#39.30 12/3/71

Second Supplement to Memorandum 71-87

Subject: Study 39.30 - Attachment, Garnishment, Execution (Employee's Earnings Protection Law)

Attached is a letter and other material sent by Mr. Bessey. The letter discusses two matters: (1) the Earnings Exemption Table and (2) the Deposit Account Exemption. You should read the letter and the attachments with care. The staff believes that the letter represents a fair and constructive attempt by the Association to develop a reasonable compromise on the provisions of the Commission's proposal that have troubled the Association.

With respect to the suggested Earnings Withholding Table (attached to Mr. Bessey's letter), you should refer to the table on page 12 of the Recommendation (attached to Memorandum 71-87). Mr. Bessey compares the amounts withheld under his proposed table with the amounts withheld under the CCPA for a single person claiming one exemption. It should be noted that more is withheld from the earnings of a married person with dependents under the CCPA so the table proposed by Mr. Bessey provides significantly more protection to the married person with dependents than the CCPA.

With respect to the deposit account suggestion, the Commission has felt in the past that some protection should be provided persons who are self-employed or have sources of income from other than wages. The suggestion of Mr. Bessey would preclude this protection. Also, it would require the tracing of earnings and the development of first-in, first-out or some similar rule and would add additional complexity to the bank account exemption.

Respectfully submitted,

John H. DeMoully
Executive Secretary

Memo 71-87-2d Supp. EXHIBIT I

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December 2, 1971

California Law Revision Commission
School of Law--Stanford University
Stanford, California 94305

Attention: John H. DeMoully, Executive Secretary

Re: Employee's Earnings Protection Act

Gentlemen:

As you are aware, our Association has expressed some concern with several provisions of your Earnings Protection Act. In hopes of being a constructive participant in your studies, we have devoted considerable time in reviewing the provisions in question and seeking equitable alternative recommendations. To this end, we suggest the following:

1. Earnings Exemption Table: Wage garnishment, now only available after judgment, was considerably limited by the Congressional enactment of the Federal Consumer Protection Act in 1968. As we all know, after this Act became a law, only 25% of the net earnings due and owing the judgment debtor at the time of levy were available to the judgment creditor. In light of the availability of a 100% hardship exemption, we felt that the judgment debtor's earnings were more than adequately protected. Notwithstanding the liberal federal exemption, your Commission has adopted an exemption table considerably more generous to the judgment debtor. Although as previously noted, we feel the present law is more than fair, we have endeavored to work out an alternative compromise solution. Attached is our recommended earnings exemption table for your consideration and recommended approval.

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2. Deposit Account Exemption: (CCP 690.7 and 690.7 1/2) On several occasions, the Commission has asked us to provide them, if we could, with a history behind the $1,000 exemption of deposits in savings and loan accounts. After considerable research, we have come up with a historical background of this exemption which we hope will be helpful. (See attachment)

We see from the attached history of the savings and loan exemption that the original concept of this exemption was to protect the funds that were deposited specifically to enable a person to build a home. These deposited funds were then drawn upon by the contractor as he progressed in the building of a home for the depositor. With the absorbtion of the building and loan associations by the savings and loan associations, the original purpose behind the exemption was abrogated and rendered meaningless; nevertheless the exemption continued as law.

It would appear that the only justifiable reason for continuing an exemption for monies in some deposited form whether in a bank or a savings and loan account, would be to protect the debtor's basic subsistence income. This income, in its many forms, is now clearly protected while still in the hands of the payor (see CCP 690.6, 690.9, 690.10, 690.11, 690.13, 690.14, 690.15, 690.16, 690.175, 690.18 and 690.19). The problem arises after these monies are paid and deposited in the savings or checking account. At that time they lose their source identity.

The problem, we believe, suggests its solution. Simply allow the judgment debtor to trace the source of his funds so deposited. Once the source is established, he should then be accorded the same exemption for these monies that he presently receives under the law if they were still in the hands of the payor. Such an approach, we submit, would add some justification to the exemption. On the other hand, merely granting an across the board exemption of a certain amount of money has no rational relationship with the source of the funds and the needs of the debtor. There would be no additional burden on the debtor in that both under the present law and under your suggested scheme of 690.7 and 690.7 1/a, he still has to affirmatively claim the exemption.

It would be appreciated if copies of this letter and its attachments could be distributed to members of the Commission prior to the December 9 meeting.

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[redacted]

We thank you for your consideration of these recommendations.

Very truly yours,

DAHL, HEFNER, STARK, MAROIS & JAMES

By
John D. Bessey

JDB:rml

Attachments

TABLE AS PROPOSED BY LAW REVISION COMMITTEE				NEW PROPOSED TABLE
GROSS EARNINGS (weekly/annual)	SINGLE PERSON (claiming 1 exemption)		PROPOSED EMPLOYEES' EARNINGS PROTECTION LAW	ALTERNATIVE PROPOSAL FOR EMPLOYEES' EARNINGS PROTECTION LAW
	Disposable earnings*	Amount withheld (CCPA)*	Amount withheld ($48 exempt; 25%)*	Totally exempt wage earners under $90.00
$ 60/3,120	$ 51.93	$ 3.93	-0-	-0-
70/3,640	59.25	11.25	$ 3.00	-0-
80/4,160	68.40	17.10	5.00	-0-
90/4,680	73.55	18.39	6.00	$13.50
100/5,200	80.65	20.16	8.00	15.00
110/5,720	87.74	21.94	10.00	16.50
120/6,240	94.94	23.74	12.00	18.00
135/7,020	105.49	26.37	14.00	20.25
150/7,800	116.31	29.08	17.00	22.50
170/8,840	129.91	32.48	20.00	29.25
200/10,400	149.94	37.49	25.00	30.00
250/13,000	181.91	45.48	33.00	37.50
300/15,600	212.29	53.07	41.00	45.00
400/20,800	272.09	68.02	56.00	60.00
600/31,200	391.69	97.92	86.00	90.00

* Figures taken from Law Revision Committee's "Employees' Earnings Protection Law--Withholding Table"

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HISTORY OF THE SAVINGS AND LOAN EXEMPTION (CCP 690.7)

By Loren S. Dahl, Esq.

In California the first privately owned property declared to be immune from claim of creditors was the homestead. The provision for a homestead is first found in the Statutes of 1851, Chapter 31, Page 296, Section 1, and was amended by the Statutes of 1860 and later re-enacted in 1872. This early homestead law resulted from a mandate of the 1849 Constitution which in Article XI, Section 15, stated:

> "The Legislature shall protect by law, from forced sale, a certain portion of the homestead and other property of all heads of families."

This basic homestead law with slight modifications has continued in our law to the present day and is presently found in the Civil Code at Section 1237 et seq.

In 1876 the shares in a homestead association to the value of $1,000 were declared likewise exempt and this statute continued as an exemption until CCP 690 was revised by the Legislature in 1970. Just prior to this revision it was found in CCP 690.12. A homestead association was a group of individuals who pooled their funds which were then loaned to members who wished to acquire and/or develop and improve their homesteads. Persons who contributed funds to the association were issued shares therein. A member's shares in the association would be pledged as security for his loan. The close tie in between membership, ownership of shares and borrowing from the association for the acquisition or improvement of a homestead would logically explain the exemption thus granted.

By the turn of the century homestead associations were no longer in vogue. Instead, building and loan societies, later to be known as building and loan associations, were taking their place. As to their origin and development see 4 Cal. Jur. at page 646 et seq. published in 1921 which states as follows:

> "§2. Origin and Development.--The term 'building and loan society' was first applied to organizations that built houses to be sold, and to speculative loan associations whose stockholders had no relation with the borrower except as lenders of money. But in their modern form, (Sic 1921) building and loan associations do not, as the name would imply, engage directly in the business of building. They are strictly loan associations, and afford facilities to their members, and sometimes to third persons, of borrowing money with which lands may be purchased or buildings erected. The usual scheme or plan of such associations is that the members shall pay into the treasury thereof a stated sum weekly or monthly for each share of stock issued, and that such payments shall be continued until from them and their accumulations, and from premiums, fines, interest and other sources of profit, the capital of the corporation is sufficient to pay upon each share of stock a sum previously agreed upon, at which period each stockholder shall be entitled to have his share so paid to him and to withdraw from the association.[2]"
>
> "§3. Nature and Purpose.--The code provides that
>
> 'Every such corporation hereafter formed, in setting forth the purposes for which it is formed, shall state that it is formed to encourage industry, frugality, home-building and savings among its stockholders and members; * * *"
>
> "§8. In General.--The capital stock of a building and loan association is composed of the subscriptions to it, either by cash or by payment in the form of dues.[19]"

Recognizing that building and loan associations were taking over the function of homestead associations, the Legislature in 1901 enacted CCP 690.19 which provided that shares of stock in any building and loan association to the value of $1,000 were exempt from execution and interestingly enough at the same time enacted CCP 690.16 providing for an exemption of materials to be used for the construction of a building or improvements thereto, to the value of $1,000. See Statutes 1901, Chapter 28, Page 23, Section 19 and Section 16. These exemptions of shares of stock in a building and loan association and building materials continued until the 1970 revision of the exemption statutes.

In addition to the exemption in the Code of Civil Procedure, Financial Code Section 7611 originally enacted in 1931, (Statutes 1931, Chapter 269, Page 514) provided:

> "The shares of associations issuing neither stock nor investment certificates, and the dividends credited thereon are exempt from attachment or execution and proceedings supplementary thereto to the value of $1,000."

Shortly after World War II, new financial entities called "savings and loan associations" became popular. With the exception of Federal savings and loan associations, they were formed pursuant to a charter issued by the State of California. They issued proprietary stock and encouraged by the lure of attractive interest rates, the deposit of funds by individuals into what were then labeled accumulative share accounts. Loans by the association were made for the purpose of residential construction. Building and loan associations were for the most part being absorbed, merged or taken over by savings and loan associations. Although savings and loan associations were in many ways similar to the old building and loan associations, nonetheless there were distinct differences. Savings and loan associations did not build homes nor did they restrict their loans to members. Further, the profits inured to the owners of the proprietary stock who may or may not have share accounts.

As a consequence, the landmark case of <u>In the Matter of Mulkins & Crawford Electric Co.</u>, (DC 1956), 145 F. Supp. 146 held that the withdrawable cumulative shares of a state chartered savings and loan association are not stock and do

not come within the exemption of CCP 690.21 as supplemented by Financial Code Section 7611. In other words the so-called cumulative shares were nothing more than a deposit account. It should be noted that Federal savings and loan associations did not and do not issue proprietary stock, hence the accumulative shares of their depositors continue to receive the exemption under Financial Code Section 7611 and CCP 690.21.

As late as 1953, under the topic of "Building and Loan Associations", it was stated in 9 Cal. Jur. 2d at page 321:

> "A building and loan association may be defined in general terms as an organization of people entitled to equal privileges, co-operating by established periodic and equal payments per share in the creation of a common fund which may be loaned to any member for the purpose of building on property purchased therewith or on other property on which the association obtains a lien, and sharing the profits and losses of the association according to their respective interests.[8]"

and on page 322:

> "A building and loan association is not a banking corporation.[11] * * * An association may not carry on its books any demand, commercial, or checking account, or any credit to be withdrawn upon a negotiable check or draft. Nor may it advertise or hold itself out to the public as a bank, whether commercial or savings, or as a trust company, or do a trust business."

In 1953 the "Building and Loan Association Law" was changed to "Savings and Loan Association Law" (Statutes 1953, Chapter 641, Page 1889, Section 3) and by the enactment of Financial Code Section 5025, it was provided that whenever in the laws of this state the words "building and loan association" appear it shall mean savings and loan association.

In summary then, from 1953 to 1970 the shares of stock in any savings and loan association to the value of $1,000 were exempt from execution, however, the accumulative share accounts of depositors in a state chartered savings and loan association were not accorded this exemption by reason of

the aforementioned Mulkins & Crawford decision. Hence, only the Federal savings and loan association accounts were accorded this exemption.

In 1970 the California Legislature revised the exemption statutes. Recognizing that depositors in a Federal savings and loan association had the distinct advantage of an exemption on their account whereas depositors in a state savings and loan association did not, the Legislature in an attempt to end this discrimination, enacted CCP 690.7 providing that the savings deposits in either a state or Federal savings and loan association to the maximum aggregate value of $1,000 would be exempt from execution.

From the foregoing it seems clear that the initial exemption in this area arose out of the close alliance and involvement of the homestead association member with the acquisition or improvement of his homestead. With the development of building and loan associations, the same purpose for such an exemption manifested itself and in the early years of the building and loan associations when they actually constructed houses and used the share accounts as security for loans granted to members, the same logic for such an exemption applied. After World War II when savings and loan associations really came into popular usage, they inherited many of the rights, including the exemption of building and loan associations. Even though savings and loan associations were still engaged in making loans for the purchase and construction of homes, their method of doing business had considerably departed from that of the old building and loan or homestead associations. It appears clear that the only reason deposit accounts in state chartered savings and loan associations are today accorded the $1,000 exemption, is to equalize the advantage previously held by Federal savings and loan associations.