

Memorandum 78-2

Subject: Study 39.160 - Attachment (Bond for Levy on Joint Bank Account)

Under existing law, if a creditor seeks to levy upon a deposit account or safe deposit box not standing solely in the name of the debtor, he must furnish a bond in twice the amount of the claim, in the case of attachment, or in twice the amount of the judgment, in the case of execution. See Code Civ. Proc., §§ 489.240, 682a. Chapter 42 of the Statutes of 1977 amended Section 682a, which is applicable upon execution, to require a bond in twice the amount of the judgment or, if it is less, twice the amount sought to be levied upon. The authors of this amendment neglected to make a conforming change in Section 489.240 relating to attachment.

We do not believe that a larger bond indemnifying against wrongful levy should be required in attachment than upon execution. Accordingly, the staff recommends that Section 489.240 be amended to conform to Section 682a when we put in the bill concerning attachment of property subject to security interests and other matters. Section 489.240 should be amended as follows:

489.240. (a) In addition to any other provision of law, the provisions of this section shall be complied with where any of the following personal property is sought to be attached:

(1) A deposit account, or interest therein, not standing in the name of the defendant alone.

(2) Property in a safe deposit vault or box maintained by a bank, trust company, savings and loan association, or other corporation authorized and empowered to conduct a safe deposit business and rented by it to a person other than a defendant.

(b) The amount of an undertaking filed to obtain a writ of attachment of property described in subdivision (a) shall be an amount not less than twice the amount sought to be recovered by the plaintiff in the action in which the writ is ~~sought~~ sought or, if a lesser amount is sought to be levied upon, not less than twice such amount. The undertaking shall secure the payment of any recovery for wrongful attachment by any person, other than the defendant whose interest is sought to be attached, rightfully entitled to such property (which person need not be named specifically in the undertaking but may be referred to generally in the same manner as in this sentence).

(c) Objections to the undertaking may be made by any person claiming to be the rightful owner of the property sought to be levied upon.

Comment. Subdivision (b) of Section 489.240 is amended to permit the plaintiff to furnish an undertaking in twice the amount sought to be levied upon rather than twice the amount of the claim. This provision is consistent with Section 682a, as amended by 1977 Cal. Stats., Ch. 42, § 1, applicable to levies of execution.

Respectfully submitted,

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