

Third Supplement to Memorandum 81-71

Subject: Study D-300 - Enforcement of Judgments (AB 707 and 798)

Attached to this supplement as Exhibit 1 (yellow) is a copy of miscellaneous amendments to Assembly Bill 707 proposed by the staff. Most of these amendments are not substantive.

§§ 693.010-693.060. Forms

Portions of the forms as printed in AB 707 (see pp. A-15 to A-27) have become illegible, and as amended on August 25, the bill omits parts of two forms. Accordingly, we have redrafted the forms and made some technical changes to conform with amendments to substantive provisions. See Amendment 4 in Exhibit 1.

§ 697.710. Execution lien; § 701.010. Duty of garnishee

Lieutenant Aguilar of the San Diego County Marshal's Office has expressed some concern over the duration and coverage of the execution lien under AB 707. His letter is attached as Exhibit 2. The main concern expressed in the letter is that it is too burdensome on garnishees and levying officers to permit a two-year execution lien. It is argued that the 90-day continuing levy like that provided for wage garnishment is a more acceptable approach.

While AB 707 does provide a more forceful levy than existing law, the letter exaggerates the effect of an execution levy. A garnishee is not required to deliver tangible personal property that comes into the possession of the garnishee after the levy. See Section 701.010(b)(1). The two-year execution lien ties up only property that is levied upon, i.e., property in the possession or under the control of the third person at the time of levy. If the third person is indebted to the judgment debtor, the levy only reaches an obligation existing at the time of levy, whether or not it is due; the lien does not attach to obligations arising after the date of levy. See Section 701.010(b)(2). Accordingly, the execution lien does not have the dragnet effect of a judgment lien on real property which attaches to property acquired by the judgment debtor in the county where the abstract of judgment is recorded, nor does it have the continuing levy effect of an earnings

withholding order which picks up earnings that become payable during a 90-day period commencing 10 days after service of the earnings withholding order. The significant change in the scope of the execution lien under AB 707 is that amounts falling due under the obligation levied upon are subject to the lien, whereas under existing law it appears that only the amount due and owing at the time of levy need be paid by the garnishee. It is possible that a garnishee on an account receivable or an obligor on a negotiable instrument may make payments as they become due to the levying officer for the purposes of the levy. However, the creditor may have the property sold at an execution sale as provided in Section 701.520. The staff believes that this scheme is an improvement over existing law and that it is not overly burdensome on levying officers and garnishees. The staff proposes to revise Section 701.010 to make clear that new obligations arising in the future and property coming into the garnishee's possession in the future are not reached by the execution lien. See Amendments 5 and 6 in Exhibit 1.

Part of the concern raised by Lieutenant Aguilar arises from the length of the execution lien. Under existing Section 688(e), the execution lien expires one year after the date of issuance of the writ. The Commission's original recommendation continued this provision but AB 707 was amended to increase the maximum lien period to two years so that the period of leviability of the writ could be extended to 180 days. If the execution lien period commenced at the time of levy, the duration of the lien could be reduced to one year. It is preferable to count the running of the execution lien from the date of issuance of the writ because it is certain, whereas the date of levy may not always be agreed upon. However, in most cases it probably does not matter because nothing of importance will hinge on the date of expiration of the execution lien. We do want to retain an execution lien that is lengthy enough to permit completion of a sale of real property which involves a delay of 120 days after notice of levy is given the judgment debtor. Accordingly, if the Commission is inclined to restrict the execution lien, the staff would propose a one-year lien running from the date of levy.

§ 708.310. Charging orders

Amendment 9 in Exhibit 1 revises a cross-reference for consistency with the new limited partnership act. See 1981 Cal. Stats. ch. 807 (AB 362).

§§ 724.210-724.260. Acknowledgment of satisfaction of matured installments under installment judgment

Under Code of Civil Procedure Section 674.5, a judgment debtor who owns property subject to a judgment lien under an installment judgment for spousal or child support may record a certificate that all matured installments have been paid in full. This certificate is prima facie evidence of satisfaction and is conclusive in favor of a person who deals in good faith and for a valuable consideration with the judgment debtor. This procedure has been revised at the current legislative session to require the judgment debtor to serve a notice on the judgment creditor at least 10 days before recording the certificate and to give the judgment creditor an opportunity to record an affidavit of nonpayment within 10 days after service of notice by the judgment debtor. The affidavit of nonpayment nullifies the certificate of full payment. A copy of the new legislation (1981 Cal. Stats. ch. 822) is attached as Exhibit 3; the new material is in subdivision (c) of Section 674.5.

A different scheme is provided by Sections 724.210-724.260 in AB 707 under which the judgment debtor may serve a demand for an acknowledgment of satisfaction on the judgment creditor. If the judgment creditor does not comply with the demand, the judgment debtor may apply by noticed motion for an order requiring compliance or ordering entry of satisfaction of matured installments. The staff believes that the procedure in AB 707 is an adequate though different approach to dealing with the problem and would not revise AB 707 in response to this new legislation.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1

STAFF DRAFT

AMENDMENTS TO ASSEMBLY BILL NO. 707

Amendment 1

On page 6, line 23, of the printed bill, as amended in Assembly August 25, 1981, strike out the first comma

Amendment 2

On page 12, line 20, strike out "(d)" and insert:
(e)

Amendment 3

On page 14, line 34, strike out "or entered" and insert:
, entered, or enforceable

Amendment 4

Strike out pages A-15 to A-27, inclusive, of the printed bill, as amended in Assembly August 25, 1981, and insert:

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

1. To the Sheriff or any Marshal or Constable of the County of:

You are directed to enforce the judgment described below with interest and costs and your costs as provided by law.

2. To any registered process server: You are authorized to serve this writ only in accord with CCP 699.080 or 715.040.

3. Judgment creditor Assignee of record (name and address):

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4. Judgment debtor (name and address):

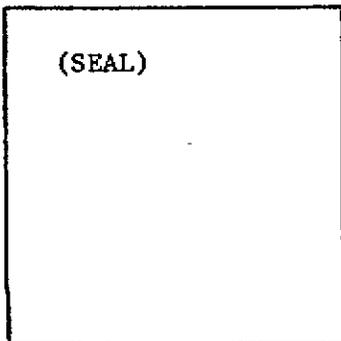
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5. Judgment entered on (date):

6. Judgment entered in
 a. Judgment book Minute book Docket
 b. Volume no.: _____ Page no.: _____

7. Judgment has been renewed.
 a. Judgment renewed on (dates):
 b. Renewal entered in
 (1) Judgment book Minute book Docket _____
 (2) Volume no.: _____ Page no.: _____

8. Notice of sale under this writ
 has not been requested
 has been requested as set forth on the reverse
9. Joint debtor information set forth on the reverse.
10. Real or personal property to be delivered under a writ of possession or sold under a writ of sale described on reverse.
11. If judgment not renewed, total judgment entered (including principal, attorney's fees, interest, and costs): \$ _____
12. If judgment renewed, total amount of judgment as last renewed (including principal, interest, and costs): \$ _____
13. Principal amount of judgment on date of writ
 a. Costs (per filed order or memo--CCP 685.090) added after entry or renewal: \$ _____
 b. Total (add 11 or 12 to 13a and subtract partial satisfactions of principal amount): \$ _____
14. Amount required to satisfy judgment on date of writ
 a. Accrued interest due on date of writ (per filed affidavit--CCP 685.050) as adjusted for partial satisfactions: \$ _____
 b. Fee for issuance of writ: \$ _____
 c. Total (add 13b, 14a, b): \$ _____
15. Levying officer: Add the following daily interest from date of writ (at legal rate on 13b) \$ _____



Dated: _____ Clerk, By _____, Deputy

NOTICE TO PERSON SERVED: SEE REVERSE FOR IMPORTANT INFORMATION

Continued items:

4. Additional judgment debtor (name and address):

8. Notice of sale has been requested by (name and address):

9. Joint debtor was declared bound by the judgment (CCP 989-994)

a. On (date):

a. On (date):

b. Name and address of joint debtor:

b. Name and address of joint debtor:

c. Additional costs against certain joint debtors (itemize):

10. Judgment was entered for the following:

a. Possession of personal property. If delivery cannot be had, then for the value (itemize in 10e) specified in the judgment or supplemental order.

b. Possession of real property.

c. Sale of personal property.

d. Sale of real property.

e. Description:

NOTICE TO PERSON SERVED

Writ of execution or sale. Your rights and duties are indicated on the accompanying Notice of Levy.

Writ of possession of personal property. If the levying officer is not able to take custody of the property, the levying officer will make a demand upon you for the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

Writ of possession of real property. If the premises are not vacated within five days after the date of service on an occupant or, if service is by posting, within five days after service on you, the levying officer will place the judgment creditor in possession of the property. Personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

693.020. Until superseded by a form prescribed by the Judicial Council, the notice of levy shall be in substantially the following form:

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

NOTICE TO PERSON SERVED (name):

The judgment creditor (name) _____ seeks to levy upon property in which the judgment debtor (name) _____ has an interest and apply it to the satisfaction of a judgment. The property to be levied upon is described:

- In the accompanying writ of possession or writ of sale.
- As follows:

1. You are served as a judgment debtor. See item 3.
2. You are served as a person other than the judgment debtor. See items 4, 5, 6, 7, and 8.
3. Notice to judgment debtor:
 - a. The levying officer is required to take custody of property in your possession that is to be levied upon.

- b. You may claim any available exemption for your property. Exemptions in limited amounts are provided for a dwelling, an automobile, household goods, personal belongings, tools of a trade, exempt funds traceable into a bank account, and certain other property. If you wish to claim an exemption, you must do so within 10 days after this notice was delivered to you or 15 days after this notice was mailed to you by filing a claim of exemption with the levying officer, together with a copy thereof, as provided in Section 703.520 of the Code of Civil Procedure. If you wish to seek the advice of an attorney in this matter, you should do so immediately so that a claim of exemption may be filed on time.
- c. You are not entitled to claim an exemption for property that is levied upon under a judgment for sale of property. This property is described in the accompanying writ of sale. You may, however, claim available exemptions for property levied upon to satisfy damages or costs awarded in such a judgment.
- d. You may obtain the release of your property by paying the amount of a money judgment remaining unpaid and any interest and costs remaining unpaid.
- e. If your property is levied upon under a writ of execution or to satisfy damages and costs under a writ of possession or sale, the property may be sold at an execution sale, perhaps at a price substantially below its value. Notice of sale will be given to you. Notice of sale of real property (other than a leasehold estate with an unexpired term of less than two years) may not be given until at least 120 days after this notice is served on you. This grace period is intended to give you an opportunity to settle with the judgment creditor, obtain a satisfactory buyer for the property, or encourage other potential buyers to attend the execution sale.
- f. All sales at an execution sale are final; there is no right of redemption.

4. Notice to person other than the judgment debtor. You are served as:

- a. Person in possession of:
- | | |
|--|-------------------------------------|
| <input type="checkbox"/> Tangible personal property in general | <input type="checkbox"/> Money |
| <input type="checkbox"/> Negotiable document | <input type="checkbox"/> Instrument |
| <input type="checkbox"/> Chattel paper | |
- b. Bailee of goods not covered by negotiable document.
- c. Financial institution. Your rights and duties are set forth in CCP 700.140-700.160.
- d. As to a security:
- | | |
|---|---|
| <input type="checkbox"/> Person in possession | <input type="checkbox"/> Holder in escrow |
| <input type="checkbox"/> Issuer | |
- e. Person obligated on instrument. If the levying officer has custody of the instrument, you must make payments to the levying officer as they come due.

7. If you claim ownership or the right to possession of real or personal property levied upon or if you claim a security interest in or lien on personal property levied upon you may make a third-party claim and obtain the release of the property pursuant to CCP 720.010-720.800.
8. The amount necessary to satisfy the judgment creditor's judgment as of the date of issuance of this notice is \$_____, plus additional interest in the amount of \$_____ per day from _____ until paid.
(date)

(name of levying officer)

(address of levying officer)

- Date mailed:
 Date delivered:
 Date posted:
 Date filed:
 Date recorded:

Signed by:

- Levying officer:
 Registered process server:

693.030. Until superseded by a form prescribed by the Judicial Council, the garnishee's memorandum shall be in substantially the following form:

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

Notice to person served with writ and notice of levy: This memorandum must be completed and mailed or delivered to the levying officer within 10 days after service on you of the writ and notice of levy unless you have fully complied with the levy. Failure to complete and return this memorandum may render you liable for the costs and attorney's fees incurred in obtaining the required information.

This memorandum does not apply to garnishment of earnings.

1. If you will not deliver to the levying officer any property levied upon, describe the property and the reason for not delivering it:

2. Describe any property of the judgment debtor not levied upon that is in your possession or under your control:

3. If you owe money to the judgment debtor which you will not pay to the levying officer, describe the amount and terms of the obligation and the reason for not paying it to the levying officer:

4. Describe the amount and terms of any obligation owed to the judgment debtor that is levied upon but is not yet due and payable:

5. Describe the amount and terms of any obligation owed to the judgment debtor that is not levied upon:

6. Describe any claims and rights of other persons to the property or obligation levied upon that are known to you and the names and addresses of the other persons:

DECLARATION

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

(Date)

(Signature)

(Type or print name)

If you need more space to provide the information required by this memorandum, you may attach additional pages. Total number of pages attached: _____.

693.040. Until superseded by a form prescribed by the Judicial Council, the notice of renewal of judgment required by Section 683.160 shall be in substantially the following form:

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

TO JUDGMENT DEBTOR (name and last known address):

1. Upon application of the judgment creditor, the following judgment against you has been renewed.
 - a. Judgment creditor (name and address):

 - b. Judgment originally entered on (date):

 - c. Judgment originally entered in
 - (1) Judgment book Minute book Docket
 - (2) Volume no.: Page no.:

 - d. Judgment has previously been renewed.
 - (1) Judgment renewed on (dates):
 - (2) Renewal entered in
 - (a) Judgment book Minute book Docket
 - (b) Volume no.: Page no.:

2. Application for this renewal filed (date):

3. This renewal is entered in
 - a. Judgment book Minute book Docket
 - b. Volume no.: Page no.:

4. Renewal of money judgment.

- a. If judgment not previously renewed, total judgment as entered (including principal, attorney's fees, interest, and costs): \$
- b. If judgment previously renewed, total amount of judgment as last renewed: \$
- c. Principal amount of judgment on date of renewal
 - (1) Costs (per filed order or memo--CCP 685.090) added after entry or renewal: \$ _____
 - (2) Total (add 4a or 4b to 4c(1) and subtract partial satisfactions of principal amount): \$
- d. Accrued interest from date of entry or prior renewal to date of renewal as adjusted for partial satisfactions: \$ _____
- e. AMOUNT OF RENEWED JUDGMENT (total amount required to satisfy judgment on date of renewal) (add 4c(2), 4d): \$ _____

5. Renewal of judgment for possession. sale.

- a. If judgment not previously renewed, terms of judgment as entered:
- b. If judgment previously renewed, terms of judgment as last renewed:
- c. Terms of judgment remaining unsatisfied:

6. THIS RENEWAL EXTENDS THE PERIOD OF ENFORCEABILITY OF THE JUDGMENT UNTIL 10 YEARS FROM THE DATE THE APPLICATION FOR RENEWAL WAS FILED. IF YOU OBJECT TO THIS RENEWAL, YOU MAY MAKE A MOTION TO VACATE OR MODIFY THE RENEWAL WITH THIS COURT. YOU MUST MAKE THIS MOTION WITHIN 30 DAYS AFTER SERVICE OF THIS NOTICE ON YOU.

Date: Clerk, By _____ Deputy

(SEAL)

- 7. NOTICE TO THE PERSON SERVED: You are served
 - a. As an individual judgment debtor.
 - b. Under the fictitious name of:
 - c. On behalf of:
 - Under CCP 416.10 (Corporation) CCP 416.60 (Minor)
 - CCP 416.20 (Defunct Corporation) CCP 416.70 (Ward)
 - CCP 416.40 (Association or Partnership) CCP 416.90 (Individual)
 - Other:

693.050. Until superseded by a form prepared by the Judicial Council, the notice of the hearing required by Section 704.770 shall be in both English and Spanish, in at least 10-point bold type, and in substantially the following form:

IMPORTANT LEGAL NOTICE TO HOMEOWNER AND RESIDENT

1. Your house will be offered for sale to satisfy a judgment obtained in court. You may be able to exempt the proceeds of sale of the house and real property described in the accompanying application if you or your family now actually reside on the property. YOU OR YOUR SPOUSE SHOULD COME TO THE HEARING TO SHOW THIS FACT.

2. If you or your spouse want to exempt the proceeds of sale of this property, you or your spouse should appear at

_____ on _____
(Location set forth in OSC) (Date and time)

and be prepared to answer questions concerning the statements made in the attached application. THE ONLY PURPOSE OF THE HEARING WILL BE TO DETERMINE WHETHER THE PROCEEDS OF SALE ARE EXEMPT, NOT WHETHER YOU OWE THE MONEY.

3. FOR YOUR OWN PROTECTION, YOU SHOULD PROMPTLY SEEK THE ADVICE OF AN ATTORNEY IN THIS MATTER. IF YOU ARE A RESIDENT OF THIS PROPERTY AND ARE NOT THE DEBTOR, THIS NOTICE DOES NOT AFFECT YOU. PLEASE GIVE IT TO YOUR LANDLORD.

**IMPORTANTE AVISO LEGAL AL PROPIETARIO DE CASA Y
RESIDENTE**

1. Su casa será puesta en venta para cumplir con una orden judicial obtenida en la corte. Usted podría exentar las ganancias de la venta de la casa y los bienes raíces descritos en la solicitud adjunta si usted o su familia actualmente residen en la propiedad. USTED O SU ESPOSO(A) DEBEN VENIR A LA AUDIENCIA PARA DEMOSTRAR ESTE PUNTO.

2. Si usted o su esposo(a) quieren exentar las ganancias de la venta de esta propiedad, usted o su esposo(a) deben presentarse a

_____ el _____
(Location set forth in O.S.C.) (Date and time)

y estar preparados para contestar las preguntas acerca de las declaraciones puestas en la solicitud adjunta. EL ÚNICO PROPÓSITO DE ESTA AUDIENCIA SERÁ EL DE DETERMINAR SI LAS GANANCIAS DE LA VENTA SON EXENTAS, Y NO SI USTED DEBE DINERO.

3. PARA SU PROPIA PROTECCIÓN, USTED DEBERÍA PRONTAMENTE PROCURAR EL CONSEJO DE UN ABOGADO EN ESTE ASUNTO. SI USTED ES UN RESIDENTE EN ESTA PROPIEDAD Y NO ES EL DEUDOR(A), ESTE AVISO NO LE AFECTA A USTED. POR FAVOR DESELO A SU ARRENDADOR.

693.060. (a) Until superseded by a form prepared by the Judicial Council, the notice of order for sale required by Section 704.790 shall be in both English and Spanish, in at least 10-point bold type, and in substantially the following form:

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

IMPORTANT LEGAL NOTICE TO HOMEOWNER AND RESIDENT

1. You were recently served with a court order requiring your presence at a hearing to determine why the court should not issue an order for the forced sale of your home in accordance with the application of the creditor. YOU AND YOUR SPOUSE FAILED TO APPEAR AT THE HEARING AND THE COURT HAS ORDERED THAT YOUR HOME BE SOLD TO SATISFY A JUDGMENT AGAINST YOU.

2. Your absence at the hearing has contributed to the issuance of the accompanying order for sale in accordance with the application of the creditor. If the absence of you or your attorney at the hearing was legally excusable and you believe in good faith that the proceeds of sale of your home may be entitled to an exemption, you should complete the form below and date, sign, and return the form below no later than _____. (Insert date no later than 10 days after date of service or 15 days if service is by mail in this state.)

3. FOR YOUR OWN PROTECTION, YOU SHOULD IMMEDIATELY SEEK THE ADVICE OF AN ATTORNEY. IF YOU ARE A RESIDENT OF THIS PROPERTY AND ARE NOT THE DEBTOR, THIS NOTICE DOES NOT AFFECT YOU. PLEASE GIVE IT TO YOUR LANDLORD.

Return This Form to:

(Name and title of levying officer)

(Street address and city)

(Area code and telephone number of levying officer)

I declare that my absence from the previous hearing on whether this property should be sold in accordance with the application of the creditor was legally excusable. I, or my spouse, currently reside in this property and I wish a further hearing so that I may claim my exemption of the proceeds of the sale of my home. I understand that I will be notified of the date and place for this hearing if I return this form immediately and that I must attend this hearing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date _____

(Signature of debtor or debtor's spouse)

(Type or print name)

IMPORTANTE AVISO LEGAL AL PROPIETARIO DE CASA Y RESIDENTE

1. Recientemente se le entregó una orden de la corte exigiendo su presencia en una audiencia para determinar el porqué la corte no debería extenderle una orden para la venta forzosa de su casa de acuerdo con la solicitud del acreedor. USTED Y SU ESPOSO(A) NO VINIERON A LA AUDIENCIA Y LA CORTE HA ORDENADO QUE SU CASA SEA VENDIDA PARA SATISFACER EL JUDICIO EN CONTRA USTEDES.

2. Su ausencia en la audiencia ha contribuido para la emisión de la orden de venta adjunta de acuerdo con la solicitud del acreedor. Si la ausencia de ustedes o de su abogado en la audiencia es excusable legalmente y creen de buena fe que las ganancias de la venta de su casa pueden tener derecho a una exención, debería completar el formato que esta debajo, fecharlo, firmarlo, y devolverlo a no mas tardar del _____.

(Insert date no later than 10 days after date service or 15 days if service is by mail in this state.)

3. PARA SU PROPIA PROTECCIÓN, USTED DEBERÍA INMEDIATAMENTE PROCURAR EL CONSEJO DE UN ABOGADO. SI USTED ES UN RESIDENTE EN ESTA PROPIEDAD Y NO ES EL DEUDOR(A), ESTE AVISO NO LE AFECTA A USTED. POR FAVOR DESELO A SU ARRENDADOR.

Devuelva Este Formato a:

(Name and title of levying officer)

(Street address and city)

(Area code and telephone number of levying officer)

Declaro que mi ausencia en la pasada audiencia sobre si esta propiedad debería ser vendida de acuerdo con la solicitud del acreedor fue legalmente excusable. Yo, o mi esposo(a), acutalmente residimos en esta propiedad y deseo una audiencia adicional para reclamar mi exención de las ganancias de la venta de mi casa. Entiendo que seré notificado de la fecha y del lugar de esta audiencia si devuelvo este formato inmediatamente y que debo asistir a esta audiencia.

Declaro bajo pena de perjurio bajo las leyes del Estado de California que lo anterior es verdadero y está correcto.

Fecha _____

(Firma del Deudor(a) o de la Esposa(o) del Deudor(a))

(Nombre escrito a máquina o en letra de molde)

(b) Timely completion and return of the Spanish language form has the same force and effect as timely completion and return of the English language form.

Amendment 5

On page 79, line 17, after "amount" insert:
of the obligation levied upon

Amendment 6

On page 79, line 20, after "debtor" insert:
on the obligation levied upon

Amendment 7

On page 120, line 8, strike out "assignemnt" and insert:
assignment

Amendment 8

On page 160, line 35, strike out "third party's" and insert:
third-party

Amendment 9

On page 168, line 15, strike out "15522" and insert:
15573

Amendment 10

On page 216, line 11, strike out "judgement" and insert:
judgment



DEPARTMENT OF THE MARSHAL
MUNICIPAL COURT OF CALIFORNIA
County of San Diego
MICHAEL GOBBA, MARSHAL

October 9, 1981

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Re: Tentative Recommendations Proposing the Enforcement of Judgments Law
(AB 707 & 798)

Assembly Bill 707 would add section 701.010 et seq. to the Code of Civil Procedure. These sections set forth the duties and liabilities of third persons after levies.

Of particular concern to us is section 701.010 which requires a third person served with a copy of the writ and notice of levy to pay to the levying officer: "(B) amounts that become due and payable to the judgment debtor during the period of the execution lien."

Under proposed section 697.710 the period of the execution lien extends from the "time of levy until the expiration of two years after the issuance of the writ unless the judgment is sooner satisfied."

This legislation would create a continuing garnishment similar to an Earnings Withholding Order, but, which would, in some instances, last for up to two years.

Presently if a garnishment is served on a financial institution to levy on a deposit account only monies in the account at the time of levy are payable to the levying officer. Existing law does not impose any duty to pay over funds coming into the account subsequent to the levy. It is our interpretation that the proposed legislation is an attempt to allow judgment creditors better access to assets of judgment debtors.

In many cases, existing law requires multiple levies on financial institutions or other third persons in order to obtain the amount rightfully due the creditor under his or her judgment.

We agree in principal with the theory of improving the remedies available to creditors by means of a continuing garnishment. We do, however, have serious reservations regarding the type of continuing garnishment as provided in the proposed legislation. We offer the following for your consideration:

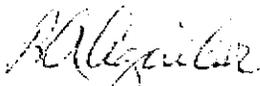
1. The proposed law would be of benefit to creditors but would impose additional burdens on the garnishee, the levying officer, and the taxpayer.

Garnishees, in order to comply with the law and protect themselves from liability, would be required to establish procedures to insure that during the levy period (up to two years) assets of the debtor coming into their possession would be identified and paid or turned over to the levying officer. For larger businesses and financial institutions with computerized accounting systems the requirements of the law would be relatively simple to comply with. In the case of smaller businesses and individuals who do not have automated systems, the proposed continuing garnishment would place, we feel, an unreasonable burden in tracking and paying over assets of judgment creditors. The duties of the levying officer only begin with the service of the writ and notice of levy. Depending on the particular department, the fee received (\$14.00 effective 1-1-82) will only cover the approximate cost of set up and service of the process. As each payment is taken in under the garnishment additional clerical and bookkeeping costs are incurred. The cost of these collections and payovers rather than being borne by the parties involved are being paid for by the taxpayer.

2. The proposed law gives the creditor causing the service of the garnishment priority over other creditors of the same debtor for a period of up to two years. We feel this type of priority gives the creditor who is lucky enough to be the first to levy an unreasonable advantage over other creditors. The existing Employees' Earnings Protection Law provides only for a 90 day continuing levy and then precludes the original creditor from causing another EWO from being served for 10 days following the expiration of the prior order. (CCP 723.107.) Your commission's comment regarding CCP 723.107. indicate "the purpose of this limitation is to give other judgment creditors a 10-day period during which their earnings withholding orders can be served while the original creditor is precluded from competing with them". We believe the intent, or at least the effect, of the proposed law and the intent of the existing section 723.107 of the Code of Civil Procedure which both deal basically with creditor's access to the debtor's assets seem to be in contradiction.
3. We understand that some people feel the creditor astute enough to levy first should be entitled to a certain degree of priority over other creditors. We feel that in theory this concept has some merit but in practical application under the proposed law we find problems in two areas. The first, as previously stated, is the potential length of time involved. The second is the difference in the level of service between the various levying officers throughout the state and particularly within each county. Process delivered to one levying officer may not necessarily be served prior to service of process delivered to a different officer at a later time.

4. We would propose a 90 day continuing garnishment similar to the Earnings Withholding Order and including a reasonable period of time following the expiration of the levy during which the original creditor is precluded from re-levy. It is our belief that this type of garnishment would provide the desired enhancement to the remedies available to creditors while providing a more equitable distribution of the burdens involved between the parties, the levying officer and the taxpayer.

MICHAEL SGOBBA, MARSHAL



By: R.A. Aguilar, Lieutenant

MS:RAA:ft

EXHIBIT 3

Assembly Bill No. 1982

CHAPTER 822

An act to amend Section 4801.7 of the Civil Code and Section 674.5 of the Code of Civil Procedure, relating to orders for support.

[Approved by Governor September 25, 1981. Filed with Secretary of State September 26, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1982, Moorhead. Orders for support.

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Existing law provides that a certified copy of a judgment order for spousal support, when recorded with the county recorder, is a lien upon all real property of the judgment creditor in the county, as specified. The certificate of the judgment debtor that all amounts and installments which have matured under a judgment for spousal or child support prior to the date of the certificate have been fully paid and satisfied is prima facie evidence of the payment and satisfaction and conclusive in favor of any person dealing in good faith and for a valuable consideration with the judgment debtor, as specified.

This bill would require that the certificate of the judgment debtor must be accompanied by either an affidavit by the judgment creditor that all amounts and installments have been satisfied or proof of service of notice to the judgment creditor of the intent to file such a certificate, as specified. Further, it would also authorize a judgment creditor to record a certificate of nonpayment with regard thereto, as specified.

It would also make a technical change.

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SEC. 2. Section 674.5 of the Code of Civil Procedure is amended to read:

674.5. (a) A certified copy of any judgment or order of the superior court of this state for spousal or child support, when recorded with the recorder of any county, shall from the recording become a lien upon all real property of the judgment debtor, not exempt from execution, in the county, owned by him or her at the time, or which he or she may afterwards and before the lien expires, acquire, for the respective amounts and installments as they mature (but shall not become a lien for any sum or sums prior to the date they severally become due and payable) which lien shall have, to the extent herein provided and for the period of 10 years from the recording, the same force, effect and priority as the lien created by recordation of an abstract of a money judgment pursuant to Section 674.

(b) The certificate of the judgment debtor, or in the event of legal disability, the affidavit of the personal representative of the judgment debtor, certified by him or her under penalty of perjury, that all amounts and installments which have matured under the judgment prior to the date of the certificate have been fully paid and satisfied shall, when acknowledged and recorded, be prima facie evidence of such payment and satisfaction and conclusive in favor of any person dealing in good faith and for a valuable consideration with the judgment debtor or his or her successors in interest.

(c) A certificate of the judgment debtor shall be accompanied by either: (1) an affidavit executed under penalty of perjury by the judgment creditor that all amounts and installments which have matured under the judgment prior to the date of the affidavit have been fully paid or satisfied; or (2) proof of service, showing proof of service of an unexecuted copy of the certificate intended to be recorded by the judgment debtor, upon the judgment creditor by personal service or by certified mail with a copy of the return receipt attached to the certificate of service, indicating service at least 10 days prior to recordation of the executed certificate of the judgment debtor. Any certificate of the judgment debtor served upon the judgment creditor shall include a notice in substantially the following form:

IMPORTANT NOTICE

The person required to pay you child or spousal support intends to record this certificate stating that the payments are current. If the person is not current in the payments, you must, within 10 days, file an affidavit of nonpayment under penalty of perjury stating the fact of a delinquency and the amount thereof in order to prevent the release of any lien which may exist on the real property of the person.

The affidavit must be recorded with the county recorder of _____ County. (State county in which judgment recorded.)

The judgment creditor may, within 10 days of service of the copy of the certificate, execute an affidavit of nonpayment declaring that matured amounts and installments under the judgment have not been fully paid, and the amount thereof. The affidavit of noncompliance shall be signed under penalty of perjury by the judgment creditor and shall set forth the name of the debtor and shall be recorded in the general index under the name of the judgment debtor.

The recording of an affidavit of nonpayment by the judgment creditor made within 10 days after date of service by the judgment debtor shall cause any executed certificate of the judgment debtor recorded within the 10-day period to be without any force and effect, unless and until the affidavit of nonpayment is expunged by a court order or until an affidavit is executed under penalty of perjury by the judgment creditor that all amounts and installments which have matured under the judgment prior to the date of the affidavit have been fully paid or satisfied. An affidavit of nonpayment shall be without any force or effect and shall be void if recorded more than 10 days after service of the unexecuted certificate of the judgment debtor upon the judgment creditor.

In the event the judgment creditor records a knowingly false affidavit of nonpayment the judgment creditor shall be liable to the judgment debtor for all damages proximately caused by the false affidavit, in addition to any reasonable attorney's fees.

(d) If any amount of child support provided in a support order has been recorded by or directed to be made to an officer designated by the court pursuant to Section 4702 of the Civil Code or any other provision of law and the directive is set forth in the copy of the recorded judgment or order, or in a recorded certified copy of an amended or supplemental order, the certificate shall not affect the lien unless approved in writing by the designated officer. The provisions of subdivision (c) shall not apply to any release of lien pursuant to this subdivision.

(d) Whenever a certified copy of any judgment or order of the superior court for spousal or child support has been recorded with the recorder of any county, the expiration or satisfaction thereof made in the manner of an acknowledgment of a conveyance of real property may be recorded.