#39.30 5/20/71

Second Supplement to Memorandum 71-32

Subject: Study 39.30 - Attachment, Garnishment, Execution (Earnings Protection Law--Bank Account Exemption)

Summary

This memorandum presents for Commission consideration a staff draft of two sections relating to bank accounts: One section provides an exemption from attachment; the other provides an exemption from execution.

The law under the present exemption is unclear. (A background research study is attached as Exhibit I--pink.) The suggested staff draft is designed to provide clear rules. However, the clear rules may at times have anomalous results, as discussed in the memorandum. Consequently, the memorandum suggests an alternate approach to the bank account problem.

These sections, after revision and approval by the Commission, could be incorporated into the Earnings Protection Law recommendation to be submitted to the 1972 Legislature.

Draft Statute

The draft statute is attached as Exhibit II (yellow). The scheme of the statute is set out briefly below.

Section 690.7. Section 690.7 provides an exemption from attachment. Subdivision (a) exempts a maximum of $1,500 in any account regardless of how many persons are holders of the account. Subdivision (b) provides an exemption for such amounts as are essential for the support of the debtor or his family or essential for the maintenance and continuance of his business. These exemptions must be claimed under Section 690.50. See the Comment for a fuller discussion.

Section 690.7a. Section 690.7a provides an exemption from execution. It is similar to Section 690.7 except that it is limited to an individual (as opposed to a partnership, corporation, or unincorporated association) and there is no exemption for amounts essential for the maintenance and continuance of the debtor's business.

How Draft Statute Differs From Present Law

The draft statute differs from present law in several significant ways, all of which embody the Commission's prior policy decisions. Present law as expressed in Code of Civil Procedure Section 690.7 provides:

> 690.7. (a) To the maximum aggregate value of one thousand dollars ($1,000), any combination of the following: savings deposits in, shares or other accounts in, or shares of stock of, any state or federal savings and loan association; "savings deposits" shall include "investment certificates" and "withdrawable shares" as defined in Section 5061 and 5067 of the Financial Code, respectively.
>
> (b) Such exemption set forth in subdivision (a) shall be a maximum of one thousand dollars ($1,000) per person, whether the character of the property be separate or community.

Present law provides an aggregate exemption of $1,000 while the draft statute allows $1,500. Present law does not include bank savings and checking accounts which the draft statute does. Present law allows the exemption for each person while the draft statute covers only debtors.

Consequences of Draft Statute

The significant feature of the draft statute is that it provides an exemption for the debtor only, computed on the basis of all money held in his name. Thus, when a creditor levies on the bank account of a debtor, the debtor has the opportunity to exempt up to $1,500 in the account. If the debtor has other accounts, the amounts in the other accounts must be taken into consideration in computing the exemption.

Suppose that the debtor's other accounts are joint accounts. Should all the money in the accounts be deemed his for purposes of computing the exemption? or just a proportionate share? or none at all? Since money in a joint account is all available to the debtor, it should all be deemed his for purposes of the exemption--i.e., the debtor will have $1,500 available to him for contingencies. Accordingly, the draft statute is phrased in terms of accounts "standing in the name of the debtor."

Suppose the account levied on is a joint account. Under present law, the following result would probably occur: Each person named in the account would be able to claim a $1,000 exemption; the creditor could reach any property over the combined exemptions if that property is subject to satisfaction of the debtor's liability. Whether the property is subject to execution depends upon its source and character in some joint accounts and upon yet undetermined principles in case of a joint tenancy. See background study.

Under the draft statute, only the debtor is given an exemption, but that exemption is in the amount of a cumulative $1,500. Third persons named in the account have no exemptions but may be able to save some of the account from execution on the general principles of law governing what assets are subject to satisfaction of a debtor's liability. And that law, as pointed out, is unclear.

Phrasing the exemption in this way can lead to some anomalous consequences. Assume that a husband and wife have a joint tenancy for $3,000 and the husband has an additional account of $1,500 in his own name. A debtor gets a judgment against the husband for $3,000 and levies on the joint account. Under the draft statute, the husband can exempt $0 in the joint account, and the creditor has a potential $3,000 available to him. The wife can attempt to

raise third-party claims to exempt some of the money in the account. If a creditor's levy severs the joint tenancy, the wife gets $1,500 exempt and the creditor can reach only $1,500 of the husband's share. But, if the rule is that all of a joint account is subject to the debts of a named holder, the wife can exempt nothing, and the creditor can take $3,000. We do not know which would be the result under present law.

Assume the same situation, but husband and wife are joint debtors levied on jointly. The wife, because she has no other accounts, can exempt up to $1,500. Thus, we see that, where one party to an account is innocent, he may find the whole account taken; but, if he is a debtor, he may be able to exempt $1,500. This situation results partly from the present uncertainty in the law governing what money is subject to whose debts and partly from the way the draft statute phrases the exemption in terms of the debtor only.

Alternate Approach

A more satisfactory approach, should the Commission wish to get into this area, is to specify the substantive rules regulating what portion of a joint account is subject to the debts of one of its holders and then to build exemptions upon the rules. Perhaps, the simplest and most reasonable rule is that all money in a joint account is subject to the debts of any of the holders. It stands to reason that, if a debtor is able to draw down money from his account in order to pay his obligations, he should not be able to insulate that money by requiring a creditor to use legal process. Conversely, each person named in an account should be able to assure that he has a minimum amount available to him in case of contingencies--the $1,500 exemption should be available to all persons, not just debtors. A statute along these lines would look, briefly, as follows:

690.7a. (a) All of a bank account standing in the name of the debtor is subject to execution except as hereinafter provided.

(b) Each person in whose name a bank account stands has exempt from execution that portion of the account which, when added to the amounts in all other bank accounts standing in his name on the date of levy, does not exceed $1,500.

(c) Each person in whose name a bank account stands has exempt from execution any amount essential for the support of himself or his family.

(d) As used in this section, "person" means an individual and does not include a corporation, partnership, or unincorporated association.

(e) As used in this section, "bank account" includes a bank account standing in the names of more than one person and means:

(1) A deposit or account in any bank. As used in this paragraph, "bank" has the meaning given that term in Section 102 of the Financial Code.

(2) A savings deposit in, share or other account in, or share of stock of any state or federal savings and loan association. As used in this paragraph, "savings deposit" includes "investment certificate" and "withdrawable share" as defined in Sections 5061 and 5067 of the Financial Code.

(3) A share or certificate for funds received of the member of a credit union and all accumulation on such share or certificate.

(f) Nothing in this section affects the rights of a banker under Section 3054 of the Civil Code.

The disadvantage of such a provision--unlike the $1,500 per account limitation in the draft statute--is that it will be possible to multiply names on the account, thereby exempting a greater portion of the account--up to $1,500 per name, depending upon the named person's other accounts. This may be good or bad, depending on one's outlook. On the one hand, every person should have the minimum exemption available to him, and his name on the account assures that any money in the account over the exemption is going to be liable for his debts as well. On the other hand, it does provide a debtor the

opportunity to insulate a lot of money in a single account. This perhaps should not be allowed, for the main purpose of the exemption is to protect the joint husband-wife checking account with a few hundred dollars in it for living expenses and emergencies. If necessary, the problem could be limited by lowering the individual exemption to, say, $1,000, as in present law, or by placing a maximum aggregate exemption on any particular account. Thus, subdivision (b) could read:

> (b) Each person in whose name a bank account stands has exempt from execution that portion of the account which, when added to the amounts in all other bank accounts standing in his name on the date of levy, does not exceed $1,000; but the aggregate exemption provided by this subdivision shall not exceed $1,000 for any one bank account.

Respectfully submitted,

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Second Supplement to Memorandum 71-32

EXHIBIT I

JOINT BANK ACCOUNTS

Nathaniel Sterling

Joint Accounts

While there are several different types of joint accounts--i.e., bank deposits standing in the names of more than one person--the only type that presents serious problems is the joint tenancy. Generally, a judgment creditor can levy on the funds in a bank account that belong to the judgment debtor only. In joint accounts other than joint tenancies, this will involve tracing the deposits. For an interesting example of this tracing, see Tinsley v. Bauer, 125 Cal. App.2d 724, 271 P.2d 116 (1954).

A joint tenancy, however, involves funds that are equally and undividedly held by all the tenants. A joint tenancy can be created in personal property generally and in a bank account specifically.

> A joint tenancy in personal property may be created by a written transfer, instrument or agreement. Provisions of this section shall not restrict the creation of a joint tenancy in a bank deposit as provided for in the Bank Act.
> Civil Code Section 683.

The Bank Act, referred to in Civil Code Section 683, provides specifically for the creation of a joint tenancy:

> When a deposit is made in a bank in the names of two or more persons, whether minor or adult, in such form that the moneys in the account are payable to the survivor or survivors then such deposit and all additions thereto shall be the property of such persons as joint tenants. The moneys in such account may be paid to or on the order of any one of such persons during their lifetimes or to or on the order of any one of the survivors of them after the death of any one or more of them.
> Financial Code Section 852.

The rules regulating the rights and duties of persons holding joint tenancies in personal property are the same as those for real property. See 1 B. Witkin, Summary of California Law Personal Property § 5 (19) and 2 B. Witkin, Summary of California Law Real Property § 103 (19). The ownership rights in a bank account held in joint tenancy, specifically, are described in 7 Cal. Jur.2d Rev. Banks § 137 (1968):

> While a joint bank account which is not a joint tenancy account may authorize one to draw money from the account for certain purposes, he does not thereby become an owner of the funds. On the other hand, each tenant of a joint tenancy in a bank account is seised of the whole estate from the creation of the tenancy, and when one of the joint tenants dies, the sole title to the balance in the account vests in the survivor. This is true without regard to prior ownership or title. It is a mistake, however, to say of joint tenants simply that the title vests in the survivor on the death of the cotenant, or that it descends to him from his cotenants, for it has already vested in him by, and at the time of, the original grant. This is the legal effect of a joint tenancy at common law and under the code and would prevail without regard to the actual intent of the donor who created it. [Footnotes omitted.]

From the foregoing descriptions of the rights and obligations of parties to a joint tenancy account, one would expect that the rights of creditors are clearly established. This is not the case.

Garnishment of Joint Tenancy

A creditor seeking to attach or execute upon a joint account must post a bond in the amount of twice his claim if one of the cotenants is not a debtor. Code Civ. Proc. §§ 539a (attachment) and 682a (execution). The third party has the opportunity to intervene but has the burden of proof in attempting to save the assets from execution. Code Civ. Proc. § 689. There are four arguments the third party might make in an attempt to save the funds in the joint account from execution:

(1) The funds are his separate or community property and are, therefore, not subject to execution for the debts of his spouse.

(2) The account is not really a joint account but is actually his separate account.

(3) Even if the account is joint, under standard rules of joint tenancy the creditor may take only a portion of the account.

(4) In any event, the third party is entitled to an individual $1,000 exemption of assets from execution. (Under existing law, this applies only to a savings and loan association account.)

The first argument is that, if the source of the funds in the joint account is the separate property of the debtor or the community property of the two, it should not be subject to execution. This argument is based on the community property law that provides that neither spouse is required to satisfy the debts of the other from his separate property, and the husband need not satisfy certain debts of his wife out of community property. While this argument might be successful in some joint accounts, it is not valid in a joint tenancy, for property in a joint tenancy loses its community or separate character. This is the nature of a joint tenancy in property. See Estate of Casella, 256 Cal. App.2d 312, 64 Cal. Rptr. 259 (1967). This rule is consistent with decisions in the real property area that hold that a community estate and a joint tenancy cannot coexist in the same property at the same time. See Knutson, California Community Property Laws: A Plea for Legislative Study and Reform, 39 So. Cal. L. Rev. 240, 252-253 (1966).

The second argument the nondebtor may raise is that, although the account appears to be a joint tenancy, it is such in form only and is

actually his personal account. Thus although Section 852 of the Financial Code, cited above, states that, when there is a right of survivorship between the parties, the tenancy is joint, this has been construed to mean that there is a rebuttable presumption of joint tenancy and the burden of proof is on the challenging depositor. See Crocker-Anglo Nat'l Bank v. American Trust Co., 170 Cal. App.2d 289, 338 P.2d 617 (1959). See also Paterson v. Comastri, 39 Cal.2d 66, 71, 244 P.2d 902, (1952), indicating a willingness to look behind the formalities in a related situation:

> The question presented by plaintiff's claim is that of the right of one of the codepositors to withdraw funds from the account during the lives of the codepositors. Under these circumstances the statutory presumption of equality of interest arising from the form of the joint account is rebuttable by competent evidence showing the true character and ownership of the monies deposited.

Perhaps the leading case in this area is Spear v. Farwell, 5 Cal. App.2d 111, 42 P.2d 391 (1935). The creditor had judgment against the husband on the husband's promissory note. The creditor attempted to execute on a bank account in joint tenancy of husband and wife. The wife filed a claim as a third party having the sole interest in the money in the account. The creditor moved for a hearing to determine title; the court found for the wife; and the creditor appealed. The facts on appeal revealed that the husband and wife had entered into the joint tenancy in the mistaken belief that it was a sort of trust account whereby the husband could draw funds after the wife's death and until her estate was settled. The court held that that mistake was a good excuse, that the bank account was not in joint tenancy but was the sole property of the wife and, hence, could not be used to satisfy the husband's debt.

> The judgment creditor acquired no greater right to the funds on deposit than the judgment debtor had. [The husband] having no title to any part of the money, the judgment debt creditor got nothing by his levy.

* * * * *

> The interest which the lien of judgment affects is the actual interest which the debtor has in the property, and a court of equity will always permit the real owner to show that the apparent ownership of another is or was not real; and when the judgment debtor has no other interest except the naked legal title, the lien of judgment does not attach.
> 5 Cal. App.2d at 114, 42 P.2d at .

There are numerous cases where this defense was successful. There have been very few instances where, at least in the appellate reports, a creditor has successfully levied on a joint tenancy bank account.

The third issue--how much of the joint account the creditor may reach--has not come before the California appellate courts. As pointed out above, there is tracing in ordinary joint accounts but apparently not in joint tenancies. The only case that even mentions the problem is Tinsley v. Bauer, 125 Cal. App.2d 724, 271 P.2d 116 (1954). Here the creditor obtained a judgment against the wife and attempted to execute on her numerous bank accounts, some of which were in her name alone and some of which were in joint tenancy with her husband. The husband filed a third-party claim that all the money was his separate property. He did not suceed in carrying his burden of proof in most cases and, where he did show some of his deposits in an ordinary (nonjoint tenancy) account, he was unable adequately to trace them and establish his interest. Having lost here, the husband next claimed:

> Appellant argues that because the account is a joint tenancy account respondent was entitled to levy on the wife's half interest in the account only, so that appellant was at any rate entitled to one-half of the balance.
> 125 Cal. App.2d at 732, 271 P.2d at .

The court did not consider the merits of this argument, however, because the husband had previously argued that the accounts were not joint but separate, and the court held him to this argument.

Just how much of a joint tenancy a creditor would be entitled to in California is, therefore, undetermined. Other jurisdictions adopt a variety of rules. The annotation in 11 A.L.R.3d 1465 (1967) [Joint bank account as subject to attachment, garnishment, or execution by creditor of one of the joint depositors] states that:

> Jurisdictions applying the general rule that joint bank accounts are vulnerable to seizure by the creditor of one depositor usually hold that the creditor's rights are limited to the amount of the funds in the account equitably owned by the debtor depositor and do extend to funds equitably owned by the innocent depositor.
> 11 A.L.R.3d 1465, § 5.

The author asserts that this is the rule in California, but his only cases are Spear and Tinsley, which, as described above, do not reach the question but are rather concerned with whether the accounts are in fact joint tenancies. At least one jurisdiction holds that the entire amount in the account is subject to garnishment, regardless of the contributor (Minnesota); other jurisdictions appear to proportion the amount available on the basis of the number of joint depositors (if there are two, creditor gets one-half; three, one-third).

It seems most likely that California would not allow tracing of funds in a joint account but would rather adopt the rule either that all is vulnerable or that a proportionate share of the account is vulnerable. The argument for all being vulnerable is that the nature of the joint tenancy is such that the interest in all the funds is undivided and vested in the tenant. Thus, all should be deemed his for purposes of execution. On the other hand, it can be argued that his interest is equal to that of the cotenants who should not be made to suffer for his debts. This argument is perhaps the strongest, for a joint tenancy in a bank account is governed by the

same rules as a joint tenancy in real property. And when a joint tenancy in real property is levied upon by the creditor of one of the tenants, the joint tenancy is destroyed, converted to a tenancy in common in which the creditor gets a proportionate share. See 2 B. Witkin, Summary of California Law Real Property § 112 (19). Thus, in a husband-wife joint tenancy account, a creditor would probably be able to reach only half, regardless of the source of the funds (unless he could show that the account was a joint tenancy in name only, in which case he could reach the debtor's share--the argument cuts both ways).

The fourth problem--the operation of the $1,000 exemption from execution in the joint account situation--likewise has not come before the court. The third-party claimant in Tinsley attempted to save $1,000 for himself in the joint account upon which his wife's creditor was levying.

> Appellant further argues that $1,000 of this account was at any rate exempt from execution under section 690.21, Code of Civil Procedure, relating to shares in building and loan associations. 125 Cal. App.2d at 732, 271 P.2d at .

The court did not reach this contention, for it had previously determined the account in question was not really a joint tenancy, and further the husband failed to raise the issue at trial.

In light of the foregoing, what is the meaning of the language of Section 690.7(b)--"Such exemption set forth in subdivision (a) shall be a maximum of one thousand dollars ($1,000) per person, whether the character of the property be separate or community."?

In joint accounts other than joint tenancies, the creditor gets only the debtor's equitable portion of the account, i.e., what the debtor contributed. However, the burden of proof is on the third-party claimant to show that the whole account is not the debtor's. In this situation,

the third party may find it difficult to show that the deposits are his or that they consist of his separate property. The $1,000 exemption in essence removes the tracing burden from the third party to the extent of $1,000. If he wants to exempt more, he must show the source and character of the funds.

On the other hand, the funds in the account may all be community property, subject to payment of the debts of either spouse. In such a situation, Section 690.7(b) appears to guarantee a $1,000 exemption per named depositor even if all the funds in the account are of the type which would be available to satisfy the debts of one depositor.

Suppose, however, the bank account is a joint tenancy. In a joint tenancy, the funds are jointly owned and lose whatever status they might have had as separate or community property. Thus, at first blush, Section 690.7(b) appears to mean nothing as applied to a joint tenancy. It is possible, though, that the section is intended to provide a rule for levy on joint tenancy. Thus, each depositor in a joint tenancy would be entitled to exempt $1,000 regardless of the source and character of the funds; the creditor could reach everything over this amount. Suppose, for example, husband and wife have $3,000 in joint tenancy. Under the traditional rule, the creditor's levy would sever the tenancy and $1,500 would be left to each tenant. The creditor would be able to get only the amount left after his debtor had exempted $1,000, i.e., $500. Under Section 690.7(b) as it could be interpreted, however, each depositor would exempt $1,000, leaving $1,000 for the creditor to seize. This would amount to a tacit adoption of a modified Minnesota rule for joint tenancies (creditor takes all subject to $1,000 exemptions).

Second Supplement to
Memorandum 71-32

EXHIBIT II

§ 690.7 (added). Bank account; exemption from attachment

Sec. 5. Section 690.7 is added to the Code of Civil Procedure, to read:

690.7. (a) All of a bank account standing in the name of the debtor is exempt from attachment to the extent that the sum of the amount in the bank account and the amounts in all other bank accounts standing in the name of the debtor on the date of levy does not exceed $1,500.

(b) All of a bank account standing in the name of the debtor is exempt from attachment in the amount essential for the support of the debtor or his family or essential for the maintenance and continuance of his business.

(c) As used in this section, "debtor" includes an individual, corporation, partnership, and unincorporated association.

(d) As used in this section, "bank account" includes a bank account standing in the name of more than one person and means:

(1) A deposit or account in any bank. As used in this paragraph, "bank" has the meaning given that term in Section 102 of the Financial Code.

(2) A savings deposit in, share or other account in, or share of stock of any state or federal savings and loan association. As used in this paragraph, "savings deposit" includes "investment certificate" and "withdrawable share" as defined in Sections 5061 and 5067 of the Financial Code.

(3) A share or certificate for funds received of the member of a credit union and all the accumulation on such share or certificate.

(e) Nothing in this section affects the rights of a banker under Section 3054 of the Civil Code.

Comment. Section 690.7 supersedes in whole former Section 690.7 to provide a uniform exemption from attachment for all types of savings or commercial accounts. For a similar exemption from execution, see Section 690.7a and Comment thereto.

Under prior law, $1,000 in savings and loan association accounts was exempt, as well as $1,500 in credit union accounts. See former Section 690.7 and former Financial Code Section 15406. These exemptions were cumulative so that a single debtor might be able to exempt a $2,500 total by proper allocation of his money. Section 690.7 provides a single aggregate exemption of $1,500 applicable to all types of accounts, including bank savings and checking accounts. The failure of prior law to provide any exemption for personal checking accounts--the usual depository for current earnings--violated the spirit if not the letter of both recent federal legislation and judicial decisions. See 15 U.S.C. §§ 1671-1677; Sniadach v. Family Finance Corp., 395 U.S. 337 (1969); McCallop v. Carberry, 1 Cal.3d 903, 464 P.2d 122, 83 Cal. Rptr. 666 (1970). See also Cal. L. Revision Comm'n Reports, Recommendation Relating to Attachment, Garnishment, Exemptions From Execution: Earnings Protection Law (1971). It should be noted, however, that the exemptions provided here are exclusive. They are in no way dependent upon a showing by the debtor that the amount claimed as exempt represents his earnings. Nor may the debtor claim a greater amount as exempt by showing that amounts deposited were derived from his earnings.

Each of the exemptions provided in Sections 690.7 and 690.7a must be claimed pursuant to Section 690.50. See Section 690(a). This procedure is intended to control the accumulation of accounts that would result from an automatic fixed exemption per account. However, it is anticipated that the release of funds pursuant to the exemptions granted by this section will generally be expeditiously accomplished. The $1,500 exemption, at least, is fixed and clear, and the asset is completely liquid. Accordingly, where only the basic exemption is claimed, there should be little occasion for the filing of counteraffidavits by a creditor, thus permitting the attaching officer to make the necessary distributions on the basis of the debtor's affidavit alone.

Subdivision (a). Subdivision (a) exempts all funds in the debtor's account up to $1,500. This basic exemption is an aggregate one, however. Hence, a debtor may claim as exempt only that portion of an account levied upon which, when added to all other amounts held by the debtor in other accounts on the date of the levy, equals $1,500. Since the exemption is claimed, the burden of proof is on the debtor to show that he is in fact entitled to exempt the amount claimed. See Section 690.50. The debtor must prove the amount he holds in all other accounts on the date of the levy even though the other accounts are not levied on.

In computing the amount of the debtor's exemption, any account standing in the debtor's name, including all joint accounts, are deemed to be the debtor's. Some or all of such accounts may in fact be not subject to attachment or execution to satisfy the debtor's obligation because of the nature of the account or the character of the funds in the account. See Tinsley v. Bauer,

125 Cal. App.2d 724, 271 P.2d 116 (1954); Spear v. Farwell, 5 Cal. App.2d 111, 42 P.2d 391 (1935). Sections 690.7 and 690.7a do not affect this immunity; a nondebtor may make his third-party claim pursuant to Section 689. Rather, subdivision (a) simply deems all amounts held in the debtor's name to be the property of the debtor for purposes of the $1,500 exemption. This treatment satisfies the primary objective of a bank account exemption, which is to assure the debtor that there is money available to him for contingency or emergency needs.

Subdivision (a) assures every debtor that there will be left to him $1,500 in his name and confers no substantive rights otherwise. Thus, where an account stands in the names of several debtors, their exemptions may well overlap; the total amount in the account exempted can never exceed $1,500. Assume, for example, that a $4,000 bank account stands in the names of two persons. If one of the two is liable on a debt, he can exempt a maximum of $1,500, depending on his other accounts, leaving a potential $2,500 available to the creditor, depending upon general principles of law. If both persons are liable on debts, whether separately or jointly, their exemptions are computed independently; and the most that either can exempt will be the most that can be exempted up to a maximum of $1,500 in their joint account. It should be noted that, if the persons severed their joint account prior to levy and opened $2,000 accounts in their own names, each could exempt up to $1,500 under subdivision (a), leaving a potential $500 in each account available to the respective creditors.

Subdivision (b). Subdivision (b) provides two exemptions that permit a debtor to protect amounts in an account in excess of the $1,500 limitation if he is able to show them essential for the support of himself or family (compare Section 723.51) or essential for the maintenance and continuance of his business. The latter preference should be particularly helpful to the small businessman in avoiding the tremendous impact of an attachment on the operating funds of his business. It should be noted that this exception applies only against a levy of attachment and is limited to amounts essential for the needs of the business.

Subdivision (c). Subdivision (c) makes clear that a business as well as an individual may take advantage of the exemptions from attachment provided by Section 690.7. A business is not provided an analogous exemption from execution. See Section 690.7a(c).

Although "debtor" is given a special definition for Section 690.7, it is clear that there is no adjudicated debt in the case of an attachment. The general definition of "debtor" contained in Section 690(c) (debtor includes defendant and judgment debtor) is fully applicable to both Sections 690.7 and 690.7a.

Subdivision (e). Subdivision (e) makes clear that the exemptions provided by Sections 690.7 and 690.7a are limitations on garnishment procedures only. They do not affect in any way the exercise of rights pursuant to Civil Code Section 3054 (banker's lien).

§ 690.7a (added). Bank account; exemption from execution

Sec. 6. Section 690.7a is added to the Code of Civil Procedure, to read:

690.7a. (a) All of a bank account standing in the name of the debtor is exempt from execution to the extent that the sum of the amount in the bank account and the amounts in all other bank accounts standing in the name of the debtor on the date of levy does not exceed $1,500.

(b) All of a bank account standing in the name of the debtor is exempt from execution in the amount essential for the support of the debtor or his family.

(c) As used in this section, "debtor" means an individual and does not include a corporation, partnership, or unincorporated association.

(d) As used in this section, "bank account" includes a bank account standing in the name of more than one person and means:

(1) A deposit or account in any bank. As used in this paragraph, "bank" has the meaning given that term in Section 102 of the Financial Code.

(2) A savings deposit in, share or other account in, or share of stock of any state or federal savings and loan association. As used in this paragraph, "savings deposit" includes "investment certificate" and "withdrawable share" as defined in Sections 5061 and 5067 of the Financial Code.

(3) A share or certificate for funds received of the member of a credit union and all the accumulation on such share or certificate.

(e) Nothing in this section affects the rights of a banker under Section 3054 of the Civil Code.

Comment. Section 690.7a is added to provide protection from execution similar to that provided by Section 690.7 from attachment. See Section 690.7 and Comment thereto. However, the exemptions provided by Section 690.7a are available only to individuals, and no exemption is provided for amounts necessary to maintain or continue the operation of a business. Compare subdivisions (b) and (c) of Section 690.7 with subdivisions (b) and (c) of this section.