

Memorandum 77-56

Subject: Study 39.200 - Enforcement of Judgments (Writ of Execution;
Levy Procedures

A copy of the first three articles of Chapter 3 (Execution) and definitions relevant thereto is attached to this memorandum. Most of the material in Articles 1 and 2 (Sections 703.110-703.295) has been tentatively approved at least in substance. Accordingly, the staff intends to discuss only those sections in the first two articles that are noted below unless someone has a problem with a particular section.

The Commission has not previously considered Article 3 (Method of Levy). These sections have been drafted to implement the decision at the April 1977 meeting that the Enforcement of Judgments Law should be self-sufficient and should not cross-refer to the Attachment Law. The substance of the levy provisions is essentially the same as existing law. (A copy of prior and existing law is attached as Exhibit 1. You may also want to refer to the Attachment Law.) Where the procedures vary, the Comment to the section indicates the change. The definitions relevant to the various levy procedures are contained in the portion of Chapter 1 which is also attached hereto.

§ 703.230. Levy on property in private place

Section 703.230 [Section 703.220 in a previous draft] provides a procedure for obtaining a court order permitting the levying officer to levy on property in a private place. David Turnoy and Patricia Tenoso of the Western Center on Law and Poverty have submitted a memorandum of comments on the draft statute (dated June 30, 1977), part of which objects to this section as follows:

CCP § 703.220 would provide that if any property sought to be levied upon is located in a private place, the judgment creditor shall apply ex parte to the court for an order directing the levying officer to seize the property. The court may grant the order only if the creditor shows there is probable cause to believe that property subject to levy is located there. This provision is new and is not based on prior law. We believe such a provision may violate due process, the Fourth Amendment prohibition against unreasonable search and seizure, and the right to privacy.

Recent cases indicate that such a provision may be unconstitutional. Camara v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1827, 18

L.Ed.2d 930 (1967), involved a housing inspector acting under the San Francisco housing code. He sought inspection of a lessee's premises; the lessee refused and was subsequently convicted. The court reversed, holding that the warrantless inspection was an unconstitutional search. See v. Seattle, 387 U.S. 541, 87 S.Ct. 1737, 18 L.Ed.2d 943 (1967), applied the Camara rule to a case where a fire department inspector sought inspection of a commercial warehouse. To meet these holdings CCP §§ 1822.50, et seq., established an inspection warrant which may be issued by a court only for cause, after the applicant has submitted an affidavit, and the judge has examined the applicant and other witnesses.

The provision in CCP § 703.220 may not seem objectionable to some because the court may grant the order only if the creditor shows that there is probable cause. But what is objectionable is that the order is granted ex parte, i.e., the judgment debtor has no say in the matter. It would be more reasonable if a process similar to that followed under CCP § 1822.50 were established for levying on property in a private place, i.e., requiring the applicant to prepare an affidavit and having the judge examine the applicant and other witnesses before issuing the order.

The intent of Section 703.230 was to conform to the search warrant decisions under the Fourth Amendment such as Camara. As the Comment to Section 703.230 states, it is based on comparable provisions in the claim and delivery law which in turn were designed to comply with the decision in Blair v. Pitchess, 5 Cal.3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971). Blair noted that the prohibition against unreasonable searches and seizures applied to civil as well as criminal cases and held that "a search incident to the execution of claim and delivery process is unreasonable unless it is supported by a warrant issued by a magistrate upon a showing of probable cause." Id. at 273.

The model recommended by the Western Center memorandum--Code Civ. Proc. §§ 1822.50-1822.57--applies to building code inspections and, from its date of enactment, would appear to have been enacted to comply with Camara, which arose out of San Francisco. The staff does not see that the recommended model is significantly different from Section 703.230. Section 1822.51 provides:

An inspection warrant shall be issued only upon cause, supported by affidavit, particularly describing the place, dwelling, structure, premises, or vehicle to be searched and the purpose for which the search is made. In addition, the affidavit shall contain either a

statement that consent to inspect has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent.

Section 1822.52 provides in part:

Cause shall be deemed to exist if . . . there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle.

Section 1822.53 provides:

Before issuing an inspection warrant, the judge may examine on oath the applicant and any other witness, and shall satisfy himself of the existence of grounds for granting such application. [Emphasis added.]

The warrant issuance procedure of Sections 1822.50-1822.57 is, like that provided by Section 703.230, ex parte. An examination of the applicant under oath is not required nor is the testimony of witnesses required. If the court were not satisfied under Section 703.230, nothing requires issuance of the order. In short, the staff is confident that Section 703.230 comports with constitutional requirements.

There is a collateral issue, however. This remedy may be viewed as a protective measure and also as a measure facilitating levy on property which otherwise it would be unconstitutional to levy upon. Two other remedies are available under the draft statute by which property in a private place may be subject to the reach of judgment creditors. Section 703.260 provides for the issuance of a turnover order, enforceable by contempt. Article 1 of Chapter 5 (Sections 705.110-705.190) provides for the examination of the judgment debtor and the issuance of an order applying the property toward the satisfaction of the judgment, which order is similarly enforceable by contempt. It should also be remembered that enforcement of a money judgment by a writ of execution is distinct from enforcement of a judgment for possession of personal property by way of a writ of possession in that the money judgment does not give the creditor a right to specific property as does a judgment in an action for specific recovery. In view of the alternatives and the lesser importance of the search warrant type of order upon execution, the Commission may wish to delete this provision.

Before a decision is made to delete this provision, the Commission should be aware of the old case law concerning the authority of the

levying officer to reach property in what would now be designated a "private place." In *People v. Sylva*, 143 Cal. 62, 76 P. 814 (1904), the sheriff and the attorney for the creditor obtained a key from a small boy on the debtor's premises and entered the debtor's house. The court held that an officer charged with the duty of enforcing a judgment by execution has the right to enter the premises of the debtor if he can do so peaceably and that he may take with him such persons as he may need to assist him. In *Green v. Palmer*, 15 Cal. 411, 418 (1860), it was stated that seizure of a bag of gold from the hands of the debtor was permissible although it would not be if the gold had been "upon his person." The Marshal's Manual suggests that it is permissible to break open a garage unless it is connected to a dwelling.

§ 703.240. Interest reached by garnishment

This provision has been substantially revised since it was last considered in order to implement the Commission's decision to provide for a limited interrogatory to the garnishee and to make more specific the rights of the garnishee to resist the garnishment on the grounds that the property is not subject to execution or is exempt.

§ 703.295. Return of writ of execution

When the principles concerning issuance, levy, duration, and return of writs of execution were outlined in the discussion at the March 1977 meeting, it was suggested that, if the writ is not delivered to the levying officer, it should be presumed to be returned at the end of one year and 90 days (the maximum life of a writ under the draft). However, we have not drafted such a provision because it seems unnecessary. The creditor may redeliver a writ to the clerk that has not been delivered to the levying officer. After the expiration of 90 days from issuance of the writ, under the scheme set forth in the draft statute, the creditor may obtain the issuance of another writ anyway. See Section 703.120(c).

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1

Execution Levy Provisions of Former Law

(Former Code Civ. Proc. §§ 541 [as enacted by 1972 Cal. Stats., Ch. 550, § 16] and 542 [as amended by 1970 Cal. Stats., Ch. 1523, § 4]--both sections repealed by 1974 Cal. Stats., Ch. 1516, § 12, operative Jan. 1, 1977, by force of 1975 Cal. Stats., Ch. 200, § 2.)

541. Securities, as defined in the Commercial Code, shall be levied upon as provided by Division 8 (commencing with Section 8101) of the Commercial Code.

542. The sheriff, constable, or marshal, to whom the writ is directed and delivered, must, upon receipt of instructions in writing, signed by the plaintiff or his attorney of record, and containing a description of the property, and in the case of real property or growing crops the name of the record owner of the real property to be attached, or upon which the crops are growing, execute the same without delay, and if the undertaking mentioned in Section 540 of this code be not given, as follows:

1. Real property, standing upon the records of the county in the name of the defendant, must be attached, by recording with the recorder of the county a copy of the writ, together with a description of the property attached, and a notice that it is attached, and by serving an occupant of the property, if there is one upon the property at the time service is attempted, with a similar copy of the writ, description and notice, or if there is no occupant then on the property, then, by posting the same in a conspicuous place on the property attached. Service upon the occupant may be made by leaving said copy of the writ, description and notice with the occupant personally, or, in his absence, with any person, of suitable age and discretion, found upon the property at the time service thereof is attempted and who is either an employee or agent of such occupant or a member of his family or household. Where the property described in the notice consists of more than one distinct lot, parcel or governmental subdivision and any of such lots, parcels, or governmental subdivisions lie with relation to any of the others so as to form one or more continuous, unbroken tracts, one service or posting need be made as to each such continuous, unbroken tract.

1a. Growing crops (which, until severed, shall be deemed personal property not capable of manual delivery), growing upon real property standing upon the records of the county in the name of the defendant, must be attached by recording with the recorder of the county a copy of the writ, together with a description of the growing crops to be attached, and of the real property upon which the same are growing, and a notice that such growing crops are attached in pursuance of the writ, and by serving an occupant of the real property, if

there is one upon the real property at the time service is attempted, with a similar copy of the writ, description and notice, or if there is no occupant then on the real property, then, by posting the same in a conspicuous place on the real property. Service upon the occupant may be made by leaving said copy of the writ, description and notice with the occupant personally, or, in his absence, with any person, of suitable age and discretion, found upon the real property at the time service thereof is attempted and who is either an employee or agent of such occupant or a member of his family or household. Where the real property described in the notice consists of more than one distinct lot, parcel or governmental subdivision, and any of such lots, parcels or governmental subdivisions lie with relation to any of the others so as to form one or more continuous unbroken tracts, one service or posting need be made as to each such continuous unbroken tract.

Whenever growing crops have been attached under the provisions of this subdivision, which will greatly deteriorate in value, unless properly cultivated, cared for, harvested, packed or sold, the court issuing such writ, upon application of the person in whose favor the writ runs, and after due notice to the owner of said property, may direct the sheriff to take possession of said property and to cultivate, care for and preserve the same and, when necessary, harvest, pack and sell such property. Any sale of such property shall be made in the same manner that property is sold on execution and the proceeds must be retained by the sheriff to be applied to the satisfaction of any judgment which may be recovered in the action in which said writ is issued. The court shall order said applicant to pay such expenses in advance if the court may deem it proper, or may direct that the whole or any part of such expenses be paid from the proceeds of any sale of such property.

2. Real property, or any interest therein, belonging to the defendant, and held by any other person, or standing on the records of the county in the name of any other person, must be attached in the same manner as is real property standing upon the records of the county in the name of the defendant by the provisions of subdivision 1 of this section and the notice of attachment shall state that the real property therein described, and any interest of the defendant therein held by or standing on the records of the county in the name of such other person (naming him), are attached. In addition, a similar copy of the writ, description and notice shall be delivered to such other person, or his agent, if known and within the county, or left at the residence of either, if within the county. The recorder must index such attachment when recorded, in the names, both of the defendant and of the person by whom the property is held or in whose name it stands of record.

2a. Growing crops (which, until severance, shall be deemed personal property not capable of manual delivery), or any interest therein, belonging to the defendant, and growing upon real property held by any other person or standing upon the records of the county in the name of any other person, must be attached in the same manner as growing crops growing upon real property standing upon the records of the

county in the name of the defendant are attached by the provisions of subdivision 1a of this section, and the notice of attachment shall state that the crops therein described or any interest of the defendant therein, held by, or standing upon the records of the county in the name of, such other person (naming him), are attached in pursuance of the writ. In addition, a similar copy of the writ, description and notice shall be delivered to such other person, or his agent, if known and within the county, or left at the residence of either, if known and within the county. The recorder must index such attachment when recorded, in the names of both the defendant and of the person by whom the real property is held, or in whose name it stands on the record.

Whenever growing crops have been attached under the provisions of this subdivision, which will greatly deteriorate in value unless properly cultivated, cared for, harvested, packed or sold, the court issuing such writ, upon application of the person in whose favor the writ runs, and with or without notice as the court directs to the owner of said property, may direct the sheriff to take possession of said property and to cultivate, care for and preserve the same and, when necessary, harvest, pack and sell such property. Any sale of such property shall be made in the same manner that property is sold under execution and the proceeds must be retained by the sheriff to be applied to the satisfaction of any judgment which may be recovered in the action in which said writ is issued. The court shall order said applicant to pay such expenses in advance if the court may deem it proper, or may direct that the whole or any part of such expenses be paid from the proceeds of any sale of such property.

8. Personal property, capable of manual delivery, in the possession of the defendant, must be attached by taking it into custody. When the personal property is used as a dwelling, such as a house trailer, mobile home, or boat, the same is to be attached by placing a keeper in charge of the property, at plaintiff's expense, for at least two (2) days. At the expiration of said period the officer shall remove its occupants, and take the property into his immediate custody, unless other disposition is made by the court or the parties to the action. Whenever a levy under attachment or execution shall be made on personal property, other than money, or a vehicle required to be registered under the Vehicle Code belonging to a going concern, then the officer making the levy must, if the defendant consents, place a keeper in charge of said property levied upon, at plaintiff's expense, for at least two days, and said keeper's fees must be prepaid by the levying creditor. During said period defendant may continue to operate in the ordinary course of business at his own expense provided all sales are for cash and the full proceeds are given to the keeper for the purposes of the levy unless otherwise authorized by the creditor. After the expiration of said two days the sheriff, constable, or marshal shall take said property into his immediate possession unless other disposition is made by the court or the parties to the action.

4. In cases where the sheriff, constable, or marshal is instructed to take into possession personal property capable of manual delivery, whether the same is to be placed in a ware-

house or in custody of a keeper, the sheriff, constable or marshal shall require, as a prerequisite to the taking of such property, that in addition to written instructions the plaintiff or his attorney of record deposit with the sheriff, constable or marshal, a sum of money sufficient to pay the expenses of taking and keeping safely said property for a period not to exceed 15 days. In the event that a further detention of said property is required, the sheriff, constable or marshal must, from time to time, make written demand upon the plaintiff or his attorney for further deposits to cover estimated expenses for periods not to exceed five days each. Such demand must be served as provided in Section 1011 of this code, or by depositing such notice in the post office in a sealed envelope, as first-class registered mail, postage prepaid, addressed to the person on whom it is served at his last known office or place of residence. In the event that the money so demanded is not paid, the sheriff, constable or marshal shall release the property to the person or persons from whom the same was taken. There shall be no liability upon the part of the sheriff, constable or marshal to take or hold personal property unless the provisions of this section shall have been fully complied with. There shall be no liability upon the part of the sheriff, constable or marshal, either to the plaintiff or the defendant for loss by fire, theft, injury or damage of any kind to personal property capable of manual delivery while in the possession of the sheriff, constable or marshal either in a warehouse or in the custody of a keeper or en route to or from a warehouse unless the sheriff, constable or marshal shall be negligent in his care or handling of the property.

5. With the exception of earnings of the defendant which are exempt as provided in Section 690.6, debts, credits, judgments, and other personal property not capable of manual delivery shall be attached by leaving with the persons owing such debts, or having in his possession, or under his control, such credits and other personal property, or with his agent or, in the case of a corporation, with the president of the corporation, vice president, secretary, assistant secretary, cashier, or managing agent thereof, a copy of the writ, and, if the demand as stated in the writ does not exceed three hundred dollars (\$300) exclusive of interest, attorney's fees and costs, a copy of the complaint in the action from which the writ issued, and, in every case, a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ. However, whenever a judgment has been attached under the provisions of this subdivision, a copy of the writ and notice shall be filed in the action from which the judgment arose and served upon the judgment creditor of such action. However, debts owing to the defendant by any of the following financial institutions: (a) banks; (b) savings and loan associations; (c) title insurance companies or underwritten title companies (as defined in Section 12102 of the Insurance Code); (d) industrial loan companies (as defined in Section 18003 of the Financial Code), maintaining branch offices, or credits or other personal property whether or not the same is capable of manual delivery, belonging to the defendant and in the possession of or under the control of such financial institution shall be attached by leaving a copy of the writ and the notice, together with a copy of the

complaint if required hereunder, with the manager or other officer of such financial institution at the office or branch thereof at which the account evidencing such indebtedness of the defendant is carried, or at which such financial institution has credits or other personal property belonging to the defendant in its possession or under its control; and no attachment shall be effective as to any debt owing by such financial institution if the account evidencing such indebtedness is carried at an office or branch thereof not so served, or as to any credits or other personal property in its possession or under its control at any office or branch thereof not so served.

6. When checks, drafts, money orders and other orders for the withdrawal of money from a banking corporation or association, the United States, any state or public entity within any state, payable to the defendant or judgment debtor on demand, come into the possession of a levying officer under a writ of attachment or execution, the sheriff, constable, or marshal, to whom the writ is directed and delivered, shall promptly thereafter endorse the same and present, or cause the same to be presented, for payment. The sheriff, constable, or marshal shall endorse such check, draft, money order or other order for the withdrawal of money by writing the name of the defendant or judgment debtor thereon and the name and official title of the officer making the levy with the statement that such endorsement is made pursuant to levy of writ of attachment or execution and giving the title of court and cause in which such writ was issued, and such endorsement shall be sufficient endorsement and no banking corporation or association or public entity on which said check, draft, money order or other order for the withdrawal of money is drawn shall incur any liability to any person, firm or corporation by reason of paying to such officer such check, draft, money order or other order for withdrawal of money by reason of such endorsement, nor shall the officer making the levy incur any liability by reason of his endorsing and presenting for and obtaining payment of such check, draft, money order or other order for the payment of money; provided, however, that the funds or credit resulting from the payment of such check, draft, money order or other order for withdrawal of money shall be held by said officer subject to the levy of said writ of attachment or execution. If it appear from the face of such check, draft, money order or other order for the withdrawal of money that the same has been tendered to the defendant or judgment debtor in satisfaction of a claim or demand and that endorsement thereof shall be considered a release and satisfaction by defendant or judgment debtor of such claim or demand, then, in such event, the officer making the levy shall not endorse said check, draft, money order or other order for the withdrawal of money unless the defendant or judgment debtor shall first endorse the same to the officer making the levy; provided, however, that if said defendant shall not endorse said check, draft, money order or other order for withdrawal of money to the officer making the levy, said officer may thereafter hold such check, draft, money order or other order for the withdrawal of money subject to such levy and shall incur no liability to the defendant or judgment debtor or to any other person, firm or corporation for delay in presentation of the same for payment.

5

Execution Levy Provisions of Existing Law

(Code Civ. Proc. § 688, as amended by 1977 Cal. Stats., Ch. 155, § 1 (urgency statute).)

688. (a) All goods, chattels, moneys or other property, both real and personal, or any interest therein, of the judgment debtor, not exempt by law, and all property and rights of property levied upon under attachment in the action, are subject to execution.

(b) All property subject to execution may be levied upon or released from levy in like manner as like property may be levied upon or released from attachment, except that tangible personal property in the possession of the judgment debtor shall always be levied upon in the manner provided by ~~Section 488.320~~ subdivision (c). Notwithstanding the provisions of Title 6.5 (commencing with Section 481.010), service on the judgment debtor of a copy of the writ of execution shall be made either by personal delivery or by mail to the judgment debtor at the address furnished by the judgment creditor. To levy upon any property or debt owed to the judgment debtor which is subject to execution but for which a method of levy of attachment is not provided, the levying officer shall serve upon the person in possession of such property or owing such debt, or his agent (1) a copy of the writ of execution and (2) a notice that such property or debt is levied upon in pursuance of such writ.

(c) *Tangible personal property in the possession of the judgment debtor shall be levied upon by taking such property into custody. Except as otherwise provided in this subdivision, where a levying officer is directed to take property into custody, the levying officer may do so either by removing the property to a place of safekeeping or by installing a keeper. Personal property that is used as a dwelling, such as a house trailer, mobile home, or vessel, shall be levied upon by placing a keeper in charge of the property, at the judgment creditor's expense, for at least two days. At the expiration of such period, the levying officer shall remove the occupants and take exclusive custody of the personal property used as a dwelling, unless other disposition is made by the court or agreed upon by the judgment creditor and the judgment debtor. If the judgment debtor consents, personal*

property of a going business (other than money or a vehicle required to be registered under the Vehicle Code) shall be levied upon by placing a keeper in charge of such property, at the judgment creditor's expense, for at least two days. During such period, the judgment debtor may continue to operate in the ordinary course of business at the judgment debtor's expense provided that all sales are final and are for cash or the equivalent of cash. For the purpose of this subdivision, payment by check is the equivalent of cash payment. The levying officer is not liable for accepting payment in the form of a cash equivalent. The proceeds from all sales shall be given to the keeper for the purposes of the levy unless otherwise authorized by the judgment creditor. At the conclusion of the period during which the business may continue to operate, the levying officer shall take the property into exclusive custody unless other disposition is made by the court or agreed upon by the judgment creditor and the judgment debtor.

~~(c)~~ (d) Until a levy, no property shall be affected by issuance of a writ of execution or its delivery to the levying officer.

~~(d)~~ (e) No levy shall bind any property for a longer period than one year from the date of the issuance of the execution, except a levy on the interests or claims of heirs, devisees, or legatees in or to assets of deceased persons remaining in the hands of executors or administrators thereof prior to distribution and payment. However, an alias execution may be issued on said judgment and levied on any property not exempt from execution.

~~(e)~~ (f) Notwithstanding subdivision (a), no cause of action nor judgment as such, nor license issued by this state to engage in any business, profession, or activity, shall be subject to levy or sale on execution.

~~(f)~~ (g) When a check, draft, money order, or other order for the withdrawal of money from a banking corporation or association, the United States, any state, or any public entity within any state, payable to the defendant on demand, comes into the possession of a levying officer under a writ of execution, the provisions of Section 488.520 are applicable.

Comment. The amendment of subdivision (b) of Section 688 is technical. The first sentence of new subdivision (c) continues the applicability after judgment of the general rule that tangible

personal property in the possession of the judgment debtor is levied upon by taking it into custody which was formerly incorporated by the reference to Section 488.320 in subdivision (b) of Section 688. The second sentence of new subdivision (c), which provides for the levying officer's discretion in the manner of taking custody, is comparable to Section 488.045 applicable to custody under an attachment levy. The third and fourth sentences of new subdivision (c) pertaining to a levy on personal property used as a dwelling continue the second and third sentences of subdivision 3 of former Section 542 (as in effect on December 31, 1976). The fifth, sixth, ninth, and tenth sentences of new subdivision (c) of Section 688 continue the substance of the fourth, fifth, and sixth sentences of subdivision 3 of former Section 542 (as in effect on December 31, 1976). The provision in the fourth sentence of subdivision 3 of former Section 542 requiring prepayment of the keeper's fees by the judgment creditor has not been continued in new subdivision (c) of Section 688 because it was surplus in view of the general provisions for prepayment of fees. See Govt. Code §§ 6100, 24350.5. The seventh and eighth sentences of new subdivision (c) of Section 688 are comparable to a portion of subdivision (a) of Section 488.360 (attachment levy on farm products and inventory of going business) and change former Section 542 by permitting payment in the form of a check.

Subdivisions of Section 688 formerly designated (c)-(f) have been renumbered as subdivisions (d)-(g).

CHAPTER 1. SHORT TITLE; DEFINITIONS
[Definitions relevant to Chapter 3.]

§ 701. . . Account debtor

701.____. "Account debtor" means the person who is obligated on an account receivable, chattel paper, or chose in action.

Comment. Section 701.____ is the same as Section 481.020 in the Attachment Law. See the Comment to Section 481.020.

§ 701. . . Account receivable

701.____. "Account receivable" means any right to payment which has been earned for goods sold or leased or for services rendered which is not evidenced by a negotiable instrument, a security, or chattel paper.

Comment. Section 701.____ is the same as Section 481.030 in the Attachment Law. See the Comment to Section 481.030.

§ 701. . . Chattel paper

701.____. "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper. As used in this section, "instrument" means a negotiable instrument, or a security, or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in the ordinary course of business transferred by delivery with any necessary indorsement or assignment.

Comment. Section 701.____ is the same as Section 481.040 in the Attachment Law. See the Comment to Section 481.040.

§ 701. . Chose in action

701.____. "Chose in action" means any right to payment which (a) is not conditioned upon further performance by the defendant or upon any event other than the passage of time, (b) is not an account receivable, (c) is not a deposit account, and (d) is not evidenced by a negotiable instrument, security, chattel paper, or judgment. The term includes a right to payment on a nonnegotiable instrument which is otherwise negotiable within Division 3 (commencing with Section 3101) of the Commercial Code but which is not payable to order or to bearer.

Comment. Section 701.____ is substantially the same as Section 481.050 [as proposed to be amended in Memorandum 77-48]. See the Comment to Section 481.050. It should be noted that the limitation on choses in action which may be attached to those which arise out of the conduct of a trade, business, or profession does not, by virtue of Section 701.____, apply to a levy of execution.

§ 701. . Deposit account

701.____. "Deposit account" means any of the following:

- (a) An account in any "bank" described in Section 102 of the Financial Code.
- (b) An account in any state or federal savings and loan association. As used in this paragraph, "account" includes investment certificate, share account, and withdrawable share.
- (c) An account for funds received from a member of a credit union.
- (d) For the purposes of the exemption provided by Section 707.380, an inmate's trust account or similar account in which the funds of a person confined in any prison or facility under the jurisdiction of the Department of Corrections or the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility.

Comment. Subdivisions (a), (b), and (c) of Section 701.____ are the same as Section 481.080 in the Attachment Law. Subdivision (d) is

derived from former Section 690.21 and has the effect of treating an inmate's trust account in the same manner as deposit accounts and money for purposes of the exemption provided by Section 707.380.

27858

§ 701. . Document

701.____. "Document" means a "document of title" as defined by subdivision (15) of Section 1201 of the Commercial Code.

Comment. Section 701.____ is the same as Section 481.090 in the Attachment Law. See the Comment to Section 481.090.

27860

§ 701. . Motor vehicle

701.____. "Motor vehicle" means a "motor vehicle" as defined by Section 415 of the Vehicle Code.

Comment. Section 701.____ is the same as Section 481.150 in the Attachment Law. See the Comment to Section 481.150.

27861

§ 701. . Negotiable instrument

701.____. "Negotiable instrument" means a "negotiable instrument" as defined by Section 3104 of the Commercial Code.

Comment. Section 701.____ is the same as Section 481.160 in the Attachment Law.

27862

§ 701. . Security

701.____. "Security" means a "security" as defined by Section 8102 of the Commercial Code.

Comment. Section 701.____ is the same as Section 481.210 in the Attachment Law.

§ 701. Vessel.

701.____. "Vessel" means a "vessel" as defined by subdivision (a) of Section 9840 of the Vehicle Code.

Comment. Section 701.____ defines "vessel" by incorporating the definition in the Vehicle Code. This definition is broader than the definition of "vessel" in Section 481.230 of the Attachment Law, which is restricted to "numbered vessels."

CHAPTER 3. EXECUTION

Article 1. Property Subject to Execution; Writ of Execution§ 703.110. Property subject to execution; exceptions

703.110. (a) Except as otherwise provided in subdivision (b) and in Chapter 7 (commencing with Section 707.110), the following property is subject to execution for the enforcement of a judgment for the payment of money:

(1) Property owned by the judgment debtor at the time of levy of a writ of execution.

(2) Real property no longer owned by the judgment debtor but subject to a judgment lien in favor of the judgment creditor when owned by the judgment debtor.

(3) Property no longer owned by the judgment debtor but subject to an attachment lien in favor of the judgment creditor when owned by the judgment debtor.

(b) The following types of property subject to other procedures for the enforcement of a judgment for the payment of money but are not subject to execution:

(1) An alcoholic beverage license that is transferable under Article 5 (commencing with Business and Professions Code Section 24070) of Chapter 6 of the Alcoholic Beverage Control Act.

(2) Money (other than earnings) owing and unpaid by a public entity to the judgment debtor.

(3) The interest of a partner in specific partnership property where the partner, but not the partnership, is the judgment debtor.

(4) A cause of action that is the subject of a pending action or special proceeding.

(5) A judgment in favor of the judgment debtor, prior to the expiration of the time for appeal from such judgment, or if an appeal is filed, prior to the final determination of the appeal.

(6) A right to future payments not evidenced by a writing.

Comment. Section 703.110 differs from provisions of former law which purported to prescribe the property subject to execution. See

subdivision 1 of former Section 682 (personal property, earnings, real property, and real property subject to judgment lien) and former Section 688 ("All goods, chattels, moneys or other property, both real and personal, or any interest therein, of the judgment debtor, not exempt by law, and all property and rights of property levied upon under attachment in the action, are subject to execution."). Subdivision (a) prescribes the general classes of property which may be reached by a writ of execution.

The classes of property described in subdivision (a) are subject to the exceptions provided in subdivision (b) and in Chapter 7 (commencing with Section 707.110) (property exempt from enforcement of a money judgment). Property which is exempt without making a claim under Chapter 7 is not subject to execution. Property which is exempt only if a claim is made therefor under Chapter 7 is subject to execution until it is shown to be exempt. See Article 3 (commencing with Section 703.310) for methods of levy on particular types of property and Chapter 4 (commencing with Section 704.110) for provisions applicable to wage garnishment.

The types of property which may be reached by levy under a writ of execution are, of course, circumscribed by the general principles determining the classes of property that may be applied toward the satisfaction of a money judgment by any means. Many of these principles are uncodified. See Section 707.120 (property subject to enforcement of money judgment) and the Comment thereto.

Subdivision (b) prescribes certain types of property which are not subject to execution; they are, however, subject to enforcement of a money judgment through some other procedure in Chapter 5. In Chapter 5, see Section 705.320 (receiver to transfer alcoholic beverage license), Article 4 (commencing with Section 705.410) (money, other than wages, owing and unpaid by a public entity to the judgment debtor), Article 5 (commencing with Section 705.510) (charging orders against interest of debtor-partner in partnership property), Article 6 (commencing with Section 705.610) (lien on cause of action and judgment), Article 7 (commencing with Section 705.710) (rights to future payments, including payments and wages due from the federal government, rents, commissions,

surplus amount of spendthrift trusts, payments due from patent or copyright).

By precluding the levy under a writ of execution on rights to future payments not evidenced by an instrument, paragraph (6) of subdivision (b) overrules *Meacham v. Meacham*, 262 Cal. App.2d 248, 68 Cal. Rptr. 746 (1968), insofar as that decision permitted the levy upon and outright sale of the debtor's right to royalties from the marketing of an invention.

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§ 703.120. Application for writ of execution

703.120. (a) After the entry of a judgment for the payment of money, upon the application of the judgment creditor, the court clerk shall issue a writ of execution.

(b) A separate writ of execution shall be issued for each county in which execution is sought.

(c) Writs of execution may be issued successively upon further application until the judgment is satisfied; however, no writ of execution may be issued to a county until the expiration of 90 days after the issuance of a prior writ of execution to that county.

(d) Notwithstanding subdivision (a), where the judgment creditor seeks a writ of execution to enforce a judgment or order for the support of a child or spouse, the judgment creditor shall apply to the court ex parte, or on noticed motion if the court so directs, for an order directing issuance of a writ of execution.

Comment. Subdivision (a) of Section 703.120 is derived from the first sentence of former Section 681. Subdivision (b) continues the substance of the first and last sentences of former Section 687. Where writs of execution are issued to two or more counties, the judgment creditor has a special duty to see that an excessive levy is not made. Cf. White Lighting Co. v. Wolfson, 68 Cal.2d 336, 347-50, 438 P.2d 345, ___, 66 Cal. Rptr. 697, ___ (1968) (excessive attachment as abuse of process).

Subdivision (c) differs significantly from prior law which did not permit more than one writ to be outstanding in one county. See subdivision (b) of former Section 683; 32 Op. Cal. Att'y Gen. 22 (1958).

Subdivision (c) permits the issuance of a writ of execution to a particular county once every 90 days. Section 703.210(b) provides a 90-day period during which property may be levied upon under the writ. Hence, only one writ at a time provides authority for levy in a given county although as many as five or six writs might be outstanding. This arrangement provides the judgment creditor with needed flexibility; one writ may be retained by the levying officer for the purpose of completing a sale while another writ may be issued to reach newly discovered property. This is particularly important in a case where there is a need to levy upon other property in a county where real property has been levied upon since [Section 703.520(f)--see staff draft of the Tentative Recommendation Relating to Redemption From Execution and Foreclosure Sales of Real Property attached to Memorandum 77-40] delays the sale of real property for 90 days. Subdivision (c) eliminates the need under former law for a return and redelivery of the writ for purposes of sale, after which the levying officer would make an alias return. See subdivision (c) of former Section 683.

Subdivision (d) continues the practice developed pursuant to Civil Code Section 4380 (formerly Civil Code Section 139 and later Civil Code Section 4540) which provides that courts have discretion in determining the manner of enforcing installment decrees for support. *Messenger v. Messenger*, 46 Cal.2d 619, 630, 297 P.2d 988, ___ (1956); *Jackson v. Jackson*, 51 Cal. App.3d 363, 124 Cal. Rptr. 101 (1975); *Slevats v. Feustal*, 213 Cal. App.2d 113, 28 Cal. Rptr. 517 (1963). It appears that the usual practice has been to apply ex parte to the court for an order directing the issuance of the writ of execution (see 5 B. Witkin, *California Procedure Enforcement of Judgment* § 9, at 3394 (2d ed. 1971); *Simonet v. Simonet*, 265 Cal. App.2d 612, 616, 69 Cal. Rptr. 806, ___ (1968)), but some courts have indicated a preference for application on noticed motion (*Martin v. Martin*, 5 Cal. App.3d 749, 755, 85 Cal. Rptr. 339, ___ (1970); *Cochrane v. Cochrane*, 57 Cal. App.2d 937, 939, 135 P.2d 714, ___ (1943)). Subdivision (d) anticipates that applications normally will be made ex parte but recognizes that notice may be required in the discretion of the court.

The provisions of this section are, of course, subject to limitations provided elsewhere. See, e.g., Sections 702.120-702.140 (time for enforcement), 702.170 (stay of execution), 702.190 (enforcement after death of judgment debtor).

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§ 703.130. Contents of writ of execution

703.130. The writ of execution shall state the amount of the judgment and the amount actually due thereon and shall require the levying officer to satisfy the judgment in the manner provided by law.

Comment. Section 703.130 prescribes the essential elements of a writ of execution. It is derived from a portion of the introductory paragraph and subdivision 1 of Section 682 and of former Sections 682.2 and 684. See Section 703.210 (execution of writ). The writ of execution is directed to the levying officer and provides the basis of the levying officer's authority under this chapter. See Section 703.220 providing the contents of the notice of levy which is directed to the person served in the process of levy.

The technical requirements for the writ provided in former Sections 682 and 682.1 have not been continued in Section 703.130. The Judicial Council is given the responsibility of prescribing forms by Section 702.290(b). The requirement that the writ state the kind of money or currency in which the judgment is payable is not continued; Section 667 has been revised to require all money judgments to be made payable in dollars. The reference to earnings has been deleted. Levy on earnings of an employee is accomplished pursuant to Chapter 4 (commencing with Section 704.110). The statute no longer requires levy first on personalty. The judgment creditor is permitted to designate the order of levy in the instructions to the levying officer. See Sections 702.230 and 703.210. Former law required satisfaction of the judgment first out of property previously attached in the action, then out of personalty, and finally out of reality. See former Section 684.2 and subdivision 1 of former Section 682.

Article 2. General Levy Provisions

§ 703.210. Delivery and execution of writ, instructions

703.210. (a) The judgment creditor shall deliver the writ of execution to the levying officer to whom the writ is directed, together with written instructions containing a description of the property to be levied upon and a designation of persons to be served.

(b) The levying officer shall execute the writ of execution without delay by levying upon sufficient property subject to execution to satisfy the judgment and any accrued costs, interest, and charges of the levying officer entered on the writ. The levying officer may not levy upon any property under the writ after the expiration of 90 days from the date the writ was issued.

(c) If the judgment creditor does not deliver the writ of execution to the levying officer, the judgment creditor may redeliver the writ to the court clerk.

Comment. Subdivisions (a) and (b) of Section 703.210 are based in part on the first portion of the first sentence of former Section 691. See also subdivision (b) of Section 488.030. Subdivisions (a) and (b) reflect the former practice, i.e., that the levying officer will not act until the judgment creditor delivers the writ of execution and written instructions to levy upon specific property. See Section 262 (sheriff not liable for following written instructions of a party or his attorney). In addition, the judgment creditor's instructions may designate the order of levy. See Section 702.230. The mandatory order of levy provided in subdivision 1 of former Section 682 has not been continued. See the Comment to Section 703.130. See also Sections 702.240 (deposit of fees), 702.250 (costs, interest, and levying officer's charges), 703.110 (property subject to execution). The second sentence of subdivision (b) prescribes the time within which property may be levied upon under a writ of execution. The 90-day period runs from the date of issuance of the writ whereas, under subdivision (a) of former Section 683, the writ could be levied within 60 days of its delivery to the levying officer.

Subdivision (c) permits the judgment creditor to redeliver a writ of execution to the court clerk if it has not been delivered to the levying officer. During the first 90 days after its issuance, an outstanding writ prevents the issuance of another writ of execution even though it has not been delivered to the levying officer. See Section 703.120 (issuance of writ of execution).

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§ 703.220. Notice of levy

703.220. The notice of levy shall inform the person who is served with the copy of the writ of execution and a notice of levy as provided in Article 3 (commencing with Section 703.310) of all of the following:

- (a) The capacity in which the person is served.
- (b) The property which is levied upon.
- (c) The person's rights under the levy, including the right to make a third-party claim pursuant to Chapter 6 (commencing with Section 706.110) and the right to claim an exemption pursuant to Chapter 7 (commencing with Section 707.110).
- (d) The person's duties under the levy.

Comment. Section 703.220 provides the contents of the notice of levy. The Judicial Council is given the responsibility of prescribing the form of the notice of levy. See Section 702.290(b). The notice of levy of execution is similar to the notice of attachment provided by Section 488.020. Under prior law, the notice of levy was recognized by Section 688(b), but there was no provision for an official form of the notice. Instead, the form of the notice of levy was determined by the levying officers. See, e.g., Marshal's Manual §§ 302.1, 344.1 (J. Matarazzo ed., rev. Jan. 1, 1977); Cal. State Sheriffs' Association, Civil Procedural Manual §§ 7.34, 7.37, 7.67, 7.71 (1969). The notice of levy is directed to the person being served whereas the writ of execution is directed to the levying officer. See Section 703.130 (contents of writ of execution). The judgment creditor must supply written instructions to the levying officer which provide sufficient information to complete the notice of levy. See Sections 702.230, 703.310.

§ 703.230. Levy on property in private place

703.230. If any property sought to be levied upon is located in a private place, the judgment creditor shall apply ex parte to the court from which the writ of execution was issued for an order directing the levying officer to seize the property in such place. The court may issue such order only if the judgment creditor establishes that there is probable cause to believe that property subject to levy is located there.

Comment. Section 703.230 is based on comparable provisions set forth in Sections 512.060 and 512.080 relating to claim and delivery. See Comment to Section 512.010(b) concerning "private place."

§ 703.240. Interest reached by levy on property in possession of third person or debts owing by third person; duties; liability

703.240. (a) A levy under a writ of execution by service of the writ and the notice of levy on a person other than the judgment debtor reaches the judgment debtor's interest in tangible personal property which is subject to execution and is in the possession of the person served and any debt which is subject to execution and is owing to the judgment debtor by the person served at the time of service.

(b) Within 10 days after the levy, the person served shall deliver possession of any tangible personal property which is subject to execution and in which the judgment debtor has an interest if the person served claims no right of possession thereof, shall pay to the levying officer any debt which is subject to execution and is due and owing to the judgment debtor, and shall execute any documents necessary to effect the transfer or payment. The receipt of the levying officer is a sufficient discharge for the amount paid.

(c) The levying officer, at the time of service, shall request the person served to give the levying officer a memorandum which the person shall mail or deliver to the levying officer within 10 days after service. The memorandum shall be executed under oath and shall contain the following information:

(1) A description of any tangible personal property which is subject to execution and in which the person knows or has reason to believe the judgment debtor has an interest and a description of the interest.

(2) A statement of the amount and the terms of any debt which is subject to execution and is owed to the judgment debtor.

(3) Whether the person possesses any tangible personal property in which the judgment debtor has an interest which is not subject to execution or owes a debt to the judgment debtor which is not subject to execution and, if so, a description of such property or a statement of the amount and the terms of such debt.

(4) A statement of any claims or rights of other persons that are prior to the lien of the judgment creditor.

(5) Whether the tangible personal property or debt is claimed to be exempt from enforcement of a judgment for the payment of money.

(d) Upon receipt of the memorandum, the levying officer shall promptly mail a copy thereof to the judgment creditor.

(e) If the person served fails to comply with subdivision (b) or (c), the levying officer shall so state at the time the writ is returned and the person may, in the court's discretion, be required to pay the costs of any proceedings taken for the purpose of obtaining payment of the debt or possession of the property or the information required by this section.

Comment. Section 703.240 provides for garnishment of third persons holding property of the judgment debtor or owing debts to the judgment debtor and specifies the duties and liabilities of the garnishee.

Former law contained two provisions for garnishment. Former Section 688(b) provided for levy of execution in the same manner as like property not in the possession of the debtor would be levied upon under a writ of attachment which in many cases would be garnishment. See, e.g., Sections 488.330 (tangible personal property in possession of third person), 488.370 (accounts receivable, choses in action), 488.380 (chattel paper in possession of third person), 488.390 (deposit accounts). Former Section 688(b) also provided generally that, where a method of levy of attachment was not provided, property of the judgment debtor in

a third person's possession, or a debt owed to the judgment debtor, was levied upon by service on the third person of a copy of the writ of execution and a notice of levy. See Sections 703.330 (levy on tangible personal property in possession of third person), 703.340 (levy on intangible personal property).

Subdivision (b) is derived in part from former Section 716 which permitted a person indebted to the judgment debtor to pay the debt to the levying officer after issuance of a writ of execution even if there had not yet been a levy thereunder. See *Butler v. San Francisco Gas & Elec. Co.*, 168 Cal. 32, 141 P. 818 (1914). Even if the garnishee refuses to turn the property over or pay the debt to the levying officer, the service of the copy of the writ of execution and notice of levy creates a lien on the property or debt. See Section 703.250; *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212, 100 P. 242, ___ (1909).

Subdivision (c) requires the garnishee to provide a sworn statement describing (1) any property in which the garnishee knows or has reason to believe the judgment debtor has an interest and (2) any debt which the garnishee knows or has reason to believe is owing to the judgment debtor. This memorandum is more extensive than the memorandum required of an attachment garnishee under Section 488.080(b) and provides an inexpensive alternative to examination proceedings under Section 705.130. It is designed to provide the judgment creditor with the information needed to be able to select the proper manner of enforcing the judgment. Of course, the garnishee is not precluded from supplying information in addition to that required in the memorandum.

Under subdivision (e), a garnishee who fails to deliver property, to pay over money due and owing, or to provide the required information, may be assessed the costs of proceedings instituted to compel compliance. See Sections 705.130 and 705.160 (examination of third person indebted to judgment debtor and order directing application of debt to satisfaction of judgment creditor's judgment), 705.210-705.270 (enforcement of garnishee's liability by suit). The levy does not, of course, create a lien on property described in the memorandum that is not subject to execution.

§ 703.250. Lien of execution

703.250. (a) Levy under a writ of execution creates a lien on the property levied upon for a period of one year from the date of levy.

(b) Notwithstanding subdivision (a), the lien upon an interest in personal property in the estate of a decedent is effective until the decree distributing the interest has become final.

(c) Until levy, property is not affected by issuance of a writ of execution or its delivery to the levying officer.

Comment. Section 703.250 supersedes subdivisions (d) and (e) of former Section 688.

Subdivision (a) provides a one-year execution lien running from the date of levy on the specific property whereas, under subdivision (d) of former Section 688, the lien did not continue longer than one year from the date of issuance of the writ.

Subdivision (b) continues the substance of the last half of the first sentence of former Section 688(b).

Subdivision (c) is the same in substance as subdivision (d) of former Section 688.

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§ 703.260. Order directing transfer of property or documents by judgment debtor

703.260. (a) If a writ of execution is issued, the judgment creditor may apply to the court ex parte, or on noticed motion if the court so directs, for an order directing the judgment debtor to transfer to the levying officer:

(1) Possession of the property to be levied upon where such property is sought to be levied upon by taking it into custody.

(2) Possession of any documentary evidence of title to any property of or any debt owed to the judgment debtor which is sought to be levied upon. An order for the transfer of possession of documentary evidence of title issued pursuant to this paragraph may be enforced by the levying officer when the property or debt is levied upon or at any time thereafter.

(b) The order shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court.

Comment. Section 703.260 is analogous to Section 482.080 (providing for turnover orders when a writ of attachment is issued) except that subdivision (a) specifies that the application for a turnover order is to be made ex parte unless the court directs otherwise. In the case of a turnover order in attachment proceedings, the plaintiff is normally already before the court and the nature of those proceedings determine whether the application will be heard ex parte or on notice.

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§ 703.270. Sale of or receiver for perishable property.

703.270. (a) Whenever property is levied upon, the judgment creditor, the judgment debtor, or any third person whose interest has been determined pursuant to Chapter 6 (commencing with Section 706.110), may apply by noticed motion for the order provided in this subdivision. Upon a showing that the property is perishable or will greatly deteriorate or greatly depreciate in value or that for some other reason the interests of the parties will be best served thereby, the court may order that such property be sold or may appoint a receiver or direct the levying officer to take charge of, cultivate, care for, preserve, collect, harvest, pack, or sell such property.

(b) Notwithstanding subdivision (a), if the levying officer determines that property is extremely perishable or will greatly deteriorate or greatly depreciate in value before a court order for the sale of the property could be obtained, the levying officer may take any action necessary to preserve the value of the property or sell the property. The levying officer is not liable for a determination made in good faith under this subdivision.

(c) Any sale of such property shall be made in the same manner provided by Article 4 (commencing with Section 703.510) and the proceeds shall be applied toward the satisfaction of the judgment.

(d) Where a receiver is appointed, the court shall fix the daily fee of the receiver and may order the judgment creditor to pay the fees

and expenses of the receiver in advance or may direct that the whole or any part of the fees and expenses be paid from the proceeds of any sale of the property.

(e) Except as otherwise provided in this section, the provisions of Chapter 5 (commencing with Section 564) and Chapter 5a (commencing with Section 571) of Title 7 govern the appointment, qualifications, powers, rights, and duties of a receiver appointed under this section.

Comment. Section 703.270 is analogous to Section 488.530 in the Attachment Law. The remedy provided by this section is of particular importance where growing crops or recently harvested farm products have been levied upon.

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§ 703.280. Order requiring either release of attached property or its application to the satisfaction of the judgment

703.280. Where any property of the judgment debtor is held under a writ of attachment, the judgment debtor may apply to the court from which the writ of execution was issued upon noticed motion for an order requiring that such property either be executed against and applied to the satisfaction of the judgment or be released from the lien of attachment.

Comment. Section 703.280 is designed to avoid a problem that could otherwise result from the elimination of a fixed order for levy on different types of property. Under former law, a judgment was satisfied first out of property previously attached in the action, then out of personalty, and finally out of realty. See subdivision 1 of former Section 682 and former Section 684.2. To avoid the danger that the judgment creditor might hold attached property for extended periods while searching for other property, Section 703.280 provides a means by which the judgment debtor can compel either the application of the attached property to the satisfaction of the judgment or its release. The lien of attachment continues after judgment until it expires on its own terms or is merged in a judgment lien, execution lien, or the lien of some other postjudgment enforcement procedure. See Section 488.510 (duration of attachment lien); Bagley v. Ward, 37 Cal. 121, 131 (1869); Balzano v. Traeger, 93 Cal. App. 640, 643-44, 270 P. 249, ___ (1928). See Section 702.160 (relation back of liens).

§ 703.290. Release of property from lien and custody

703.290. (a) The levying officer shall release the property from a lien and from custody upon the receipt of a written direction from the judgment creditor or a certified copy of an order to that effect from the court which issued the writ or other process the service of which created a lien on the property, or when otherwise required by this title to release the property.

(b) Where the property to be released has been taken into custody, it shall be released to the person from whom it was taken unless otherwise ordered by the court. If such person cannot be found within the county where the property was levied upon, the levying officer shall retain custody of the property and give notice to such person by registered or certified mail, return receipt requested, sent to such person's last known address, as to where possession of the property may be secured. If, after 30 days from sending the notice, such person has not claimed the property, the levying officer shall sell the property in the manner provided by Article 4 (commencing with Section 703.510) and deposit the proceeds, after first deducting the levying officer's charges, with the county treasurer of the county where the property is located, payable to the order of such person.

(c) Where the property to be released has not been taken into custody, the levying officer shall release the property by issuing a written release and giving notice of release to such person by registered or certified mail, return receipt requested, sent to such person's last known address.

(d) Where the property to be released was levied upon by recording or filing a copy of the writ and notice of levy, the levying officer shall record or file a written notice of release in the same office.

(e) The levying officer is not liable for releasing property in accordance with this section nor is any other person liable for acting in conformity with the release.

Comment. Section 703.290 prescribes the manner of releasing property from a lien and from custody. Under subdivision (b) of former Section 688, the manner of release of attachment was incorporated upon

execution. Section 703.290 is generally similar to Section 488.560 (release of attachment). Subdivision (b), however, provides for property to be sold and the proceeds deposited in the county treasury where the person to whom property is to be released does not appear.

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§ 703.295. Return of writ of execution

703.295. (a) Except as otherwise provided in subdivision (b), the levying officer to whom the writ of execution is delivered shall return the writ of execution to the court from which it was issued at the earliest of the following times:

- (1) One year from the date of the last levy under the writ.
- (2) Not later than 15 days after the last sale is made under the writ.
- (3) When return is requested in writing by the judgment creditor.
- (4) If the writ is not levied within 90 days after its issuance, promptly after the expiration of 90 days after issuance.

(b) If an earnings withholding order has been issued and served upon the employer as provided in Chapter 4 (commencing with Section 704.110) within 90 days after issuance of a writ of execution, the writ of execution shall be returned as provided in Section 704. ____.

Comment. Section 703.295 supersedes subdivisions (a) and (e) of former Section 683 and makes several significant changes in former law. Under Section 703.295, the period at the end of which the writ must be returned runs from the last levy under the writ (which must occur within 90 days after issuance of the writ) rather than from the date the writ was delivered to the levying officer. The provision of former Section 683 that the writ could not be returned before the expiration of 10 days has not been continued. If the writ is levied within 90 days, any sale of property or collection of a debt under the writ must be completed before the expiration of a year from the date of the last levy under that writ. See paragraph (1) of subdivision (a) and Section ____.

The return provisions of this section are incorporated by Sections 708.170(b) and 709.150(b).

Article 3. Method of Levy§ 703.310. Interest in real property

703.310. (a) To levy upon an interest in real property, including a leasehold interest, the levying officer shall record with the office of the county recorder of the county where the real property is located a copy of the writ of execution and a notice of levy.

(b) Where the notice of levy identifies a person, other than the judgment debtor, in whose name the real property in which the judgment debtor has an interest stands upon the records of the county, the recorder shall index the levy when recorded in the names of both the judgment debtor and such other person.

(c) Promptly after recording and in no event more than 15 days thereafter, the levying officer shall mail a copy of the writ of execution and the notice of levy to the judgment debtor and to any other person identified in the writ in whose name the real property in which the judgment debtor has an interest stands upon the records of the county at the address of such other person as shown by the records of the office of the tax assessor of the county where the real property is located.

(d) Promptly after recording and in no event more than 15 days thereafter, the levying officer shall serve one occupant of the real property with a copy of the writ of execution and a notice of levy. If there is no occupant on the real property at the time service is attempted, the levying officer shall post a copy of the writ and the notice in a conspicuous place on the real property. Service upon the occupant may be made by leaving the copy of the writ and the notice with the occupant personally or, in the occupant's absence, with any person, of suitable age and discretion, found upon the real property at the time service is attempted and who is either an employee or agent of the occupant or a member of the occupant's family or household. Where the real property described in the writ consists of more than one distinct lot, parcel, or governmental subdivision and any of such lots, parcels, or governmental subdivisions lie with relation to any of the others so as to form one or more continuous, unbroken tracts, only one service or

posting need be made under this subdivision as to each such continuous, unbroken tract.

(e) A failure to send the copies of the writ and the notices required by subdivision (c) or to post or serve notice pursuant to subdivision (d) does not affect the lien created by the levy.

Comment. Section 703.310, providing the manner of levy of execution upon interests in real property, is comparable to Section 488.310 which provides the manner of levy upon interests in real property pursuant to the Attachment Law and which was incorporated by former Section 688(a) for purposes of levy of execution on interests in real property. See Section 488.310 and former Section 688, and the Comments thereto. Any interest in land, legal or equitable, which is subject to the enforcement of a money judgment, is subject to execution except where some other method is specified, such as in the case of a partner's interest in partnership real property which is reachable only by way of a charging order pursuant to Section 705.510. See Sections 703.110 (property subject to execution), 707.120 (property subject to enforcement of money judgment); *Lynch v. Cunningham*, 131 Cal. App. 164, 173-75, 21 P.2d 154, 21 P.2d 973 (1933). Subdivision (a) of Section 703.310 also makes clear that the term "interest in real property," as used in this section, includes leasehold interests. The scope of interests which are leviable under execution is, therefore, greater than those leviable under attachment since leasehold interests with an unexpired term of less than one year are not subject to attachment where the defendant is an individual. See Section 487.010(c)(1). Under former law, it was the practice to treat some leases as personal property and some as real property for purposes of levy. See *Marshal's Manual of Procedure* § 300.3 (J. Matarazzo ed., rev. Jan. 1, 1977).

Section 703.310 requires a levy to be made to reach the interest regardless of whether there is a prior judgment lien or attachment lien on the property in favor of the judgment creditor. Under former law, the writ of execution was not required to be recorded if there was an existing judgment lien on the property. See *Lehnhardt v. Jennings*, 119 Cal. 192, 195, 48 P. 56, 50 P. 195 (1897) (no levy required where judgment is lien). However, the practice has been to record notice of levy

in every case. See Marshal's Manual of Procedure § 303.2 (J. Matarazzo ed., rev. Jan. 1, 1977); Cal. State Sheriffs' Association, Civil Procedural Manual § 7.71 (1969).

The notice of levy of execution is new to the statutes. See Section 703.140 (contents of notice of levy). The form of the writ of execution and the notice of levy is prescribed by the Judicial Council. See Section 702.290(b).

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§ 703.320. Tangible personal property in possession of judgment debtor

703.320. (a) Except as otherwise provided by this article, to levy upon tangible personal property in the possession of the judgment debtor, the levying officer shall take the property into custody.

(b) At the time of levy or promptly thereafter, the levying officer shall serve upon or mail to the judgment debtor a copy of the writ of execution and a notice of levy. A failure to serve or mail the copy of the writ and the notice pursuant to this subdivision does not affect the lien created by the levy.

Comment. Section 703.320 provides the general rule governing the levy of execution on tangible personal property in the possession of the judgment debtor. As indicated by the introductory phrase in subdivision (a), this general rule does not apply where other sections of this article are applicable to particular types of property. Subdivision (a) is essentially the same as the first sentence of subdivision (c) of former Section 688 [as amended by 1977 Cal. Stats., Ch. 155]. For a general provision for the manner of taking custody, see Section 702.270. Subdivision (b) continues the requirement of giving notice of levy to the judgment debtor provided by the second sentence of subdivision (b) of former Section 688. The judgment creditor has the responsibility of furnishing the levying officer with the information necessary to comply with this provision. See Section 702.230. Subdivision (b), as well as the remainder of this article, requires service of both a copy of the writ of execution and a notice of levy. Former Section 688(b) requires service of only the copy of the writ of execution upon the

judgment debtor. See Sections 703.130 (contents of writ of execution), 703.220 (contents of notice of levy).

Section 703.320 is comparable to Section 488.320 (attachment of tangible personal property in possession of defendant). See the Comment to Section 488.320.

27808

§ 703.330. Tangible personal property in possession of third person

703.330. (a) Except as otherwise provided in this article, to levy upon tangible personal property of the judgment debtor which is in the possession of another person, the levying officer shall personally serve upon such person a copy of the writ of execution and a notice of levy.

(b) Promptly after levy, the levying officer shall mail a copy of the writ of execution and a notice of levy to the judgment debtor. A failure to mail the copy of the writ and the notice to the judgment debtor pursuant to this subdivision does not affect the lien created by the levy.

(c) Where goods are subject to a negotiable document, the goods may not be levied upon but the negotiable document may be levied upon in the manner provided by Section 703.400.

Comment. Section 703.330 provides the general rule governing the levy of execution on tangible personal property in which the judgment debtor has an interest which is in the possession of a third person. This general rule does not apply where other sections of this article are applicable to particular types of property. Subdivision (a) continues the substance of a portion of the last sentence of subdivision (b) of former Section 688.

Subdivision (b) continues the requirement of giving notice of levy to the judgment debtor provided by the second sentence of subdivision (b) of former Section 688. The judgment creditor has the responsibility of furnishing the levying officer with the information necessary to comply with this provision. See Section 702.230. Subdivision (b) is analogous to Section 488.330(c), applicable to a levy of attachment.

Subdivision (c) corresponds to subdivision (d) of Section 488.330 (attachment of tangible personal property in possession of third person).

The duties of the garnishee are specified by Section 703.240.

For special provisions applicable to a levy upon the contents of a safe deposit box not standing solely in the name of the judgment debtor, see Section 703.435.

27809

§ 703.340. Intangible personal property

703.340. (a) Except as otherwise provided in this article, to levy upon a debt owed to the judgment debtor, the levying officer shall personally serve upon the person owing the debt a copy of the writ of execution and a notice of levy.

(b) Promptly after levy, the levying officer shall mail a copy of the writ of execution and a notice of levy to the judgment debtor. A failure to mail the writ and the notice to the judgment debtor pursuant to this subdivision does not affect the lien created by the levy.

Comment. Section 703.340 provides the general rule governing the levy of execution on intangible personal property. This general rule is inapplicable where other sections of this article govern the manner of levy on particular types of property. Subdivision (a) continues the substance of a portion of the last sentence of subdivision (b) of former Section 688.

Subdivision (b) continues the requirement of giving notice of levy to the judgment debtor provided by the second sentence of subdivision (b) of former Section 688. The judgment creditor has the responsibility of furnishing the levying officer with the information necessary to comply with this provision. See Section 702.230.

27810

§ 703.350. Motor vehicles and vessels required to be registered

703.350. Promptly after levying pursuant to Section 703.320, 703.330, 703.360(c), or 703.370(c) upon a motor vehicle or a vessel required to be registered with the Department of Motor Vehicles, the

levying officer shall determine from the department the name and address of the legal owner of the vehicle or vessel and, if the legal owner is a person other than a person served pursuant to Section 703.320, 703.330, 703.360, or 703.370, the levying officer shall send a copy of the writ of execution and a notice of levy by registered or certified mail, return receipt requested, to the legal owner. A failure to send the copy of the writ and the notice to the legal owner does not affect the lien created by the levy.

Comment. Section 703.350 continues the substance of subdivision (1) of former Section 689b. Former law required notice to be given the legal owner who was not also the registered owner. Section 703.350 has the same effect but is worded so as to avoid duplicate notice in any case where the legal owner has already received notice in the course of the levy. Section 703.350 also makes clear that notice is to be given the legal owner where a vehicle or vessel which is required to be registered is levied upon as part of the personal property of a going business. See Section 703.360. The levying officer is not required to send notice to the legal owner when the keeper levy is made under subdivision (a) of Section 703.360 but only when the levying officer takes exclusive custody of the vehicle or vessel under subdivision (c) of Section 703.360. This recognizes that, while Section 703.360 does not require a keeper levy on vehicles and vessels of a going business that are required to be registered, such a levy is permitted so long as custody is maintained. See Section 702.270 (manner of taking custody). Similarly, notice is explicitly required to be given the legal owner of a vehicle or vessel which is required to be registered and is used as a dwelling where a levy takes place pursuant to Section 703.370 but only when the levying officer takes exclusive custody of the vehicle or vessel under subdivision (c) of Section 703.360. See Sections 701.____ ("motor vehicle" defined), 701.____ ("vessel" defined).

27811

§ 703.360. Tangible personal property of a going business

703.360. (a) If the judgment debtor consents, tangible personal property of a going business (other than money or a vehicle required to be registered under the Vehicle Code) shall be levied upon by placing a

keeper in charge of the property, at the judgment creditor's expense, for at least two days. During such period, the judgment debtor may continue to operate in the ordinary course of business at the judgment debtor's expense provided that all sales are final and are for cash or the equivalent of cash. For the purpose of this subdivision, payment by check is the equivalent of cash payment. The levying officer is not liable for accepting payment in the form of a cash equivalent. The proceeds from all sales shall be given to the keeper for the purposes of the levy unless otherwise authorized by the judgment creditor.

(b) At the time of levy or promptly thereafter, the levying officer shall serve upon or mail to the judgment debtor a copy of the writ of execution and a notice of levy. A failure to serve or mail the copy of the writ and the notice pursuant to this subdivision does not affect the lien created by the levy.

(c) At the conclusion of the period during which the business may continue to operate, the levying officer shall take the tangible personal property into exclusive custody unless some other disposition is made by the court or agreed upon by the judgment creditor and the judgment debtor.

Comment. Section 703.360 provides a special method of levy on a going business which permits the business to operate for at least two days after levy subject to the custody of a keeper. Subdivisions (a) and (c) of Section 703.360 continue the substance of the fifth through the tenth sentences of subdivision (c) of former Section 688 [as amended by 1977 Cal. Stats., Ch. 155]. Subdivision (b) makes clear that the judgment debtor is to be given notice of the levy just as in any other case of a levy on tangible personal property in the possession of the judgment debtor.

The method of levy of execution provided by this section differs from the method of levy of attachment pursuant to Section 488.360. See Section 488.360 and the Comments thereto.

See Section 703.350 (notice to legal owner of motor vehicle or vessel required to be registered).

§ 703.370. Personal property used as dwelling

703.370. (a) Personal property which is used as a dwelling, such as a housetrailer, mobilehome, or vessel, shall be levied upon by placing a keeper in charge of the property, at the judgment creditor's expense, for a least two days.

(b) At the time of levy or promptly thereafter, the levying officer shall serve upon or mail to the judgment debtor a copy of the writ of execution and a notice of levy. A failure to serve or mail the copy of the writ and the notice pursuant to this subdivision does not affect the lien created by the levy.

(c) At the conclusion of the period during which the property is in the custody of the keeper, the levying officer shall remove the occupants and take the personal property used as a dwelling into exclusive custody unless some other disposition is made by the court or agreed upon by the judgment creditor and the judgment debtor.

Comment. Subdivisions (a) and (c) of Section 703.370 continue the substance of the third and fourth sentences of subdivision (c) of former Section 688 [as amended by 1977 Cal. Stats., Ch. 155]. Subdivision (b) makes clear that the judgment debtor is to be given notice of the levy just as in any other case of a levy on tangible personal property in the possession of the judgment debtor. See Section 703.350 (notice to legal owner of motor vehicle or vessel required to be registered).

§ 703.380. Growing crops and standing timber

703.380. (a) To levy upon growing crops or timber to be cut, the levying officer shall record a copy of the writ of execution and a notice of levy with the office of the county recorder of the county where the real property on which the crops are growing or on which the timber is standing is located.

(b) Where the notice of levy identifies a person, other than the judgment debtor, in whose name the real property on which the crops are growing or on which the timber is standing stands upon the records of the county, the recorder shall index the levy when recorded in the names of both the judgment debtor and such other person.

(c) Promptly after recording [and in no event more than 15 days thereafter,] the levying officer shall mail a copy of the writ of execution and a notice of levy to the judgment debtor and to any other person identified in the notice of levy in whose name the real property stands upon the records of the county at the address of such other person as shown by the records of the office of the tax assessor of the county where the real property is located.

(d) Promptly after recording [and in no event more than 15 days thereafter], the levying officer shall serve one occupant of the real property with a copy of the writ of execution and a notice of levy. If there is no occupant on the real property at the time service is attempted, the levying officer shall post a copy of the writ and the notice in a conspicuous place on the real property. Service upon the occupant may be made by leaving the copy of the writ and the notice with the occupant personally or, in the occupant's absence, with any person of suitable age and discretion, found upon the real property at the time service is attempted and who is either an employee or agent of the occupant or a member of the occupant's family or household. Where the real property described in the notice of levy consists of more than one distinct lot, parcel, or governmental subdivision and any of such lots, parcels, or governmental subdivisions lie with relation to any of the others so as to form one or more continuous, unbroken tracts, only one service or posting need be made under this subdivision as to each such continuous, unbroken tract.

Comment. Section 703.330 is derived from a portion of Section 488.360(c) pertaining to the attachment of growing crops and standing timber and from paragraphs 1a and 2a of former Section 542 (repealed by 1974 Cal. Stats., Ch. 1516, § 12, operative January 1, 1977). Although growing crops and standing timber are considered to be personal property, the method of levy on such property corresponds to the method of levy on real property. Once the crops are harvested and the timber is cut, such property may be levied upon in the manner provided for levy upon tangible personal property generally. See Sections 703.320, 703.330. A keeper or receiver may, pursuant to court order, cultivate, care for, harvest, pack, and sell the property where necessary. See Section 703.270.

§ 703.390. Chattel paper

703.390. (a) Except as provided in Section 703.470, to attach chattel paper, the levying officer shall (1) serve the person in possession of the chattel paper with a copy of the writ of execution and a notice of levy and (2) if the chattel paper is in the possession of the judgment debtor, take the chattel paper into custody.

(b) If the chattel paper is not in the possession of the judgment debtor, promptly after levy, the levying officer shall mail a copy of the writ of execution and a notice of levy to the judgment debtor.

(c) Promptly after levy, the levying officer shall mail a copy of the writ of execution and a notice of levy to the account debtor obligated on the chattel paper. Until the account debtor is notified, the levy does not affect the rights and duties of the account debtor. After notification, the account debtor shall make any payments required under the chattel paper to the levying officer. If the chattel paper results from a lease of tangible personal property, upon termination of the lease because of the expiration of the term or because of default, the lessee shall deliver the leased property to the levying officer.

(d) A failure to mail the copy of the writ and the notice to the judgment debtor pursuant to subdivision (b) or to the account debtor pursuant to subdivision (c) does not affect the lien created by the levy.

(e) Any payments required by the chattel paper and made by the account debtor to the person in possession of the chattel paper after levy shall be delivered by such person to the levying officer to be held pursuant to the levy.

Comment. Section 703.390 is analogous to Section 488.380 which provides the method of attachment of chattel paper. See Section 701.____ ("chattel paper" defined).

§ 703.400. Negotiable instruments; negotiable documents; money

703.400. (a) Except as provided in Section 703.470, to levy upon a negotiable instrument, a negotiable document, or money not placed in a deposit account, the levying officer shall (1) serve the person in

possession of the negotiable instrument, negotiable document, or money with a copy of the writ of execution and a notice of levy and (2) if the property is in the possession of the judgment debtor, take the negotiable instrument, negotiable document, or money into custody.

(b) If the negotiable instrument, negotiable document, or money is not in the possession of the judgment debtor, promptly after levy, the levying officer shall mail a copy of the writ of execution and a notice of levy to the judgment debtor.

(c) Promptly after a negotiable instrument is levied upon, the levying officer shall mail a copy of the writ of execution and a notice of levy to any person obligated under the negotiable instrument. Until an obligor is notified as required by this subdivision, payments made in good faith by the obligor to the previous holder of the instrument shall be applied to the discharge of obligation of the obligor.

(d) A failure to mail the copy of the writ and the notice to the judgment debtor pursuant to subdivision (b) or to an obligor pursuant to subdivision (c) does not affect the lien created by the levy.

Comment. Section 703.400 is analogous to Section 488.400 which provides the method of attachment of negotiable instruments, negotiable documents, and money. See Sections 701.____ ("document" defined), 701.____ ("negotiable instrument" defined).

27816

§ 703.410. Securities

703.410. (a) To levy upon a security in the possession of the judgment debtor, the levying officer shall take the security into custody. At the time of levy or promptly thereafter, the levying officer shall serve upon or mail to the judgment debtor a copy of the writ of execution and a notice of levy.

(b) [Except as provided in Section 703.470,] to levy upon a security which (1) is held in escrow pursuant to the provisions of the Corporate Securities Law or (2) has been surrendered to the issuer, the levying officer shall serve the person in possession of the security with a copy of the writ of execution and a notice of levy. Promptly after levy, the levying officer shall mail a copy of the writ and the notice to the judgment debtor.

(c) A failure to serve the judgment debtor pursuant to subdivision (a) or (b) does not affect the lien created by the levy.

(d) In those cases not provided for by subdivisions (a) and (b), the plaintiff's relief is governed by subdivision (2) of Section 8317 of the Commercial Code.

Comment. Section 703.410 is analogous to Section 488.410 which provides the method of attachment of securities. See Section 701.____ ("security" defined).

Note. The subject of levy on pledged securities is considered in Memorandum 77-53 for the September 1977 meeting.

27817

§ 703.420. Accounts receivable and choses in action

703.420. (a) Except as provided in Section 703.470, to levy upon an account receivable or a chose in action, the levying officer shall serve the account debtor with a copy of the writ of execution and a notice of levy.

(b) Promptly after service on the account debtor, the levying officer shall mail a copy of the writ of execution and a notice of levy to the judgment debtor and to any other person identified in writing by the account debtor as an obligee. The levying officer is not liable for mailing notice to any person identified by the account debtor as an obligee. A failure to mail the copy of the writ and the notice to the judgment debtor or to other obligees pursuant to this subdivision does not affect the lien created by the levy.

Comment. Section 703.420 is analogous to Section 488.370 which provides the method of attachment of accounts receivable and choses in action. See Sections 701.____ ("account receivable" defined), 701.____ ("chose in action" defined).

27818

§ 703.430. Deposit accounts

703.430. (a) Except as provided in Section 703.470 and except where the deposit account is represented by a negotiable instrument, to attach a deposit account, the levying officer shall serve the financial

institution holding the deposit account with a copy of the writ of execution and a notice of levy.

(b) Promptly after levy, the levying officer shall mail a copy of the writ of execution and a notice of levy to the judgment debtor and to any other person in whose name the deposit account is held. A failure to mail the copy of the writ and the notice to the judgment debtor or to other persons pursuant to this subdivision does not affect the lien created by the levy.

(c) While the lien created by the levy is in force, the financial institution is not liable to any person by reason of any of the following:

(1) Compliance with the levy.

(2) Nonpayment of any check or other order for the payment of money drawn or presented against the deposit account.

(3) Refusal to pay any withdrawal in respect to the deposit account.

Comment. Section 703.430 is analogous to Section 488.390 which provides the method of attachment of deposit accounts. See Section 701.____ ("deposit account" defined). For special provisions applicable in the case of a levy upon a joint account, see Section 703.435. See also Section 707.390 (deposit account into which social security payments are directly deposited).

27864

§ 703.435. Levy on deposit account, contents of safe deposit box, not exclusively in name of judgment debtor

703.435. (a) As used in this section, "financial institution" includes a bank, trust company, savings and loan association, credit union, or other corporation authorized and empowered to conduct a safe deposit business.

(b) In addition to any other statute, the provisions of this section shall be complied with where any of the following property is sought to be levied upon:

(1) A deposit account, or interest therein, not standing solely in the name of the judgment debtor.

(2) Property in a safe deposit vault or box maintained by a financial institution and rented by it not solely to the judgment debtor.

(c) The judgment creditor shall provide, and the levying officer shall deliver to the financial institution, a bond in an amount not less than twice the amount of the judgment or, if a lesser amount is sought to be levied upon, not less than twice such amount. The bond shall indemnify any person (other than the judgment debtor whose interest is sought to be levied upon) rightfully entitled to the property against actual damage by reason of the levy on the property and shall assure to such person the return of the property upon proof of such person's right thereto. The bond need not name such person specifically but may refer to such person generally in the same manner as in this subdivision.

(d) Upon delivery of the bond to the financial institution, the financial institution shall immediately notify any person (other than the judgment debtor) in whose name the deposit account stands or to whom the safe deposit box is rented by registered mail, addressed to the last address of such person known to the financial institution, of the fact of the levy and the delivery of the bond.

(e) From the time of levy and the delivery to the financial institution of the bond until 15 days after the mailing of notice under subdivision (d) or until the levy is sooner released, the financial institution shall not honor a check or other order for the payment of money drawn against, or any withdrawals from, the deposit account levied upon that would reduce the deposit account to less than the amount to be satisfied as stated in the writ of execution, and shall not permit the removal of any of the contents of the safe deposit vault or box levied upon.

(f) After the expiration of 15 days from the levy and the delivery of the bond, if no proceedings excepting to the sufficiency of the sureties have been commenced or, if such proceedings have been commenced, when the sureties have justified, the financial institution shall comply with the levy unless it has been sooner released. The financial institution is not liable to any person by reason of such compliance, by reason of the nonpayment of any check or other order for the payment of money drawn against the deposit account levied upon that

is presented while the levy is in force, or by reason of the removal, pursuant to the levy, of any of the contents of the safe deposit vault or box or the refusal of the financial institution to permit access to the safe deposit vault or box by the renter thereof.

(g) The bond described in subdivision (c) shall be executed, exceptions to the sufficiency of the sureties may be taken by any person claiming to be the rightful owner of the property levied upon, and, when excepted to, the sureties shall justify in the same manner as is provided with respect to an undertaking on attachment.

(h) The financial institution to which a bond is delivered shall deliver it as directed by the obligees thereof.

(i) Before giving access to any safe deposit vault or box, the financial institution may demand payment to it of all the expense of opening the safe deposit vault or box and the expense of repairing any damage to the safe deposit vault or box caused by the opening thereof.

(j) A purported levy that does not comply with this section is ineffectual and shall be disregarded.

Comment. Section 703.435 continues the substance of former Section 682a subject to several changes. Subdivision (a) specifically refers to credit unions which were not covered by the former provision. Subdivisions (b) and (j) continue the substance of the first sentence of former Section 682a. See Section 701. ("deposit account" defined). Subdivision (c) continues the substance of the second sentence of former Section 682a [as amended by 1977 Cal. Stats., Ch. 42, § 1]. Where the judgment has been partially satisfied, the judgment creditor is not required to give such a large undertaking. Subdivision (d) continues the third sentence of the former provision. Subdivision (e) continues the substance of the fourth sentence of former Section 682a except that subdivision (e) recognizes the former practice of holding only so much of the account as is necessary to satisfy the amount stated in the writ. Subdivisions (f), (g), and (i) continue the substance of the fifth through the ninth sentences of former Section 682a. See also Article 1 (commencing with Section 489.010) of Chapter 9 of Title 6.5 (undertakings under attachment); Sections 1054a (deposit of money or bearer bonds or notes instead of undertaking), 1056 (single corporate surety may execute bond in place of two or more personal sureties).

§ 703.440. Judgments owing to judgment debtor

703.440. (a) Except as provided in Section 703.470, to levy upon a judgment owing to the judgment debtor, the levying officer shall (1) file in the action in which the judgment was entered a copy of the writ of execution and a notice of levy and (2) serve a copy of the writ of execution and a notice of levy upon the judgment debtor in such action.

(b) Promptly after levy, the levying officer shall mail a copy of the writ of execution and a notice of levy to the judgment debtor. A failure to mail the copy of the writ and the notice to the judgment debtor pursuant to this subdivision does not affect the lien created by the levy.

(c) A judgment owing to the defendant may not be levied upon until after its entry as a final judgment and the time for appeal from the judgment has expired or, if an appeal is filed, until the appeal is finally determined.

Comment. Section 703.440 is analogous to Section 488.420 which provides the method of attachment of judgments owing to a defendant. A judgment which is not final within the terms of subdivision (c) may be reached only through the procedure for obtaining a lien on a cause of action and judgment set forth in Sections 705.610-705.640.

§ 703.450. Interest in personal property of estate of decedent

703.450. (a) To levy upon the interest of the judgment debtor in personal property belonging to the estate of a decedent, whether by testate or intestate succession, the levying officer shall (1) file a copy of the writ of execution and a notice of levy in the office of the clerk of the court in which the estate is being administered and (2) serve the personal representative of the decedent with a copy of the writ of execution and a notice of levy.

(b) Promptly after levy, the levying officer shall mail a copy of the writ of execution and a notice of levy to the judgment debtor. A failure to mail the copy of the writ and the notice to the judgment debtor pursuant to this subdivision does not affect the lien created by the levy.

(c) The personal representative shall report the levy to the court in which the estate is being administered when any petition for distribution is filed.

(d) The levy does not impair the powers of the representative over the property for the purposes of administration.

(e) If a decree orders distribution to the judgment debtor, the property shall be ordered to be delivered to the levying officer who made the levy subject to the claim of the judgment debtor or any person claiming under the judgment debtor. The property may not be delivered to the levying officer who made the levy until the decree distributing the property has become final.

Comment. Section 703.450 is analogous to Section 488.430 which provides the method of attachment of an interest in personal property of a decedent's estate.

27850

§ 703.460. Goods subject to perfected security interest

703.460. (a) To levy upon the judgment debtor's interest in goods which are in the possession of a bailee who has not issued a negotiable document therefor and which are subject to a perfected security interest under the Commercial Code, the levying officer shall serve upon the secured party a copy of the writ of execution and a notice of levy.

(b) Promptly after levy, the levying officer shall mail a copy of the writ of execution and a notice of levy to the judgment debtor. A failure to mail the copy of the writ and the notice to the judgment debtor pursuant to this subdivision does not affect the lien created by the levy.

Comment. Section 703.460 is analogous to Section 488.335 in the Attachment Law.

Note. This section will be revised to be consistent with Section 488.335 (part of the Tentative Recommendation Relating to Attachment of Property Subject to Security Interest), which is considered in Memorandum 77-53, for the September 1977 meeting.

§ 703.470. Personal property subject to perfected security interest

703.470. (a) The judgment debtor's interest in the following property, if the property is subject to a perfected security interest of another person under the Commercial Code, shall be levied upon by serving the secured party with a copy of the writ of execution and a notice of levy:

- (1) Accounts receivable.
- (2) Choses in action.
- (3) Chattel paper, if the security interest is perfected by possession of the chattel paper.
- (4) Deposit accounts.
- (5) Negotiable instruments, if the security interest is perfected by possession of the negotiable instrument.

(6) Judgments, except that no judgment owing to the judgment debtor shall be levied upon until after its entry as a final judgment and the time for appeal from the judgment has expired or, if an appeal is filed, until the appeal is finally determined.

(b) Promptly after levy, the levying officer shall mail a copy of the writ of execution and a notice of levy to the judgment debtor. A failure to mail the copy of the writ and the notice to the judgment debtor pursuant to this subdivision does not affect the lien created by the levy.

(c) Except in a case described in subdivision (d), the secured party may collect the payments due from the account debtor or obligor obligated on the account receivable, chose in action, chattel paper, deposit account, negotiable instrument, or judgment and may enforce or accept the return of the tangible personal property sold or leased. After the satisfaction of the security interest, the secured party may deliver any excess property or pay any excess payments or proceeds of the property remaining in the possession of the secured party to the levying officer.

(d) In a case where the judgment debtor has the liberty to collect payments due on the account receivable or chattel paper or to enforce or accept the return of tangible personal property the sale or lease of which resulted in the account receivable or chattel paper which was

attached, the levying officer shall serve the account debtor or obligor obligated on the account receivable or chattel paper with a copy of the writ of execution and notice of levy and with a demand to pay to the levying officer all amounts due and to deliver to the levying officer all returnable tangible personal property.

Comment. Section 703.470 is analogous to Section 488.440 in the Attachment Law.

Note. This section will be revised to be consistent with Section 488.440 (part of the Tentative Recommendation Relating to Attachment of Property Subject to Security Interest), which is considered in Memorandum 77-53, for the September 1977 meeting.