363 P.2d 479, \_\_\_, 14 Cal. Rptr. 439, \_\_\_ (1961).
25. Section 690.10; Ins. Code § 10213. This exemption does not apply in certain cases. See Ins. Code §§ 10203.5 (borrower and installment purchaser groups), 10203.6 (credit union groups), 10203.8 (savings account depositors).

the reach of judgment creditors of the insured and of the beneficiary.<sup>26</sup> The exemption also protects a beneficiary under a credit insurance policy.<sup>27</sup>

Consistent with the policy of protecting a minimal amount of property necessary to support the judgment debtor and the judgment debtor's family, the proposed law would substantially revise these exemptions. A judgment creditor would not be able to reach the cash surrender value of a policy. The proposed law would, however, permit the creditor to reach the loan value of the policy to the extent it exceeds \$5,000. The judgment debtor should not be forced to surrender the policy because the judgment debtor may be uninsurable or insurable only at a prohibitive premium.

The proposed law provides an exemption of benefits from a matured life insurance, endowment, or annuity policy in an amount reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor. The proposed law would eliminate the arbitrary feature of existing law which exempts benefits to the extent represented by a \$500 annual premium.<sup>28</sup> The existing standard can result in widely varying exempt amounts depending upon the type of policy (e.g., straight life, endowment, or annuity), the type of insurer

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26. *Holmes v. Marshall*, 145 Cal. 777, 779-82, 79 P.2d 534, \_\_\_ (1905).

27. *Jackson v. Fisher*, 56 Cal.2d 196, 199, 363 P.2d 479, \_\_\_, 14 Cal. Rptr. 439, \_\_\_ (1961).

28. This standard dates from 1868 when the life insurance exemption was enacted. 1868 Cal. Stats. ch. 404, § 1. The first life insurance exemption provision, the Verplanck Act enacted in New York in 1840, also based the exemption upon the amount of the annual premium. See *Riesenfeld, Life Insurance and Creditors' Remedies in the United States*, 4 U.C.L.A. L. Rev. 583, 589 (1957). At the time such exemptions were first enacted, life insurance was used to provide support for the family of the deceased. Today, a majority of payments under life insurance policies are made to policyholders. See *Institute of Life Insurance, Life Insurance Fact Book '77*, at 49-50 (1977); *Vukowich, Debtors' Exemption Rights*, 62 Geo. L.J. 779, 810 & n.183 (1974).

(e.g., private, group, industrial, government), the age of the insured when the policy was taken out, and the length of coverage.<sup>29</sup>

#### Public and Private Retirement and Death Benefits

Existing law exempts retirement plan benefits both before payment, when no claim is required to be made, and after payment, when the exemption must be claimed.<sup>30</sup> The exemption does not apply, however, against a judgment for child or spousal support.<sup>31</sup> The proposed law would continue the substance of this exemption.

#### Disability and Health Benefits

Existing law provides several exemptions for benefits from a disability or health insurance policy or program. Disability or health insurance benefits are exempt to the extent represented by a \$500 annual premium.<sup>32</sup> Money of a fraternal organization used to pay sick benefits to members of the organization is exempt in the amount of \$500.<sup>33</sup> Money paid by a fraternal benefit society is exempt before and after payment.<sup>34</sup> Disability benefits under a retirement plan are exempt to the same extent as other retirement benefits.<sup>35</sup>

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29. For example, the exempt benefits deriving from a \$500 premium amounted to \$113,200 in *Jackson v. Fisher*, 56 Cal.2d 196, 363 P.2d 479, 14 Cal. Rptr. 439 (1961) (\$883 annual premium on \$100,000 policy with double indemnity clause), and \$8,900 in *California United States Bond & Mort. Corp. v. Grodzins*, 139 Cal. App. 240, 34 P.2d 193 (1934) (\$558 annual premium on \$10,000 policy).
30. Section 690.18. This exemption covers pensions, annuities, and retirement, disability, death, or other benefits, and return of contributions and interest, from a public entity and money held or paid by a private retirement plan, union retirement plan, or profit-sharing plan designed and used for retirement purposes.
31. Section 690.18. See the discussion under "Exception for Judgments for Spousal or Child Support" infra.
32. Section 690.11. For a discussion of tying the exemption of insurance benefits to the amount of the premium, see the discussion under "Life Insurance" supra.
33. Section 690.13.
34. Section 690.14.
35. Section 690.18. See the discussion under "Retirement Benefits" supra.

The proposed law consolidates these provisions. Under the proposed law, disability and health benefits, before payment, are exempt without the requirement of making a claim and, after payment, are exempt upon a claim therefore. This exemption would not apply where the judgment creditor provided health care concerning the condition for which the benefits are collected.

#### Damages for Personal Injury

Existing law provides an exemption for insurance benefits for injury<sup>36</sup> or death<sup>37</sup> but does not exempt settlements or awards for the personal injury of the judgment debtor. The proposed law provides an exemption for a settlement or award arising out of the personal injury of the judgment debtor to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.<sup>38</sup> This exemption would not apply when the judgment creditor provided health care for the personal injury for which the settlement or award was made.

#### Wrongful Death Awards

Existing law does not exempt wrongful death settlements or awards. The proposed law would exempt settlements and awards arising out of the wrongful death of a person of whom the judgment debtor was a spouse or a dependent to the extent reasonably necessary for support.<sup>39</sup>

#### Unemployment Benefits and Contributions, Strike Benefits

Under existing law, contributions of employees and employers to unemployment programs, and benefits from such programs, prior to payment, are exempt without making a claim.<sup>40</sup> After payment, these bene-

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36. Section 690.11 (disability and health insurance).

37. Sections 690.9 (life insurance), 690.10 (group life insurance).

38. Section 6(a)(3) of the Uniform Exemptions Act (1976) provides a similar exemption.

39. Section 6(a)(3) of the Uniform Exemptions Act (1976) provides a similar exemption.

40. Sections 690.13 (\$500 used by fraternal organization as unemployment benefits for members), 690.16 (contributions to the Unemployment Compensation Disability Fund and the Unemployment Fund), 690.175 (state and federal-state benefits and payments under a plan or system established by an employer for employees generally or for a class or group of employees for the purpose of supplementing unemployment compensation benefits), 690.18(b) (contributions and reimbursement for benefits received under Unemployment Insurance Code by government employees); Unemp. Ins. Code §§ 988 (incorporating Section 690.16), 1342 (incorporating Sections 690.175, 690.18).

fits are exempt if a claim is made.<sup>41</sup> The proposed law would continue the substance of this exemption and would also provide a similar exemption for strike benefits paid to a union member.

#### Aid

Existing law provides a complete exemption for aid given under a public assistance program<sup>42</sup> and for aid from a fraternal benefit society.<sup>43</sup> Under the proposed law, these exemptions are combined and the protection is extended to aid of the same nature given by a charitable organization.

#### Relocation Benefits

Under existing law, relocation benefits for displacement from a dwelling owned or rented by the judgment debtor are exempt without filing a claim.<sup>44</sup> Under the proposed law, once the benefits have been paid, an exemption claim must be made since it is necessary for the judgment debtor to trace the funds to their source in order to qualify for the exemption.

#### Cemetery Plot

Existing law exempts a judgment debtor's cemetery lot, not exceeding one-quarter of an acre and, in the case of a religious or benevolent association or corporation, not exceeding five acres.<sup>45</sup> The proposed exemption provision incorporates a definition of "plot" which includes graves, crypts, vaults, and niches,<sup>46</sup> whereas existing law specifically applies only to land to be used for burial purposes and fixtures. The proposed law exempts a cemetery plot for one person. The proposed law

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41. See Sections 690.13, 690.175.

42. Section 690.19. Before payment, the aid is exempt without making a claim; after payment, a claim of exemption must be made.

43. Section 690.14. This exemption must be claimed.

44. Section 690.8a.

45. Section 690.24.

46. See Health & Safety Code § 7022.

also protects a family plot<sup>47</sup> from enforcement of a money judgment. Land which is held for the purpose of sale as cemetery plots would be nonexempt as under existing law.<sup>48</sup> The five-acre limitation on the exemption for religious or benevolent associations or corporations is unnecessary and is not continued in the proposed law.

#### Prisoners' Trust Fund

A prison inmate's trust fund is exempt in the amount of \$40.<sup>49</sup> The proposed law raises this exemption to \$1,000 so that a prisoner who is released will have some funds on which to live.

#### Church Pews

Existing law exempts pews in churches and meetinghouses used for religious purposes and owned by the debtor.<sup>50</sup> The proposed law does not continue this exemption because it is obsolete, the practice of member ownership of pews having generally ceased.<sup>51</sup>

#### Exemptions in Bankruptcy

A debtor in bankruptcy is entitled to select either the applicable state exemptions or the federal exemptions provided by the Bankruptcy Act.<sup>52</sup> The California exemptions are more favorable to a debtor who is a homeowner since California law provides a liberal dwelling exemption,<sup>53</sup> while the federal exemptions are more favorable to a debtor who is a renter since the bankruptcy law provides a liberal "blanket" exemption if a dwelling exemption is not claimed.<sup>54</sup>

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47. For provisions concerning family plots, see Health & Safety Code §§ 8650-8653.

48. Section 690.24. The proposed law would also continue portions of Section 690.24 which provide that property dedicated as a cemetery is not subject to enforcement of a debt due from an individual owner of a plot and that money from the sale of unused cemetery lands is not subject to enforcement of a money judgment if used for the purposes specified in Health and Safety Code Section 7925.

49. Section 690.21.

50. Section 690.25.

51. See 6 J. Weinstein, H. Korn, & A. Miller, *New York Civil Practice* ¶ 5205.15 (rev. 1976).

52. 11 U.S.C. § 522(b).

53. See discussion of "Dwelling Exemption," infra.

54. 11 U.S.C. § 522(d)(5).

Each state is permitted to preclude use of the federal exemptions in bankruptcy and to require that a debtor in bankruptcy be subject to the state exemptions. The Law Revision Commission has considered whether California should exercise its option to bar use of the federal exemptions by a debtor. To the extent that the federal exemptions are more favorable to debtors than the state exemptions, the debtor will be inclined to undergo voluntary bankruptcy, to the possible detriment of creditors. However, the federal exemptions are advantageous to renters, who do not receive the same protection under California law that homeowners receive. The Commission believes that as a matter of fairness, the federal exemptions should be available to debtors as a remedy for the discrimination inherent in the California exemption scheme. The Commission recommends that California take no action to preclude use of the federal exemptions.

#### Applicability of Exemptions

It is implicit under existing law that property which is exempt from execution is also exempt from other procedures for the enforcement of a money judgment.<sup>55</sup> This principle is made explicit in the proposed

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55. Section 690(a) provides that the property mentioned in Sections 690.1-690.29 is "exempt from execution." Section 690.31 exempts a dwelling house from "execution" and Civil Code Section 1240 provides that a homestead is "exempt from execution or forced sale." Section 690.50(i) provides that the judgment rendered in exemption proceedings thereunder is "determinative as to the right of the creditor . . . to subject the property to payment or other satisfaction of his judgment." Section 710(c) incorporates Section 690.50 for the determination of exemption claims concerning money owed to the debtor by a public entity. Section 719 provides that the court in supplementary proceedings may order the application of property "not exempt from execution" toward the satisfaction of the judgment. Section 690.51 incorporates Section 690.50 for the determination of exemption claims when property is levied upon pursuant to certain warrants or notices of levy for the collection of tax liability. Section 302(c) of the Consumer Credit Protection Act, 15 U.S.C. § 1672(c) (1970), defines garnishment to mean "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt."

law, and provisions for the determination of exemption claims are included in the special procedures for enforcement of money judgments where appropriate.<sup>56</sup>

The principle that exemptions do not apply where the judgment is for the purchase price of the property involved or is for the foreclosure of a lien on the property<sup>57</sup> (other than a lien created in the course of enforcing a general money judgment) is continued in the proposed law.

The proposed law also makes clear that exemptions are to be determined and applied under the circumstances existing at the time of levy upon the property for which the exemption claim is made. This provision is intended to reject the holding in California United States Bond & Mortgage Corp. v. Grodzins<sup>58</sup> which held that the portion of life insurance benefits which exceeded the exempt amount at the time they were received was "earmarked" for creditors even though the amount of benefits remaining at the time they were levied upon was less than the amount protected by statute.<sup>59</sup> Exemption laws are intended to protect an amount of property sufficient for the support of the debtor and the

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56. See the discussion under "Special Procedures for the Enforcement of Money Judgments" infra.

57. See Civil Code § 1241; Code Civ. Proc. §§ 690.28, 690.31, 690.52; Willen v. Willen, 121 Cal. App. 351, 353, 8 P.2d 942, \_\_\_ (1932) (lien on insurance policies created by court order in proceedings to enforce alimony award foreclosed by execution).

58. 139 Cal. App. 240, 34 P.2d 193 (1934).

59. In Grodzins, the surviving wife received \$10,000 in life insurance benefits, deposited \$5,000 in a savings and loan account, and spent the remainder for the support of herself and her minor children. Under the exemption in effect at the time, approximately \$8,900 of the \$10,000 would have been exempt if the creditor had levied upon the funds immediately. The creditor was permitted to reach \$1,100 of the remaining \$5,000. The result could have been more detrimental since, if the lump-sum originally received at some remote time before levy had been \$18,000, for example, and the wife had spent \$9,000 of it before levy, the creditor would have been able to apply the remaining \$9,000 to the judgment.

debtor's family at the time it is needed, i.e., when the creditor attempts to enforce the judgment. The question of exemption of property does not arise until the creditor seeks to reach the property and apply it toward the satisfaction of a judgment.<sup>60</sup>

#### Retroactive Application of Exemptions

Decisions of state and federal courts in California have consistently held that the grant of a new or increased exemption for property sought to be applied to the satisfaction of a contractual obligation incurred before the change in the exemption would violate the Contract Clause of Article 1, Section 10, of the United States Constitution and of Article 1, Section 9, of the California Constitution.<sup>61</sup> This rule is also applied in bankruptcy cases with the result that the debtor is restricted to the exemptions in effect at the time of the earliest of the scheduled debts.<sup>62</sup>

Decisions in this area during the last forty years have almost completely ignored the gradual erosion of the rigid application of the

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60. Medical Fin. Ass'n v. Rambo, 33 Cal. App.2d Supp. 756, 758-60, 86 P.2d 159, \_\_\_ (1939). This case involved the garnishment of wages at a time when one-half of the earnings received during a 30-day period were exempt. The debtor had already received some earnings and the creditor argued that those earnings should be counted toward the exemption, leaving the remainder earned during the 30-day period subject to levy in the amount of one-half of the total. The court held that only one-half of the particular paycheck could be garnished.

61. See In re Rauer's Collection Co., 87 Cal. App.2d 248, 253-54, 196 P.2d 803, \_\_\_ (1948) (increase in homestead exemption); Daylin Medical & Surgical Supply, Inc. v. Thomas, 69 Cal. App.3d Supp. 37, 41-42, 137 Cal. Rptr. 826, \_\_\_ (1977) (extension of time for claiming homestead exemption); Smith v. Hume, 29 Cal. App.2d Supp. 747, 749, 74 P.2d 566, \_\_\_ (1937) (new motor vehicle exemption); Medical Fin. Ass'n v. Wood, 20 Cal. App.2d Supp. 749, 751, 63 P.2d 1219, \_\_\_ (1936) (new motor vehicle exemption); In re Fox, 16 F. Supp. 320, \_\_\_ (S.D. Cal. 1936) (motor vehicle exemption); The Queen 93 F. 834, \_\_\_ (N.D. Cal. 1899) (seamen's earnings exemption).

62. See England v. Sanderson, 236 F.2d 641, 643 (9th Cir. 1956), rev'g In re Sanderson, 134 F. Supp. 484, 485 (N.D. Cal. 1955); In re Towers, 146 F. Supp. 882, 885-86, aff'd sub nom. Towers v. Curry, 247 F.2d 738, 739 (9th Cir. 1957).

Contract Clause by the United States Supreme Court.<sup>63</sup> California decisions concerning the retroactive application of statutory provisions in other areas of the law, such as community property and sovereign immunity, have engaged in a modern and more sophisticated analysis of the constitutional issues and found no constitutional impediment to retroactive application.<sup>64</sup> Recent decisions in at least two other states have recognized the erosion of the Contract Clause and upheld retroactive application of increased exemption to preexisting debts.<sup>65</sup> Most commentators also urge the views set forth in these recent decisions.<sup>66</sup>

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63. See Home Building & Loan Ass'n v. Blaisdell, 290 U.S. 398, \_\_\_ (1934) (upholding the Minnesota Mortgage Moratorium Law); City of El Paso v. Simmons, 379 U.S. 497, \_\_\_ (1965).
64. See, e.g., Robertson v. Willis, 77 Cal. App.3d 358, 367-69, \_\_\_ Cal. Rptr. \_\_\_, \_\_\_ (1978) (community property); In re Marriage of Bouquet, 16 Cal.3d 583, 592-94, 546 P.2d 1371, \_\_\_, 128 Cal. Rptr. 427, \_\_\_ (1976) (community property); Flournoy v. State, 230 Cal. App.2d 520, 530-37, 41 Cal. Rptr. 190, \_\_\_ (1964) (sovereign immunity). These cases have applied a balancing approach, relying heavily on the analysis developed in Hochman, The Supreme Court and the Constitutionality of Retroactive Legislation, 73 Harv. L. Rev. 692 (1960). See also Reppy, Retroactivity of the 1975 California Community Property Reforms, 48 So. Cal. L. Rev. 977 (1975).
65. See Wilkinson v. Carpenter, 277 Or. 557, \_\_\_, 561 P.2d 607, 609-12 (1977) (application of homestead exemption in effect at time of sale); Hooter v. Wilson, 273 So.2d 516, 521-22 (La. 1973) (wage garnishment exemption); Ouachita Nat'l Bank v. Rowan, 345 So.2d 1014, 1016-17 (La. Ct. App. 1977) (homestead exemption); see also Natchitoches Collections, Inc. v. Gorum, 274 So.2d 449, 450 (La. Ct. App. 1973) (homestead exemption).
66. See, e.g., Countryman, For a New Exemption Policy in Bankruptcy, 14 Rutgers L. Rev. 678, 726-32 (1960); Reppy, Retroactivity of the 1975 California Community Property Reforms, 48 So. Cal. L. Rev. 977, 1120 n.470 (1975); Comment, The Contract Clause and the Constitutionality of Retroactive Application of Exemption Statutes: A Reconsideration, 9 Pac. L.J. 889 (1978); Note, Bankruptcy Exemptions: Critique and Suggestions, 68 Yale L.J. 1459, 1471-72 (1959); Comment, Contract Clause Prevents Exemption Change, 1 Stan. L. Rev. 350 (1949). Similarly, Section 23(b) of the Uniform Exemptions Act (1976) would apply exemptions retroactively. See also In re Towers, 146 F. Supp. 882, 885 n.2 (N.D. Cal. 1956).

The proposed law would determine an exemption under the law in effect at the time the property claimed to be exempt is levied on.<sup>67</sup> This principle furthers the policy of the exemption laws--to provide the debtor with sufficient assets to remain self supporting and to avoid making the debtor a charge upon the state. Increased or new exemptions are generally enacted to take account of inflation or to recognize the importance of new forms of assets. This intention is defeated if the fortuity of the time of contract or tort liability determines the applicable exemption. Tort creditors clearly do not have any reliance interest in exemptions in effect at the time liability arises. It is highly doubtful that general contract creditors have a significant vested interest in exemptions in effect when the contract is executed. The debtor's financial status at the time a contract is executed is certainly an important consideration to the creditor, but there is no guarantee that the assets listed in the statement will not be transferred or exhausted before a default occurs. The creditor may also be protected by insisting on security for the obligation.

The incremental increase of the amount of exemptions is necessary to take account of inflation.<sup>68</sup> Under current economic conditions, inflation is much more a certainty than the expectation that the debtor will have nonexempt assets that were listed in a financial statement. To the extent that exemptions are increased to take account of inflation, creditors should not be heard to complain that vested rights are being abrogated so long as the remedies for enforcement of judgments remain in force and debtors as a class may not protect any significantly different proportion of their assets.

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67. The proposed law would also provide that contracts are made in recognition of the power of the state to alter or make additions to exemptions. See *Wilkinson v. Carpenter*, 277 Or. 557, \_\_\_, 561 P.2d 607, 610-11 (1977); *Hooter v. Wilson* 273, So.2d 516, 521-22 (La. 1973).

68. See the discussion under "Continuing Review of Exemptions" infra.

[Exception for Judgments for Spousal or Child Support]

Exception for Welfare Payment Reimbursement

Existing law provides that the judgment debtor is entitled to a more limited set of exemptions against a claim by a county for reimbursement for county aid used to support the judgment debtor than is available against claims of judgment creditors generally.<sup>69</sup> This exception to the standard exemptions is not continued in the proposed law because it is constitutionally suspect under the equal protection clause.<sup>70</sup>

[Exemption Rights of Married Debtors]

Tracing Exempt Amounts

An exemption for money derived from a particular source, such as retirement or life insurance benefits, is illusory if the exemption is lost when the benefits are deposited in a bank or held in the form of a check or cash. Present case law and, to a limited extent, statutory law recognize the right of a debtor to trace exempt amounts through a change in form.<sup>71</sup> The proposed law contains a general provision that

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69. See Section 690.19; Welf. & Inst. Code § 17409. Welfare and Institutions Code Section 17409 provides the following exemptions in such cases: \$50 in cash, personal effects and household furniture with a value of \$500, a cemetery plot, \$500 placed in trust for funeral expenses, insurance policies with a cash surrender value of \$500, and relocation assistance benefits.

70. Cf. *James v. Strange*, 407 U.S. 128 (1972) (Kansas statute imposing liability on indigent defendant for costs of counsel provided the defendant and denying exemptions available to other judgment debtors held unconstitutional).

71. See, e.g., Sections 690.18(a) (pension benefits exempt in debtor's possession and when deposited), 690.30 (direct deposit of social security payments); *Kruger v. Wells Fargo Bank*, 11 Cal.3d 352, 367, 521 P.2d 441, \_\_\_, 113 Cal. Rptr. 449, \_\_\_ (1974) (unemployment benefits in checking account); *Holmes v. Marshall*, 145 Cal. 777, 782-83, 79 P. 534, \_\_\_ (1905) (life insurance benefits deposited in bank account); *Bowman v. Wilkinson*, 153 Cal App.2d 391, 395-96, 314 P.2d 574, \_\_\_ (1957) (life insurance check converted to cashier's check and deposited in attorney's trust account); *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 416-17 (1973) (disability benefits in bank account); *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 162 (1962) (veterans' benefits in savings and loan account).

would permit the judgment debtor to trace exempt amounts through deposit accounts and in the form of cash and the equivalent of cash, including cashier's checks, certified checks, and money orders. This tracing provision would apply to relocation, life insurance, retirement, unemployment, disability, health, social security, and veteran's benefits, worker's compensation, aid, and proceeds from the sale of or indemnification for a dwelling, a motor vehicle, and tools of a trade.<sup>72</sup> Consistent with the general burden on the judgment debtor to claim exemptions,<sup>73</sup> the judgment debtor would have the burden of tracing the exempt amount. Tracing would be accomplished by the lowest intermediate balance principle<sup>74</sup> unless the judgment debtor could show that some other method would be more appropriate under the circumstances of the case.

#### Continuing Review of Exemptions

Exemptions subject to dollar amount limitations have the virtue of certainty and prevent the abuse that arises where specific items are exempt without value limits. Legislatures have typically been slow to adjust exemptions in response to changes in the value of the dollar.<sup>75</sup> For example, the exemption for an account in a savings and loan association<sup>76</sup> was set at \$1,000 in 1901.<sup>77</sup> The dollar was worth approximately seven times as much in 1901 as it is now,<sup>78</sup> yet the amount of the

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72. The opportunity to trace exempt proceeds from the sale of a motor vehicle or tools would be limited to 90 days.

73. See Section 690.50(i).

74. See *Republic Supply Co. v. Richfield Oil Co.*, 79 F.2d 375, 379 (9th Cir. 1935) (determination of lowest intermediate balance).

75. See Countryman, For a New Exemption Policy in Bankruptcy, 14 Rutgers L. Rev. 678, 683 (1960); Joslin, Debtors' Exemption Laws: Time for Modernization, 34 Ind. L.J. 355, 356 (1959).

76. Section 690.7.

77. 1901 Cal. Stats. ch. 28, § 1 (then building and loan associations).

78. See Bureau of Census, Historical Statistics of the United States, Table E-183, at 212, (1975) [hereinafter cited as Historical Statistics]. Bureau of Census, Statistical Abstract of the United States: 1976, Table No. 708, at 439 [hereinafter cited as Statistical Abstract].

exemption remains unchanged. The credit union account exemption<sup>79</sup> was raised to \$1,500 in 1939<sup>80</sup> when the dollar was worth approximately four times as much.<sup>81</sup> The life insurance exemption<sup>82</sup> was set at the amount of benefits represented by a \$500 annual premium in 1868<sup>83</sup> when the dollar was worth approximately six times what it is today.<sup>84</sup> Less dramatic but still significant disparities have occurred in exemptions such as the motor vehicle exemption which has been frequently amended since its original enactment in 1935.<sup>85</sup> The protection of a motor vehicle in which the debtor has no more than \$500 equity, established in 1972, has been significantly eroded because by 1976 the average price of new cars had risen over 20% and the average price of used cars had risen over 40 percent.<sup>86</sup>

The proposed law provides a means for periodic and continuing review of the exemptions and exempt amounts. The California Law Revision Commission is charged with the responsibility to review the exemptions every five years, and more frequently if desirable, and make any necessary recommendations to the Legislature. This will enable modernization of the exemptions without mandating automatic increases tied to inflation.

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79. Fin. Code § 15406.

80. 1939 Cal. Stats. ch. 965, § 2.

81. See Historical Statistics, supra note 410, Table E-135, at 210; Statistical Abstract, supra note 410, Table No. 708, at 439.

82. Section 690.9.

83. 1868 Cal. Stats. ch. 404, § 1.

84. Historical Statistics, supra note 410, Table E-183, at 212; Statistical Abstract, supra note 410, Table No. 708, at 439.

85. 1935 Cal. Stats. ch. 723, § 24. The motor vehicle exemption at first protected a vehicle valued at \$100, regardless of the extent of the debtor's equity. This limit was raised to \$250 in 1949 and to \$350 in 1959. In 1967 the debtor's equity was protected in the amount of \$350 so long as the vehicle was not worth more than \$1,000. The equity exemption was raised to \$500 in 1972 and in 1976 the value limitation was repealed. See 1949 Cal. Stats. ch. 628, § 1; 1959 Cal. Stats. ch. 1474, § 1; 1967 Cal. Stats. ch. 1241, § 1; 1972 Cal. Stats. ch. 744, § 1; 1976 Cal. Stats. ch. 1210, § 2.

86. Statistical Abstract, supra note 410, Table No. 709, at 440.

### Procedure for Claiming Exemptions After Levy

Existing law provides a detailed procedure through which exemptions may be claimed and determined.<sup>87</sup> The judgment debtor or the judgment debtor's agent may, within 10 days after property has been levied upon, claim an exemption by filing an affidavit with the levying officer; otherwise the exemption is waived and the property will be applied toward the satisfaction of the judgment.<sup>88</sup> If the judgment debtor files an affidavit, the levying officer immediately serves it on the judgment creditor along with a notice that the property will be released unless the judgment creditor files a counteraffidavit with the levying officer within five days after the judgment debtor's affidavit is served. The judgment creditor is also required to serve a copy of this counteraffidavit on the judgment debtor and file proof of service with the levying officer. Once the counteraffidavit is filed, either party is permitted to make a motion for an order determining the exemption claim within five days after the filing of the counteraffidavit. The hearing is required to be held within 15 days after the motion is made unless a continuance is granted. The moving party must give at least five days' notice of the hearing to the other party and to the levying officer. If no motion is made within five days after the counteraffidavit is filed or if the levying officer is not served with notice of the hearing within 10 days after such filing, the property is required to be released to the debtor. At the hearing the judgment debtor has the burden of proof. The affidavit and counteraffidavit are filed with the court by the levying officer and constitute the pleadings of the parties,

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87. Section 690.50; see generally 5 B. Witkin, California Procedure Enforcement of Judgment §§ 88-92 (2d ed. 1971 & Supp. 1977). Special procedures are provided for determining certain exemptions. See Sections 690.30 (deposit account into which social security benefits directly deposited), 690.31 (dwelling exemption).

88. Section 690(a). Some exemptions are not subject to waiver. See, e.g., Section 690.6(b) (portion of earnings not subject to garnishment), 690.15 (worker's compensation benefits prior to payment), 690.19 (aid under public assistance program prior to payment), Smith v. Rhea, 72 Cal. App.3d 361, 370-72, 140 Cal. Rptr. 116, \_\_\_\_\_ (1977) (exempt portion of proceeds from execution sale of motor vehicle).

subject to the power of the court to permit amendments. The court may also permit the production of other evidence. At the conclusion of the hearing, the court determines the exemption and makes any necessary orders for the disposition of the property.

The proposed law would make several changes in this procedure.<sup>89</sup> Since the judgment debtor may not receive notice of levy for some time after levy has occurred,<sup>90</sup> the 10-day period within which the claim of exemption must be filed with the levying officer runs from the date notice of levy is served on the judgment debtor. The five-day period for filing the counteraffidavit should be increased to 10 days, where the claim of exemption is served on the judgment creditor by mail.<sup>91</sup> As a condition of claiming an exemption for a motor vehicle or tools of a trade, the judgment debtor should be required to describe other property of the same type for which an exemption is not claimed. Similarly, where the judgment debtor claims an exemption for deposit accounts and money or for the loan value of an insurance policy, the judgment debtor should describe all other such funds. This will enable the judgment creditor to obtain information regarding other property of the judgment debtor and will help achieve the policy of the exemptions laws to protect only a limited amount of the judgment debtor's property.

The right of the judgment debtor to move for a hearing on the exemption claim should be eliminated as unnecessary. Under the proposed law, if the judgment creditor does not file the notice of opposition with the levying officer and file notice of motion within the five-day period after service of the claim of exemption, the property will be

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89. For minor and technical revisions, see the Comments to the sections in the Proposed Legislation infra.

90. Notice of levy is required to be given the judgment debtor promptly after levy. See Section 688(b) (incorporating the levy provisions in the Attachment Law, Sections 488.310-488.430).

91. See Section 1013 (general provision for extension of time where notice served by mail).

released and the judgment creditor will be precluded from levying on it again absent a showing of changed circumstances. Accordingly, the judgment debtor has nothing to gain by moving for a hearing on the exemption claim. The 15-day period after the motion is filed during which the hearing is required to be commenced should be increased to 20 days so that the judgment debtor receives additional notice of the hearing.

## CHAPTER 4. EXEMPTIONS

Article 1. General Provisions§ 703.000. Definitions

703.000. As used in this chapter, "equity" means the fair market value of an interest in property over and above all liens and encumbrances on the interest superior to the judgment creditor's lien.

Comment. Section 703.000 is new. It is intended to simplify drafting.

405/598

§ 703.010. Application of exemptions

703.010. (a) Except as otherwise provided by statute, the exemptions provided by this chapter or by any other statute apply to all procedures for enforcement of a money judgment.

(b) The exemptions provided by this chapter or by any other statute do not apply if the judgment to be enforced is for the purchase price of the property or is for the foreclosure of a mortgage or other lien on the property other than a lien created pursuant to this title.

Comment. Subdivision (a) of Section 703.010 makes clear that exemptions apply regardless of the procedure selected for the enforcement of a money judgment. This provision is comparable to but broader than former Section 690 in that it applies to exemptions prescribed by statute apart from this chapter and it applies to all procedures for enforcement of a money judgment and not just execution. For exemptions not included in this chapter, see, e.g., Civil Code § 986(a)(6) (artist's residual payment); Fin. Code § 15406 (credit union); Gov't Code § 32210 (fire service pensions); Health & Safety Code §§ 8561 (ceme-teries), 32508 (hospital endowments), 33124, 34142, 34217 (public property); 10 U.S.C. § 1035 (servicemen savings); 38 U.S.C. § 3101 (veterans benefits); 42 U.S.C. § 407 (U.S. life insurance); 48 U.S.C. § 231(m) (railroad retirement pensions). The exemptions do not apply to nonmoney judgments except for enforcement of costs and damages under such judgments. See Section \_\_\_\_\_.

Certain exemptions do not apply where a judgment for child or spousal support is being enforced (see Section 703.070) or a property tax is being collected (see Section 703.100).

Subdivision (b) continues the substance of former Section 690.52. See also former Civil Code § 1241; former Code Civ. Proc. §§ 690.28, 690.31(b)(3).

§ 703.020. Persons entitled to exemptions

703.020. (a) The exemptions provided in this chapter apply only to property of an individual judgment debtor or property set aside and held for the purpose of making payments to an individual judgment debtor or the surviving spouse or dependents of an individual judgment debtor.

(b) The exemptions provided in this chapter may be claimed by any of the following persons:

(1) The judgment debtor.

(2) In the case of property set aside and held for the purpose of making payments to an individual judgment debtor or the surviving spouse or dependents of an individual judgment debtor, the person holding the property.

Comment. Section 703.020 is new. The persons entitled to claim an exemption on behalf of a judgment debtor include the judgment debtor's agent and other persons authorized to exercise the rights of a judgment debtor.

Note. Whether a spouse may claim an exemption where the judgment debtor fails to do so is reserved.

405/474

§ 703.030. Manner of claiming exemptions

703.030. (a) Except as otherwise provided in this section, an exemption for property that is exempt pursuant to this chapter or any other statute shall be claimed within the time and in the manner prescribed in the applicable enforcement procedure. If the exemption is not so claimed, the property is subject to enforcement of a money judgment.

(b) Property that is described as exempt without making a claim is not subject to any procedure for enforcement of a money judgment.

(c) Nothing in this section limits the authority of the court pursuant to Section 473 to relieve a person from failure to claim an exemption within the time and in the manner prescribed in the applicable enforcement procedure.

Comment. Subdivisions (a) and (b) of Section 703.030 continue the substance of former Section 690 but are broader in their application since they are not limited to exemptions provided in this chapter.

Former law also referred to exemptions "from execution" whereas this section makes clear that exemptions apply in all proceedings for the enforcement of a money judgment. See Section 703.010.

If property is levied upon by a levying officer, the applicable procedure for claiming an exemption is that provided in Article 2, with the exception of the dwelling exemption which is governed by Article 4. The exemption procedure is also incorporated in other instances, e.g., where property is attached under an ex parte writ of attachment (see Section 485.610) or where a warrant or notice of levy for the collection of taxes is treated as a writ of execution (see Section \_\_\_\_\_). If the property is sought to be reached by a procedure other than a levy under a writ, a court hearing is required and exemption claims will be determined at such time or later upon noticed motion. See Sections \_\_\_\_\_ (examination proceedings), \_\_\_\_\_ (creditor's suit), \_\_\_\_\_ (assignment orders), \_\_\_\_\_ (collection where public entity is debtor of judgment debtor).

Subdivision (c) makes clear the power of the court under Section 473 to relieve the claimant from the consequences of failure to properly file a claim of exemption through mistake, inadvertance, surprise, or excusable neglect.

405/475

§ 703.040. Waiver of exemptions

703.040. A purported contractual or other waiver of the exemptions provided by this chapter or by any other statute, other than a waiver by failure to claim an exemption required to be claimed, is against public policy and void.

Comment. Section 703.040 codifies existing case law. See, e.g., Industrial Loan & Inv. Co. v. Superior Court, 189 Cal. 546, 209 P. 360 (1922).

26751

§ 703.050. Exemptions in effect at time of levy govern

703.050. The determination whether property is exempt or the amount of an exemption shall be made by application of the exemption statutes in effect at the time the enforcement lien on the property was created.

Comment. Section 703.050 rejects the case law rule that the judgment debtor could take advantage of only the exemptions in effect at the time an obligation was incurred. See, e.g., In re Rauer's Collection Co., 87 Cal. App.2d 248, 253-54, 196 P.2d 803, \_\_\_\_\_ (1948); Daylin Medical & Surgical Supply, Inc. v. Thomas, 69 Cal. App.3d Supp. 37, 41-42, 137 Cal. Rptr. 826, \_\_\_\_\_ (1977); Smith v. Hume, 29 Cal. App.2d Supp. 747,

749, 74 P.2d 566, \_\_\_\_ (1937); Medical Fin. Ass'n v. Wood, 20 Cal. App.2d Supp. 749, 751, 63 P.2d 1219, \_\_\_\_ (1936).

Note. Compare homestead retroactive application provision.

26752

§ 703.060. Reserved power of state

703.060. All contracts shall be deemed to have been made and all liens on property shall be deemed to have been created in recognition of the power of the state to alter and to make additions to statutes providing for liens and exemptions from the enforcement of money judgments.

Comment. Section 703.060 reserves the power of the state to change and add to existing exemptions in line with recent decisions in other jurisdictions. See, e.g., Wilkinson v. Carpenter, 277 Or. 557, \_\_\_\_, 561 P.2d 607, 610-11 (1977); Hooter v. Wilson, 273 So.2d 516, 521-22 (La. 1973).

Note. Compare homestead reserved power provision.

28459

[§ 703.070. Exemptions inapplicable against support judgment

703.070. (a) The exemptions provided by this chapter do not apply where the judgment being enforced is for child or spousal support.

(b) Where property for which an exemption is provided by this chapter is sought to be applied to the satisfaction of a judgment for child or spousal support, the court shall, upon motion of an interested party, make an equitable division of the property that takes into account the needs of all the persons the judgment debtor is required by law to support. The court shall effectuate the equitable division by an order determining the amount of the property to be applied toward the satisfaction of the judgment.

(c) The person making the motion shall notify the levying officer of the motion and the levying officer shall not dispose of the property until receipt of the court order for application of the property.

Comment. Subdivision (a) of Section 703.070 provides a general exception to the application of the exemptions provided by this chapter. Former Section 690.18 provided such an exception applicable to the exemption of pensions, annuities, and retirement, disability, death, or other benefits, from a public entity or under a private plan.

Subdivision (b) codifies and makes generally applicable the case law concerning the equitable division of earnings levied upon to enforce a support judgment. See *Rankins v. Rankins*, 52 Cal. App.2d 231, 234-35, 126 P.2d 125, \_\_\_ (1942).

Subdivision (c) requires notice of the motion to be given the levying officer in order to preserve the status quo until the court makes its order.]

Note. The staff is currently reviewing this provision and will suggest revisions.

32/236

§ 703.080. Tracing exempt funds

703.080. (a) A fund for which an exemption may be claimed remains exempt to the extent that it can be traced through deposit accounts and in the form of cash or an equivalent of cash.

(b) The claimant has the burden of tracing an exempt fund.

(c) The tracing of exempt funds in deposit accounts shall be accomplished by application of the lowest intermediate balance principle unless the judgment debtor or the judgment creditor shows that some other method of tracing would be more appropriate under the circumstances of the case.

Comment. Section 703.080 prescribes the general rule governing the duration of an exemption for payments to the judgment debtor through deposit accounts and in the form of cash and its equivalents, including cashier's checks, certified checks, and money orders.

Subdivision (a) is consistent with decisions under prior law. See, e.g., *Kruger v. Wells Fargo Bank*, 11 Cal.3d 352, 367, 521 P.2d 441, \_\_\_, 113 Cal. Rptr. 449, \_\_\_ (1974) (unemployment benefits in checking account); *Holmes v. Marshall*, 145 Cal. 777, 782-83, 79 P. 534, \_\_\_ (1905) (life insurance benefits deposited in bank account); *Bowman v. Wilkinson*, 153 Cal. App.2d 391, 395-96, 314 P.2d 574, \_\_\_ (1957) (life insurance check converted to cashier's check and deposited in attorney's trust account). See also former Sections 690.18(a) (pension benefits exempt in debtor's possession and when deposited), 690.30 (direct deposit of social security payments); *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 416-17 (1973) (disability benefits in bank account); *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 162 (1962) (veterans' benefits in savings and loan account). This section applies to any fund which is exempt as provided in this chapter. See Sections 704.010 (proceeds from motor vehicle), 704.060 (proceeds from tools of trade), 704.070 (deposit accounts and money), 704.080 (deposit account into which Social Security benefits are paid), 704.100 (life insurance benefits), 704.110 (retirement benefits), 704.120 (unemployment benefits), 704.130 (disability and health benefits), 704.140 (damages for personal

injury), 704.150 (damages for wrongful death), 704.160 (worker's compensation), 704.170 (aid), 704.180 (relocation benefits), and 704.730 (proceeds from dwelling). Proceeds from a motor vehicle or tools may be traced only during the applicable period. See Sections 704.010 (90 days in case of motor vehicle) and 704.060 (90 days in case of tools).

Subdivision (b) continues existing law concerning the burden of tracing exempt funds. This is consistent with the general burden on the claimant in exemption proceedings. See Section 703.580(b).

Subdivision (c) prescribes the general rule for tracing exempt funds in deposit accounts. It reverses the rule in California United States Bond & Mort. Corp. v. Grodzins, 139 Cal. App. 240, 242-43, 34 P.2d 193, \_\_\_ (1934) (portion of life insurance benefits which exceeded exempt amount when received was earmarked for creditors even though benefits remaining at time of levy were below exempt amount). Under the lowest intermediate balance rule, the exempt fund may not exceed the lowest balance occurring at any time between the deposit of the exempt amount of money and the time of levy. New deposits do not replenish the original exempt fund although the new deposits may themselves be exempt. See Republic Supply Co. v. Richfield Oil Co., 79 F.2d 375, 379 (9th Cir. 1935), concerning the determination of the lowest intermediate balance. As an example of the operation of the lowest intermediate balance principal, suppose the judgment debtor has a deposit account in which there is a balance of \$400 composed of nonexempt funds. The judgment debtor then makes a deposit of \$400 of exempt funds (leaving a balance of \$800), a withdrawal of \$600 (leaving a balance of \$200), and a deposit of \$300 of nonexempt funds (leaving a balance of \$500). The total exempt funds deposited were \$400, but under the lowest intermediate balance rule, the \$600 withdrawal reduces first the nonexempt funds and then the exempt funds, leaving \$200 of exempt funds. The final \$300 deposit does not affect the exempt funds, which remain exempt in the amount of \$200, the lowest intermediate balance, despite the final balance of \$500.

100/913

§ 703.090. Costs in case of subsequent levy on exempt property

703.090. If the judgment creditor has failed to oppose a claim of exemption within the time allowed by Section 703.520 or if property has been determined by a court to be exempt and the judgment creditor subsequently levies upon or otherwise seeks again to apply the property toward the satisfaction of the same money judgment, the judgment creditor shall not recover the subsequent costs of collection unless the property is applied to satisfaction of the judgment.

Comment. Section 703.090 is intended to limit repeated levies on the same property by the judgment creditor. Nothing in this section affects any rights the judgment debtor may have to recover damages for abuse of process. Cf. Section 704.810(c) (dwelling exemption).

§ 703.100. Exemptions from tax liability

703.100. (a) Except as otherwise provided in this section, the provisions of this chapter apply where a tax liability is sought to be collected by a public entity. For the purpose of this section, "judgment creditor" means the public entity which seeks to collect the tax, and "judgment debtor" means the tax debtor.

(b) Claims of exemption shall be heard and determined in the superior court of the county where the property is located as if the property were levied upon under a writ of execution issued from the superior court.

(c) If a levy is not made by a levying officer, the claim of exemption shall be filed with the public entity within 10 days after the judgment debtor is notified of the levy, withholding, or seizure. The public entity shall perform the duties of the levying officer with respect to the claim.

(d) If the tax liability arises from assessment of property tax, an exemption may not be claimed for the property subject to the tax.

Comment. Section 703.100 supersedes former Section 690.51 which applied the exemptions from execution to certain procedures for the collection of several state taxes. Section 703.100 makes all tax collections by the state or by local public entities subject to the substantive and procedural provisions of this chapter except as provided in subdivision (d). This provision changes the general rule under former law that the exemption laws did not apply to the collection of tax liabilities except where specifically provided otherwise, as in former Section 690.51, or where a homestead had been declared prior to the attachment of a tax lien having the effect of a judgment lien. See Curtis v. County of Kern, 37 Cal. App.3d 704, 706, 113 Cal. Rptr. 41, \_\_\_ (1974); Greene v. Franchise Tax Bd., 27 Cal. App.3d 38, 103 Cal. Rptr. 483 (1972); Morrison v. Barham, 184 Cal. App.2d 267, 272, 7 Cal. Rptr. 442, \_\_\_ (1960).

Subdivision (b) continues the substance of the second sentence of former Section 690.51.

Subdivision (c) is a general provision which codifies the practice developed under Unemployment Insurance Code Section 1755.

Subdivision (d) is new.

§ 703.110. Time for determination of exemptions

703.110. The determination whether property is exempt shall be made under the circumstances existing at the time of creation of the lien on the property pursuant to which enforcement is sought, but the court may take into consideration changes in circumstances that have occurred between the time of creation of the lien and the time of the hearing.

Comment. Section 703.110 rejects the holding in California United States Bond & Mort. Corp. v. Grodzins, 139 Cal. App. 240, 242-43, 34 P.2d 193, \_\_\_ (1934) (portion of life insurance benefits which exceeded exempt amount when received was earmarked for creditors even though benefits remaining at time of levy were below exempt amount). It adopts the principle that the question of exemptions does not arise until the creditor has sought to apply the debtor's property toward the satisfaction of the judgment. See Medical Fin. Ass'n v. Rambo, 33 Cal. App.2d Supp. 756, 758-60, 86 P.2d 159, \_\_\_ (1939).

§ 703.120. Continuing review of exemptions

703.120. (a) Five years following the operative date of this act and every five years thereafter the California Law Revision Commission shall examine the exempt amounts provided in this chapter in light of changes in the Consumer Price Index or other index represented by the Bureau of Labor Statistics of the United States Department of Labor as most accurately reflecting changes in the purchasing power of the dollar for consumers. The Commission shall recommend to the Governor and the Legislature any changes in the exempt amounts that appear proper.

(b) Nothing in this section precludes the Commission from making recommendations concerning exempt amounts more frequently than required by subdivision (a) or from making recommendations concerning any other aspect of this title, and the Commission is authorized to maintain a continuing review of and submit recommendations concerning enforcement of judgments.

Comment. Section 703.120 is intended to provide an institutional mechanism for periodically updating and modernizing the exemptions without mandating increases tied to the cost of living.

Article 2. Procedure for Claiming Exemptions After Levy

§ 703.510. Application of article

703.510. (a) Except as otherwise provided by statute, property that has been levied upon may be claimed to be exempt as provided in this article.

(b) Property that is exempt without making a claim that has been levied upon may be released pursuant to the claim of exemption procedure provided in this article.

Comment. Subdivision (a) of Section 703.510 indicates the scope of the application of the exemption procedure provided in this article. As noted in the introductory clause, special exemption procedures apply in certain cases where property has been levied upon. See, e.g., Sections 484.070(a) (attachment), 704.080 (deposit accounts consisting of Social Security benefits), 704.710-704.890 (dwellings), 723.010-723.154. This continues the introductory portion of former Section 690.50(a).

Subdivision (b) supersedes former Section 690(b) which provided that property for which a claim of exemption was not required was not subject to enforcement procedures. See Section 703.030. Subdivision (b) makes clear that if such property is levied on, its release may be obtained through the exemption procedures. Cf. Section 695.030 (property not subject to enforcement of a money judgment).

16/973

§ 703.520. Claim of exemption

703.520. (a) The claimant shall, within 10 days after the date the notice of levy was served on the judgment debtor, file with the levying officer a claim of exemption, together with a copy thereof.

(b) The claim of exemption shall be executed under oath and shall include all of the following:

(1) The name of the claimant and the mailing address where service of a notice of opposition to the claim of exemption may be made upon the claimant.

(2) The name and address of the judgment debtor if the claimant is not the judgment debtor.

(3) A description of the property claimed to be exempt. If an exemption is claimed pursuant to Section 704.010 or 704.060, the claimant shall describe all other property of the same type owned by the judgment debtor on the date of levy and state which items are claimed as

exempt. If an exemption is claimed pursuant to Section 704.070 or subdivision (b) of Section 704.100, the claimant shall state the nature and amount of all other funds of the same type owned by the judgment debtor alone or in combination with others on the date of levy.

(4) A financial statement if required by Section 503.530.

(5) A citation of the provision of this chapter or other law upon which the claim is based.

(6) A statement of the facts necessary to support the claim.

Comment. Section 703.520 supersedes subdivision (a) of former Section 690.50. See also Section 703.020 (persons entitled to exemptions).

28768

§ 703.530. Judgment debtor's financial statement

703.530. (a) If property is claimed as exempt pursuant to a provision exempting property to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor, the claim of exemption shall include the judgment debtor's financial statement.

(b) The judgment debtor's financial statement shall be executed under oath or by declaration under penalty of perjury and shall include all of the following information:

(1) The name, age, and relationship of all persons dependent upon the judgment debtor for support.

(2) All sources of the judgment debtor's earnings and other income and the amounts of such earnings and other income.

(3) All sources and the amounts of earnings and other income of the persons listed in subdivision (a).

(4) A listing of the assets of the judgment debtor and the value of such assets.

(5) All outstanding obligations of the judgment debtor.

Comment. Section 703.530 is comparable to Section 723.124 (wage garnishment).

§ 703.540. Notice of claim of exemption

703.540. Upon the filing of the claim of exemption, the levying officer shall promptly serve personally or by mail on the judgment creditor both of the following:

(a) A copy of the claim of exemption.

(b) A notice of claim of exemption which states that the claim of exemption has been filed and that the levying officer will release the property unless a notice of opposition to the claim of exemption is filed with the levying officer by the judgment creditor within five days in the case of personal service or 10 days in the case of service by mailing after the date of service of the notice of the claim.

Comment. Section 703.540 supersedes subdivision (b) of former Section 690.50. The five-day period provided by former law for giving the notice of opposition is increased to 10 days in the case of service by mail. See Section 684.040 (time for performing act).

§ 703.550. Opposition to exemption claim

703.550. (a) Within five days after service of the notice of claim of exemption, a judgment creditor who opposes the claim of exemption shall file with the court a notice of opposition to the claim of exemption and a notice of motion for an order determining the claim of exemption and serve on the levying officer a copy of the notice of opposition and notice of motion.

(b) If the levying officer is not served with a notice of opposition to the claim of exemption and a notice of the hearing within the time prescribed in subdivision (a), the levying officer shall immediately release the property in the manner provided by Section \_\_\_\_\_ to the extent it is claimed to be exempt.

Comment. Subdivision (a) of Section 703.550 supersedes portions of subdivisions (c) and (e) of former Section 690.50. Subdivision (a), unlike former law, does not provide the claimant with the right to request a hearing on the claim of exemption since, if the judgment creditor does not file a notice of opposition and file a notice of motion for an order determining the claim of exemption within the time provided, the property is released pursuant to Section \_\_\_\_\_, making a hearing unnecessary. Consequently, the delay between the filing of the

counteraffidavit and the notice of motion provided by subdivision (e) of former Section 690.50 has been eliminated. The five-day period for filing the notice of opposition and notice of motion runs from the date of service of the notice of claim of exemption. In the case of service by mail, 10 days is the relevant period. See Section 684.040 (time for performing act).

Subdivision (b) supersedes subdivisions (d) (release if no counter-affidavit served) and (f) (release if no motion) of former Section 690.50.

16/971

§ 703.560. Contents of notice of opposition

703.560. The notice of opposition to the claim of exemption shall be executed under oath and shall include all of the following:

(a) An allegation either that (1) the property or a portion thereof is not exempt within the meaning of the provision of this chapter or other law relied upon or (2) the judgment debtor's equity in the property claimed to be exempt is in excess of the amount stated in the applicable provision.

(b) A statement of the facts necessary to support the allegation.

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

Comment. Section 703.560 supersedes a portion of subdivision (c) of former Section 690.50.

CROSS-REFERENCES

Defined terms

Equity § 703.000

Judgment creditor § \_\_\_\_\_

Judgment debtor § \_\_\_\_\_

16/970

§ 703.570. Notice of motion for hearing

703.570. (a) The hearing on the motion shall be held not later than 20 days from the date the notice of motion was filed unless continued by the court for good cause.

(b) Not less than 10 days prior to the hearing, the judgment creditor shall serve a notice of the hearing and a copy of the notice of opposition to the claim of exemption on the claimant and on the judgment debtor, if other than the claimant.

Comment. Section 703.570 supersedes portions of subdivisions (c) and (e) of former Section 690.50.

CROSS-REFERENCES

Proof of service § \_\_\_\_\_

16/968

§ 703.580. Hearing and order

703.580. (a) The claim of exemption and notice of opposition to the claim of exemption filed with the court constitute the pleadings, subject to the power of the court to permit amendments in the interest of justice.

(b) At a hearing under this section, the claimant has the burden of proof.

(c) The claim of exemption is deemed controverted by the notice of opposition and both shall be received in evidence. If no other evidence is offered, the court, if satisfied that sufficient facts are shown by the claim of exemption and the notice of opposition to the claim of exemption, including the financial statement if one is required, may make its determination thereon. If not satisfied, the court shall order the hearing continued for the production of other evidence, oral or documentary.

(d) At the conclusion of the hearing, the court by order shall determine whether or not the property is exempt, in whole or in part. The order is determinative of the right of the judgment creditor to apply the property to the satisfaction of the judgment. No findings are required in a proceeding under this section.

(e) The clerk shall promptly transmit a certified copy of the order to the levying officer. Subject to Section 703.610, the levying officer shall, in compliance with the order, release the property in the manner provided by Section \_\_\_\_\_ or apply the property to the satisfaction of the judgment.

Comment. Subdivisions (a)--(d) of Section 703.580 continue the substance of a portion of subdivision (i) of former Section 690.50.

Subdivision (e) continues the substance of the first sentence of subdivision (j) of former Section 690.50.

§ 703.590. Extension of time

703.590. If the court extends the time allowed for an act to be done under this article, written notice of the extension shall be given promptly to the opposing party, unless notice is waived, and to the levying officer.

Comment. Section 703.590 continues the substance of a portion of former Section 690.50(1).

16/967

§ 703.600. Appeal

703.600. An appeal lies from any order made under this article and shall be taken in the manner provided for appeals in the court in which the proceeding takes place.

Comment. Section 703.600 continues the substance of subdivision (m) of former Section 690.50.

100/909

§ 703.610. Disposition of property during pendency of proceedings

703.610. (a) Except as otherwise provided in this section or in Sections [702.620] and [706.750], until the final determination of the claim of exemption:

(1) The levying officer shall not release property unless the judgment creditor otherwise instructs.

(2) Property shall not be sold or otherwise disposed of except pursuant to an order of the court or under Section [703.220].

(b) At any time while the exemption proceedings are pending, upon motion of the judgment creditor or a claimant, or upon its own motion, the court may make such orders for disposition of the property as may be proper under the circumstances of the case. Such an order may be modified or vacated by the court at any time during the pendency of the exemption proceedings upon such terms as are just.

(c) If an appeal of the determination of a claim of exemption is taken, notice of the appeal shall be given to the levying officer and the levying officer shall hold, release, or dispose of the property

subject to the provisions governing enforcement and stay of enforcement of money judgments pending appeal.

Comment. Subdivision (a) of Section 703.610 continues the substance of subdivision (h) and the second sentence of subdivision (j) of former Section 690.50. It requires, as did former Section 690.50(h), that the levying officer preserve the status quo by maintaining the lien on the property.

Subdivision (b) continues the substance of former Section 690.50(g), except that orders for the disposition of perishable property are governed by Section 703.220.

Subdivision (c) is new. For provisions governing enforcement and stays pending appeal, see Sections 916-923.

Note. Subdivision (c) will be reviewed in light of the Commission's recommendations concerning stays of enforcement.

27/868

Article 3. Exempt Property

§ 704.010. Motor vehicle; proceeds

704.010. (a) One motor vehicle is exempt if the judgment debtor's equity does not exceed one thousand dollars (\$1,000). For the purpose of determining the judgment debtor's equity, the fair market value of the motor vehicle shall be determined by reference to used car price guides customarily used by California automobile dealers unless the motor vehicle is not listed in such price guides.

(b) If the motor vehicle is sold, or if it has been lost, damaged, or destroyed, the proceeds of sale or of insurance or other indemnification are exempt in the amount of one thousand dollars (\$1,000) for a period of 90 days after the sale in the case of a voluntary sale, or 90 days after the receipt of proceeds in all other cases.

(c) If the judgment debtor has only one motor vehicle, proceeds of an execution sale of the motor vehicle are exempt in the amount provided in this section without making a claim. The levying officer shall consult and may rely upon the records of the Department of Motor Vehicles in determining whether the judgment debtor has only one motor vehicle.

Comment. Section 704.010 supersedes subdivisions (a), (d), and (e) of former Section 690.2. The exemption provided by this section is in addition to the exemption for a motor vehicle necessary as a tool of the trade. See Section 704.050.

Subdivision (a) increases the motor vehicle exemption from \$500 to \$1,000.

Subdivision (b) provides an exemption for proceeds of sale, or of insurance or other indemnification, whereas subdivision (e) of former Section 690.2 exempted "any amount representing the motor vehicle exemption." Cf. *Houghton v. Lee*, 50 Cal. 101, 103 (1875) (exemption of proceeds from insurance on homestead). Subdivision (b) also makes clear that the 90-day period during which proceeds are exempt runs from the receipt of the proceeds by the judgment debtor except in the case of a voluntary sale in which case the period runs from the date of sale. This principle is derived from the provisions exempting the proceeds from the sale of a homestead. See former Civil Code §§ 1257, 1265; *Chase v. Bank of America*, 227 Cal. App.2d 259, 263-64, 38 Cal. Rptr. 567, \_\_\_ (1964).

Subdivision (c) makes clear that the exemption of proceeds need not be claimed where there is only one motor vehicle. See Section 707.030. Section 701.810 requires distribution of such proceeds to the judgment debtor before the judgment creditor. See also Section \_\_\_\_\_ (sale price required to exceed liens required to be satisfied and proceeds exemption).

15329

§ 704.020. Household furnishings, wearing apparel, personal effects

704.020. Household furnishings, appliances, provisions, wearing apparel, and other personal effects, ordinarily and reasonably necessary for an average household and personally used or procured for use by the judgment debtor and members of the judgment debtor's household at the judgment debtor's principal place of residence, are exempt.

Comment. Section 704.020 supersedes the first sentence of former Section 690.1. Section 704.020 continues the ordinarily and reasonably necessary standard but makes clear that exemption is limited to items that are necessary for the average household. This limitation is intended to eliminate the unfairness inherent in the "station in life" test as applied in cases such as *Independence Bank v. Heller*, 275 Cal. App.2d 84, 79 Cal. Rptr. 868 (1969), and *Newport Nat'l Bank v. Adair*, 2 Cal. App.3d 1043, 83 Cal. Rptr. 1 (1969).

999/319

§ 704.030. Materials for repair or improvement of dwelling

704.030. All material not exceeding one thousand dollars (\$1,000) in value, purchased in good faith for use in the repair or improvement of the judgment debtor's principal place of residence, is exempt as long

as the material in good faith is about to be applied to the repair of the dwelling.

Comment. Section 704.030 continues a portion of former Section 690.17.

15330

§ 704.040. Jewelry, heirlooms, works of art

704.040. Jewelry, heirlooms, works of art, and other personal effects are exempt to the extent the court determines that they reasonably have such sentimental or psychological value to the judgment debtor that it would be inequitable to subject them to enforcement of a money judgment.

Comment. Section 704.040 provides an exemption for items of sentimental value. This section supersedes portions of former Section 690.1 which provided an exemption for wearing apparel, furnishings, and works of art "of or by the debtor and his resident family." The exemption of property under Section 704.040 depends upon its sentimental or psychological value, rather than upon its being ordinarily and reasonably necessary to the judgment debtor as under the former provision.

405/332

§ 704.050. Health aids

704.050. Health aids reasonably necessary to enable the judgment debtor or a spouse or dependent of the judgment debtor to work or sustain health, and prosthetic and orthopedic appliances, are exempt.

Comment. Section 704.050 supersedes former Section 690.5 which exempted prosthetic and orthopedic appliances used by the debtor. Section 704.050 is based on Section 5(2) of the Uniform Exemptions Act (1976). The requirement that health aids be reasonably necessary to enable the individual to work or sustain health permits the exemption of such items as a wheel chair for a person unable to walk to work, an air conditioner for a person afflicted with asthma, or an elevator for a person unable to climb stairs, but does not permit the exemption of a swimming pool, sauna, bicycle, golf clubs, or gymnastic equipment merely because their use is conducive to maintaining good health.

§ 704.060. Tools, etc., used in trade, business, or profession; proceeds

704.060. (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one motor vehicle, one vessel, and other personal property, which are reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood are exempt to the extent that the aggregate value of the judgment debtor's equity therein does not exceed two thousand five hundred dollars (\$2,500).

(b) If an item exempt pursuant to subdivision (a) is sold, or if it has been lost, damaged, or destroyed, the proceeds of sale or of insurance or other indemnification are exempt in an amount of two thousand five hundred dollars (\$2,500), less the value of other items exempt pursuant to subdivision (a), for a period of 90 days after the sale, in the case of a voluntary sale, or after receipt of the proceeds by the judgment debtor, in all other cases.

Comment. Subdivision (a) of Section 704.060 continues the substance of former Section 690.4 and a portion of former Section 690.17 (building materials not exceeding \$1,000).

Subdivision (b) provides an exemption for the proceeds of sale or of insurance or other indemnification analogous to that provided by Section 704.010(b) (motor vehicle).

27/867

§ 704.070. Deposit accounts and money

704.070. (a) Any combination of deposit accounts (other than deposit accounts described in subdivisions (b) and (c)) and money is exempt in the maximum aggregate amount of five hundred dollars (\$500).

(b) Any combination of savings deposits (including "investment certificates" and "withdrawable shares" as defined in Sections 5061 and 5067 of the Financial Code) in, shares or other accounts in, or shares of stock of, any state or federal savings and loan association is exempt in the maximum aggregate amount of one thousand dollars (\$1,000).

(c) Any combination of shares and certificates for funds deposited in a credit union and all the accumulation thereon is exempt in the maximum aggregate amount of one thousand five hundred dollars (\$1,500).

(d) The amount of the exemption provided by this section is reduced by the amount of any funds in the deposit account or money traceable and exempt pursuant to this chapter or any other law providing an exemption. Application of the exemptions provided by this section shall be first to amounts in deposit accounts and money other than the deposit account or money before the court and then, if not exhausted, to the deposit account or money before the court.

Comment. Subdivision (a) of Section 704.070 is new. It provides an exemption for deposit accounts other than savings and loan and credit unions as well as for money. The \$500 exemption is a maximum, available only to the extent the deposit account does not consist of other exempt funds.

Subdivision (b) continues the substance of former Section 690.7 (\$1,000 of savings deposits in, shares or other accounts in, or shares of stock of, savings and loan associations). See also Section 707.590 (exemption of deposit account into which social security payments are directly deposited).

Subdivision (c) continues the substance of former Financial Code Section 15406 (\$1,500 of shares or certificates in credit unions).

Subdivision (d) adopts the rule that the deposit account exemption is applied first to property not levied upon. The intent of this rule is to subject the greatest amount subject to judicial process to enforcement of the judgment. See Section 703.520 (exemption claim discloses assets not levied upon).

Note. Treatment of joint accounts and community property accounts is deferred.

32/239

§ 704.080. Deposit account in which social security payments are directly deposited

704.080. (a) For the purposes of this section, "payments authorized by the Social Security Administration" means regular retirement and survivors' benefits, supplemental security income benefits, coal miners' health benefits, and disability insurance benefits.

(b) A deposit account in which payments authorized by the Social Security Administration are directly deposited by the United States government is exempt in the following amount without making a claim of exemption:

(1) Five hundred dollars (\$500) where one depositor is the designated payee of the directly deposited payments.

(2) Seven hundred fifty dollars (\$750) where two or more depositors are the designated payees of the directly deposited payments, unless such depositors are joint payees of directly deposited payments which represent a benefit to only one of the depositors, in which case the exempt amount is five hundred dollars (\$500).

(c) The amount of a deposit account described in subdivision (b) that exceeds the exemption provided in subdivision (b) is exempt to the extent that it consists of payments authorized by the Social Security Administration.

(d) Notwithstanding [Article 5 of Chapter 3], upon levy or service of other process the financial institution that holds the deposit account shall either place the amount that exceeds the exemption provided in subdivision (b) in a suspense account or otherwise prohibit withdrawal of the amount pending notification of the failure of the judgment creditor to file the affidavit required by this section or the judicial determination of the exempt status of the amount. Within 10 business days after the levy, the financial institution shall provide the levying officer with a written notice stating that the deposit account is one described in subdivision (b) and state the balance of the deposit account. Promptly upon receipt of the notice, the levying officer shall serve personally or by mail notice of the nature and balance of the deposit account on the judgment creditor.

(e) Notwithstanding the procedure prescribed in Article 2 (commencing with Section 703.510), whether there is an amount exempt under subdivision (c) shall be determined as follows:

(1) Within five days after the levying officer serves notice of the nature and balance of the deposit account to the judgment creditor, a judgment creditor who desires to claim that the amount is not exempt shall file with the court an affidavit alleging that the amount is not exempt and serve a copy on the levying officer. The affidavit shall be in the form of the notice of opposition provided by Section 703.560, and a hearing shall be set and held, and notice given, as provided by Sections 703.570 and 703.580. For the purpose of this subdivision, the "notice of opposition to the claim of exemption" in Sections 703.570 and 703.580 means the affidavit under this subdivision.

(2) If the judgment creditor does not serve the affidavit on the levying officer and give notice to the judgment debtor pursuant to Section 703.570 within the time provided in paragraph (1) of this subdivision, the levying officer, if any, shall release the property in the manner provided by Section \_\_\_\_\_ and shall notify the financial institution.

(3) The affidavit constitutes the pleading of the judgment creditor, subject to the power of the court to permit amendments in the interest of justice. The affidavit is deemed controverted and the judgment debtor is not required to file a counteraffidavit.

(4) At a hearing under this subdivision, the judgment debtor has the burden of proving that the excess amount is exempt.

(5) At the conclusion of the hearing, the court by order shall determine whether or not the amount of the deposit account is exempt pursuant to subdivision (c), in whole or in part and shall make appropriate order for the prompt disposition of the money. The order is determinative of the right of the judgment creditor to apply such amount toward the satisfaction of the judgment. No findings are required in a proceeding under this subdivision.

(6) Upon determining that all or part of the amount of the deposit account is exempt pursuant to subdivision (c), the clerk shall immediately transmit a certified copy of the order to the levying officer and the levying officer shall serve the copy of the order on the financial institution.

(f) If the judgment debtor claims that a portion of the amount is exempt other than pursuant to subdivision (c), the claim of exemption shall be made pursuant to Article 2 (commencing with Section 704.510). If the judgment debtor also opposes the judgment creditor's affidavit regarding an amount exempt pursuant to subdivision (c), both exemptions shall be determined at the same hearing, provided the judgment debtor has complied with Article 2 (commencing with Section 704.510).

Comment. Section 704.080 supersedes former Section 690.30. Social Security payments may be directly deposited pursuant to 31 U.S.C. § 492 (1976). Subdivision (a) continues former Section 690.30(c). Subdivision (b) continues the substance of the first paragraph and subdivision (a) of former Section 690.30. Subdivision (c) continues the

substance of the introductory paragraph of former Section 690.30(b). Subdivision (d) continues the substance of former Section 690.30(b)(1).

Subdivision (e) supersedes paragraphs (2), (3), and (4) of subdivision (b) of former Section 690.30. Subdivision (e), along with subdivision (f), clarifies the procedure applicable to claiming exemptions for excess amounts in deposit accounts described in this section and the relation between this procedure and the procedure provided by Article 2 (commencing with Section 703.510) (superseding former Section 690.50, incorporated by reference in former Section 690.30). Paragraph (6) supersedes former Section 690.30(b)(3). The provision for an order determining priority or dividing the property between several creditors is not continued. Paragraph (7) continues former Section 690.30(b)(4).

Where a deposit account is not one described by subdivision (b) or where an exemption of excess funds in a deposit account described in subdivision (b) is claimed on other grounds, the procedures provided in Article 2 (commencing with Section 703.510) apply to the determination of the exemption. See Section 704.070 and subdivision (f) of this section.

See also Sections \_\_\_\_\_ ("deposit account" defined) and \_\_\_\_\_ (release).

999/322

§ 704.090. Inmate's trust account

704.090. The funds of a judgment debtor confined in a 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 or to the credit of the judgment debtor, in an inmate's trust account or similar account by the state, county, or city, or any agency thereof, are exempt without making a claim for exemption in the amount of one thousand dollars (\$1,000).

Comment. Section 704.090 supersedes former Section 690.21, which provided an exemption of \$40.

101/153

§ 704.100. Life insurance, endowment, annuity policies

704.100. (a) Unmatured life insurance policies, including endowment and annuity policies (but not the loan value of such policies), are exempt without making a claim.

(b) The aggregate loan value of unmaturred life insurance policies, including endowment, and annuity policies is subject to the enforcement

of a money judgment but is exempt in the amount of five thousand dollars (\$5,000). Application of the exemption provided by this subdivision shall be first to policies other than the policy before the court and then, if not exhausted, to the policy before the court.

(c) Benefits from matured life insurance policies, including endowment, and annuity policies, paid or payable to the judgment debtor or the spouse or dependents of the judgment debtor, are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

Comment. Section 704.100 supersedes the exemptions provided in former Sections 690.9 (life insurance represented by \$500 annual premium), 690.10 (group life insurance), and 690.14 (fraternal benefit society). Under subdivision (a), the judgment creditor is precluded from reaching an unmatured policy except for its loan value; subdivision (b) protects a portion of the loan value. The loan value is not subject to execution (see Section [703.110(b)(7)]) but may be reached by some other appropriate procedure. See Sections \_\_\_\_\_ (examination of judgment debtor), \_\_\_\_\_ (order in examination proceedings), \_\_\_\_\_ (appointment of receiver), \_\_\_\_\_ (assignment order). Subdivision (a) prevents the judgment creditor from forcing the judgment debtor to surrender a life insurance policy for its cash value.

Subdivision (c) limits former law, which made the exemption of benefits available to any person, including creditors of the judgment debtor and artificial persons. See Jackson v. Fisher, 56 Cal.2d 196, 200, 363 P.2d 479, \_\_\_, 14 Cal. Rptr. 439, \_\_\_ (1961). Under subdivision (c), the exemption may be asserted against creditors of the judgment debtor or of the spouse or dependents of the judgment debtor. See Holmes v. Marshall, 145 Cal. 777, 779-82, 79 P. 534, \_\_\_ (1905).

968/999

§ 704.110. Retirement and related benefits and contributions

704.110. (a) As used in this section, "retirement benefits" means money held, controlled, or in process of distribution, or received by the judgment debtor, as an annuity, pension, retirement allowance, or death or other benefit, or as a return of contributions and interest thereon, under a retirement plan of the United States, a public entity, public trust, public corporation, or public board of this state, or a private employer, union, trust, or other private entity (including a profit-sharing plan designed and used for retirement purposes) or under a self-employed retirement plan or individual retirement annuity or

account which is exempt from federal income taxation, and all vacation credits accumulated by a public employee pursuant to any law for the accumulation of vacation credits.

(b) Before payment, retirement benefits are exempt without making a claim. After payment, retirement benefits are exempt.

Comment. Section 704.110, in conjunction with Section 703.070 (exemptions not applicable in case of support judgment), supersedes the provisions relating to exemptions for retirement and related benefits (other than disability payments covered by Section 707.610) provided by former Section 690.18.

405/355

§ 704.120. Unemployment benefits and contributions; strike benefits

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

(b) Before payment, money held for payment of the following benefits is exempt without making a claim:

(1) Unemployment compensation benefits payable under Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code.

(2) Unemployment compensation disability benefits payable under Part 2 (commencing with Section 2601) of Division 1 of the Unemployment Insurance Code.

(3) Extended duration benefits payable under Part 3 (commencing with Section 3501) of Division 1 of the Unemployment Insurance Code.

(4) Federal-state extended benefits payable under Part 4 (commencing with Section 4001) of Division 1 of the Unemployment Insurance Code.

(5) Incentive payments payable under Division 2 (commencing with Section 5000) of the Unemployment Insurance Code.

(6) Benefits under a plan or system established by an employer that makes provision for employees generally or for a class or group of employees for the purpose of supplementing unemployment compensation benefits.

(7) Unemployment benefits by a fraternal organization to bona fide members.

(8) Benefits payable by a union due to a labor dispute.

(c) After payment, the benefits described in subdivision (b) are exempt.

Comment. Section 704.120 supersedes former Sections 690.13, 690.16, and 690.175 and portions of Unemployment Insurance Code Sections 988 and 1342. Subdivision (b)(8) is new.

15331

§ 704.130. Disability and health benefits and contributions

704.130. (a) Before payment, benefits from a disability or health insurance policy or program are exempt without making a claim. After payment, the benefits are exempt.

(b) Subdivision (a) does not apply if the judgment creditor is a provider of health care whose claim arises out of the judgment debtor's condition for which the benefits are collected.

Comment. Subdivision (a) of Section 704.130 supersedes former Section 690.11 (disability or health insurance benefits represented by \$500 annual premium), 690.13 (money used exclusively in payment of sick benefits by fraternal organization to bona fide members), 690.14 (fraternal benefit society funds), and portions of former Section 690.18 (disability benefits from retirement plans). Subdivision (b) is new.

101/173

§ 704.140. Damages for personal injury

704.140. (a) A cause of action for personal injury is exempt without making a claim.

(b) An award of damages or a settlement arising out of personal injury to the judgment debtor is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

(c) Subdivision (b) does not apply if the judgment creditor is a provider of health care whose claim arises out of the personal injury for which the award or settlement was made.

Comment. Section 704.140 is new. A pending cause of action may only be reached by the lien procedure provided by Article 4 (commencing with Section 708.310) of Chapter 6.

§ 704.150  
29215

§ 704.150. Damages for wrongful death

704.150. (a) A cause of action for wrongful death is exempt without making a claim.

(b) An award of damages or a settlement arising out of the wrongful death of a person of whom the judgment debtor was a spouse or a dependent is exempt to the extent reasonably necessary for support of the judgment debtor and the spouse and dependents of the judgment debtor.

Comment. Section 704.150 is new. A pending cause of action may only be reached by the lien procedure provided by Article 4 (commencing with Section 708.310) of Chapter 6.

405/354

§ 704.160. Worker's compensation

704.160. Except as provided by Chapter 1 (commencing with Section 4900) of the Labor Code, before payment, a claim for worker's compensation or compensation awarded or adjudged is exempt without making a claim. After payment, the award is exempt.

Comment. Section 704.160 continues the substance of former Section 690.15.

405/346

§ 704.170. Aid

704.170. Before payment, aid provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or similar aid provided by a charitable organization or a fraternal benefit society as defined in Section 10990 of the Insurance Code, to the judgment debtor or for the benefit of the judgment debtor is exempt without making a claim. After payment, the aid is exempt.

Comment. Section 704.170 is based on former Sections 690.14 and 690.19. This section exempts local aid as well as federal aid administered by the state pursuant to the Welfare and Institutions Code. See also Welf. & Inst. Code § 10052 ("aid" defined).

Section 704.170 also expands the category of nongovernmental aid that is exempt. Former Section 690.14 applied only to fraternal benefit societies.

§ 704.180. Relocation benefits

704.180. Before payment, relocation benefits for displacement from a dwelling actually owned or rented by the judgment debtor which are to be paid pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, are exempt without making a claim. After payment, the benefits are exempt.

Comment. Section 704.180 supersedes Section 690.8a. The last sentence of this section requires the debtor to claim an exemption for such benefits after payment, whereas under former law these benefits were designated as exempt without filing a claim.

§ 704.190. Licenses

704.190. Except as provided in Section 705.330, a license to engage in any business, profession, or activity issued by a public entity is exempt without making a claim.

Comment. Section 704.190 is derived from a portion of subdivision (f) of former Section 688 which precluded levy or sale on execution of a "license issued by this state to engage in any business, profession, or activity." See Section \_\_\_\_\_ (receiver to sell liquor license).

§ 704.200. Cemetery plot

704.200. (a) As used in this section:

(1) "Cemetery" has the meaning provided by Section 7003 of the Health and Safety Code.

(2) "Family plot" is a plot that satisfies the requirements of Section 8650 of the Health and Safety Code.

(3) "Plot" has the meaning provided by Section 7022 of the Health and Safety Code.

(b) A family plot is exempt without making a claim.

(c) Except as provided in subdivision (d), a cemetery plot for one person is exempt.

(d) Land held for the purpose of sale or disposition as cemetery plots or otherwise is not exempt.

(e) Notwithstanding subdivision (b) of Section 703.010, the exemptions provided in this section apply to property dedicated as a cemetery by a cemetery authority where the judgment to be enforced is for a debt due from an individual owner for the purchase price of a cemetery plot.

Comment. Section 704.200 supersedes portions of former Section 690.24 which provided an exemption for a cemetery lot not exceeding one-quarter of an acre in size or, in the case of a religious or benevolent association or corporation, five acres in size. Subdivision (b) recognizes that family plots are inalienable. See Health & Saf. Code § 8650. Subdivision (c) exempts a cemetery lot for one person. See also Health & Saf. Code § 8601 (spouse's vested right of interment). Subdivision (d) continues the substance of the third paragraph of former Section 690.24. Subdivision (e) continues the substance of the fourth paragraph of former Section 690.24. The portion of land containing graves of human beings is not subject to enforcement of a money judgment. See Peebler v. Danziger, 104 Cal. App.2d 491, 493, 231 P.2d 895, \_\_\_ (1951).