

2/22/77

## Memorandum 77-12

Subject: Study 39.160 - Attachment (General Assignment for Benefit of Creditors)

Attached to this Memorandum is a staff draft of a recommendation concerning the relation between the lien of the temporary protective order or attachment and a general assignment for the benefit of creditors or bankruptcy proceedings. This draft recommendation combines features of the Commission's decision at the February meeting with Senate Bill 221, introduced on February 1 (see Exhibit 1, attached hereto). The Commission needs to decide whether or not to proceed with this matter in view of the introduction of Senate Bill 221.

## BACKGROUND

Commission Decision

At the February 1977 meeting, the Commission tentatively decided to recommend that the Attachment Law be amended to provide that the temporary protective order expires upon the making of a general assignment for the benefit of creditors or upon the commencement of proceedings under the Bankruptcy Act or other provisions for the ratable distribution of the defendant's assets to creditors upon the defendant's insolvency. This decision would be implemented by amending Section 486.090 substantially as follows:

486.090. Except as otherwise provided in this title, the temporary protective order shall expire at the earliest of the following times:

(a) Forty days after the issuance of the order or, if an earlier date is prescribed by the court in the order, on such earlier date.

(b) As to specific property described in the order, when a levy of attachment upon that property is made by the plaintiff.

(c) When the defendant makes a general assignment for the benefit of creditors or proceedings for the liquidation or rehabilitation of an insolvent defendant's estate, providing for ratable distribution of assets, are commenced.

The Comment would read substantially as follows:

Subdivision (c) is added to make clear that the unperfected lien of the temporary protective order is ineffective where there has been a general assignment for the benefit of creditors or where an insolvent defendant is involved in proceedings for the purpose of liquidation or rehabilitation of his estate. See Sections 486.110(b) (levy of attachment perfects lien of temporary protective order), 488.500(f) (attachment lien relates back to date of service of temporary protective order). Subdivision (c) continues the substance of a portion of former Section 542b but is more general in its terminology so as to include all insolvency proceedings, e.g., proceedings under the Bankruptcy Act, 11 U.S.C. § 1 et seq. (1970), the National Bank Act, 12 U.S.C. § 21 et seq. (1970), Fin. Code § 3100 et seq. (liquidation, conservatorship, reorganization and dissolution of banks), and Ins. Code § 1010 et seq. (solvency and delinquency of insurance companies).

Section 486.040 would also be amended to provide that the temporary protective order may not preclude the making of a general assignment for the benefit of creditors:

486.040. (a) The temporary protective order issued under this chapter shall contain such provisions as the court determines would be in the interest of justice and equity to the parties, taking into account the effects on both the defendant and the plaintiff under the circumstances of the particular case.

(b) Notwithstanding subdivision (a), the temporary protective order may not prohibit the making by the defendant of a general assignment for the benefit of creditors.

#### Senate Bill 221

Senate Bill 221, introduced at the request of Mr. Harold Marsh, acting for the Credit Managers Association of Southern California, proposes to amend the Attachment Law to provide for the termination of the lien of the temporary protective order upon the making of a general assignment for the benefit of creditors or the filing of a proceeding under the Bankruptcy Act within four months from the creation of the lien. (See Senate Bill No. 221 in Exhibit 1, attached hereto.) The bill also provides that the lien of attachment terminates upon such assignment or filing within four months from the creation of the lien.

## ANALYSIS OF SENATE BILL 221

Several differences between the Commission's tentative decision and Senate Bill 221 should be noted as a basis for deciding whether to pursue this matter any further:

### Substantive Differences

(1) Termination of attachment lien. Senate Bill 221 proposes to amend Section 488.510 by providing for the termination of the lien of attachment upon the making of a general assignment for the benefit of creditors. Neither the Commission decision, nor former Section 542b upon which it was based, provided for termination of the attachment lien upon such an occurrence. Former Section 542b provided as follows:

542b. The service upon the defendant of a notice and order pursuant to Section 538.2 creates a lien upon all of his personal property subject to the levy of a writ of attachment pursuant to this chapter and owned by him at the time of such service or the proceeds thereof. Such lien, however, shall not be valid as against a bona fide purchaser or encumbrancer for present value or a transferee in the ordinary course of business. Such lien shall terminate 30 days after the service of the notice and order upon the defendant; except with respect to property upon which a writ of attachment has been levied during that period and upon the filing by the defendant of a proceeding under the National Bankruptcy Act or the making by the defendant of a general assignment for the benefit of creditors, such lien shall terminate with respect to all property upon which a writ of attachment has not been levied prior to such event. The levy of writ of attachment shall perfect the lien created by the service of the notice and order against a bona fide purchaser and a transferee in the ordinary course of business and the levy of writ of attachment in those cases where it is not preceded by the service of a notice and order shall create a lien upon the property levied upon which is valid against all third persons.

The proposed amendment of Section 488.510 (see Exhibit 1) thus gives a general assignment the same effect against an attachment lien as has the commencement of bankruptcy proceedings. Because the attachment lien may last for considerably longer than four months (in contrast with the lien of the temporary protective order), the four-month limitation on voiding liens under the Bankruptcy Act is necessary in this case. The automatic termination of the lien avoids the need to initiate proceedings to void the lien.

(2) Administrative efficiency in voiding attachment liens. Senate Bill 221 goes beyond the Bankruptcy Act by terminating attachment liens where the defendant is not insolvent when the lien is created. Section 67a(1) of the Bankruptcy Act provides that the attachment "shall be deemed null and void (a) if at the time when such lien was obtained such person was insolvent . . . ." Elimination of this qualification makes it unnecessary to determine the time of insolvency of the defendant as a precondition to terminating the lien. The staff sees this as a theoretical drawback of Senate Bill 221; however, it may be assumed that in practice few attachment defendants who are involved in bankruptcy proceedings within four months after the creation of the lien of attachment were solvent at the time of the attachment. The attaching plaintiff could be given the opportunity to show that the defendant was solvent under the terms of the Bankruptcy Act when the attachment lien was created so that the plaintiff could preserve his preference. However, we rejected this alternative in light of the practical considerations and the possibility of the determination of the state courts being in conflict with the determination of insolvency under the Bankruptcy Act.

(3) Reinstatement of lien. Section 67a(1) of the Bankruptcy Act provides that "if such person is not finally adjudged a bankrupt in any proceeding under this Act and if no arrangement or plan is proposed and confirmed, such lien shall be deemed reinstated with the same effect as if it had not been nullified and voided." However, if state law also has the effect of terminating the lien, it appears that the Bankruptcy Act would not reinstate the lien. We are informed that this possibility would arise in very few cases since a voluntary petition is deemed an adjudication of bankruptcy (Bankruptcy Act § 19f) and the defendant will successfully resist an involuntary petition only rarely. Nonetheless, the state law should track with the policy reflected in the Bankruptcy Act in this case.

(4) Other insolvency proceedings. The Commission had tentatively decided to provide for the termination of the lien of the temporary protective order at the commencement of any insolvency proceeding providing for the ratable distribution of the defendant's assets. The draft

Comment to Section 486.090 mentioned insolvency proceedings concerning banks and insurance companies. While this policy could be easily achieved when only the lien of the temporary protective order was to be terminated, complexities arise when we try to apply this principle to the termination of the attachment lien because of its longer duration. As indicated in paragraph (1), supra, the terminating effect of commencement of bankruptcy proceedings must be limited to four months in the case of an attachment lien. However, all insolvency proceedings do not provide for the same voiding period--liquidation provisions in the Financial Code applicable to banks do not provide for any retroactive voiding period (Fin. Code §§ 3103, 3105); liquidation provisions applicable to state savings and loan associations provide for a 30-day voiding period (Fin. Code § 9056); liquidation provisions applicable to insurance companies provide for a four-month period (Ins. Code § 1034). The number of other insolvency proceedings is probably negligible when compared to general assignments and bankruptcies. Accordingly, the draft recommendation does not propose to deal with these other insolvency proceedings. This will be at most a procedural inconvenience requiring some action to be taken to void the attachment in these other insolvency proceedings.

(5) Release of attached property. Providing that the lien of attachment or that the attachment terminates upon the making of a general assignment of the commencement of bankruptcy proceedings leaves open the question of how the levy is actually released. Section 488.560(a) provides for release only at the written direction of the plaintiff or upon receipt of a certified copy of an order of court in which the action is pending. Under existing law, the filing of a bankruptcy petition operates as a stay of the execution of the writ of attachment but the attachment is not released until the levying officer receives a certified copy of an order of the bankruptcy court. One purpose of Senate Bill 221 is to avoid the necessity of having a court hearing to terminate the effect of the attachment. If this purpose is to be achieved, a procedure should be devised that will permit the release of the levy on and custody of the property without a court order.

Technical Problems

(1) Previously, the staff has recommended that Section 486.090 be amended to provide for the expiration of the temporary protective order. Then, under the terms of Section 486.110(b), the lien terminates when the temporary protective order terminates. Senate Bill 221 proposes to amend Section 486.110 to provide for the termination of the lien of the temporary protective order, apparently leaving open the theoretical question of what happens to the order itself.

(2) Senate Bill 221 would, in the second sentence of subdivision (c) of Section 486.110, provide that nothing in Title 6.5 (the Attachment Law) or any order issued pursuant thereto prevents the making of a general assignment or the filing of a proceeding under the Federal Bankruptcy Acts. The staff believes that this provision belongs in Chapter 2 (General Provisions) or in a new Chapter 13 because it applies to more than the temporary protective order. We also think it unnecessary to provide that the Attachment Law does not prevent the defendant from filing a petition in bankruptcy since it is beyond the power of state law to provide such limitations.

(3) Senate Bill 221 would amend Section 488.510 to provide for the termination of the "lien of an attachment." In view of the wording of the rest of the section, the words "lien of an" should not precede "attachment" in subdivision (e).

(4) Senate Bill 221 refers to the "Federal Bankruptcy Acts." If the terminology of the Attachment Law is to remain internally consistent in this regard, "Federal Bankruptcy Acts" in Senate Bill 221 should be changed to read "National Bankruptcy Act" as in Sections 484.020 and 484.320.

Respectfully submitted,

Stan G. Ulrich  
Staff Counsel

EXHIBIT 1

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REFER TO FILE NUMBER

February 8, 1977

Professor John H. DeMouilly  
California Law Revision Commission  
Stanford Law School  
Stanford, California 94505

Re: Lien of Temporary Protective Order  
and Attachment

Dear John:

I am enclosing herewith a copy of S.B. No. 221 which has been introduced by Senator Zenovich at my request, acting on behalf of the Credit Managers Association of Southern California, to provide that the lien of the temporary protective order or of an attachment expires upon the making of a general assignment for the benefit of creditors or the filing of a petition under the National Bankruptcy Act. The Bill also provides that the temporary protective order does not prohibit the making of a general assignment, which it is inconceivable to me could have been the intention of the Law Revision Commission.

The purpose of this proposed legislation is, of course, to promote equality of distribution among creditors and to preserve the use of the general assignment as a less expensive and more desirable alternative to bankruptcy in many cases.

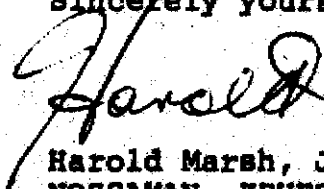
I would hope that the Law Revision Commission would see fit to support these amendments. I do not believe that they detract from any of the objectives of the Commission in its

**NOSSAMAN, KRUEGER & MARSH**

**Professor John H. DeMouilly  
Page Two  
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**legislative recommendation which resulted in the new Attachment  
Law.**

**Sincerely yours,**



**Harold Marsh, Jr. of  
NOSSAMAN, KRUEGER & MARSH**

**HM/ma  
Enclosure**

**cc: Mr. Lee J. Fortner**



**Introduced by Senator Zenovich.**

**February 1, 1977**

**An act to amend Sections 486.110 and 488.510 of the Code of Civil Procedure, relating to lien termination.**

**LEGISLATIVE COUNSEL'S DIGEST**

**SB 221, as introduced, Zenovich. Lien termination.**

(1) Under existing law, the service upon a defendant of a temporary protective order creates a lien upon property described in the order. The lien terminates on the date of expiration of the order, except as to property upon which a writ of attachment has been levied during that period. The lien also terminates upon transfer of the property to a bona fide purchaser or encumbrancer for present value or a transferee in the ordinary course of business.

This bill, in addition, would provide that the lien terminates upon the making by the defendant of a general assignment for the benefit of creditors or the filing by or against the defendant of a proceeding under federal bankruptcy statutes, if such assignment or filing is made within 4 months after the lien was created.

(2) Under existing law, except as otherwise specified, levy of a writ of attachment creates a lien on the property levied upon and is valid against all subsequent transferees of the property. The lien generally terminates 3 years after the issuance of the writ of attachment under which the levy was made, unless extended by court order.

This bill, in addition, would provide that the lien terminates upon the making by the defendant of a general assignment for the benefit of creditors or the filing by or against the defendant of a proceeding under federal bankruptcy statutes, if such assignment or filing is made within 4 months after the lien was created.

Vote: majority. Appropriation: no. Fiscal committee: no. (   
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 486.110 of the Code of Civil  
2 Procedure is amended to read:

3 486.110. (a) The service upon the defendant of a (   
4 temporary protective order pursuant to Section 486.080  
5 creates a lien upon any property, or the proceeds thereof,  
6 which is described in the order, is owned by the  
7 defendant at the time of such service, and is subject to the  
8 levy of a writ of attachment pursuant to this title. The lien  
9 is not valid as against a bona fide purchaser or  
10 encumbrancer for present value or a transferee in the  
11 ordinary course of business.

12 (b) The lien terminates upon the date of expiration of  
13 the order except with respect to property upon which a  
14 writ of attachment issued upon application of the plaintiff  
15 has been levied during that period. The levy of a writ of (   
16 attachment perfects the lien created by the service of the  
17 temporary protective order.

18 (c) *The lien terminates upon the making by the*  
19 *defendant of a general assignment for the benefit of*  
20 *creditors or the filing by or against the defendant of a*  
21 *proceeding under the Federal Bankruptcy Acts, if such*  
22 *assignment or filing is made within four months after the*  
23 *date of creation of the lien. Nothing contained in this title*  
24 *nor in any order issued pursuant thereto shall be*  
25 *construed to prevent the making by the defendant of*  
26 *such a general assignment for the benefit of creditors or*  
27 *the filing by the defendant of such a proceeding under*  
28 *the Federal Bankruptcy Acts.*

29 SEC. 2. Section 488.510 of the Code of Civil Procedure (   
30 is amended to read:

31 488.510. (a) Unless sooner released or discharged, any  
32 attachment shall cease to be of any force or effect, and the  
33 property levied upon shall be released from the  
34 operation of such attachment at the expiration of three  
35 years from the date of issuance of the writ of attachment (

1 under which such levy was made.

2 (b) Notwithstanding subdivision (a), upon motion of  
3 the plaintiff, made not less than 10 or more than 60 days  
4 before the expiration of the three-year period and upon  
5 notice of not less than five days to the defendant whose  
6 property is attached, the court in which the action is  
7 pending may, by order filed prior to the expiration of the  
8 period and for good cause, extend the time of such  
9 attachment for a period not exceeding one year from the  
10 date on which the attachment would otherwise expire.

11 (c) The levying officer shall serve notice of such order  
12 upon any person holding property pursuant to an  
13 attachment and shall record or file such notice in any  
14 office where the writ and notice of attachment are  
15 recorded or filed prior to the expiration of the period  
16 described in subdivision (a) or any extension thereof.  
17 Where the attached property is real property, the  
18 plaintiff or his attorney, instead of the levying officer,  
19 may record the required notice.

20 (d) Any attachment may be extended from time to  
21 time in the manner herein prescribed, but the aggregate  
22 period of such extensions shall not exceed five years.

23 (e) *The lien of an attachment terminates upon the*  
24 *making by the defendant of a general assignment for the*  
25 *benefit of creditors or the filing by or against the*  
26 *defendant of a proceeding under the Federal Bankruptcy*  
27 *Acts, if such assignment or filing is made within four*  
28 *months after the date of effectiveness of the lien pursuant*  
29 *to Section 488.500.*

Staff Draft

RECOMMENDATION RELATING TO

THE ATTACHMENT LAW

Effect of Bankruptcy Proceedings

Effect of General Assignments for the Benefit of Creditors

BACKGROUND

Section 67a(1) of the Bankruptcy Act<sup>1</sup> declares certain attachment liens obtained within four months before the filing of a petition in bankruptcy to be null and void.<sup>2</sup> The trustee may have the lien voided in summary proceedings before the bankruptcy court by showing that the defendant was insolvent when the lien was obtained and that the lien was obtained within four months before the petition in bankruptcy was filed.<sup>3</sup>

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1. 11 U.S.C. § 107(a)(1)(1970).

2. Section 67a(1) of the Bankruptcy Act provides as follows:

Every lien against the property of a person obtained by attachment, judgment, levy, or other legal or equitable process or proceedings within four months before the filing of a petition initiating a proceeding under this Act by or against such person shall be deemed null and void (a) if at the time when such lien was obtained such person was insolvent or (b) if such lien was sought and permitted in fraud of the provisions of this Act: Provided, however, That if such person is not finally adjudged a bankrupt in any proceeding under this Act and if no arrangement or plan is proposed and confirmed, such lien shall be deemed reinstated with the same effect as if it had not been nullified and voided.

3. Bankruptcy Act § 67a(3)-(4), 11 U.S.C. § 107(a)(3)-(4)(1970); E. Jackson, California Debt Collection Practice §§ 9.116-9.117 (Cal. Cont. Ed. Bar 1968).

Prior to its repeal,<sup>4</sup> Section 542b of the Code of Civil Procedure provided that the lien of the temporary restraining order obtained by serving a copy of the application for an attachment and the order terminated upon the filing by the defendant of petition in bankruptcy. This provision was not continued by the Attachment Law, making it necessary for the trustee in bankruptcy to initiate proceedings to obtain an order declaring the lien of the temporary protective order<sup>5</sup> to be void.

Former Section 542b also provided for the termination of the lien of the temporary restraining order upon the making by the defendant of a general assignment for the benefit of creditors, a less formal and less expensive alternative to bankruptcy.<sup>6</sup> The Attachment Law did not continue this provision, although Section 486.040 does permit the court to fashion a temporary protective order containing "such provisions as the court determines would be in the interest of justice and equity to the parties" which arguably include the possibility of a general assignment.

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4. Code Civ. Proc. § 542b, added by Cal. Stats. 1972, Ch. 550, § 19, was repealed by Cal. Stats. 1974, Ch. 1516, § 12 (operative Jan. 1, 1977).

5. See also Code Civ. Proc. § 488.110 (lien of temporary protective order).

6. See generally D. Cowans, Bankruptcy Law and Practice § 83 (1963); Shapiro, Assignment for the Benefit of Creditors, in California Remedies for Unsecured Creditors 429 (F. Stumpf, W. Horwitz, B. Deal ed. Cal. Cont. Ed. Bar 1957). It should also be noted that the making of a general assignment for the benefit of creditors is an act of bankruptcy. Bankruptcy Act § 3a, 11 U.S.C. § 21(a)(1970).

## RECOMMENDATIONS

The Commission recommends that the Attachment Law be amended to provide for the termination of the lien of a temporary protective order or of an attachment when, within four months from the date the lien was obtained, a petition in bankruptcy is filed by or against the defendant or the defendant makes a general assignment for the benefit of creditors. Terminating such preferential liens as a matter of state law furthers the policy favoring procedures generally designed to distribute the debtor's assets ratably and also eliminates the need in bankruptcy proceedings to obtain a court order declaring such liens void.<sup>7</sup>

The Attachment Law should also be amended to provide an orderly procedure through which an assignee under a general assignment for the benefit of creditors or a trustee in bankruptcy may obtain the release of property which has been levied upon pursuant to the terminated writ of attachment. The plaintiff in the action in which the attachment has been issued should be given notice and a 10-day period within which to object to the release of the property.

## PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to add Chapter 13 (commencing with Section 493.010) to Title 6.5 of part 2 of the Code of Civil Procedure, relating to attachment.

The people of the State of California do enact as follows:

SECTION 1. Chapter 13 (commencing with Section 493.010) is added to Title 6.5 of Part 2 of the Code of Civil Procedure, to read:

7. In order to avoid the procedural burden, the terminating provisions of state law would have a slightly broader scope than the Bankruptcy Act voiding provisions since liens would be terminated which were obtained when the defendant was not insolvent. State law should, like the Bankruptcy Act, provide for the reinstatement of a lien of attachment where the defendant is finally adjudged not to be a bankrupt. See Bankruptcy Act § 67a(1), 11 U.S.C. § 107(a)(1)(1970), quoted in note 2 supra.

CHAPTER 13. EFFECT OF BANKRUPTCY PROCEEDINGS

AND GENERAL ASSIGNMENTS FOR THE BENEFIT

OF CREDITORS

§ 493.010. General assignment for the benefit of creditors not precluded

493.010. Nothing in this title precludes the making by the defendant of a general assignment for the benefit of creditors.

Comment. Section 493.010 makes clear that regardless of the terms of any writ of attachment, temporary protective order (Sections 486.010-486.110), or turnover order (Section 482.080), the defendant may make a general assignment for the benefit of creditors. Section 493.010 and the remainder of Chapter 13 reflect the policy favoring general assignments for the benefit of creditors (which contemplate the ratable distribution to creditors of the assignor's assets) over attachment (which permits one general creditor to establish a priority over other general creditors).

§ 493.020. Termination of temporary protective order or attachment

493.020. (a) A temporary protective order terminates if, within four months after the temporary protective order is served on the defendant, the defendant makes a general assignment for the benefit of creditors or a petition initiating a proceeding under the National Bankruptcy Act is filed by or against the defendant.

(b) An attachment terminates as to particular property if, within four months after the effective date of the lien of attachment on such property pursuant to Section 488.500, the defendant makes a general assignment for the benefit of creditors or a petition initiating a proceeding under the National Bankruptcy Act is filed by or against the defendant.

Comment. Section 493.020 provides for the termination of a temporary protective order or an attachment upon the making of a general assignment for the benefit of creditors or the commencement of bankruptcy proceedings within four months after the creation of the lien of the temporary protective order or the lien of attachment. See also Sections 486.090 (expiration of temporary protective order), 486.110 (lien of temporary protective order from time of service), 488.500 (lien of attachment), 488.510 (duration of lien of attachment).

Subdivision (a) is derived from a portion of former Section 542b which provided for the termination of the lien created by service of the notice of attachment hearing and the temporary restraining order when the defendant filed a proceeding under the National Bankruptcy Act or made a general assignment for the benefit of creditors.

Subdivision (b) is new. It provides for the automatic termination of the attachment, thereby making it unnecessary to initiate court proceedings under the National Bankruptcy Act to void the lien of attachment. This principle is also applied where the defendant makes a general assignment for the benefit of creditors within the specified time.

This chapter does not affect other provisions voiding liens arising under this title. See, e.g., Ins. Code § 1034 (voidable preferences in insolvency proceedings applicable to insurers).

#### § 493.030. Release of attachment

493.030. (a) Where an attachment terminates pursuant to Section 493.020, the assignee of a general assignment for the benefit of creditors or the trustee in bankruptcy may secure the release of the attachment by filing with the levying officer a request for release of attachment, executed under oath, which describes the property to be released from the attachment and:

(1) In the case of an assignee, a copy of the general assignment for the benefit of creditors.

(2) In the case of a trustee, a certified copy of the petition in bankruptcy and a certified copy of the court order approving the trustee's bond.

(b) Within five days after the filing pursuant to subdivision (a), the levying officer shall [serve upon] [mail to] the plaintiff a copy of the papers filed and a notice that the property will be released pursuant to the request for release of attachment unless otherwise ordered by court within 10 days after the date of [service of] [mailing] the notice of request for release of attachment.

(c) Unless otherwise ordered by court, the levying officer shall release the attachment pursuant to the request for release of attachment after the expiration of 10 days from the date of [service of] [mailing]



the notice of request for release of attachment to the plaintiff. Where the property has been taken into custody, it shall be released to the assignee or trustee unless otherwise stated in the request for release of attachment. Where the property has been taken into custody but is to be released to the defendant, it shall be released as provided in subdivision (b) of Section 488.560. Where the property has not been taken into custody, it shall be released as provided in subdivision (c) of Section 488.560.

Comment. Section 493.030 provides a procedure for releasing property from an attachment which has terminated pursuant to Section 493.020. Section 493.030 seeks to provide the levying officer with sufficient information to dispose of the attached property in an expeditious and orderly manner. By giving the plaintiff notice before the release takes place, the plaintiff in an appropriate case is able to protect his interests in preserving his priority. Through its incorporation of the release provisions of Section 488.560, Section 493.030 is also intended to inform garnishees that they are relieved of the duties and liabilities of a garnishee arising from service of the notice and writ of attachment.

#### § 493.040. Reinstatement of attachment lien

493.040. (a) Where an attachment has terminated as a result of the filing against the defendant of a petition initiating a proceeding under the National Bankruptcy Act, the lien of attachment is reinstated with the same effect as if the attachment had not been terminated if the defendant is not finally adjudged a bankrupt in any proceeding under the National Bankruptcy Act and if no arrangement or plan is proposed and confirmed under the National Bankruptcy Act.

(b) The plaintiff may perfect the reinstated lien of attachment by causing the property to be levied upon pursuant to a writ of attachment. The lien of attachment is effective from the effective date of the lien of attachment on the particular property pursuant to the reinstated attachment.

Comment. Subdivision (a) of Section 493.040 is analogous to a proviso contained in Section 67a(1) of the National Bankruptcy Act, 11 U.S.C. § 107(a)(1) (1970). Subdivision (b) makes the reinstatement

provision effective by providing for a relevy upon the property in order to perfect the reinstated lien. The effective date of the lien of the reinstated attachment may relate back to the date of service of a temporary protective order as provided in Section 488.500(1). However, Section 493.040 does not provide for reinstatement or perfection of an unperfected lien of a temporary protective order. See also Section 486.110 (lien of temporary protective order).