

First Supplement to Memorandum 74-17

Subject: Study 39.120 - Execution (Exemptions--General Policy)

This memorandum presents several basic policy questions regarding exemptions in general, tracing, and the homestead exemption as a basis for discussion of Chapter 5 (Exemptions)(attached to Memorandum 74-17). Attached to this memorandum are the exemption provisions of the proposed bankruptcy act (Exhibit I) and excerpts from a report by the Committee on Debtor and Creditor of the State Bar entitled Modernization of Statutory Exemptions, 42 State B.J. 869 (1967)(Exhibit II).

EXEMPTION POLICY

General Approach

The aim of the exemption provisions should be to strike a satisfactory balance between the interests of the debtor in supporting himself and his family in some degree of comfort, the interests of creditors in collecting judgments, and the interests of debtors, creditors, and the judicial system in administrative efficiency. It is generally thought that it is the interests of debtors which is best protected by present California exemption provisions. To a large extent, specific exemptions are a result of lobbying by special interest groups (e.g., credit unions, insurance, fraternal benefit societies); others reflect a legislative view of the assets of the typical debtor (e.g., the list of household items in Section 690.1). Inequities result wherever certain types of assets are favored by exemption laws over other assets. For example, why should there be an absolute exemption of proceeds of group life insurance while the exemption of private life policies is limited? Why should the head of the family owning a house get a \$20,000

homestead exemption whereas a similar head of a household who rents his house gets no exemption? Why should credit union members get a \$1,500 exemption whereas that amount of money in a bank account is entitled to no exemption?

The staff thinks that the general approach of an exemption statute should be to allow the debtor and his family an adequate standard of living; the debtor should not be reduced to penury, he should not be thrown on welfare, but he should not be able to maintain himself in luxury.

An analysis of existing exemption provisions reveals three major exemption criteria which may be used alone or in combination to achieve the purpose of the exemption statute:

(1) Type of property. The characterization of the type of property ranges from the very specific (shotgun, piano, TV, cow, church pew), through the general (tools of trade, personal effects, wearing apparel), to the very general (personal, real). A statute using the very specific designations has the virtue of certainty; the debtor, creditor, and the courts know in most cases what is exempt and what is not. Early exemption statutes tended to be very specific in designating the type of exempt property. As is readily apparent, this sort of statute easily becomes obsolete as technology, society, and personal taste change. In addition, to attempt a comprehensive exemption statute listing specifically all types of exempt property is impossible because of the incredible variety of items of property which would have to be listed. In special cases, however, this type of exemption may be justified; hence, for example, it may be felt by some that church pews or cemetery lots should be listed as exempt in any statute.

A more general property description makes a statute more flexible and less subject to the vicissitudes of change. Instead of listing items like

television sets and shotguns, it seems more desirable to describe such items as "personal effects" (see draft § 705.620). Of course, what is gained in flexibility is lost in certainty. Furthermore, where more general categories of property are used, numerical limitations on the number of exempt items cannot be used. For example, the debtor may be allowed one television set, one radio, and so forth (as in § 690.1), but it is absurd to provide that "three personal effects" are exempt.

Consequently, as property descriptions become more general, they must be limited by value or the reasonable necessity standard.

(2) Value. If all debtors are to be treated equally (taking no account of their different occupations, standard of living, or special needs), an exemption statute based only upon value is best. Although apparently no states have this sort of exemption provision, the staff thinks that the Commission should consider this alternative. An exemption statute could simply provide that property of the debtor is exempt to the maximum aggregate amount of X thousand dollars. The virtue of a "pure" value statute is that it would not discriminate between types of assets. All debtors would have the same amount exempt in whatever form desired. This form of exemption could be combined with a procedure where the debtor selects the property he wants exempt, subject to court review or, if he fails to select the property, the selection would be made by some officer. (Draft § 705.610 applies this sort of procedure to household goods and tools of trade.)

Value limitations may be imposed on exemptions provided for specific or general types of property. (Section 4-503(b) of the proposed bankruptcy act contains this feature; see Exhibit I.) This is probably the most common type of exemption. It provides the certainty of specific property exemptions, the

flexibility of general categories, and the prevention of abuse afforded by the value limitation. Often, however, statutory value limitations are not adjusted for the effect of inflation and the rising standard of living and so tend to become too restrictive. Ideally, the Legislature can be relied upon to periodically review value limits; in California in recent years the Legislature has several times raised value limits on homesteads, motor vehicles, and mobile homes.

(3) Reasonable necessity test. The necessity standard, whether taken to mean subsistence or something more, allows a flexible application of exemption statutes that takes into account the occupation and peculiar needs of the debtor. Its greatest drawback is that it is very vague as a standard by itself and lends itself to inequitable application by the courts. Theoretically, an exemption statute might be drafted to provide that the court is to decide what amount of the debtor's assets should be exempt. The debtor could be required to file a financial statement, and the creditor could offer evidence to aid the court in its determination.

Usually the reasonable necessity standard is applied to a particular category of exempt property such as wages, tools of trade, or household goods, and which also may have an absolute value limitation. Where the exemption is already limited by property type and maximum value, it may be argued that it is inefficient to also require a determination of reasonable necessity.

Additional factors. In addition to these three primary factors, exemptions may take into account the type of debtor (individual or corporate, single or supporting dependents) and the type of debt (alimony, support, or other money judgment). These factors should play a part only in exceptional circumstances. Most exemptions should be fashioned to protect the individual and his family.

Staff Recommendation

The staff believes that the policy of the exemption statutes should be to allow the debtor to support himself (and his family, if any) at an adequate standard of living and to continue working. In most cases, the exemption provisions should not seek to protect specific classes of assets since this results in favoring debtors who happen to have such assets. Rather, various specific types and general categories of property should be protected up to a certain maximum value (with no required showing of need) and, as in the proposed bankruptcy act, an exemption amount not fully used in one category of property could be applied to certain other categories.

The following seem to the staff to be the most important general categories:

(1) Home. Homestead (\$10,000 or \$20,000?), dwelling compensation, housetrailer (\$15,000?), vessel (\$15,000?), or rent allowance (\$2,500, \$5,000?). Should the amount of the exemption not taken (such as where debtor's interest in housetrailer is worth only \$7,000) be applied to increase limits in other categories? Should the amount of the exemption be the same regardless of the type of housing? Should the amount vary with the number of dependents?

(2) Personal belongings. Household furnishings, appliances, wearing apparel, provisions, fuel, other personal effects up to a maximum value of \$1,000? \$5,000? Note that the proposed bankruptcy act gives only a \$1,000 exemption for this type of property, tools of the trade, and vehicles although the excess homestead exemption (\$5,000 plus \$500 per dependent) may be applied. Should the amount of this exemption vary with the number of dependents?

(3) Tools of trade. Tools, equipment, books, one vehicle or vessel, and so forth, necessary in exercise of trade, business, or profession up to a maximum value of \$2,500? \$5,000? While this exemption will apply only to those with such tools, the staff thinks that such an exemption is justifiable

in order to put those depending on such tools for their livelihood in a position equal to that of the wage-earner without tools. This exemption should not be transferable to other types of exemptions nor should other exemption amounts increase this one.

(4) Transportation. One motor vehicle (\$500? \$1,000? equity) or public transportation allowance (\$100?, \$500?). This exemption should not be transferable nor should other exemption amounts increase this one.

(5) Paid money. Paid earnings (including retirement and pension) deposit accounts, inmate funds up to \$2,500? \$5,000? plus additional amounts essential for support of debtor and family. Should this exemption be transferable? Should other exemption excesses increase this exemption?

(6) Unpaid money. Unpaid wages, retirement, pension, endowment, and annuity in amount allowable under wage garnishment provisions.

(7) Health, disability, unemployment, and disability benefits. Exempt to full amount from whatever source. (See Memorandum 74-23.) Should some provision be made to prevent abuse such as a reasonableness standard? Should the exemption be inapplicable against doctors, hospitals, and drug and equipment suppliers who have a claim arising out of the debtor's condition for which he collects the benefits, with any additional amounts of benefits exempt on the same basis as paid earnings?

(8) Life insurance. See Memorandum 74-23.

(9) Aid. Aid and other welfare payments should be completely exempt.

Should the following specific types of property be exempt in addition?

(1) Works of art by or of the debtor or his family.

(2) Prosthetic and orthopedic appliances.

(3) Cemetery lots. By size or value? Should this exemption be transferable?

(4) Church pews.

Provisions exempting retirement system property, vacation credits, merchandise on a vessel, and so forth, should be retained since they are designed to deal with specific problems.

TRACING

Two tracing problems need to be considered: The tracing of exempt funds which are comingled with other exempt or nonexempt funds, and the tracing of exempt property through a change of form.

The Commission has previously considered the first problem in connection with the exemption of paid earnings. The problem was finally avoided by providing an exemption of paid earnings in an amount essential for the support of the debtor and his family. However, the problem returns in cases where exempt funds such as insurance payments, dwelling compensation, and aid are deposited by the debtor in a deposit account. If the total amount of the money in the account and the exempt amount deposited is less than the deposit account exemption, there is no problem. But, if the total amount is more than the deposit account exemption, problems arise. For example, if the debtor has a \$2,000 bank account (assume that \$2,000 is the total allowable deposit account exemption) and then deposits \$15,000 from life insurance proceeds, \$10,000 of which is exempt and, if no other withdrawals or additions are made, clearly \$5,000 may be reached by the judgment creditor. But, what happens if the debtor spends \$1,000 of the \$17,000 bank account before levy? Did the debtor spend \$1,000 of the \$2,000, of the exempt \$10,000, or of the nonexempt \$5,000? Under the ruling in California U.S. Bond & Mort. Corp. v. Grodzins, 139 Cal. App. 240, 34 P.2d 193 (1934), the debtor would be held to have spent part of his exempt money on the grounds that otherwise the debtor could defeat the

purpose of limited exemptions. In Iowa, the rule is that nonexempt money has been used in such cases since the debtor has no duty to establish his exemptions until the creditor levies on his property. An alternative rule would be to apportion the expenditure between the exempt and nonexempt funds by some formula. A first-in, first-out rule would find that the expenditures came from the exempt \$2,000 fund. The question would then be whether the deposit account exemption may then be replenished by the nonexempt portion of the insurance proceeds, leaving \$4,000 total nonexempt funds in a \$16,000 account.

The staff thinks that the debtor should be able to take full benefit of the exemptions allowed by statute at the time he makes a claim of exemption. Hence, the Iowa rule would be followed before levy, and the nonexempt fund would be reduced to \$4,000.

This raises another problem which may be simply illustrated with a fully exempt deposit account. When levied upon, the debtor successfully claims the full exemption. He later spends half of it and then replenishes it. The creditor levies on the account again. Should the full exemption apply each time levy is made regardless of the interval between levies and regardless of the source of the funds? The staff thinks that the answer should be yes where a deposit account exemption only is involved. However, to apply the same policy where insurance proceeds are deposited in the same account would allow the debtor in effect to increase his deposit account exemption to the amount of the exempt insurance plus the deposit account exemption as long as the total amount of the account did not dip below the amount of the exempt insurance proceeds. The debtor could save everyone a lot of trouble if he would deposit the exempt insurance proceeds in a separate account to which no additions were made; the principal funds in such an account would remain exempt until

exhausted. But, where only one account is maintained, the first-in, first-out rule should apply after levy; before levy, the Iowa rule should apply. In order to prevent a debtor from claiming that insurance funds from 25 years before still reside in his account (something which would be difficult for him to prove anyway), perhaps a tracing cut-off period such as one year prior to levy should be provided.

It was assumed in the above discussion that the check from the insurance company could be deposited in the bank without destroying its exempt character. This is a threshold aspect of the second problem indicated at the outset: The tracing of exempt property through a change in form. Except in the case of property exempt under the wage garnishment recommendation, the staff thinks that property such as insurance proceeds, dwelling compensation, workmen's compensation, unemployment benefits, health and disability insurance proceeds, and aid should retain their exempt status when deposited in a deposit account. However, tracing becomes much too complex where it is provided that goods or real property purchased with exempt funds is exempt. (Apparently, only Iowa followed this view.) Therefore, the staff thinks that property purchased with exempt funds should be exempt only where an exemption is allowable for such property.

HOMESTEAD EXEMPTION

Before attempting a revision of the homestead exemption, the staff would like some guidance on several policy issues. (A copy of the homestead provisions is attached as Exhibit III.)

In California, a homestead not exceeding \$20,000 in value over liens and encumbrances may be selected by any head of a family or by any person 65 years old, and a homestead not exceeding \$10,000 in value over liens and encumbrances

may be selected by a married person after separation or dissolution or any other person. Civil Code §§ 1260, 1300. The person selecting the homestead must execute, acknowledge, and file a homestead declaration in order to establish a homestead. Civil Code § 1262. When recorded, the declaration defeats a prior attachment lien and a levy of execution where no judgment lien has been filed prior to declaration. See Yager v. Yager, 7 Cal.2d 213, 60 P.2d 422 (1936). The exemption is lost where a judgment lien or other encumbrance is recorded before the declaration is filed. In addition, the exemption does not apply to encumbrances created by the homestead claimant and is not effective against certain favored claimants such as mechanics, contractors, and the like. See Civil Code § 1241. The homestead is effective over the stated limits if the creditor does not attempt to get the excess value as provided by statute: Within 60 days after levy of execution on the homestead, the creditor petitions for appraisers; within 90 days a copy of notice of hearing must be served on the debtor at least two days before the hearing; at the hearing, three appraisers are appointed who must file a report within 15 days; the court orders exempt property set aside and the remainder is sold if possible, otherwise the entire parcel is sold. Civil Code § 1245 et seq. Funds from sale of homestead are exempt for a period of six months. Civil Code § 1265.

The Commission may want to consider whether the amounts of the exemption allowed various persons is proper.

The staff thinks that the declaration requirement acts in a harsh manner to deprive the ignorant and unwary of their right to a homestead exemption. (This view is also expressed in Rifkind, Archaic Exemption Laws, 39 State B.J. 370 (1964).) A majority of the states require only occupancy as a homestead

or notification at time of levy that the property is claimed as a homestead. (See Haskins, Homestead Exemptions, 63 Harv. L. Rev. 1289 (1950).) It may be argued that the formal declaration is necessary to put the creditor on notice that the debtor claims a homestead. But such notice may be given just as well by the debtor's occupancy. Furthermore, the declaration in California is not required to be filed before the obligation upon which judgment is based is incurred; hence, the creditor cannot argue that the declaration is necessary to inform him that he should not base his extension of credit on the debtor's home ownership. Since most debtors are not aware of exemptions until they really need them, and since the homestead exemption is one of the largest and most important exemptions, the staff thinks that debtors should be allowed to claim the homestead in the same manner as other exemptions and after the judgment lien is filed. Procedures vary in other states; the claim may be required to be made within 10 days after levy, within 30 days after notice of judgment or before sale, at any time before sale, or even as late as a subsequent action by the creditor to dispossess. In line with present exemption claim procedure, the claim should be allowed to be made within some time after notice of levy or before sale.

The staff assumes that the Commission will want to continue present law concerning claims against which the exemption is ineffective (except, of course, that the exemption would be good against a judgment lien, if claimed in time). We note that some states provide that the homestead exemption is not good against preexisting debts. This policy makes the homestead exemption largely useless. Some states do not apply the exemption to debts existing before the acquisition of the homestead, but this seems unnecessarily restrictive.

Respectfully submitted,

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EXHIBIT I

93d Congress, 1st Session - - - - House Document No. 93-137, Part II

COMMUNICATION
FROM THE
EXECUTIVE DIRECTOR, COMMISSION ON
THE BANKRUPTCY LAWS OF THE
UNITED STATES
TRANSMITTING A
REPORT OF THE
COMMISSION ON THE BANKRUPTCY LAWS
OF THE UNITED STATES
JULY 1973

PART II



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1 *Section 4-503. Exemptions.*

2 *(a) Controlling Law.* An individual debtor, who has filed a petition
3 for relief or against whom relief has been directed under this Act, shall
4 be allowed exemptions of property as provided in this section. Property
5 allowed as exempt under this section is exempt from creditors holding
6 claims allowable against the debtor's estate, other than claims excepted
7 from discharge under section 4-506(a)(6).

8 *(b) Homestead or Property in Lieu Thereof.*

9 (1) An individual debtor shall be allowed an exemption of property
10 which he owned and was used at the date of the petition as a home for
11 the debtor, his spouse, or a dependent or any or all of them. The
12 aggregate value so allowable shall not exceed \$5,000 plus \$500 for each
13 dependent of the debtor.

14 (2) If no property is allowed as exempt under paragraph (1) or if the
15 property allowed has an aggregate value less than the maximum allowed
16 under paragraph (1), an individual debtor shall be allowed additional
17 exemptions of property of the kinds described in clauses (1) and (2) of
18 subdivision (c) until the aggregate value of such additional property and
19 property allowed as exempt under paragraph (1) of this subdivision
20 equals the maximum value allowable under paragraph (1).

21 *(c) Other Property.* The following property shall be allowed as
22 exempt in addition to any property allowed as exempt under subdivision
23 (b):

24 (1) livestock, wearing apparel, jewelry, household furnishings, tools
25 of the trade or profession, and motor vehicles, to the aggregate value of
26 not more than \$1,000;

27 (2) a burial plot to the value of \$2,500;

28 (3) cash, securities, and receivables, including unpaid personal
29 earnings, accrued vacation pay, and income tax refund, to the aggregate
30 value of not more than \$500;

31 (4) payments for alimony, support, and separate maintenance;

32 (5) the identifiable proceeds or benefits from any life insurance
33 policy if the debtor is the spouse or a dependent of the insured, to the
34 extent the proceeds or benefits are reasonably necessary for the support
35 of the debtor and his dependents;

36 (6) before or after retirement, such rights as the debtor may have
37 under a profit sharing, pension, stock bonus, annuity, or similar plan
38 which is established for the primary purpose of providing benefits upon
39 retirement by reason of age, health, or length of service, and which is
40 either (A) qualified under section 401(a) of the Internal Revenue Code,
41 or any successor thereto, or (B) established by federal or state statute, to
42 the extent in either case the debtor's interest therein is reasonably
43 necessary for the support of the debtor and his dependents;

44 (7) disability benefits;

45 (8) proceeds, benefits, or other rights to which the debtor is entitled
46 as a result of any personal injury or unemployment; and

47 (9) health aids reasonably necessary to enable the debtor to work or
48 to sustain his health.

49 *(d) Exemption of Life Insurance Policy with Cash Surrender Value.*

50 A policy or policies of life insurance having an aggregate cash surrender
51 value of not more than \$1,500 payable to the debtor, together with such
52 value, are exempt. If the debtor has a policy or policies with an
53 aggregate cash surrender value in excess of \$1,500, the policies shall
54 nevertheless be exempt if the debtor pays the amount of such excess
55 value to the trustee within 30 days after it has been ascertained and
56 stated to the trustee by the insurer or insurers.

57 *(e) Family Allowance.*

58 (1) If a debtor dies after the date of the petition, the surviving
60 spouse and minor and dependent children are entitled to an allowance
61 out of the property of the estate remaining undistributed at the date of
62 notice to the trustee of the death. The allowance shall be the amount
63 necessary for their support but not more than \$1,000 per person. An
64 allowance shall be reduced in the amount by which the proceeds of life
65 insurance on the debtor's life payable to the person or persons entitled
66 to the allowance exceed \$10,000.

67 (2) The allowances provided for by paragraph (1) are payable to the
68 surviving spouse, if living, for the use of the surviving spouse and minor
69 and dependent children. If the surviving spouse is not living, the
70 allowances are payable to the children or the persons having their care
71 and custody. If any minor or dependent child is not living with a
72 surviving spouse, an allowance may be made to the child, his guardian or
73 other person having his care and custody, and to the spouse, as their
74 needs may appear.

75 (3) The family allowances provided for by paragraph (1) are exempt
76 from and have priority over allowable claims and claims of creditors of
77 the surviving spouse and dependent children.

78 *(f) Waiver; Liens.* A waiver of exemptions is unenforceable by a
79 creditor without security in the property allowed to the debtor pursuant
80 to this section. A lien obtainable by legal or equitable proceedings and,
81 with respect to wearing apparel, household goods, and health aids, any
82 lien created by an agreement to give security other than for a purchase
83 money obligation, is unenforceable against the property allowed to the
84 debtor pursuant to this section as exempt, except that such lien may be
85 preserved for the benefit of the debtor.

86 *(g) Definition of Value.* For the purpose of this section, value is fair
87 market value as of the date of the petition, less all indefeasible liens.

88 *(h) Exemptions Allowed out of Recovered Property.* No property
89 recovered under the provisions of this Act shall be allowed as exempt if

90 the property recovered was concealed or voluntarily transferred by the
91 debtor, unless so transferred to secure a debt and then only to the
92 extent the value of the property exceeds the debt.

93 (i) *Administrative Costs.* The exemptions allowed by this section are
94 not subject to administrative claims other than those for the cost of
95 (1) recovering property that was involuntarily transferred and thereafter
96 allowed as exempt and (2) setting aside liens on property allowed as
97 exempt.

98 (j) *Procedures.* The exemptions allowable by this section may be
99 claimed by the debtor, his spouse, his dependents, or anyone on behalf
100 of any of them. The exemptions shall not be denied because of a failure
101 to claim them. The administrator shall give notice of the disallowance of
102 a claim to an exemption to the claimant and of the allowance of
103 exemptions to the debtor and to other persons as provided in section
104 4-307(c). Procedures for appraising and allowing the debtor's exemp-
105 tions shall be prescribed by rules of the administrator, and procedures
106 for contesting the administrator's allowance or failure to allow exemp-
107 tions shall be prescribed by the Rules of Bankruptcy Procedure.

NOTE

1. Section 4-503 is derived from §§6, 8, and 70a of the Act. The reference to nonbankruptcy law to determine the exemptions is abandoned to eliminate diversity, reduce the amount of litigation having no direct relationship to the policy underlying exemptions, and because state exemption laws seem generally archaic and unduly generous in some states and exceedingly niggardly, particularly as to urban residents, in others. See generally Countryman, *For a New Exemption Policy in Bankruptcy*, 14 Rutgers L. Rev. 678 (1960); Marier, *Bankruptcy Exemptions: A Full Scale Circle Back to the Act of 1800?*, 53 Com. L.Q. 663 (1968); Note, *Bankruptcy Exemptions: Critique and Suggestions*, 68 Yale L. J. 1459 (1959). But see Kennedy, *Limitation of Exemptions in Bankruptcy*, 45 Iowa L. Rev. 445 (1960). The effect of this section taken in conjunction with §§2-201(a)(2) and 4-601 of the proposed Act, is to overrule the holding in *Lockwood v. Exchange Bank*, 190 U.S. 294 (1903), that exempt assets are not administered or subject to the bankruptcy court's jurisdiction after set apart to the bankrupt. It is intended that generally the allowance of exemptions be a ministerial act by the administrator, since the debtor is not required to claim his exemptions in order to be entitled to have them set apart to him. The debtor will have to choose the items to be exempted when he owns property in a category of a value higher than the maximum allowed to him, but his failure to exercise his right of choice is not intended to result in any loss of the right of the debtor and his family to the exemptions allowable under this section. Under subdivision (d), however, there is a loss of

the \$1,500 exemption of cash surrender values as to any policies having a cash surrender value exceeding \$1,500 unless the debtor pays the excess to the trustee within 30 days of its determination.

2. *Subdivision (a)* limits exemptions allowed by §4-503 to natural persons. The section controls what property of the debtor is to be set aside to the debtor; conflicting laws are superseded. Thus, the fact a debtor could claim additional or less property under state or other federal law is immaterial. Federal laws thereby superseded include Internal Revenue Code §6334 and garnishment restrictions of the Federal Consumer Credit Protection Act (15 U.S.C. §§1671-77) to the extent they constitute exemptions. The exemptions are effective against all creditors of the debtor that may share in the proceeds of the estate under §4-405, but are subject to certain claims excepted from discharge under §4-506(a)(6) of the Act. The right to the exemption is unqualified; it does not depend on whether the debtor receives a discharge and is not forfeited by "bad conduct" of the debtor. See, e.g., *White v. Stump*, 266 U.S. 310 (1924); *Sampsel v. Straub*, 194 F.2d 228 (9th Cir. 1951) *cert. denied*, 343 U.S. 927 (1952). The exemption is available as to the property specified regardless of when acquired or the source of the consideration paid for the property claimed.

3. By eliminating the reference to nonbankruptcy law much litigation and considerable inequity due to state procedural requirements are avoided. Questions as to the applicable law, its scope, and whether a law provides an exemption within the meaning of §6 of the Act are mooted.

4. *Subdivision (b)* creates a homestead exemption. The test of qualifying property is whether it is used as a home. The legal label given the property, i.e., whether real, chattel real, fixture, or personal property is immaterial. Thus, a boat, a trailer, or a structure erected on leased land or real estate held by a fee simple title is equally available if used as a home. The property may be the debtor's home, his family's home, or the home of a dependent.

5. Paragraph (1) limits the exemption to \$5,000 for a debtor without a dependent. But the value that can be allowed is increased by \$500 for each dependent of the debtor. The definition of dependent has been left to a case-by-case development by the courts. Any person qualifying as a dependent under §151 of the Internal Revenue Code of 1954 would qualify under paragraph (1).

6. In recognition of the fact that many debtors do not acquire homes or have only a small equity, paragraph (2) allows the debtor certain other property having an aggregate value not exceeding the maximum allowed by paragraph (1).

7. *Subdivision (c)* recognizes additional exemptions in types of property often exempt under state and federal nonbankruptcy law. Clauses (1), (2), and (3) contain limitations to specified aggregate values, but the exemptions allowable thereunder, as well as those allowable under the remaining clauses

of subdivisions (c) and subdivisions (d) and (e), are in addition to the exemptions allowed by paragraphs (1) and (2) of subdivision (b).

8. The value of property exempted by clauses (4), (5), (7), (8), and (9) of subdivision (c) is not limited. Benefits or rights under a retirement plan are exempt under clause (6) if the plan is qualified under I.R.C. §401(a). A limit is placed on the exemption since it is recognized that members of professional corporations and officers will have very substantial benefits. The exemption is limited to benefits "reasonably necessary for the support of the debtor and his dependents." This treatment is similar to that accorded interests in spendthrift trusts by §4-601(b) of the proposed Act. For a discussion of the options of the trustee as to reaching excess benefits, see the Note to §4-601.

9. *Subdivision (d)*. The cash surrender value of life insurance policies payable to the debtor, together with the policies themselves, is exempt if it does not exceed \$1500. Any excess is available to creditors, unless it is allowed as exempt under clause (2) of subdivision (c). This alters the approach of §70a(5) of the Act, which exempts the policy but not the cash surrender value. Exemption of the cash surrender value of life insurance policies has heretofore been left to nonbankruptcy law by the Act.

10. *Subdivision (e)* replaces and revises the proviso to §8 of the Act. It is unnecessary to add that the exemptions of the debtor are not affected by death. The entitlement to exemptions as against creditors of the debtor having claims at the date of the petition is determined by this section; death in no way affects the situation. The exemption of property from levy by creditors holding claims against the debtor arising after the filing of the petition, which were not payable out of the estate, is determined by nonbankruptcy law. Thus, to the extent §8 implied that the exempt property devolved to the spouse or dependent children regardless of other law, the rule is altered.

11. This subdivision goes further, however, and carves out of the property or proceeds of the estate remaining undistributed at the time of notice of the death of a debtor a cash allowance for the spouse and dependents. This is a reversion to the pre-1938 language of §8 of the Act, which was clumsily amended to cope with *Siegel v. Wells*, 55 F. 2d 877 (6th Cir.), *cert. denied*, 286 U.S. 549 (1932).

12. The subdivision is an adaptation of the language of §2-403 of the Uniform Probate Act. It recognizes a general policy in the United States to give the surviving widow or widower and children an allowance prior to the rights of creditors. Notice of death must occur prior to a distribution (since the allowance can only be satisfied out of undistributed assets). The allowance is limited to \$1,000 for the surviving spouse and for each minor or dependent child, and the amount of the allowance is reduced by life insurance proceeds in excess of \$10,000 payable to the beneficiaries of the allowance.

13. *Subdivision (f)* is new. It avoids one of the means by which the policy of §6 of the Act was frustrated. Exemptions under this section cannot be affected by judicial liens or agreement other than an indefeasible security agreement. For a discussion of waivers of exemptions under state law see Countryman, *supra*, at 708-13; Currie, *Exempt Property and Bankruptcy: Secured and Waiver Claims*, 31 La. L. Rev. 73 (1970); Kennedy, *supra*, at 462-72; and Note, *supra*, at 1494-97. The right to exemptions under this section cannot be affected by a judicial lien or any agreement other than an indefeasible security agreement. Nonpurchase-money security agreements are unenforceable as to wearing apparel, household goods, and health aids (to the extent they cover property that is allowable as exempt). The reference to purchase-money obligations that are not affected by this subdivision has a well understood meaning. See, e.g., §9-107 of the Uniform Commercial Code. The exemptions are, however, subject to statutory liens not vulnerable under §4-606.

14. *Subdivision (g)* provides that value is to be determined as of the date of the petition. For the purpose of this section, e.g., determining whether property set aside as exempt is within the \$1,000 limit set by subdivision (c)(1), value is the debtor's equity, i.e., the fair market value of the property as reduced by all liens that cannot be set aside by the trustee.

15. *Subdivision (h)* is derived from the proviso to §6 of the Act. It differs, however, in that the debtor's right to an allowance out of transferred property is barred only if the transfer was voluntary. Thus, if a motor vehicle transferred by the debtor to a creditor is recovered as a preference under §4-607, the motor vehicle or its value is not available to the debtor as an exemption. But if the creditor acquired the vehicle by judicial process, the vehicle or its value, after recovery by the trustee, may be set aside as exempt. This adopts, but greatly expands, the policy of the holding in *Chicago, B. & Q. R. R. v. Hall*, 229 U.S. 511 (1913), which was probably codified in 1938 in §67a(3) of the Act. But see MacLachlan §§207-08 (1956).

16. *Subdivision (i)* makes it clear that property to be set aside as exempt is not subject to costs of administration, except to the extent of the cost of recovering property transferred or freeing property of a lien for the benefit of the debtor.

17. *Subdivision (j)* precludes loss of exemptions by the debtor not claiming them. The mechanics are left to rules to be promulgated by the administrator. If a contest develops, it is to be resolved by the court and the procedure is to be prescribed by rules promulgated by the court.

EXHIBIT II

[Excerpts From - Committee on Debtor and Creditor of State Bar,
Modernization of Statutory Exemptions, 42 State B.J. 869 (1967)
(Note that the sections referred to in this report have been
largely renumbered.)]

Since we are a committee designed originally to consider bankruptcy law as it affected the citizens of California, subsequently converted into a committee to consider the relations of debtor and creditor, it seems appropriate to evaluate our present-day exemptions because they determine what the creditor can levy upon, by attachment or execution, and what the debtor can preserve for himself and his family, even through the travails of a judgment or an adjudication in bankruptcy. To the individual debtor, no legislation is more important when financial difficulties raise their ugly heads. Not only does it appear appropriate for this Committee to consider exemption problems, but the Board would seem to be a logical testing ground for the consideration of the various recommendations presented; if we can't interest or convince the Board, we had better re-stable our white horses and shining armor.

When we finished our comparative study of the contents and location of California exemption statutes we were rather shocked to realize that many provisions were obsolete, too rigid, inequitable, overlapping and just downright difficult to find from a logical standpoint. Try any index on exemptions and our last point will be obvious. We recognize that obsolescence, rigidity, inequities, overlapping and location constitute very debatable areas, but after struggling manfully for almost three years we brave the possible wrath of an already overburdened Board by including in our analysis objections to form, as well as substance, in areas such as grammar, consistency, verbosity, and to coin a word, antiquation.

California must be rated as one of the most (if not the most) generous exemption states in the Union. Immediately we are confronted with the problem of determining the philosophical approach to this phase of social welfare. To avoid Board criticism that we are treading upon hallowed non-State Bar ground, we will merely present the areas of concern in this regard and the Board can determine if recommendations to the Legislature should be the concern of the bar. Obsolescence and antiquation expose themselves upon presentation. However, without a side by side comparison, duplication is a serious problem since it is not obvious. We are certain that even eliminating the fraudulent debtor who wrongfully utilizes creditors' monies to prepare for insolvency, the legislature never intended to allow a debtor not only the old-fashioned physical exemptions such as furniture, a horse, etc., but also certain insurance cash values, \$1500.00 in a credit union, \$1,000.00 in each of several kinds of savings and loan institutions, a house trailer, as

well as a homestead, and maybe one-half or all of his earnings. There's nothing in the code books that says qualification for one exemption eliminates any others of a similar nature. Yet we're sure this would have been the intent if called to the attention of the legislators. Shall we help recognize duplications by consolidating all exemption provisions in one code and in one section? Or shall we retain individual exemptions in separate codes? Or shall we compromise, consolidate exemptions in one code section but retain cross-reference provisions in the individual codes? These, and many other problems, will be considered as we explore the past to try to improve the future.

Exemption of Household Items, Personal Effects and Other Personal Property Used by the Debtor and His Family

The present statute primarily relating to exemption of household items and personal effects is Section 690.2 of the Code of Civil Procedure. In addition to that section, other sections which in whole or in part refer to or concern the exemption of items which could be considered household items or personal effects, are Sections 690.1, 690.9, 690.13 and 690.15 of the Code of Civil Procedure and Section 1831a of the Civil Code. The Committee believes that all of the exemptions relating to household items or personal effects contained in the various subsections of Section 690 of the Code of Civil Procedure should be consolidated into what is presently Section 690.2, and the latter amended to read as follows:

Necessary household furnishings and appliances and wearing apparel ordinarily and reasonably necessary to and personally used by the debtor and his resident family; works of art shall not be exempt unless of or by the debtor and his resident family; provisions and fuel actually provided for the debtor and his resident family use, sufficient for three months; one shotgun and one rifle.

The proposed amendment of Section 690.2 eliminates as far as possible specific enumeration and itemization of personal property which is considered to be a household item or personal effect. As with the tools of trade exemption to be discussed subsequently, the principal objections to specific enumeration or identification of exempt property are (1) that such description may not include all of those items which are reasonably necessary for the health, care and comfort of the debtor or his family, and (2) that the provisions will become obsolete. It is believed that the broad description of exempt property in the proposed amendment will avoid these problems. Because past statutes and case law will be a guide as to what items are to be exempt, the coverage of the present statutes should not be changed by the proposed amendment. For example, television sets and

radies would be exempt to the extent that they are exempt under present statute.

No dollar limitation is placed upon the value of the personal property which could be exempted under the proposed statute. It being the opinion of the Committee that items which are necessary for the care and maintenance of the debtor or his family should be exempt regardless of their value. Unlike tools of trade, non-sold items or personal effects are not likely to have such great value that permitting their exemption will be unfair to creditors. The Court will have to be the final arbiter in those instances where claim is made to exempt household items which have unusual value such as antiques. It was felt that a dollar limitation would enhance the probability that the statute would become obsolete and therefore require frequent revision—a consideration which in this instance outweighs the interest of the creditors for the reasons stated above.

Aside from the open designation type of statute which the Committee proposes or the specific enumeration type of statute which we presently have, another alternative considered by the Committee was a statute which specifically enumerates certain essential items and then permits the debtor to select other items of personal property of his choice up to a maximum dollar amount in value. However, the debtor, left to his own choice, may not select those items which are necessary for the welfare of himself or his family, and the primary purpose for permitting exemptions of this type would be negated.

The Committee also noted that the proposed amendment of Section 690.2 is not intended to effect a change of Section 1861a of the Civil Code which gives to a landlord a lien on the baggage and other property of his tenant for rent past due. By its terms, Section 1861a permits levy upon items of household furniture which are presently exempt under the various subsections of Section 690 of the Code of Civil Procedure. The Committee has made no attempt to redraft Section 1861a or to incorporate it into a subsection of Section 690 of the Code of Civil Procedure.

Finally, two other subsections of CCP Section 690 concern items of personal property personally used by a debtor. Section 690.5 exempts prosthetic and orthopedic appliances used by the judgment debtor. The Committee believes that this exemption should be retained as a separate subsection of CCP 690. However, the phrase "judgment debtor" should

be changed to the word "debtor" to conform with the language proposed elsewhere in the exemption statutes.

Then, in Section 690.2, one motor vehicle, not exceeding a value of less than \$350.00, as the statute presently provides the debtor and his family, not exceeding \$2500.00, are exempt. The Committee believes that this statute is in need of change. First, the Committee believes that the exemption of a motor vehicle and of a house trailer should be set forth as separate subsections of Section 690 of the Code of Civil Procedure inasmuch as the philosophy underlying the exemption of these items differs. The former recognizes the modern day necessity of a means of transportation and the latter is designed to protect the dwelling accommodations of the debtor and his family. Second, the Committee believes that the dollar amount of the exemptions should be increased to reflect inflation which has taken place since the statute was last amended in 1959. An automobile having a value of less than \$350.00 as the statute presently provides would of necessity be an old model and one likely to be unsafe. The Committee suggests that instead of limiting the value of the automobile to be exempt, the debtor's equity in such automobile be limited. The Committee favors the use of equity as a measure of the amount of the exemption rather than the market value of the automobile itself inasmuch as such measure recognizes that the automobile which the debtor uses is likely to be financed and subject to a security interest, and because it is the debtor's equity in the same which is of interest to the levying creditor. The Committee suggests that the present amount of \$350.00 is an appropriate measure of the equity in an automobile (as opposed to the fair market value of the automobile) which should be exempt, and proposes that the subsection of section 690 of the Code of Civil Procedure read as follows:

One motor vehicle in which the equity of the debtor does not exceed the sum of Three Hundred Fifty Dollars (\$350.00).

As for the mobile home exemption, the Committee believes that the exemption should be premised on recognition of the mobile home as a dwelling for the debtor and his family, and protected only to this extent. For this reason, the Committee suggests that the exemption be permitted in lieu of the homestead exemption. And, the value of the exemption should be increased to meet the inflation which has taken

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place and the fact that the mobile home has in recent years become more elaborate and a substitute for other types of dwelling units. The Committee proposes the following language for this exempt or as a separate subsection of Section 690 of the Code of Civil Procedure:

One house trailer or mobile home actually occupied by the debtor and his family as their principal residence to the extent of Five Thousand Dollars (\$5,000.00) in actual cash value, over and above all liens and encumbrances on said house trailer or mobile home at the time of any levy of execution thereon. A debtor shall not be entitled to assert a claim to the exemption under this section while he and/or his spouse is a declarant under a declaration of homestead filed in this state pursuant to Civil Code Section 1240 and related sections and said declaration not having been abandoned in accordance with Civil Code Section 1243.

Tools of Trade

The present exemption statute which is primarily for tools of trade is Section 690.4 of the Code of Civil Procedure. However, either in whole or in part, six other subsections of Section 690 of the Code of Civil Procedure exempt items which can be classified as tools of trade. They are Sections 690.3, 690.6, 690.7, 690.8, 690.13, 690.15 and 690.18. The Committee believes that all of the subsections or portions thereof which contain references to tools of trade should be consolidated into what is presently 690.4 and the latter amended to read as follows:

The tools, implements, instruments, uniforms, furnishings, books, equipment, one commercial motor vehicle, one commercial fishing boat and net, and other personal property ordinarily and reasonably necessary to, and personally owned and used by the debtor exclusively in the exercise of the trade, calling or profession by which he earns his livelihood up to the amount of \$2500.00 of the actual cash value, over and above all liens and encumbrances on said items at the time of any levy of attachment or execution thereon.

The proposed consolidation and amendment would elimi-

nate several objectionable features of the present tools of trade exemption statutes. The present statutes are the so-called specific designation type of statutes. Not only do they attempt to specifically enumerate the items of property to be exempted, but separate statutes or statutory provisions are applicable to the various professions, callings or occupations. The Court frequently has to determine which of the categories applies to the debtor. And there is a risk that some debtors or items of property will be overlooked in the statutory scheme. Finally, this type of statute is quickly outmoded -- as a glance of the present tools of trade exemption statutes will illustrate.

In the opinion of the Committee, section 5504, as amended, would be universally applicable to all trades, callings and professions. The proposed amendment is an open designation type of statute and does away with the specific enumeration of tools of trade. This reduces the substantial risk that items of personal property needed in the exercise of a particular calling or trade may not be exempt as the Legislature would have wished them to be. And, not only would the proposed amendment eliminate obsolete language in the present statutes, but it is not subject to obsolescence in the future.

The Committee considered at length the advisability of placing a dollar ceiling on the value of the personal property which can be exempted as a tool of trade. It would be possible, of course, to omit a dollar ceiling and let the Court determine the outer limits of the exemption--that is, to determine on a case to case basis what items are necessary in the exercise of a debtor's calling or trade. However, this would place a heavy burden upon the Courts and would create uncertainty in result at the expense of whatever flexibility would be gained. Moreover, the Committee notes that there are certain callings or professions in which items ordinarily and reasonably necessary in the exercise of a calling or trade may be of such great value that it would be unfair to permit the debtor to retain expensive equipment to the detriment of his creditor. For example, a dentist may own equipment having a value in excess of \$30,000. The Committee decided that some dollar ceiling should be put on the exemption.

The Committee considered various proposals regarding the amount of the dollar ceiling and the manner in which it is

to be measured, but practically it can be measured in terms of the fair market value, the replacement value or the debtor's equity in the case of a motor vehicle, for example. The ceiling amount would vary, depending upon the measure used. The Committee concluded that it is the debtor's equity in such items that is of primary interest to the creditor and that such measure recognizes modern day financing practices. Moreover, by using the debtor's equity as a measure of the extent of the exemption, the debtor cannot retain expensive equipment in which he has a large equity or which he owns outright to the detriment of his creditors yet he can still have the use of equipment necessary to the exercise of his trade or calling. He would be forced to sell his equipment to pay off his creditors, and so then rent or purchase equipment or replacement thereof. So long as his equity does not exceed the dollar amount allowed, he could still have the use of equipment necessary to his trade though it may be expensive.

The Committee recognizes that the market value of the tools of trade used in the various callings or trades may vary greatly and for this reason an argument can be made that separate treatment should be given and larger ceilings provided for certain tools of trade. However, it is believed that the benefits to be derived from a uniform statute outweigh whatever problems may be created by making one dollar limit applicable to all tools of trade. Moreover, the use of equity as a measure of the ceiling of the exemption will minimize the differences in the market value of the various tools of trade--a problem which would be more acutely felt if the market value of the tool of trade were the measure of ceiling rather than the debtor's equity in such item.

Exemptions for Savings and Loan Deposits

The Committee found scattered throughout the various Codes a number of exemption statutes which permit the debtor to exempt from attachment or execution certain funds on deposit in various types of accounts, such as credit union accounts and accounts in each of the various types of savings and loan associations, both Federal and State. The amount of the exemption in each fund ranges from \$1,000 to \$1,500. Inasmuch as the exemptions are cumulative, a debtor can exempt a sizeable amount of property. Moreover, if community assets are on deposit the total amount of the exemption is doubled. The Committee has concluded that there is no reason why credit unions or savings and loan associations should be distinguished one from the other or from other types of depositories. The Committee feels that if the Legislature wishes the debtor to have a minimum cash reserve on hand for unexpected liabilities, the Legislature should permit the exemption of a cash reserve regardless of where it is deposited. For these reasons, the Committee has determined that Section 690.21 of the Code of Civil Procedure and Sections 7611, 10202, 11900 and 15406 of the Financial Code should be eliminated. In their stead, the Committee proposes the following statute as a subsection of Section 690 of the Code of Civil Procedure:

To the maximum extent possible of \$1,000.00 and accumulation of the following: (1) a deposit in a savings account in a bank; (2) a deposit in investment certificates or shares in a corporation or stock of any state or federal chartered savings or loan association; (3) the shares and certificates for funds of members of any such association and all the accumulation on such shares and certificates.

The Committee also included in its study, Section 690.12 of the Code of Civil Procedure which permitted an exemption of shares in a fraternal association having a value up to one thousand dollars (\$1,000.00). However, this section was repealed in 1966 while our study was in progress because that amount was no longer used.

Welfare Fund Exemptions

Certain cash and property of welfare recipients, or of welfare aid itself is now exempt. The applicable sections are situated in Welfare and Institutions Code Sections 17002 (formerly 498) and 17003 (formerly 511). The Committee does not recommend a substantive change but suggests that these sections should be made a subsection of Section 690 of the Code of Civil Procedure in addition to their location in the Welfare and Institutions Code. This is in keeping with the Committee's general suggestion that all exemptions be situated in one place so that they will be easy to find and use. The Committee also believes that a cross-reference should be made in Section 690 of the Code of Civil Procedure to the related section of the Welfare and Institutions Code, and vice versa, to assure notice of the exemption. And, no attempt has been made to restate in Section 690 the exemption declared in Section 17409 as it is a specialized exemption and is closely tied into other sections of the Welfare and Institutions Code. The proposed subsection for Section 690 of the Code of Civil Procedure is as follows:

690.-----

All aid given under a public assistance program to a debtor or for his benefit shall be absolutely exempt from attachment or execution without filing a claim for exemption as provided in Section 690.23 of this Code.

As against the claim of the County, the real and personal property of a debtor who has received support from public monies shall be exempt only to the extent provided by and in accordance with the provisions of Section 17409 of the Welfare and Institutions Code.

Exemption Statutes Relating to Government Employees' Benefits

The principal sections relating to exemption from execution or attachment of government employee benefits, such as State or County retirement, death or disability funds, are Sections 690.22 and 690.23 of the Code of Civil Procedure. The former relates to property in the hands of the beneficiary after it has been received, and the latter relates to an exemption of property before it has been paid out or received by the beneficiary. For the most part, the Committee is satisfied with the statutes as they presently exist. However, it is felt that a more concise description can be made of the properties which are exempt, and also that such benefits should be exempt regardless of the manner in which the Government agency establishes the benefit-- that is, by private insurance or otherwise. The Committee suggests that the separate Sections be consolidated and amended to read as follows:

(1) All moneys and interests thereon in the hands of the State, or a person or persons, or a partnership, or a corporation, or death or estate benefits, or a trust, or a fund, or a contribution and interest thereon from the Federal States Government, or from any State or county, city, or city and county, or other political subdivision of the State, or any public trust, or public corporation, or from the governing body of any of them, or from any public board or boards, or from any retirement, disability or annuity system established by any of them, or from any benefits whenever the same shall be in the hands or possession of any beneficiary, or deposited, loaned, or otherwise held, except from execution or attachment.

(2) All moneys held, controlled or in process of distribution by the State, or a city, county or county, or other political subdivision of the State, or any public trust, or public corporation, or the governing body of any of them, or by any public board or boards, derived from the contributions by the State or such city, county, city and county, or other political subdivision, or such public trust, public corporation, governing body or public board or boards, or by any officer or employee thereof for retirement or pension purposes or the payment of disability, death or other benefits or benefits payable to employees thereof under the provisions of the Unemployment Insurance Code and all rights and benefits accrued or accruing to any person under any system established pursuant to the Statute by the State, city, county or other political subdivision of the State or any public trust or public corporation for retirement, annuity or pension purposes or payment of disability or death benefits, are exempt from attachment or execution.

Perhaps the above language could be even more streamlined by combining the two subsections inasmuch as the only principal difference between the two is that one exempts money prior to its disbursement and the other after it has been received by the beneficiary. If so, the statute would have to account for the different treatment accorded nonresidents in the two sections as they presently exist. Nonresidents are not entitled to an exemption once monies have been received from the government fund.

In addition to the above sections in the Code of Civil Procedure, such property is also exempt by reason of sections in other codes which describe or establish the employee benefit itself. These sections include Government Code, Sections 31452, 32210, 3339.3 and 21201; Public Utilities Code, Sections 12337 and 25337; and Education Code, Section 14407. In each of these sections, not only are the funds exempted from attachment and execution, but also from taxation or other court process. Moreover, the funds or benefits cannot be assigned. The Committee recommends that in all codes other than the Code of Civil Procedure, the exemption of funds and benefits from execution and attachment be eliminated and, instead, a reference be made to the exemption created by reason of the proposed subsection of Section 690 of the Code of Civil Procedure. For example, each of the above sections would be amended to read as follows:

... is exempt from execution or attachment as provided in Section 690, --- of the Code of Civil Procedure ...

Thus, neither the State nor the local legislature assumes its proper role as the primary legislator on public property. It may also be that reference should be made in Section 690 to the applicable Government Code, Public Utility Code and Education Code sections for further restrictions upon the collection of debts or liens from the public or type of property.

Exemptions for Public Property

A variety of statutes presently exist which permit the exemption of public property. They are as follows:

- CCP 690.16--(Exemption of real and personal public property)
- CCP 690.14--(Fire fighting equipment)
- CCP 690.16--(In part)--(Arms and armor)
- CCP 710(1)--(Voting materials of elective officers)
- Education Code 41007--(Exemption relative to schools)
- Health & Safety Code 12724--(The person of a Government Re-development Agency)
- Health & Safety Code 18411--(Real Property of Housing Authority)
- Water Code 8531--(Property of Reclamation Board or Drainage District)

It is the Committee's opinion that these exemptions which are presently stated in other than a subsection of Section 690 of the Code of Civil Procedure, should be added as a subsection of Section 690 so that all exemption statutes will be collected in one place. This will assist in giving notice of the exemption and will make the statutes easier to understand and use. Additionally, an appropriate cross-reference should be made in Section 690 to the applicable Education, Health & Safety, and Water Code sections. Furthermore, the Committee believes that it may be possible to consolidate in one subsection of Section 690 of the Code of Civil Procedure some of the separate sections which presently exist in other codes. However, with one exception, no attempt has been made by the Committee to draft such a consolidated statute.

The Committee has drafted and proposes an amendment to Sections 690.14 and 690.16 of the Code of Civil Procedure.

The former exempted specified items of fire fighting equipment--many of which are now obsolete and no longer used. The Committee believes that a separate statute is not necessary for fire fighting equipment and that CCP 690.14 can be consolidated into CCP 690.16, the section concerning the exemption of real and personal public property generally. Section 690.16, as amended, would read as follows:

All courthouses, jails, public offices or buildings, lots, grounds, and personal property fixtures, including automotive and truck equipment, furniture, books, papers and appurtenances belonging to the fire company and public offices belonging and appertaining to any county of this State, or any fire company or department organized under the laws of this State; all cemeteries, public squares, parks, and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging, and appertaining, owned or held by any town or incorporated city, or dedicated by any such town or city, to health, ornament or public use, or for the use of any fire or military company organized under the laws of this State.

The Committee also noted that one exemption statute no longer has an effect and that the same should be repealed. The statute is number 1141 of the Code of Civil Procedure which exempts from attachment or execution any wages or salary owing to any state employee whose salary is fixed by Section 11 of Article V of the State Constitution. Inasmuch as Section 11 of Article V was repealed on November 8, 1966 and a provision was enacted in its place, Section 11(1) of the Code of Civil Procedure is now without any effect. The proposed Code Section should be deleted or amended so as to identify the persons to whom it is meant to apply. The Committee assumes that by repeal of the constitutional provision, a repeal of CCP 116(f) was also intended.

Workman's and Unemployment Compensation Insurance and Fraternity, Fraternal and Other Benefits

There are presently scattered in various parts of the Code of Civil Procedure and in scattered portions of other codes, exemption provisions for suits relating to workman's compensation, unemployment compensation, life and disability insurance benefits and fraternal or private organization benefits. These code sections are as follows:

- CCP 690.19--(Life Insurance Benefits)
- CCP 690.25--(Disability and Health Insurance Benefits)
- CCP 690.31--(Fraternal Organization Benefits)
- Insurance Code 1103--(Benefits of Insurance and Fraternal Benefit Society)
- Insurance Code 1037--(Proceeds from Group Life Insurance Policy)
- Insurance Code 4906--(Funds in Medical Benefit Association)
- Unemployment Ins. Code 202--(Employer Contributions)
- Unemployment Ins. Code 184--(Claims from Private Unemployment Compensation Fund)
- Labor Code 489--(Workman's Compensation Claims and Awards)

With but two exceptions, the Committee believes each section is substantially adequate and recommends no change. The exceptions permitted are not excessive, nor are they cumulative. However, the Committee again recommends that all exemption statutes be collected in Section 690 of the Code of Civil Procedure so that they will be easy to find and to use. Those are other provisions contained in sections of codes other than Section 690 of the Code of Civil Procedure should be made a subsection of Section 690 with an appropriate cross-reference between the codes to assure notice of the exemption. The Committee has not attempted to consolidate by subject matter the various exemptions—however, further streamlining could be accomplished by grouping, for example, all life insurance exemptions in one subsection of Section 690.

The two exemption statutes which are in need of substantive change are Sections 285 and 1405 of the Unemployment Insurance Code. Section 285 exempts from garnishment, attachment and execution the unemployment insurance contributions of workers in the hands of his employer prior to transmittal by the employer to the State. The Committee believes that the exemption should extend as well to the contributions made by the employee to such fund. There

is no apparent reason why this protection has not been afforded in the past. Accordingly, the committee proposes that Section 983 of the Unemployment Insurance Code be amended and its parallel subsection in the proposed subsection of section 690 of the Code of Civil Procedure read as follows:

Contributions by workers and the companies payable as provided in this article shall be exempt from garnishment, attachment, execution or any other remedy for the collection of debts, and in the event of the insolvency or bankruptcy of an employer, shall not be considered any part of his assets and shall be paid to the director prior to the payment of any other claim against the company.

Section 1342 of the Unemployment Insurance Code exempts from attachment and execution the benefits received by an employee from a private unemployment compensation plan. Prior to the enactment of this statute in its present form in 1951, benefits received from the State Unemployment Compensation Fund were also exempt. The Committee has been unable to find a reason why State benefits are no longer exempt. The Committee believes that this omission was in error and is inconsistent with the legislative policy indicated in other sections of the Unemployment Insurance Code, such as Section 988 above. Accordingly, the Committee recommends that Section 1342 be amended to include State unemployment compensation benefits as well as those from private plans. The parallel subsection of Section 690 of the Code of Civil Procedure should similarly so provide.

Miscellaneous Funds and Property Exemptions

There are a number of isolated exemptions scattered throughout the various codes which pertain to specialized types of property. They are as follows:

- CCP 688 -- (Causes of action, judgments, state licenses, gold dust)
 - CCP 690
 - 235 -- (Prisoner's trust)
 - CCP 690.17
 - and 1202.1 -- (Construction materials)
 - CCP 826 -- (Merchandise on board vessel and personal property of passengers and crew in action against vessel)
 - Health & Safety Code 32808 -- (Endowment of hospital)
 - Health & Safety Code
 - 8561 and 7925
 - CCP 690.16 (in part) and
 - CCP 690.51
 - CCP 690.52 -- (Church Bells)
- } (Property dedicated and money used for cemetery purposes)

It is the Committee's opinion that all of the above sections should be restated as a subsection of Section 690 of the Code of Civil Procedure. An appropriate cross-reference should then be made in Section 690 to the other codes. In this way, Section 690 will contain an accurate and complete list of all exemptions.

Those code sections which relate to similar types of property such as Sections 8561 and 7925 of the Health & Safety Code and Section 690.51 of the Code of Civil Procedure which concern cemetery property, could be consolidated into one subsection of Section 690. It should also be noted

that the exemption of a public utility (CCP 690.25) and of church pews (CCP 690.26) are already stated as separate subsections of Section 690 and, therefore, require no change.

The Committee believes substantive changes are necessary in three of the statutes mentioned above. Section 539 of the Code of Civil Procedure is a section which describes the nature and extent of the liability of a creditor or attachment creditor, and perhaps by accident, mention or create some of personal property exemptions. Causes of action, judgments and claims exempt by the State are exempt by reason of Section 539. The Committee proposes to delete from Section 539 the exemption language, and to enact a new subsection of Section 539 which includes such items. The proposed subsection of 539 would read as follows:

539. (b) (1) Property owned, leased, or used by this state to engage in any business, profession or trade;

The other substantive changes concern Sections 690.17 and 1302.1 of the Code of Civil Procedure. By these sections materials purchased in good faith and about to be applied to the construction, alteration or repair of a building, mining claim or other improvement, are exempt within certain limits. The Committee recommends repeal of these exemption statutes as there does not appear to be any reason to give preferential treatment to this kind of property.

Other Sections Reviewed by Committee

Aside from the code sections mentioned above in this report, the Committee also reviewed Sections 690.26 and 690.27 of the Code of Civil Procedure. These sections do not create exemptions, but rather define the manner in which claims for exemption are to be made--CCP 690.26 being generally applicable to all such claims and CCP 690.27 being applicable to claims for exemption upon the levy of a warrant issued by the State of California or an agency thereof for the collection of a tax liability. Neither section is believed to be in need of revision, and both are properly situated in Section 690 as an integral part of the creation and applica-

Reference is also made in CCP 687 to the exemption of wages. Committee believes that such reference should be deleted from CCP 688. The exemption of wages is fully covered in CCP 690.11, the statute which creates the exemption, and there is no reason to make special mention of it in CCP 688, the latter being merely a procedural statute which is applicable to all exemptions.

tion of exemptions. If, however, new subsections of Section 690 are created or if the present subsections of 690 are renumbered, consolidated or deleted in accordance with the recommendations made in this report, or otherwise, then the references made in Sections 690.26 and 690.27 to other subsections of Section 690 must be changed to conform with the new or renumbered subsections of Section 690 of the Code of Civil Procedure.

RECOMMENDATIONS

Hoping that you have been able to "take through" the items covered by this report, I am, naturally, (having expended so much time and effort in its preparation) fearful that the matters covered will be forgotten in the interim. We sincerely urge the Board to see that the recommendations contained in our "Statement of Findings" are not. Perhaps the matter should be referred to the Board and its members or to a legislative committee even if the proposal is appropriate from an administrative point of view. It would be wise to have before it exact knowledge that would be recommended to a legislature. In this report, there should be coverage of the cross-references required by the fact that the Report recommends the provisions or taken out of an other codes and placed under CCL 100, but the other codes should have a reference to Section 999 and Section 989 itself should have a cross-reference to the codes which cover the replacement has occurred.

It is perhaps with a sigh of relief that we hand to you the Report and Appendix, but in truth we must acknowledge that those of us who participated in its preparation received a most liberal education in exemptions and we enjoyed the vigorous debates which were created by both the legal and sociological discussions involved in a consideration of matters of this kind.

Respectfully submitted,
STATE BAR COMMITTEE ON
DEBTOR AND CREDITOR RELATIONS
BY Martin Gendel

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TITLE 5
Homesteads

Chapter

1. General Provisions. §§ 1237-1261.
2. Homestead of the Head of a Family. §§ 1262-1265a.
3. Homestead of Other Persons. §§ 1266-1269.
4. Alienation of Homesteads of Insane Persons. §§ 1269a-1269c. [Repealed.]
5. Married Person's Separate Homestead. §§ 1300-1304.

CHAPTER 1

General Provisions

- § 1237. Of what homestead consists.
- § 1237.5. "Quasi-community property": "Separate property."
- § 1238. From what homestead may be selected: Property defined.
- § 1239. From separate property of wife.
- § 1240. Exempt from forced sale.
- § 1241. Exceptions.
- § 1242. Married persons' homestead: How conveyed or encumbered: Exceptions.
- § 1243. Abandonment of homestead: Exceptions.
- § 1244. Same.
- § 1245. Proceedings on execution against homesteads: Time to apply for appraisers: Expiration of lien: Second execution upon same judgment.
- § 1246. Application: Form: Contents.
- § 1247. Petition: Filing.
- § 1248. Service of petition and notice of hearing: Effects of failure to serve.
- § 1249. Appointment of appraisers.
- § 1250. Appraisers to take oath.
- § 1251. Duties of appraisers.
- § 1252. Appraisers' report: Time: Contents.
- § 1253. Proceedings where land can be divided without material injury.
- § 1254. Sale where property can not be divided.
- § 1255. Same: Bid must exceed homestead exemption and liens.
- § 1256. Same: Application of proceeds.
- § 1257. After sale, money equal to homestead exemption protected.
- § 1258. Compensation of appraisers.
- § 1259. Costs.
- § 1260. Who may select homestead: Value.
- § 1261. Head of a family: Persons included.
- § 1261.1. Claim of homestead on property previously homesteaded not deemed abandonment of prior homestead.

§ 1237. [Of what homestead consists.] The homestead consists of the dwelling house in which the claimant resides, together with outbuildings, and the land on which the same are situated, selected as in this title provided.

The dwelling house may be in a condominium, as defined in Section 783 of the Civil Code, a planned development, as defined in Section 11003 of the Business and Professions Code, a stock cooperative, as defined in Section 11003.2 of the Business and Professions Code, or a community apartment project, as defined in Section 11004 of the Business and Professions Code, or may be situated on real property held under long-term lease rather than a freehold. In such cases, an agreement, covenant, or restriction between or binding upon the owners of a title, interest, or estate in a condominium, planned development, stock cooperative, or community apartment project, or lien arising under such agreement, covenant, or restriction, or an underlying lease or sublease, indebtedness, security, or other interest or obligation may

be enforced in the same manner as if no homestead were declared, and the homestead shall include the interest in and right to use, recreation areas and other appurtenances subject to the terms and conditions applicable thereto. For the purposes of this section "long-term lease" is a lease of 30 years or more. [1872; 1873-74 ch 612 § 143; 1929 ch 789 § 1; 1970 ch 687 § 1; 1973-74 ch 281 § 1.] *Cal Jur 2d Home §§ 2, 23, 25, 26, 27, 33, 35, 45, 46, Min & M § 114; Cal Practice § 5743; Witkin Procedure 2d, pp 3409, 3411, 3412.*

§ 1237.5. ["Quasi-community property"; "Separate property."] As used in this title:

(a) "Quasi-community property" means real property situated in this state heretofore or hereafter acquired in any of the following ways:

(1) By either spouse while domiciled elsewhere which would have been community property if the spouse who acquired the property had been domiciled in this state at the time of its acquisition.

(2) In exchange for real or personal property, wherever situated, which would have been community property if the spouse who acquired the property so exchanged had been domiciled in this state at the time of its acquisition.

(b) "Separate property" does not include quasi-community property. [1961 ch 636 § 11; 1970 ch 312 § 1.] *Witkin Procedure 2d, p 3411.*

§ 1238. [From what homestead may be selected: Property defined.] If the claimant be married, the homestead may be selected:

(a) From the community property; or

(b) From the quasi-community property; or

(c) From the separate property of the husband; or

(d) Subject to the provisions of Section 1239, from the property held by the spouses as tenants in common or in joint tenancy or from the separate property of the wife.

When the claimant is not married, but is the head of a family, within the meaning of Section 1261, the homestead may be selected from any of his or her property. If the claimant be an unmarried person, other than the head of a family, the homestead may be selected from any of his or her property. Property within the meaning of this title, includes any freehold title, interest, or estate which vests in the claimant the immediate right of possession, even though such a right of possession is not exclusive, and includes land held under long-term lease, as specified in Section 1237, and ownership rights in a condominium, planned development, stock cooperative, or community apartment project even though the title, interest, or estate of the condominium, planned development, stock cooperative, or community apartment project is in a leasehold or subleasehold. [1872; 1873-74 ch 612 § 144; 1929 ch 184 § 1; 1935 ch 444 § 1; 1937 ch 570 § 1; 1961 ch 636 § 12; 1970 ch 687 § 2.] *Cal Jur 2d Ex & Ad § 391, Home §§ 23, 25, 26, Pks & Pl § 4; Cal Practice § 5743; Witkin Procedure 2d, pp 3409, 3411; Summary p 956.*

§ 1239. [From separate property of wife.] The homestead cannot be selected from the separate property of the wife, without her consent, shown by her making, or joining in making the declaration of homestead. [1872; 1873-74 ch 612 § 145.] *Cal Jur 2d Home §§ 23, 24; Cal Practice § 5743; Witkin Procedure 2d, p 3411.*

§ 1240. Exempt from forced sale. The homestead is exempt from execution or forced sale, except as in this title provided. [1872.] *Cal Jur 2d Attach § 139, Home §§ 55, 63; Cal Practice § 5752; Witkin Procedure 2d, p 3416.*

§ 1241. [Exceptions.] The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

1. Before the declaration of homestead is recorded, and which, at the time of such recordation, constitute liens upon the premises.

2. On debts secured by mechanics, contractors, subcontractors, artisans, architects, builders, laborers of every class, materialmen's or vendors' liens upon the premises.

3. On debts secured by encumbrances on the premises executed and acknowledged by

husband and wife, by a claimant of a married person's separate homestead, or by an unmarried claimant.

4. On debts secured by encumbrance on the premises, executed and recorded before the declaration of homestead was filed for record. [1872; 1873-74 ch 612 § 146; 1880 ch 41 § 17; 1887 ch 71 § 1; 1951 ch 1109 § 1, 1957 ch 1317 § 3; 1959 ch 1805 § 2.] *Cal Jur 2d Attach § 139, Exec §§ 60, 117, Ex & Ad §§ 439, 439, Home §§ 55, 57, 59, 60, 63, 70, 121, 138, Mtg § 330; Cal Practice §§ 57:52, 217:2, 217:3, 416:3; Witkin Procedure 2d, pp 3282, 3420, 3421.*

§ 1242. [Married person's homestead: How conveyed or encumbered: Exceptions.] Except as provided in Chapter 2a (commencing with Section 1435.1) of Division 4 of the Probate Code where one or more spouses is incompetent, and except in the case of a married person's separate homestead, the homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife or unless each spouse executes and acknowledges a separate instrument so conveying or encumbering the homestead in favor of the same party or his successor in interest; provided, however, that a conveyance of the homestead between husband and wife need be executed and acknowledged only by the spouse conveying, and unless the one conveying expressly reserves his homestead rights, the spouse to whom the conveyance is made may convey or encumber the homestead property in the same manner and to the same extent as though no homestead had been declared. [1872; 1951 ch 438 § 1; 1957 ch 1619 § 1; 1959 ch 125 § 24, ch 1805 § 3.] *1 Cal Jur 3d Acknowledgments §§ 3-6, 8-10; Cal Jur 2d, Deeds § 76, Ex & Ad § 365, Home §§ 18, 51, 68, 70, 90, 99; Cal Practice § 57:65; Witkin Procedure 2d, pp 3414, 3415; Summary p 2758.*

§ 1243. [Abandonment of homestead: Exceptions.] Except as provided in Chapter 2A (commencing with Section 1435.1) of Division 4 of the Probate Code where one or both spouses are incompetent, a homestead can be abandoned only by:

1. A declaration of abandonment executed and acknowledged by the husband and wife, jointly or by separate instruments, if the claimant is married.
2. A declaration of abandonment or a conveyance by the claimant if unmarried.
3. A declaration of abandonment or a conveyance by the grantee named in a conveyance by which one spouse conveys the homestead to the other spouse without expressly reserving his homestead rights.
4. A conveyance or conveyances by both spouses as provided in Section 1242.
5. A declaration of abandonment or a conveyance by the claimant alone in the case of a married person's separate homestead. [1872; 1949 ch 772 § 1; 1951 ch 438 § 2; 1959 ch 125 § 25, ch 1805 § 4, ch 1960 § 1.] *1 Cal Jur 3d Acknowledgments §§ 3, 5; Cal Jur 2d Deeds § 5, Ex & Ad § 367, Home §§ 67, 99, 100, 103; Cal Practice §§ 57:46, 57:48, 57:49, 57:50, 57:51, 57:53; Witkin Procedure 2d, pp 3414, 3415; Summary p 2758.*

§ 1244. Same. A declaration of abandonment is effectual only from the time it is recorded in the office in which the homestead was recorded. [1872; 1967 ch 79 § 4.] *Cal Jur 2d Home §§ 99, 103; Cal Practice § 57:53; Witkin Procedure 2d, p 3415.*

§ 1245. [Proceedings on execution against homesteads: Time to apply for appraisers: Expiration of lien: Second execution upon same judgment.] When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in section 1241 is levied upon the homestead, the judgment creditor may at any time within sixty days thereafter apply to the superior court of the county in which the homestead is situated for the appointment of persons to appraise the value thereof, and if such application shall not be made within sixty days after the levy of such execution the lien of the execution shall cease at the expiration of said period, and no execution based upon the same judgment shall thereafter be levied upon the homestead. [1872; 1880 ch 41 § 18; 1911 ch 436 § 1.] *4 Cal Jur 3d Appellate Review § 61; Cal Jur 2d Home §§ 140, 146; Cal Practice § 57:57; Witkin Procedure 2d, pp 393, 3419, 3420, 3422, 3423, 3424; Summary p 961.*

§ 1246. [Application: Form: Contents.] The application must be made upon a verified petition of the judgment creditor showing:

1. The fact that an execution has been levied upon the homestead within 60 days prior to the filing of said petition.
2. A description of the homestead and the name of the claimant.
3. That the value of the homestead, over and above all liens and encumbrances thereon, exceeds the amount of the homestead exemption.
4. That no previous execution arising out of the same judgment has been levied upon said homestead. [1872; 1911 ch 436 § 2; 1945 ch 789 § 2.] *Cal Jur 2d Home § 140; Cal Practice § 57:57; Witkin Procedure 2d, p 3422.*

§ 1247. [Petition: Filing.] The petition must be filed with the clerk of the superior court. [1872; 1880 ch 41 § 19.] *Cal Jur 2d Home § 140; Cal Practice § 57:57; Witkin Procedure 2d, p 3422.*

§ 1248. [Service of petition and notice of hearing: Effects of failure to serve.] Within ninety days from the date of filing the petition, a copy thereof, with the notice of the time and place of hearing, must be served upon the claimant or his attorneys at least two days before the hearing; and if such notice shall not be so served, the lien of the execution shall cease at the expiration of said period of ninety days, and no execution based upon the same judgment shall thereafter be levied upon the homestead. [1872; 1911 ch 436 § 3.] *Cal Jur 2d Home § 141; Cal Practice § 57:59; Witkin Procedure 2d, p 3423.*

§ 1249. [Appointment of appraisers.] At the hearing the judge may, upon proof of the service of a copy of the petition and notice, and of the facts stated in the petition, appoint three disinterested residents of the county to appraise the value of the homestead. [1872.] *Cal Jur 2d Home § 142; Cal Practice § 57:61; Witkin Procedure 2d, p 3423.*

§ 1250. [Appraisers to take oath.] The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same. [1872.] *Cal Jur 2d Home § 143; Cal Practice § 57:61; Witkin Procedure 2d, p 3423.*

§ 1251. [Duties of appraisers.] They must view the premises and appraise the value thereof, and if the appraised value, less the aggregate of all liens and encumbrances thereon, exceeds the homestead exemption they must determine whether the land claimed can be divided without material injury. [1872; 1945 ch 789 § 3.] *Cal Jur 2d Home § 143; Cal Practice § 57:63; Witkin Procedure 2d, p 3423.*

§ 1252. [Appraisers' report: Time: Contents.] Within 15 days after their appointment they must make to the judge a report in writing, which report must show the appraised value, the amount of all liens and encumbrances, and their determination upon the matter of a division of the land claimed. [1872; 1945 ch 789 § 4.] *Cal Jur 2d Home § 143; Cal Practice § 57:63; Witkin Procedure 2d, p 3423.*

§ 1253. [Proceedings where land can be divided without material injury.] If, from the report, it appears to the judge that the land claimed can be divided without material injury, he must, by an order, direct the appraisers to set off to the claimant so much of the land, including the residence and outbuildings, as will amount in value to the homestead exemption over and above all liens and encumbrances, and the execution may be enforced against the remainder of the land. [1872; 1945 ch 789 § 5.] *Cal Jur 2d Home § 144; Cal Practice § 57:65; Witkin Procedure 2d, p 3423.*

§ 1254. [Sale where property can not be divided.] If, from the report, it appears to the judge that the land claimed exceeds in value, over and above all liens and encumbrances thereon, the amount of the homestead exemption, and that it can not be divided, he must make an order directing its sale under the execution. [1872; 1945 ch 789 § 6.] *Cal Jur 2d Home § 144; Cal Practice § 57:65; Witkin Procedure 2d, pp 3423, 3424.*

§ 1255. [Same: Bid must exceed homestead exemption and liens.] At such sale no bid shall be received, unless it exceeds the amount of the homestead exemption plus the aggregate amount of all liens and encumbrances on the property. [1872; 1945 ch 789 § 7.] *Cal Jur 2d Home § 144; Cal Practice § 57:65; Witkin Procedure 2d, p 3424.*

§ 1256. [Same: Application of proceeds.] If the sale is made, the proceeds thereof must be applied in the following order of priority, first, to the discharge of all liens and encumbrances, if any, on the property, second, to the homestead claimant to the amount of the homestead exemption, third, to the satisfaction of the execution, and fourth, the balance, if any, to the homestead claimant. [1872; 1945 ch 789 § 8.] *Cal Jur 2d Home § 147; Cal Practice § 57:65; Witkin Procedure 2d, pp 3421, 3424.*

§ 1257. [After sale, money equal to homestead exemption protected.] The money paid to the claimant is entitled, for the period of six months thereafter, to the same protection against legal process and the voluntary disposition of the husband, which the law gives to the homestead. [1872; 1873-'74 ch 612 § 53.] *Cal Jur 2d Home §§ 56, 147; Cal Practice §§ 57, 65; Witkin Procedure 2d, pp 3418, 3424.*

§ 1258. [Compensation of appraisers.] The court must fix the compensation of the appraisers in an amount as determined by the court to be reasonable, but such fees shall not exceed similar fees for similar services in the community where such services are rendered. [1872; 1949 ch 946 § 1; 1968 ch 450 § 1.] *Cal Jur 2d Home § 143; Cal Practice § 57:65; Witkin Procedure 2d, p 3423.*

§ 1259. **Costs.** The execution creditor must pay the costs of these proceedings in the first instance; but in the cases provided for in sections twelve hundred and fifty-three and twelve hundred and fifty-four the amount so paid must be added as costs on execution, and collected accordingly. [1872.] *Cal Jur 2d Home § 147; Cal Practice § 57:71; Witkin Procedure 2d, p 3423.*

§ 1260. [Who may select homestead: Value.] Homesteads may be selected and claimed:

1. By any head of a family, of not exceeding twenty thousand dollars (\$20,000) in actual cash value, over and above all liens and encumbrances on the property at the time of any levy of execution thereon.

2. By any person 65 years of age or older, of not exceeding twenty thousand dollars (\$20,000) in actual cash value, over and above all liens and encumbrances on the property at the time of any levy of execution thereon.

3. By any other person, of not exceeding ten thousand dollars (\$10,000) in actual cash value, over and above all liens and encumbrances.

Any declaration of homestead which has been filed prior to January 1, 1971 shall be deemed to be amended on such date by increasing the value of any property selected and claimed to the value permitted by this section on such date to the extent that such increase does not impair or defeat the right of any creditor to execute upon the property which existed prior to such date. [1872; 1945 ch 789 § 9; 1947 ch 1077 § 1; 1949 ch 357 § 1; 1953 ch 943 § 1; 1963 ch 1288 § 1; 1969 ch 1099 § 1; 1970 ch 319 § 1.] *Cal Jur 2d Div & S § 301, Home §§ 20, 29; Cal Practice §§ 57:44, 57:58; Witkin Procedure 2d, pp 3409, 3410, 3412, 3413, 3415, 3422; Summary p 3291.*

§ 1261. [Head of a family: Persons included.] The phrase "head of a family," as used in this title, includes within its meaning:

1. The husband, when the claimant is a married person.

2. Every person who has residing on the premises with him or her, and under his or her care and maintenance, either:

(a) His or her minor child, or minor grandchild, or the minor child of his or her deceased wife or husband;

(b) A minor brother or sister, or the minor child of a deceased brother or sister;

(c) A father, mother, grandfather, or grandmother;

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(d) The father, mother, grandfather, or grandmother of a deceased husband or wife;

(e) An unmarried sister, or any other of the relatives mentioned in this section, who have attained the age of majority, and are unable to take care of or support themselves. [1872 1873-74 ch 612 § 155; 1893 ch 107 § 1; 1921 ch 780 § 1.] *Cal Jur 2d Home § 21; Cal Practice § 57:43; Witkin Procedure 2d, pp 3410, 3412.*

§ 1261.1. [Claim of homestead on property previously homesteaded not deemed abandonment of prior homestead.] Whenever a claim of homestead is made pursuant to subdivision 1 or 2 of Section 1260 which includes property previously homesteaded, to the extent that such prior homestead is still valid such new claim of homestead shall not be considered an abandonment of the prior homestead. [1872; 1873-74 ch 612 § 155; 1959 ch 1099 § 2.] *Ca Jur 3d Acknowledgments §§ 3, 5; Cal Jur 2d Est § 7, Home §§ 22, 40, 49, Recds § 42; Ca Practice § 57:45.*

CHAPTER 2

Homestead of the Head of a Family

§ 1262. Mode of selection: Execution, acknowledgment and filing of declaration.

§ 1263. Contents of declaration: Recorded declaration as evidence.

§ 1264. Declaration must be recorded.

§ 1265. When property becomes homestead: Disposition in case of death: Exemption of property or proceeds from liability for debts: Exceptions.

§ 1265a. Retroactive effect of new declaration on property purchased with proceeds of former homestead.

§ 1262. [Mode of selection: Execution, acknowledgment and filing of declaration.] In order to select a homestead, the husband or other head of a family, or in case the husband has not made such selection, the wife, must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record. [1872; 1873-74 ch 612 § 157; 1905 ch 447 § 1; 1927 ch 490 § 1; 1943 ch 63 § 1; 1945 ch 789 § 10; 1953 ch 330 § 1; 1969 ch 564 § 1; 1970 ch 80 § 1.] *Witkin Procedure 2d, pp 3409, 3410, 3412.*

§ 1263. [Contents of declaration: Recorded declaration as evidence.] The declaration of homestead must contain:

1. A statement showing that the person making it is the head of a family, and if the claimant is married, the name of the spouse; or, when the declaration is made by the wife, showing that her husband has not made such declaration and that she therefore makes the declaration for their joint benefit;

2. A statement that the person making it is residing on the premises, and claims them as a homestead;

3. A description of the premises;

4. Such declaration of homestead may further contain a statement of the character of the property sought to be homesteaded, showing the improvement or improvements which have been affixed thereto, with sufficient detail to show that it is a proper subject of homestead, and that no former declaration has been made, or, if made, that it has been abandoned or that the present claim of homestead is an augmentation of value of a former claim and is within the limits prescribed by subdivisions (1) or (2) of Section 1260 and if it contains such further statement and the declaration is supported by the affidavit of the declarant, annexed thereto, that the matters therein stated are true of his or her own knowledge, such declaration, when properly recorded, shall be prima facie evidence of the facts therein stated, and conclusive evidence thereof in favor of a purchaser or encumbrancer in good faith and for a valuable consideration. [1872; 1873-74 ch 612 § 157; 1905 ch 447 § 1; 1927 ch 490 § 1; 1943 ch 63 § 1; 1945 ch 789 § 10; 1953 ch 330 § 1; 1969 ch 564 § 1; 1970 ch 80 § 1.] *Cal Jur 2d Home §§ 34, 35, 41 et seq.; Cal Practice § 57:45; Witkin Procedure 2d, pp 3413, 3414.*

§ 1264. **Declaration must be recorded.** The declaration must be recorded in the office of the recorder of the county in which the land is situated. [1872.] *Cal Jur 2d Home* § 50, *Reeds* §§ 42, 45; *Cal Practice* § 57:45.

§ 1265. [When property becomes homestead. Disposition in case of death; Exemption of property or proceeds from liability for debts; Exceptions.] From and after the time the declaration is filed for record, the premises therein described constitute a homestead. If the selection was made by a married person from the community property, or from the quasi-community property, or from the separate property of the spouse making the selection or joining therein, and if the surviving spouse has not conveyed the homestead to the other spouse by a recorded conveyance which failed to expressly reserve his homestead rights as provided by Section 1242 of the Civil Code, the land so selected, on the death of either of the spouses, vests in the survivor, except in the case of a married person's separate homestead, subject to no other liability than such as exists or has been created under the provisions of this title; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to the heirs or devisees, subject to the power of the superior court to assign the same for a limited period to the family of the decedent; but in no case shall it, or the products, rents, issues or profits thereof be held liable for the debts of the owner, except as provided in this title; and should the homestead be sold by the owner, the proceeds arising from such sale to the extent of the value allowed for a homestead exemption, as provided in this title shall be exempt to the owner of the homestead for a period of six months next following such sale. [1872; 1873-74 ch 612 § 158; 1880 ch 41 § 20; 1909 ch 637 § 1; 1911 ch 45 § 1; 1951 ch 438 § 3; 1959 ch 1805 § 5; 1961 ch 636 § 13.] *Cal Jur 2d Crops* § 3, *Ex & Ad* § 413, *Home* §§ 2, 18, 29, 52, 56, 90, 91, 92, 93, 96; *Cal Practice* § 57:43; *Within Procedure 2d*, pp 3416, 3417, 3418.

§ 1265a. [Retroactive effect of new declaration on property purchased with proceeds of former homestead.] If the proceeds arising from the sale of property selected as a homestead are used for the purchase of real property within the period of six months following such sale, the property purchased may be selected as a homestead in the manner provided in this title within the period of six months following such sale, and such selection, when the declaration has been filed for record, shall have the same effect as if it had been created at the time the prior declaration of homestead was filed for record. [1959 ch 515 § 1.] *Cal Jur 2d Home* § 56; *Cal Practice* § 57:43.

CHAPTER 3

Homestead of Other Persons

§ 1266. Mode of selection.

§ 1267. Contents of declaration.

§ 1268. Declaration must be recorded.

§ 1269. Effect of filing for record the declaration of homestead.

§ 1266. **Mode of selection.** Any person other than the head of a family, in the selection of a homestead, must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a "declaration of homestead." [1872.] *1 Cal Jur 3d Acknowledgments* §§ 3, 5; *Cal Jur 2d Home* §§ 40, 43, 44; *Cal Practice* § 57:45; *Within Procedure 2d*, pp 3409, 3412.

§ 1267. [Contents of declaration.] The declaration shall contain everything required by the second and third subdivisions of Section 1263, and in addition thereto may contain the statement and affidavit provided for by subdivision 4 of such section, with like effect as therein provided. If the homestead is selected and claimed pursuant to subdivision 2 of Section 1260, the declaration shall also contain a statement that the person making it is 65 years of age or older. [1872; 1927 ch 491 § 1; 1969 chs 564 § 2, 1099 § 3.] *Cal Jur 2d Factor* §§ 27, 30, *Home* §§ 41, 45, 46, 47; *Within Procedure 2d* p 3413.

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§ 1268. **Declaration must be recorded.** The declaration must be recorded in the office of the county recorder of the county in which the land is situated. [1872.] *Cal Jur 2d Hom* § 50, *Reeds* §§ 42, 43; *Cal Practice* § 57.43.

§ 1269. **Effect of filing for record the declaration of homestead.** From and after the time the declaration is filed for record, the land described therein is a homestead. [1872.] *Cal Ju* 2d *Home* § 52; *Witkin Procedure 2d*, p 3417.

CHAPTER 4

Alienation of Homesteads of Insane Persons

[This chapter, consisting of §§ 1268-1269, added 1905 ch 463 § 1, and repealed 1941 ch 1220 § 3.]

CHAPTER 5

Married Person's Separate Homestead

- § 1300. Execution and acknowledgment of declaration, following judgment for legal separation or dissolution of marriage.
- § 1301. Contents of declaration.
- § 1302. "Head of a family" defined.
- § 1303. When land becomes homestead.
- § 1304. Reconciliation of parties: Transformation of married person's separate homestead into joint protection homestead: Reduction of exemption.

§ 1300. [Execution and acknowledgment of declaration, following judgment for legal separation or dissolution of marriage.] Following the entry of a judgment decreeing legal separation of the parties or an interlocutory judgment of dissolution of a marriage, each spouse may execute and acknowledge in the same manner as a grant of real property is acknowledged, a declaration of a married person's separate homestead from the separate property of the spouse so declaring same, or from any property awarded to such spouse by said judgment. [1959 ch 1805 § 1; 1971 ch 1210 § 2; former § 1300 repealed 1931 ch 281.] *Witkin Procedure 2d*, pp 3409, 3410, 3412, 3415.

§ 1301. [Contents of declaration.] The declaration must contain:

(1) A statement that the declarant is a married person, and that there is in existence a judgment decreeing legal separation of the parties or an interlocutory judgment of dissolution of the marriage between declarant and his or her spouse.

(2) A statement showing that declarant is the head of a family, as defined in this chapter, if such is the case.

(3) The matters required by the second and third subdivisions of Section 1263, and in addition thereto may contain the statement and affidavit provided for by subdivision 4 of said section, with like effect as therein provided. [1959 ch 1805 § 1; 1969 ch 564 § 4; 1971 ch 1210 § 3; former § 1301 repealed 1931 ch 281.] *Witkin Procedure 2d*, p 3413.

§ 1302. ["Head of a family" defined.] For the purpose of this chapter, the phrase "head of a family" includes every person who has residing on the premises with him or her and under his or her care and maintenance one or more of the persons enumerated in paragraphs (a), (b), (c), (d) and (e) of subdivision 2 of Section 1261, and such person shall receive the exemption allowed the head of a family by Section 1260. Any married person declaring a homestead under this chapter who is not the head of a family, as defined in this section, shall receive the exemption allowed other persons by Section 1260. [1959 ch 1805 § 1; former § 1302 repealed 1931 ch 281.] *Witkin Procedure 2d*, p 3410.

§ 1303. [When land becomes homestead.] From and after the time the declaration is recorded in the office of the recorder of the county in which the land is situated, the land described therein is a homestead. [1959 ch 1805 § 1; former § 1303 repealed 1931 ch 281.] *Witkin Procedure 2d*, p 3417.

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§ 1304. [Reconciliation of parties: Transformation of married person's separate homestead into joint protection homestead: Reduction of exemption.] When a homestead has been declared under this chapter by a married person following the entry of an interlocutory judgment of dissolution of a marriage upon property awarded to such person by such judgment, a subsequent reconciliation of the parties when evidenced by a dismissal of such dissolution action executed by both parties or their attorneys of record shall transform such homestead into a joint protection homestead, which shall thereafter have the force and effect of a homestead selected under Chapter 2 of this title. If each such married person has selected a homestead under this chapter, and such a dismissal has been filed after reconciliation, one of the homesteads must be abandoned or the exemption under each shall be reduced by one-half. [1959 ch 1805 § 1; 1971 ch 1210 § 4; former § 1304 repealed 1931 ch 281.] *Within Procedure 2d, p 3410.*