

Memorandum 78-6

Subject: Study D-39,200 - Enforcement of Judgments (Comprehensive Statute--Exemptions)

Attached to this memorandum is a revised version of the exemption provisions from the draft enforcement of judgments law, which reflects the decisions made at the January meeting. We hope that this will be the last time these provisions will have to be considered before final consideration and approval of the tentative recommendation. Attached as Exhibit 1 is the exemption section from the proposed Bankruptcy Act. Exhibit 2 is a copy of the California exemption provisions. Also accompanying this memorandum is a copy of the Uniform Exemptions Act.

We would like to note the following matters:

§§ 707.110, 707.120. Property subject to enforcement; applicability of exemptions

We have tentatively replaced the phrase "exempt without a claim" with "not subject to the enforcement of a money judgment". Section 690(b) in existing law equated the two concepts. The significance of designating property as "exempt," as opposed to "not subject to enforcement," is that an exemption may be waived if it is not properly claimed. In addition, we propose to make a creditor liable for damages for reaching or attempting to reach property which is not subject to enforcement, whereas reaching property which is exempt would result in liability only where the exemption had already been determined. See draft Section 707.320. The judgment creditor should have no trouble identifying property which is not subject to enforcement of a money judgment because it either is of an unusual type (such as a license, other than a liquor license) or is controlled by a third person (such as various sorts of benefits prior to payment).

§ 707.150. Exemption inapplicable against support judgment

This section implements a decision at the January meeting. It has been drafted broadly so that exemptions do not apply where the judgment is for child or spousal support. Of course, property that is not subject to enforcement of a money judgment remains protected. We do not feel that it is necessary to exclude specific items from this exception, such as prosthetic devices and heirlooms, since the court has the power

to make an equitable division of the property which we assume is sufficient authority to prevent abuses. Section 10(a)(1)(i) of the Uniform Exemptions Act is also unrestricted in its application.

§ 707.215. Applicable procedure for claiming exemptions

Exemptions protect property from all proceedings to enforce a money judgment, not just levy under a writ of execution. However, the procedure for claiming an exemption in Section 690.50 of existing law assumes that there is a levying officer with whom to file claims and who in turn files the claim with the court. Subdivision (b) of Section 707.215 has been drafted to take care of the situation where the property has been reached by some process other than levy of execution.

§ 707.320. Liability for interference with exemption rights

This section has not yet been considered by the Commission. It is derived from a provision of New York law. See N.Y. Civ. Prac. Law & R. § 5205(b).

§ 707.430. Motor vehicle; proceeds

The definition of "value" as fair market value of the debtor's interest in property has been deleted in response to objections made at the January meeting. Accordingly, the substance of the definition has been included in this section and in several others to which the deleted definition applied. See Sections 707.440, 707.450, 707.470.

§ 707.460. Prosthetic and orthopedic appliances

The staff believes this exemption is too narrowly drawn. "Prosthesis" is defined as the "addition to the human body of some artificial part, as a leg, eye, or tooth." Webster's New Collegiate Dictionary (1956). Inasmuch as such items are a part of the debtor's body, it is hard to believe anyone would contend they should be subject to execution. "Orthopedics" is defined as the "correction or prevention of deformities, esp. in children." Section 5(2) of the Uniform Exemptions Act exempts "health aids reasonably necessary to enable the individual or a dependent to work or to sustain health." See the Comment to this provision in the attached copy of the Uniform Exemptions Act. Section 522(d)(9) of the proposed Bankruptcy Act exempts "professionally prescribed health aids for the debtor or a dependent of the debtor." The staff proposes to replace the current exemption with the exemption from the Uniform Act.

§ 707.500. Life insurance, endowment, and annuity policies

This provision has been revised to implement several decisions at the January meeting. Subdivision (c) implements, in part, the decision to permit a higher exemption for life insurance in lieu of a homestead. Compare Section 522(d)(5) of the proposed Bankruptcy Act. In order to avoid the necessity of appraising the value of the homestead exemption, this provision is designed to be used only where no homestead has been claimed. If this exemption is taken and a homestead is later claimed, the amount of the homestead exemption should be reduced by the amount taken under subdivision (c). The increased exemption applies only to the loan value exemption since the reasonably necessary for support standard in subdivision (b)(2) presumably will compensate on its own for the lack of a homestead.

We have deleted one provision which was previously approved. It was proposed to grant an exemption for periodic payments of benefits from a life insurance policy, if such payments occurred over at least a two-year period, in the amount of the wage garnishment exemption. This policy was workable under the wage garnishment tables earlier recommended by the Commission since the amount to be garnished depended only on the gross amount of the payment. However, at the January meeting, the Commission approved an amendment in the wage garnishment scheme which depends on the garnishee knowing how many deductions the judgment debtor claims for federal tax purposes. Other amounts must also be deducted from the gross payment in figuring the amount to be withheld. A life insurer would not have this information. Accordingly, the staff recommends that benefits from a life insurance policy be exempt only to the extent necessary for support. This is consistent with Section 522(d)(11)(C) of the proposed Bankruptcy Act and Section 6(a)(3) of the Uniform Exemptions Act.

§§ 707.510-707.530. Retirement benefits; unemployment benefits; disability and health benefits

Sections 707.510 (retirement benefits) and 707.530 (disability and health benefits) have been revised to implement decisions at the January meeting. We have also revised Section 707.520 (unemployment benefits) in a consistent manner.

§ 707.570. Relocation benefits

The staff proposes to make relocation benefits, after payment, exempt rather than not subject to enforcement. There is no way for the creditor to know that the bank account consists of relocation benefits unless the debtor makes a claim and traces the funds.

Election of Exemptions; Marshalling of Funds Subject to Exemption

A problem arises where items of property, some number of which are exempt, are levied upon. For example, the debtor may have two motor vehicles, one of which may be claimed as exempt. If the creditor levies upon one vehicle, the debtor may claim an exemption for it. If the creditor then levies on the second vehicle, the debtor should be precluded from claiming an exemption. In any event, the creditor should not be forced to levy upon both vehicles in order to force the debtor to make a choice. Pursuant to a 1977 amendment to Section 690.2, a claim of exemption for one vehicle in this situation operates as a waiver of an exemption for any other vehicle registered to that person at the time the claim is made. We propose to add a general waiver provision of this nature.

A similar problem occurs where a portion of several funds is exempt, such as in the case of deposit accounts and life insurance loan value. If the debtor has five accounts each in the amount of \$1,000, the creditor should be able to reach \$3,000. However, the garnishee-bank should not honor the levy since the amount on deposit is less than the amount of the exemption. Section 487.010(c)(7) of the Attachment Law provides for a court order determining which accounts should be levied upon in order to preserve the exempt amount. We propose to add a similar provision to the enforcement of judgments law.

It would be possible to formalize this process by requiring the judgment debtor to describe in the claim of exemption all other property of the same type as that claimed to be exempt. The waiver provision would then apply to all the property so described and the creditor would be free to have it levied upon. In the case of deposit accounts and life insurance loan values, the debtor would be required to list all such funds as a condition to claiming an exemption for that levied upon. In its first wage garnishment recommendation, the Commission recommended

such a provision applicable to deposit accounts. See Recommendation Relating to Attachment, Garnishment, and Exemptions--Employees' Earnings Protection Law, 10 Cal. L. Revision Comm'n Reports 700, 740-41 (1971).

Does the Commission wish to recommend a more general provision of this nature?

Respectfully submitted,

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EXHIBIT 1

PROPOSED BANKRUPTCY ACT
EXEMPTIONS--§ 522

§ 522. Exemptions

(a) In this section--

(1) "dependent" includes spouse, whether or not actually dependent; and

(2) "value" means fair market value as of the date of the filing of the petition.

(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate either--

(1) property that is specified under subsection (d) of this section; or, in the alternative,

(2) (A) any property that is exempt under Federal, State, or local law, other than subsection (d) of this section, that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a

longer portion of such 180-day period than in any other place; and

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant would have been exempt from process under applicable nonbankruptcy law.

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose before the commencement of the case, except a debt of a kind specified in section 523 (a) (1) or 523 (a) (5) of this title.

(d) The following property may be exempted under subsection (b) (1) of this section:

(1) The debtor's aggregate interest, not to exceed \$10,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed \$1,500 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed \$300 in

under section 401 (a), 403 (a), 403 (b), 408, or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401 (a), 403 (a), 403 (b), 408, or 409).

(11) The debtor's right to receive, or property that is traceable to—

(A) an award under a crime victims' reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependents of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependents of the debtor;

(D) a payment, not to exceed \$10,000, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependents of the debtor.

(e) A waiver of exemptions executed in favor of a creditor that holds an unsecured claim against the debtor is unenforceable in a case under this title with respect to such claim against property that the debtor may exempt under subsection (b) of this section. A waiver by the debtor of a power under subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i) of this section to exempt property, or under subsection (j) of this section to recover property or to preserve a transfer is unenforceable in a case under this title.

(f) The debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor, notwithstanding any waiver of exemptions, would have been entitled under subsection (b) of this section, if such lien is—

(1) a judicial lien; or

(2) a nonpurchase-money security interest in any—

(A) household furnishings, household goods, wearing apparel, appliances, books, animals, crops,

musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(B) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(C) professionally prescribed health aids for the debtor or a dependent of the debtor.

(g) Notwithstanding section 550 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510 (b) (2), 542, 543, 550, or 551 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1) (A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property; or

(2) the debtor could have avoided such transfer under subsection (f) (2) of this section.

(h) The debtor may avoid a transfer of property of the debtor to the extent that the debtor could have exempted such property under subsection (g) (1) of this section if the trustee had avoided such transfer, if—

(1) such transfer is avoidable by the trustee under

section 544, 545, 547, 548, 549, or 724 (a) of this title;
and

(2) the trustee does not attempt to avoid such transfer.

(i) (1) If the debtor avoids a transfer under subsection (f) or (h) of this section, the debtor may recover in the manner proscribed by, and subject to the limitations of, section 550 of this title, the same as if the trustee had avoided such transfer, and may exempt any property so recovered under subsection (b) of this section.

(2) Notwithstanding section 551 of this title, a transfer avoided under section 544, 545, 547, 548, 549, or 724 (a) of this title, or under subsection (f) or (h) of this section, may be preserved for the benefit of the debtor to the extent that the debtor may exempt such property under subsection (g) of this section or paragraph (1) of this subsection.

(j) Notwithstanding subsections (g) and (i) of this section, the debtor may exempt a particular kind of property under subsections (g) and (i) of this section only to the extent that the debtor has exempted less property in value of such kind than that to which the debtor is entitled under subsection (b) of this section.

(k) Property that the debtor exempts under this section

is not liable for payment of any administrative expenses except—

(1) the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of recovery of such property, that is attributable to the value of the portion of such property exempted in relation to the value of the property recovered; and

(2) any costs and expenses of avoiding a transfer under subsection (f) or (h) of this section, or of recovery of property under subsection (i) (1) of this section, that the debtor has not paid.

(l) The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

(m) The clerk shall give notice of any exemptions claimed by the debtor or by a dependent of the debtor under subsection (l) of this section.

(n) This section shall apply with respect to each debtor in a joint case.

EXHIBIT 2

[EXEMPTIONS--CODE CIV. PROC. §§ 690-690.52]

§ 690. [Property exempt from execution.] (a) Except as otherwise specifically provided, the property mentioned in Sections 690.1 to 690.29, inclusive, is exempt from execution when claim for exemption is made to the same by the judgment debtor or defendant as hereinafter in Section 690.50 provided.

(b) Whenever it is specifically provided in Sections 690.1 to 690.29, inclusive, that the filing of a claim of exemption is not required, the property so mentioned in each such section shall not be subject to levy of attachment or execution in any manner.

(c) As used in Sections 690.1 to 690.31, inclusive, "debtor" means debtor, claimant, defendant, cross-defendant, or judgment debtor.

(d) As used in Sections 690.1 to 690.31, inclusive, "creditor" means the plaintiff or the person in whose favor the writ runs. [1872; 1875-76 ch 483 § 1; 1877-78 ch 579 § 1; 1887 ch 84 § 1; 1897 ch 120 § 1; 1899 ch 19 § 1; 1901 ch 28 § 1; 1903 ch 103 § 1; 1907 ch 479 § 1; 1927 ch 199 § 1; 1929 ch 45 § 1; 1935 ch 723 § 1; 1945 ch 714 § 1; 1949 ch 369 § 1; 1970 ch 1523 § 8; 1974 ch 1516 § 16, operative January 1, 1977; 1977 ch 305 § 2, effective July 8, 1977.] *Cal Jur 3d Cemeteries § 8, Creditors' Rights and Remedies § 10, Eminent Domain § 244, Enforcement of Judgments §§ 19, 21, 25, 26; Cal Jur 2d Pks & Pl § 4; Cal Practice §§ 57:21, 57:27, 57:28, 57:32, 57:35, 57:39; Witkin Procedure 2d pp 1551, 3405, 3406, 3407, 3442, 3456, 3543; Summary (8th ed) p 2204.*

§ 690.1. [Same: Household furnishings, appliances and wearing apparel: Provisions and fuel: Firearms: Works of art.] Necessary household furnishings and appliances and wearing apparel, ordinarily and reasonably necessary to, and personally used by, the debtor and his resident family, including, but not limited to, one piano; one radio and one television receiver; provisions and fuel actually provided for the debtor and his resident family's use, sufficient for three months; one shotgun and one rifle. Works of art shall not be exempt unless of or by the debtor and his resident family. [1970 ch 1523 § 10; former § 690.1 repealed 1970 ch 1523 § 9.] *Cal Jur 3d Creditors' Rights and Remedies §§ 16, 17, Enforcement of Judgments § 30; Cal Practice §§ 57:4, 57:7, 57:18; Witkin Procedure 2d pp 3407, 3428, 3430, 3455, 3456; Summary (8th ed) p 5157.*

§ 690.2. [Same: Motor vehicle.] (a) One motor vehicle with a value not exceeding five hundred dollars (\$500), over and above all liens and encumbrances on such motor vehicle. The value of such motor vehicle shall be established by reference to used car price guides customarily used by California automobile dealers, or, if not listed in such guides, fair market value, for a motor vehicle of that year and model.

(b) When the debtor has only one vehicle, the levying officer shall not receive any bid at the execution sale unless it exceeds the total of:

- (1) The motor vehicle exemption;
- (2) The aggregate amount of all liens and encumbrances on the motor vehicle; and
- (3) The amount necessary to repay the judgment creditor for the fees and costs advanced to the levying officer.

In the event no bid is accepted the levying officer shall release the motor vehicle to the debtor within five days.

(c) When the debtor has only one vehicle, the levying officer shall distribute the proceeds of any execution sale or from the undertaking, if necessary, without further order of the court, in the following order of priority:

- (1) First, the seller, lienholder or encumbrancer shall recover pursuant to paragraph (1) of Section 689c;
- (2) Second, the debtor shall recover five hundred dollars (\$500), the amount of the motor vehicle exemption;
- (3) Third, to the satisfaction of the judgment; and
- (4) Fourth, the balance, if any, to the debtor.

This distribution shall be made, whether or not the debtor has filed a claim of exemption and regardless of who purchases the motor vehicle.

(d) In addition to the procedure established under this section and Section 690.50, the levying officer shall consult the Department of Motor Vehicles and, if the department's records show that another vehicle is registered in the name of the debtor, the levying officer shall notify the debtor of his findings and that the debtor may file a claim of exemption pursuant to this section prior to the sale of the motor vehicle held by the levying officer but if the debtor so files he waives his right to file a claim of exemption under this section for any other motor vehicle currently registered in the name of the

debtor with regard to the judgment giving rise to the existing writ of execution.

The notice required by this subdivision shall be given at the same time and in the same manner as the giving of the notice of sale to the judgment debtor. Notwithstanding the provisions of Section 690.50, a claim of exemption may be filed pursuant to this subdivision at any time prior to the sale of the motor vehicle. If the debtor files a claim of exemption, the motor vehicle held by the levying officer shall be deemed to be the sole motor vehicle owned by the debtor. The procedure for hearing the claim shall be the same as that provided in Section 690.50, and the procedure for sale, if ordered, shall be as provided in subdivision (b) and (c) of this section.

If no claim of exemption is filed after notice is given under this subdivision, the levying officer shall distribute the proceeds of the sale in the following order of priority:

(1) First, the seller, lienholder or encumbrancer shall recover pursuant to paragraph (1) of Section 689c;

(2) Second, to the satisfaction of the judgment; and

(3) Third, the balance, if any, to the debtor.

(c) Any amount representing the motor vehicle exemption paid to the debtor shall be entitled, for a period of 90 days thereafter, to the same protection against legal process which the law gives to the motor vehicle exemption. [1976 ch 1210 § 2; 1977 ch 683 § 1.] *Cal Jur 3d Creditors' Rights and Remedies* §§ 11, 18, 28, *Enforcement of Judgments* § 32; *Cal Practice* §§ 57:7, 57:13-57:15; *Witkin Procedure 2d* pp 3428, 3432.

§ 690.3. [Same: House Trailer, Mobile Home, Houseboat, Boat, or Waterborne Vessel.] (a) One house trailer, mobilehome, houseboat, boat, or other waterborne vessel in which the debtor, or the family of such debtor, actually resides, or a value not exceeding the following values:

(1) For any head of a family, of a value not exceeding thirty thousand dollars (\$30,000) in actual cash value, over and above all liens and encumbrances on that house trailer, mobilehome, houseboat, boat, or other waterborne vessel;

(2) For any person 65 years of age or older of a value not exceeding thirty thousand dollars (\$30,000) in actual cash value, over and above all liens and encumbrances on that house trailer, mobilehome, houseboat, boat, or other waterborne vessel; and

(3) For any other person, of a value not exceeding fifteen thousand dollars (\$15,000) in actual cash value, over and above all liens

and encumbrances on that house trailer, mobilehome, houseboat, boat, or other waterborne vessel.

(b) The exemption provided by this section shall not apply if such debtor or the spouse of such debtor has an existing homestead as provided by Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code or has obtained a prior judicial determination that the dwelling house of the debtor or the family of the debtor is exempt from execution under Section 690.31. [1970 ch 1523 § 14; 1972 ch 418 § 1; 1973 ch 787 § 1; 1976 ch 471 § 2.] *Cal Jur 3d Creditors' Rights and Remedies* §§ 11, 13, 28, *Enforcement of Judgments* § 32; *Cal Practice* §§ 57:4, 57:7, 57:13; *Witkin Procedure 2d* pp 3430, 3432.

§ 690.4. [Same: Tools, equipment, boat, motor vehicle used in commercial activity: Property used exclusively to earn living.] To the maximum aggregate actual cash value of two thousand five hundred dollars (\$2,500), over and above all liens and encumbrances on such items at the time of any levy of attachment or execution thereon, any combination of the following: tools, implements, instruments, uniforms, furnishings, books, equipment, one commercial fishing boat and net, one commercial motor vehicle reasonably necessary to and actually used in a commercial activity, and other personal property ordinarily and reasonably necessary to, and personally owned and used by, the debtor exclusively in the exercise of the trade, calling, or profession by which he earns his livelihood. [1970 ch 1523 § 16.] *Cal Jur 3d Creditors' Rights and Remedies* §§ 11, 13, 28, *Enforcement of Judgments* § 29; *Cal Jur 2d Notar* § 9, *Rel & Ch Soc* § 26; *Cal Practice* §§ 57:7, 57:12; *Witkin Procedure 2d* pp 3431, 3432.

§ 690.5. [Same: Prosthetic and orthopedic appliances.] All prosthetic and orthopedic appliances personally used by the debtor. [1953 ch 249 § 1; 1970 ch 1523 § 17.] *Cal Jur 3d Creditors' Rights and Remedies* § 16, *Enforcement of Judgments* § 30; *Cal Practice* §§ 57:7, 57:18; *Witkin Procedure 2d* p. 3428.

§ 690.6. [Exemptions; earnings for personal services.] (a) One-half or such greater portion as is allowed by statute of the United States, of the earnings of the debtor received for his or her personal services rendered at any time within 30 days next preceding the date of a withholding by the employer under Section 682.3, shall be exempt from execution without filing a claim for exemption as provided in Section 690.50.

(b) All earnings of the debtor received for

his or her personal services rendered at any time within 30 days next preceding the date of a withholding by the employer under Section 682.3, if necessary for the use of the debtor or the debtor's family residing in this state and supported in whole or in part by the debtor, unless the debts are:

(1) Incurred by the debtor, his or her spouse, or his or her family for the common necessities of life.

(2) Incurred for personal services rendered by any employee or former employee of the debtor.

(c) The court shall determine the priority and division of payment among all of the creditors of a debtor who have levied an execution upon nonexempt earnings upon such basis as is just and equitable.

(d) Any creditor, upon motion, shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the priority and division of payment among all the creditors of the debtor who have levied an execution upon nonexempt earnings pursuant to this section. [1970 ch 1523 § 19; 1971 ch 578 § 8.8, operative October 1, 1971, ch 1645 § 1, ch 1684 § 5; 1972 ch 43 § 1, effective April 6, 1972; 1974 ch 1516, § 17, operative January 1, 1977; 1975 ch 1241 § 7; 1976 ch 317 § 1.] *Cal Jur 3d Creditors' Rights and Remedies* §§ 13, 19, 20, 28, 33, 132, 136, 140, 145, 225, 226, 233, *Enforcement of Judgments* §§ 21, 33, 35, 37, 126, 223; *Witkin Summary* (8th ed) p 4654.

§ 690.7. [Same: Savings deposits: Shares in savings and loan association.] (a) To the maximum aggregate value of one thousand dollars (\$1,000), any combination of the following: savings deposits in, shares or other accounts in, or shares of stock of, any state or federal savings and loan association; "savings deposits" shall include "investment certificates" and "withdrawable shares" as defined in Section 5061 and 5067 of the Financial Code, respectively.

(b) Such exemption set forth in subdivision (a) shall be a maximum of one thousand dollars (\$1,000) per person, whether the character of the property be separate or community. [1970 ch 1523 § 21.] *16 Cal Jur 3d Creditors' Rights and Remedies* §§ 10, 11, 13, *Enforcement of Judgments* § 26; *Cal Practice* §§ 57:7, 57:13, 57:18; *Witkin Procedure 2d* p 3442.

§ 690.8. [Same: Except proceeds from compensation by public entity for dwelling displacement.] For a period of six months

from the date of receipt, the compensation received from a public entity which acquires for a public use a dwelling actually owned and occupied by the debtor. Such compensation shall be exempt in the amount, over and above all liens and encumbrances, provided by Section 1260 of the Civil Code. [1972 ch 861 § 2; 1974 ch 47 § 1; effective February 28, 1974.] *Note*—There was another section of this number which was added by Stats 1972 ch 822 § 1 and repealed by Stats 1974 ch 47 § 3, effective February 28, 1974. *Cal Jur 3d Creditors' Rights and Remedies* §§ 10, 13, *Eminent Domain* § 244, *Enforcement of Judgments* § 26.

§ 690.8a. [Relocation benefits for displacement from dwelling] All relocation benefits for displacement from a dwelling actually owned or rented by the debtor received from a public entity pursuant to Chapter 16 (commencing with Section 7260), Division 7, Title 1 of the Government Code or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 USCS § 4601 et seq.], as amended, shall, in addition to any other exemptions provided for by the law, be exempt from attachment or execution. Such benefits shall be exempt from attachment or execution without filing a claim of exemption, as provided in Section 690.50. [1974 ch 47 § 2, effective February 28, 1974.] *Cal Jur 3d Creditors' Rights and Remedies* § 10, *Enforcement of Judgments* § 26.

§ 690.9. [Same: Life insurance benefits.] (a) All moneys, benefits, privileges, or immunities, accruing or in any manner growing out of any life insurance, if the annual premiums paid do not exceed five hundred dollars (\$500), or if they exceed that sum a like exemption shall exist which shall bear the same proportion to the moneys, benefits, privileges, and immunities so accruing or growing out of such insurance that such five hundred dollars (\$500) bears to the whole annual premium paid.

(b) In addition to the foregoing, all moneys, benefits, or privileges belonging to or insuring to the benefit of the insured's spouse or minor children growing out of life insurance purchased with annual premiums not exceeding five hundred dollars (\$500), or if such annual premiums exceeded that sum, a like exemption shall exist in favor of such persons which shall bear the same proportion to the moneys, benefits, or privileges growing out of such insurance that five

hundred dollars (\$500) bears to the whole annual premiums paid. [1970 ch 1523 § 39.] *Cal Jur 3d Creditors' Rights and Remedies* § 24, *Enforcement of Judgments* § 38; *Cal Practice* §§ 57:4, 57:7, 57:18; *Witkin Procedure 2d* pp 3432, 3509.

§ 690.10. [Same: Employee's group life insurance.] Except as provided in Sections 10203.5, 10203.6, and 10203.8 of the Insurance Code, a policy of group life insurance, or the proceeds thereof, either before or after payment, paid to the insured employee or the beneficiary. [1970 ch 1523 § 26; former § 690.10 repealed 1970 ch 1523 § 25.] *Cal Jur 3d Creditors' Rights and Remedies* § 24, *Enforcement of Judgments* § 38; *Cal Jur 2d Ship* § 53; *Cal Practice* §§ 57:7, 57:9, 57:20; *Witkin Procedure 2d* pp 3433, 3438.

§ 690.11. [Same: Health insurance benefits.] All moneys, benefits, privileges, or immunities, accruing or in any manner growing out of any disability or health insurance, if the annual premiums do not exceed five hundred dollars (\$500), and if they exceed that sum a like exemption shall exist which shall bear the same proportion to the moneys, benefits, privileges, and immunities so accruing or growing out of such insurance that such five hundred dollars (\$500) bears to the whole. [1970 ch 1523 § 41.] *Cal Jur 3d Collection and Credit Agencies* § 9, *Creditors' Rights and Remedies* § 24; *Cal Practice* §§ 18:134, 18:163, 57:7, 57:8, 57:20, 57:28; *Witkin Procedure 2d* pp 3408, 3433, 3436, 3438.

§ 690.12. [Same: Segregated benefit funds of holder of certificate of exemption.] The segregated benefit funds of a holder of a certificate of exemption issued pursuant to Section 1047 of the Insurance Code against the holder of a certificate of exemption, except that such funds shall not be exempt from process issued to enforce a claim of benefit. [1970 ch 1523 § 29.] *16 Cal Jur 3d Creditors' Rights and Remedies* § 25; *Cal Practice* § 57:7.

§ 690.13. [Same: Moneys of fraternal organizations used for payment of benefits.] All moneys belonging to a fraternal organization not exceeding the sum of five hundred dollars (\$500), and which moneys are used exclusively in the payment of sick or unemployment benefits to bona fide members of such fraternal organizations. [1970 ch 1523 § 48.] *Cal Jur 3d Creditors' Rights and Remedies* §§ 13, 25, *Enforcement of Judgments* § 39; *Cal Jur 2d Ship* § 31; *Cal Prac-*

tice §§ 57:7, 57:18; *Witkin Procedure 2d* pp 3431, 3435.

§ 690.14. [Same: Payment from fraternal benefit society.] Money or other aid paid or rendered by any fraternal benefit society as defined in Section 10990 of the Insurance Code, either before or after payment. [1970 ch 1523 § 32.] *16 Cal Jur 3d Creditors' Rights and Remedies* § 25; *Cal Practice* §§ 57:7, 57:18; *Witkin Procedure 2d* pp 3401, 3435.

§ 690.15. [Same: Claim for workmen's compensation: Award.] Any claim for workmen's compensation or compensation awarded, adjudged, or paid, except as provided in the Labor Code. Such claim or award, prior to actual payment, shall be exempt without filing a claim of exemption as provided in Section 690.50. [1970 ch 1523 § 34.] *Cal Jur 3d Creditors' Rights and Remedies* §§ 13, 25, 28, *Enforcement of Judgments* §§ 21, 39; *Cal Practice* §§ 57:7, 57:18; *Witkin Procedure 2d* pp 3431, 3436, 3456.

§ 690.16. [Same: Contributions to unemployment funds.] Contributions by workers, payable to the Unemployment Compensation Disability Fund, and by employers, payable to the Unemployment Fund, are exempt without filing a claim of exemption as provided in Section 690.50. [1970 ch 1523 § 36.] *Cal Jur 3d Creditors' Rights and Remedies* §§ 25, 28, *Enforcement of Judgments* §§ 21, 39; *Cal Jur 2d Pks & Pl* § 4; *Cal Practice* §§ 57:7, 57:18; *Witkin Procedure 2d* pp 3401, 3436, 3456.

§ 690.17. [Same: Building materials.] All material not exceeding one thousand dollars in value, purchased in good faith for use in the construction, alteration or repair of any building, mining claim or other improvement as long as in good faith the same is about to be applied to the construction, alteration or repair of such building, mining claim or other improvement. [1935 ch 723 § 17.] *Cal Jur 3d Creditors' Rights and Remedies* §§ 10, 11, *Enforcement of Judgments* § 26; *Cal Practice* §§ 57:4, 57:7, 57:18; *Witkin Procedure 2d* p 3442.

§ 690.175. [Same: Unemployment compensation benefits.] State unemployment compensation benefits or extended duration benefits or federal-state extended benefits or unemployment compensation disability benefits, incentive payments provided by Division 2 (commencing with Section 5000) of the Unemployment Insurance Code, and pay-

ments to an individual under a plan or system established by an employer which makes provision for his employees generally, or for a class or group of his employees, for the purpose of supplementing unemployment compensation benefits. Such benefits or payments, prior to actual payment, shall be exempt without filing a claim of exemption, as provided in Section 690.50. [1970 ch 1523 § 37; 1973 chs 1206, 1207 § 3.] *Cal Jur 3d Creditors' Rights and Remedies* §§ 25, 28, *Enforcement of Judgments* §§ 21, 39; *Witkin Procedure 2d* pp 3436, 3456.

§ 690.18. [Same: Money received as pension or benefit: Money held by state, etc., for retirement or pension purposes or for payment of disability, death, unemployment or other benefits.] (a) Except with regard to court ordered child or spousal support payments, all money received by any person, a resident of the state, as a pension, or as an annuity or retirement or disability or death or other benefit, or as a return of contributions and interest thereon, from the United States government, or from the state, or any county, city, or city and county, or other political subdivision of the state, or any public trust, or public corporation, or from the governing body of any of them, or from any public board or boards, or from any retirement, disability, or annuity system established by any of them pursuant to statute, whether the same shall be in the actual possession of such pensioner or beneficiary, or deposited by him.

(b) All money held, controlled, or in process of distribution by the state, or a city, city and county, county, or other political subdivision of the state, or any public trust or public corporation, or the governing body of any of them, or by any public board or boards, derived from the contributions by the state or such city, county, city and county, or other political subdivision, or such public trust, public corporation, governing body, or public board or boards, or by any officer or employee thereof, for retirement or pension purposes or the payment of disability, death, or other benefits, or the payment of benefits payable to, or the reimbursement of benefits paid to, employees thereof under the provisions of the Unemployment Insurance Code, and all rights and benefits accrued or accruing to any person under any system established pursuant to statute by the state, city, city and county, county, or other political subdivision of the state, or any public trust or public corporation for retirement, annuity, or pension pur-

poses or payment of disability or death benefits, and all vacation credits accumulated by a state employee pursuant to the provisions of Section 18030 of the Government Code, or any other public employee pursuant to any law for the accumulation of vacation credits applicable to such employee. Such moneys, benefits, and credits shall be exempt without filing a claim of exemption as provided in Section 690.50.

(c) All money held, controlled, or in process of distribution by any private retirement plan, including, but not limited to, union retirement plans, or any profit-sharing plan designed and used for retirement purposes, or the payment of benefits as an annuity, pension, retirement allowance, disability payment or death benefit from such retirement or profit-sharing plans, and all contributions and interest thereon returned to any member of any such retirement or profit-sharing plan, are exempt from execution, attachment, or garnishment in any bankruptcy proceeding. Except with regard to moneys withheld from employees' wages and contributions based on wages in employment under provisions of the Unemployment Insurance Code, and except with regard to court-ordered child support payments, the exemption given by this subdivision shall apply to any moneys held in self-employed retirement plans and individual retirement annuities or accounts provided for in the Federal "Employee Retirement Income Security Act of 1974" (P.L. 93-406) [29 USCS § 1001 et seq.]. [1970 ch 1523 § 44.5; 1973 ch 509 § 2; 1976 ch 948 § 1.] *Cal Jur 3d Creditors' Rights and Remedies* §§ 13, 25, 28, *Enforcement of Judgments* §§ 21, 39; *Cal Practice* §§ 57:4, 57:7, 57:18; *Witkin Procedure 2d* pp 3407, 3431, 3435, 3456.

§ 690.19. [Same: Public assistance payments.] All aid given under a public assistance program to a debtor or for his benefit. However, as against the claim of the county, the real and personal property of a debtor who has received support from public moneys shall be exempt only to the extent provided by and in accordance with the provisions of Section 17409 of the Welfare and Institutions Code. Such aid, prior to payment, shall be exempt without filing a claim of exemption, as provided in Section 690.50. [1970 ch 1523 § 40.] *Cal Jur 3d Creditors' Rights and Remedies* §§ 25, 28, *Enforcement of Judgments* §§ 21, 39; *Cal Jur 2d Ins* § 365; *Cal Practice* §§ 57:7, 57:16; *Witkin Procedure 2d* pp 3432, 3436, 3486.

§ 690.20. [Same: Hospital endowment.] To the extent provided for in Section 32508 of the Health and Safety Code, property, of any nature, given to endow an endowment hospital. [1970 ch 1523 § 42.] *Cal Jur 2d Ins* § 365; *Cal Practice* §§ 57:7, 57:16, 57:20; *Witkin Procedure 2d* pp 3407, 3433, 3442.

§ 690.21. [Same: Funds of person confined in prison or adjunct thereof.] The funds of any 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, held in trust for him, or to his credit, in an inmate's trust account or similar account by the state, county, or city, or any agency thereof, not to exceed the sum of forty dollars (\$40), shall be exempt from execution without filing a claim for exemption as provided in Section 690.50. [1970 ch 1523 § 44; 1974 ch 1516 § 18, operative January 1, 1977.] *Cal Jur 3d Creditors' Rights and Remedies* §§ 10, 28, *Enforcement of Judgments* §§ 21, 26; *Cal Practice* §§ 57:4, 57:7, 57:18; *Witkin Procedure 2d* p 3456.

§ 690.22. [Same: Courthouse, jails, public offices, etc.] All courthouses, jails, fire companies, public offices, and public buildings, lots, grounds, and personal property, including automotive and truck equipment, fixtures, furniture, books, papers, and appurtenances belonging to the jail, fire company, and public offices belonging and appertaining to any county of this state; and all cemeteries, public squares, parks, and places, public buildings, town halls, and buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament, or public use, or for the use of any fire or military company organized under the laws of this state. [1970 ch 1523 § 35.] *Cal Jur 3d Cemeteries* § 8, *Creditors' Rights and Remedies* § 14, *Enforcement of Judgments* § 40; *Cal Jur 2d Rec* § 29; *Cal Practice* §§ 57:7, 57:17, 57:21; *Witkin Procedure 2d* pp 3401, 3435.

§ 690.24. [Same: Land for burial of dead; Railings and inclosures of land; Monuments, tombstones, and improvements.] All lots of land, not exceeding one-quarter of an acre in size, owned, used, or occupied by any person, or by any person in joint tenancy or tenancy in common with any other person or persons, in any graveyard, ceme-

tery, or other place for the sole purpose of burying the dead, together with the railing or fencing enclosing the same, and all grave-stones, tombstones, monuments, and other appropriate improvements thereon erected, are exempt from levy and forced sale by virtue of any writ, order, judgment, or decree, or by any legal process whatever. In cases of religious or benevolent associations or corporations, the amount of land so exempt may extend to not exceeding five acres.

Not more than one lot owned, used, or occupied by any such person or by any person in joint tenancy or tenancy in common with any other person or persons or such association or corporation in any one cemetery, graveyard or other place is exempted by this section.

This section does not apply to land held by any person or persons, association, or corporation for the purpose of sale or disposition as burial lots or otherwise.

No property dedicated as a cemetery by a cemetery authority shall be subject to execution because of debts due from an individual owner of an interment plot.

All money payable or to become payable as the purchase price or on account of the purchase price of unused cemetery lands, or lands from which all remains have been removed, is not subject to execution if used for the purpose enumerated in Section 7923 of the Health and Safety Code. [1970 ch 1523 § 57; 1974 ch 1516 § 19, operative January 1, 1977.] *Cal Jur 3d Creditors' Rights and Remedies* § 10, *Enforcement of Judgment* § 26; *Cal Practice* §§ 57:4, 57:7, 57:11, 57:12; *Witkin Procedure 2d* pp 3402, 3407, 3432; *Summary (8th ed)* p 1740.

§ 690.25. [Same: Pews in churches and meetinghouses.] All pews in churches and meetinghouses, used for religious purposes, owned and claimed by any person, or held, in accordance with the rules and regulations of such churches shall be exempt without filing a claim of exemption as provided in Section 690.50. [1970 ch 1523 § 38.] *Cal Jur 3d Creditors' Rights and Remedies* §§ 10, 28, *Enforcement of Judgments* §§ 21, 26; *Cal Jur 2d Mut Ben* § 40; *Cal Practice* §§ 57:7, 57:18; *Witkin Procedure 2d* pp 3402, 3435.

§ 690.26. [Same: Property of Reclamation Board; Property of Sacramento and San Joaquin Drainage District.] The property of the Reclamation Board and the Sacramento and San Joaquin Drainage District. [1970 ch 1523 § 50.] *Cal Jur 3d Creditors' Rights and Remedies* § 14, *Enforcement of Judgments*

§ 40; Cal Practice §§ 18-134, 18-163, 44-25, 57-8, 57-25, 57-26, 57-27, 57-28, 57-29, 57-31, 57-34, 57-36, 57-37, 57-38, 57-40, 57-41. Witkin Procedure 2d pp 1265, 3401, 3456.

§ 690.27. [Same: Housing authority realty.] The real property of a housing authority, as defined in Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code. [1970 ch 1523 § 52.] Cal Jur 3d Creditors' Rights and Remedies § 14, Enforcement of Judgments § 40; Cal Jur 2d Exemp § 24; Cal Practice § 57-23; Witkin Procedure 2d pp 3401, 3407.

§ 690.28. [Same: Trust for educational purpose.] Any property granted to a trustee for educational purposes, pursuant to Section 31051 of the Education Code, if the action under which the execution or attachment is issued, or the proceeding under which the sale is ordered, is not commenced within two years of the filing for record of the grant. No property shall be subject to execution or forced sale under any judgment obtained in any proceeding instituted within two years, if there is other property of the grantor subject to execution or forced sale sufficient to satisfy the judgment. Nothing in this section shall be construed to affect mechanics' or laborers' liens. [1970 ch 1523 § 53.] Cal Jur 3d Creditors' Rights and Remedies § 14, Enforcement of Judgments § 40; Witkin Procedure 2d pp 3401, 3407.

§ 690.29. [Same: Redevelopment agency property.] All property of a redevelopment agency, including funds, owned or held by it for the purposes of Chapter 2 (commencing with Section 33100) of Part 1 of Division 24 of the Health and Safety Code. [1970 ch 1523 § 54.] Cal Jur 3d Creditors' Rights and Remedies § 14, Enforcement of Judgments § 40; Witkin Procedure 2d p 3401.

§ 690.30. [Deposit under certain provisions of federal law: Exemption of specified amount held in accounts of financial institutions which are "payments authorized by the Social Security Administration".] With respect to any deposit account maintained with a bank or any investment certificate, share account or withdrawable share maintained with a state or federally chartered savings and loan association in which payments authorized by the Social Security Administration are directly deposited by the United States government pursuant to Public Law No. 92-366 (86 Stats. 506 (1972)) and any regulations promulgated thereunder:

(a) The first five hundred dollars (\$500) of

such account shall not be subject to levy of attachment or execution in any manner where one depositor to the account is the designated payee of the directly deposited payments. The first seven hundred fifty dollars (\$750) of such account shall not be subject to levy of attachment or execution in any manner where two or more depositors to the account are the designated payees of the directly deposited payments; provided, however, that where two or more such depositors are joint payees of directly deposited payments which represent a benefit to only one of the depositors, the exemption shall be the first five hundred dollars (\$500) of such account.

(b) Any amounts in excess of those authorized under subdivision (a) are exempt to the extent such amounts consist of payments authorized by the Social Security Administration which are directly deposited by the United States government pursuant to Public Law No. 92-366 (86 Stats. 506 (1972)) and any regulations promulgated thereunder or exempt under any other provisions of law as hereinafter provided:

(1) The financial institution shall either place the amounts in excess of those authorized by subdivision (a) in a suspense account or otherwise prohibit their withdrawal pending notification of the judicial determination of their exempt status, and advise the levying officer in writing of the nature and balance of the account of the debtor within 10 business days after the levy;

(2) No claim of exemption shall be required with respect to payments authorized by the Social Security Administration which are directly deposited by the United States government pursuant to Public Law No. 92-366 (86 Stats. 506 (1972)). If the judgment creditor delivers an affidavit or declaration alleging that the property is not exempt within the meaning of this subdivision to the levying officer within five days after the levying officer has notified the judgment creditor that all or parts of the amounts being held by the financial institution pursuant to paragraph (1) are nonexempt the procedure in Section 690.50 shall be followed. If no affidavit or declaration is timely delivered by the judgment creditor, then subdivision (d) of Section 690.50 shall apply. For purposes of subdivision (i) of Section 690.50, the judgment debtor has the burden of proving that the moneys are exempt;

(3) No finding shall be required in an exemption hearing under this section. At the conclusion of the hearing, the court shall

give judgment determining whether or not the excess moneys are exempt, in whole or in part, and may give judgment determining the priority or division of payment between one or more creditors from nonexempt moneys which judgment shall be determinative as to the right of the creditor to have the moneys held by the financial institution pursuant to the writ. In the judgment, the court shall make all appropriate orders for the prompt disposition of such moneys.

(4) If the court determines that all or part of the excess is exempt, a certified copy of the judgment shall be transmitted forthwith by the clerk to the financial institution in order to permit the financial institution to transfer such moneys from the suspense account to the debtor's account or otherwise release any restrictions on its withdrawal by the debtor. The transfer or release shall be effected within three business days of the receipt of the judgment. If the court has determined that all or part of the excess is nonexempt, a certified copy of the judgment shall be transmitted forthwith by the clerk to the levying officer and the levying officer shall serve the copy of the judgment forthwith upon the financial institution. With respect to any part of the excess which is exempt, the financial institution shall transfer such moneys from the suspense account or otherwise release any restrictions on its withdrawal by the debtor. The transfer or release shall be effected within three business days of the receipt of a certified copy of the judgment by the financial institution.

(c) For purposes of this section, "payments authorized by the Social Security Administration" means regular retirement and survivors benefits, supplemental security income benefits, coal miners health benefits, and disability insurance benefits. [1976 ch 810 § 1.]

§ 690.31. [Exemption of dwelling house: Exception: Execution procedure.] (a) A dwelling house in which the debtor or the family of the debtor actually resides shall be exempt from execution, to the same extent and in the same amount, except as otherwise provided in this section, as the debtor or the spouse of the debtor would be entitled to select as a homestead pursuant to Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code. For the purpose of this section, "dwelling house" means the dwelling house together with the out-buildings and the land on which the same are situated.

(b) The exemption provided in subdivision (a) does not apply:

(1) Whenever the debtor or the spouse of the debtor has an existing declared homestead on any property in this state other than property which is the subject of a proceeding under subdivision (c) of this section. The existence of a homestead declared by the debtor or the debtor's spouse under Section 1300 of the Civil Code shall not affect the right of the other spouse to an exemption under this section.

(2) Whenever a judgment or abstract thereof or any other obligation which by statute is given the force and effect of a judgment lien has been recorded prior to either:

(i) The acquisition of the property by the debtor or the spouse of the debtor; or

(ii) The commencement of residence by the debtor or the spouse of the debtor, whichever last occurs.

(3) Whenever the execution or forced sale is in satisfaction of judgments obtained:

(i) On debts secured by mechanics, contractors, subcontractors, artisans, architects, builders, laborers of every class, or material-men's or vendors' liens upon the premises;

(ii) On debts secured by encumbrances on the premises executed and acknowledged by husband and wife, by a claimant of a married person's separate homestead, or by an unmarried claimant; or

(iii) On debts secured by encumbrances on the premises, executed and recorded prior to or in connection with the acquisition of the property by the debtor or the spouse of the debtor.

(c) Whenever a judgment creditor seeks to enforce a judgment against a dwelling house, the judgment creditor shall apply to the court in the county in which the dwelling house, whether or not the judgment was rendered in another county, the judgment creditor shall apply to the proper court in the county in which the dwelling house is located for the issuance of a writ of execution. The proper court shall be determined in the same manner as provided in Section 392. The application shall be verified and describe the dwelling house and state that either or both of the following facts exist:

(1) The dwelling house is not exempt, the reasons therefor, and (i) that a reasonable search of the records of the office of the county recorder has not resulted in the finding of a declared homestead of the debtor or the spouse of the debtor on the subject dwelling house, and further, that a

reasonable search of the records of the county tax assessor indicates that there is no current homeowner's exemption claimed by either the debtor or the spouse of the debtor on the subject dwelling house, or (b) that the records of the county tax assessor indicate that there is a current homeowner's exemption claimed by either the debtor or the spouse of the debtor on the subject dwelling house but the judgment creditor believes for reasons which shall be stated in the application that the debtor or the spouse of the debtor is not entitled to the exemption provided in this section.

(2) The current value of the dwelling house, over and above all liens and encumbrances thereon, exceeds the amount of the allowable exemption.

If an application alleges facts solely pursuant to paragraph (2) or the court determines that a writ may issue only under the circumstances described in paragraph (2), the court shall determine whether the current value of the dwelling house, over and above all liens and encumbrances thereon, exceeds the amount of the allowable exemption in the manner provided by Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code.

At the time the application is filed, if the judgment was rendered in another county, there shall be paid to the clerk or judge, as a filing fee, the sum of four dollars (\$4) when filed in a justice court, or the sum of six dollars (\$6) when filed in a superior or municipal court.

Whenever a judgment creditor seeks to enforce a judgment pursuant to this section and the judgment was rendered in another county, the judgment creditor shall file with the clerk or judge of the proper court in the county in which the dwelling house is located an abstract of judgment in the form prescribed in Section 674.

(d) Upon receipt of a completed application of a judgment creditor, the court shall set a time and place for hearing and order the debtor to show cause why a writ of execution should not issue. Prior to the hearing, a copy of the order to show cause, a copy of the application filed by the judgment creditor and a copy of the following notice, in at least 10-point bold type, shall be served as prescribed in subdivision (f):

**"IMPORTANT LEGAL NOTICE TO
HOMEOWNER AND RESIDENT"**

1. Your house is in danger of being sold to satisfy a judgment obtained in court. You

may be able to protect the house and real property described in the accompanying application from execution and forced sale if you or your family now actually reside on the property and presently do not have a declared homestead legally recorded with the county recorder on any other property in the State of California. **YOU OR YOUR SPOUSE MUST COME TO THE HEARING TO SHOW THESE FACTS.**

2. If you or your spouse want to contest the forced sale of this property, you or your spouse must appear at (location set forth in OSC) on (date and time) and be prepared to answer questions concerning the statements made in the attached application. **THE ONLY PURPOSE OF THE HEARING WILL BE TO DETERMINE WHETHER THE PROPERTY CAN BE SOLD, NOT WHETHER YOU OWE THE MONEY.**

3. **FOR YOUR OWN PROTECTION, YOU SHOULD PROMPTLY SEEK THE ADVICE OF AN ATTORNEY IN THIS MATTER. IF YOU ARE A TENANT AND DO NOT CLAIM TO BE THE OWNER OR BUYER OF THIS PROPERTY, THIS NOTICE DOES NOT AFFECT YOU. PLEASE GIVE IT TO YOUR LANDLORD."**

(e) The burden of proof at the hearing shall be determined in the following manner:

(1) Where the application of the judgment creditor states a claim of nonexempt status, the debtor or the spouse of the debtor shall have the burden of proving his or her entitlement to the exemption; and

(2) Where the application of the judgment creditor asserts that the current value of the dwelling, over and above all liens and encumbrances thereon, exceeds the amount of the allowable exemption, the judgment creditor shall have the burden of proof on that issue.

(f) Upon a determination by the court that the dwelling house is not exempt or that, although exempt, the judgment creditor is entitled to levy against any excess, it shall make an order directing the issuance of a writ of execution. The order shall state whether or not the dwelling house is exempt and, if not exempt, state that the judgment creditor is entitled only to execution against the excess over the exempt amount. It shall also specify the amount of the exemption. A copy of the order shall be transmitted by the clerk of the court to the clerk of the court in which the judgment was rendered.

The writ of execution shall specify the

amounts for distribution under the levy, including names and addresses of each person or entity having an encumbrance against the dwelling and the name and address of any exempt debtor and the exempt amount.

(g) Any such writ of execution issued upon a hearing at which the debtor, the spouse of the debtor, or his or her attorney did not appear shall be served in the manner prescribed in subdivision (f) and be accompanied by the following notice in at least 10-point bold type:

**"IMPORTANT LEGAL NOTICE TO
HOMEOWNER AND RESIDENT"**

1. You were recently served with a court order requiring your presence at a hearing to determine why the court should not issue a writ of execution for the forced sale of your home. **YOU AND YOUR SPOUSE FAILED TO APPEAR AT THE HEARING AND THE COURT HAS ORDERED THAT YOUR HOME BE SOLD TO SATISFY A JUDGMENT AGAINST YOU.**

2. Your absence at the hearing has contributed to the issuance of the accompanying writ of execution. If the absence of you or your attorney at the hearing was legally excusable and you believe in good faith that your home may be entitled to an exemption from execution, you should complete the form below and date, sign, and return the form below no later than (Insert date no later than five days prior to date of sale.)

3. **FOR YOUR OWN PROTECTION, YOU SHOULD IMMEDIATELY SEEK THE ADVICE OF AN ATTORNEY. IF YOU ARE A TENANT AND DO NOT CLAIM TO BE THE OWNER OR BUYER OF THIS PROPERTY, THIS NOTICE DOES NOT AFFECT YOU. PLEASE GIVE IT TO YOUR LANDLORD.**

(Cut Out and Return This Form to)
..... (Name and Title of Levying Officer)
..... (Street Address and City)
..... (Area Code and Telephone Number of Levying Officer)"

I declare that my absence from the previous hearing on whether or not this property should be sold was legally excusable. I, or my spouse, currently reside in this property and I wish a further hearing so that I may assert my exemption rights under Code of Civil Procedure Section 690.31 and contest the sale of my home. I understand that the clerk of the court will notify me of the date and place for this hearing if I return this

form immediately and that I must attend this hearing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on at, California.

.....
Signature of Debtor or
Debtor's Spouse

(h) If the debtor or spouse of the debtor declares that his or her absence or the absence of his or her attorney at the hearing was due to mistake, inadvertence, surprise or excusable neglect and declares that the subject dwelling house may be entitled to an exempt status, the levying officer shall, upon receipt of the declarations of the debtor five days prior to the scheduled sale date, postpone the sale pending further orders of the court and transmit the notice forthwith to the court. Upon receipt of the notice, the clerk shall set a hearing to determine whether the writ of execution should be recalled, and shall give at least 10 days notice to the parties.

(i) Subsequent applications by a judgment creditor within 12 months of a denial of a writ of execution shall be supported by a statement under oath alleging that there is a material change of circumstances affecting the exemption, and setting forth facts supporting such claimed material change of circumstances.

(j) In the event of an execution sale, the proceeds of the sale shall be applied in the following order and priority: first, to the discharge of all liens and encumbrances, if any, on the property; second, to the debtor, or the debtor's spouse if such person is the exemption claimant, in the amount of the exemption if allowed pursuant to this section; third, to the satisfaction of the execution; and fourth, to the debtor, or the debtor's spouse if such person is the exemption claimant.

(k) That portion of the proceeds from the sale of real property pursuant to an order of the court directing the issuance of a writ of execution pursuant to subdivision (f) of this section, which portion represents the amount of the exemption, shall be exempt for a period of six months from the date of receipt of the proceeds. Where such exempt proceeds are used for the purchase of a dwelling house, in which the debtor or the family of the debtor actually reside, within a period of six months following receipt, the subsequently acquired dwelling shall be exempt from execution. The exemption for the sub-

subsequently acquired real property shall have the same effect as if allowed on the date of the acquisition of or the commencement of residence by the debtor or the spouse of the debtor, whichever last occurred, in the property previously determined to be exempt, except with respect to a judgment or other obligation which by statute is given the force and effect of a judgment lien against the subsequently acquired property prior to its acquisition.

(j) Promptly upon receipt of the application filed by the judgment creditor, the order to show cause, and the notice specified in subdivision (d), or promptly upon receipt of the writ of execution and the notice specified in subdivision (g), and in no event less than 10 days prior to the date of the hearing specified in the notice under subdivision (d) or the date of sale, as the case may be, the levying officer shall mail copies of the documents to the defendant and to any third person in whose name the property stands upon the records of the office of the tax assessor of the county where the property is located on the last business day preceding the date of mailing. Such copies shall be mailed first-class mail, postage prepaid, to the address of the defendant and any such third person as shown by the records of the office of the tax assessor. The levying officer shall also serve an occupant of the property with copies or, if there is no occupant on the property at the time service is attempted, the levying officer shall post a copy in a conspicuous place on the property. Service upon the occupant may be made by leaving the copies with the occupant personally, or, in the occupant's absence, with any person of suitable age and discretion, found upon the property at the time service is attempted and who is either an employee or agent of such occupant or a member of his family or household.

(m) The provisions of subdivisions (j), and (l) of Section 690.50 shall apply to proceedings under this section.

(n) An appeal lies from any judgment under this section. Such appeal shall be taken in the manner provided for appeals in the court in which the proceeding is had.

(o) The notice specified in subdivision (d) shall also be provided in Spanish as follows:

**"IMPORTANTE AVISO LEGAL AL
PROPIETARIO DE CASA Y
RESIDENTE**

1. Su casa está en peligro de ser vendida para cumplir con una orden judicial obten-

ida en la corte. Usted podría proteger la casa y los bienes raíces descritos en la solicitud adjunta de la ejecución y venta forzosa si usted o su familia actualmente residen en la propiedad y no tienen una casa propia legalmente registrada con el registrador del condado en alguna otra propiedad en el Estado de California. **USTED O SU ESPOSO(A) DEBEN VENIR A LA AUDIENCIA PARA DEMOSTRAR ESTOS PUNTOS.**

2. Si usted o su esposa(a) quieren disputar la venta forzosa de esta propiedad, usted o su esposo(a) deberán presentarse a

..... el
(location set forth in O.S.C.) (date and time) y estar preparados para contestar las preguntas acerca de las declaraciones puestas en la solicitud adjunta. **EL ÚNICO PROPÓSITO DE ESTA AUDIENCIA SERÁ EL DE DETERMINAR SI LA PROPIEDAD PUEDE SER VENDIDA, Y NO SI USTED DEBE DINERO.**

3. **PARA SU PROPIA PROTECCIÓN, USTED DEBERÍA PRONTAMENTE DE BUSCAR EL CONSEJO DE UN ABOGADO EN ESTE ASUNTO.** Si usted es un inquilino y no reclama ser el dueño o el comprador de esta propiedad, este aviso no le afecta a usted. Por favor díselo a su arrendador."

(p) The notice specified in subdivision (g) shall be provided in Spanish as follows:

**"IMPORTANTE AVISO LEGAL AL
PROPIETARIO DE CASA Y
RESIDENTE**

1. Recientemente se le entregó una orden de la corte pidiendo su presencia para una audiencia para determinar el porque la corte no debería de extenderle una orden de ejecución para la venta forzosa de su casa. **USTED Y SU ESPOSA NO VINIERON A LA AUDIENCIA Y LA CORTE HA ORDENADO QUE SU CASA SEA VENDIDA PARA SATISFACER EL JUICIO EN CONTRA DE USTEDES.**

2. Su ausencia a la audiencia ha contribuido para la emisión de la orden de ejecución. Si la ausencia de ustedes o de su abogado en la audiencia es excusable legalmente y creen de buena fe que su casa puede tener derecho a estar exonerada de ejecución, debería de completar el formato que está debajo y fecharlo, firmarlo, y devolverlo no a más tardar del _____. (Insert date no later than five days prior to sale.)

3. **PARA SU PROPIA PROTECCIÓN, USTED DEBERÍA INMEDIATAMENTE**

BUSCAR EL CONSEJO DE UN ABOGADO. Si usted es un inquilino y no reclama ser el dueño o el comprador de esta propiedad, este aviso no le afecta a usted. Por favor désele a su arrendador.

(Corte y Devuelva Este Formato a)

(Name and title of levying officer)

(Street address and city)

(Area code and telephone number of levying officer)

Declaro que mi ausencia en la pasada audiencia sobre si esta propiedad deberia de ser vendida o no fue legalmente excusable. Yo, o mi esposo(a), actualmente residimos en esta propiedad y deseo una audiencia adicional para hacer valer mis derechos de exención bajo el Código de Procedimiento Civil Sección 690.31 y disputar la venta de mi casa. Entiendo que el oficial de la corte me notificará de la fecha y del lugar de esta audiencia si devuelvo este formato inmediatamente y que debo asistir a esta audiencia.

Declaro bajo pena de perjurio que lo anterior es verdadero y está correcto.

Firmado el (fecha) en (ciudad o condado) California

(Firma del Deudor(a) o de la Esposa(o) del Deudor(n))

Timely completion and return of the return portion of the Spanish translation of this form shall have the same force and effect as timely completion and return of the English language form. [1976 ch 1000 § 4, operative July 1, 1977; 1977 ch 305 § 3, effective July 8, 1977.]

§ 690.50. [Same: Affidavit and claim of exemption; Notice of claim; Creditor's counteraffidavit; Hearing; Perishable goods; Burden of proof; Judgment; Appeal; Release.]

(a) If the property mentioned in Section 690.1 to 690.29, inclusive, shall be levied upon under writ of execution, the judgment debtor (herein referred to as "the debtor"), in order to avail himself of his exemption rights as to such property, shall within 10 days from the date such property was levied upon deliver to the levying officer an affidavit of himself or his agent, together with a copy thereof, alleging that the property levied upon, identifying it, is exempt, specifying the section or sections of this code on which he relies for his claim to exemption, and all facts necessary to support his claim, and also

stating therein his address within this state for the purpose of permitting service by mail upon him of the counteraffidavit and any notice of the motion herein provided. For purposes of this section, if the property levied upon consists of the earnings of a judgment debtor, each date that earnings are withheld from the judgment debtor shall be deemed to be the date such earnings were levied upon. A judgment debtor shall have the right to file a separate claim of exemption each time that a withholding of earnings occurs, provided, that if a prior claim of exemption has been adjudicated under the same levy, that each separate claim of exemption thereafter be supported by a statement under oath alleging the changed circumstances which support the new claim of exemption. If a claim of exemption be allowed, the judgment creditor shall have the right, at any time during the effective period of the claim of exemption, to move the court for consideration of the claim previously granted on the grounds of a material change of circumstances affecting the debtor's exemption rights. If the judgment creditor does make such a motion, he must support his motion by a statement under oath alleging the changed circumstances which support his motion for consideration.

(b) Forthwith upon receiving the affidavit of exemption, the levying officer shall serve upon the person in whose favor the writ runs (herein referred to as "the creditor"), either personally or by mail, a copy of the affidavit of exemption, together with a writing, signed by the levying officer, stating that the claim to exemption has been received and that the officer will release the property unless he receives from the creditor a counteraffidavit within five days after service of such writing.

(c) If the creditor desires to contest the claim to exemption, he shall, within such period of five days file with the levying officer a counteraffidavit alleging that the property is not exempt within the meaning of the section or sections of this code relied upon, or if the claim to exemption be based on Sections 690.2, 690.3, 690.4, or 690.6, alleging that the value of the property claimed to be exempt is in excess of the value stated in the applicable section or sections, together with proof of service of a copy of such counteraffidavit upon the debtor.

(d) If no such counteraffidavit, with such proof of service, is so filed with the levying

officer within the time allowed, the officer shall forthwith release the property.

(e) If such counteraffidavit, with such proof of service, is so filed, either the creditor or the debtor shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the claim to exemption, the priority or division of payment between one or more creditors from nonexempt earnings under the provisions of Section 690.6 or the value of the property claimed to be exempt. Such hearing shall be granted by the court upon motion of either party made within five days after the counteraffidavit is filed with the levying officer, and such hearing must be had within 15 days from the date of the making of such motion unless continued by the court for good cause. The party making the motion for hearing shall give not less than five days' notice in writing of such hearing to the levying officer and to the other party, and specify therein that the hearing is for the purpose of determining the claim to exemption. The notice may be of motion or of hearing and upon the filing of the notice with the clerk of the court, the motion is deemed made.

(f) If neither party makes such motion within the time allowed, or if the levying officer shall not have been served with a copy of the notice of hearing within 10 days after the filing of the counteraffidavit, the levying officer shall forthwith release the property to the debtor.

(g) At any time while the proceedings are pending, upon motion of either party or upon its own motion, the court may (1) order the sale of any perishable property held by such officer and direct disposition of the proceeds of such sale, and (2) make such other orders as may be proper under the particular circumstances of the case. Any orders so made may be modified or vacated by the court or judge granting the same, or by the court in which the proceedings are pending, at any time during the pendency of the proceedings, upon such terms as may be just.

(h) The levying officer in all cases shall retain physical possession of the property levied upon if it is capable of physical possession, or in the case of property not capable of physical possession, the levy shall remain in full force and effect, pending the final determination of the claim to exemption. However, no sale under execution shall be had prior to such final determination

unless an order of the court hearing the claim for exemption shall so provide.

(i) At such hearing, the party claiming the exemption shall have the burden of proof. The affidavits and counteraffidavits shall be filed by the levying officer with the court and shall constitute the pleadings, subject to the power of the court to permit an amendment in the interests of justice. The affidavit of exemption shall be deemed controverted by the counteraffidavit and both shall be received in evidence. Nothing herein shall be construed to deprive anyone of the right to a jury trial in any case where, by the Constitution, such right is given, but a jury trial may be waived in any such case in like manner as in the trial of an action. No findings shall be required in a proceeding under this section. When the hearing is before the court sitting without a jury, and no evidence other than the affidavit and counteraffidavit is offered, the court, if satisfied that sufficient facts are shown thereby, may make its determination thereon. Otherwise, it shall order the hearing continued for the production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits. At the conclusion of the hearing, the court shall give judgment determining whether the claim to exemption shall be allowed or not, in whole or in part, and may give judgment determining the priority or division of payment between one or more creditors from nonexempt earnings under the provisions of Section 690.6, which judgment shall be determinative as to the right of the creditor to have the property taken and held by the officer or to subject the property to payment or other satisfaction of his judgment. In such judgment the court shall make all proper orders for the disposition of such property or the proceeds thereof.

(j) A copy of any judgment entered in the trial court shall be forthwith transmitted by the clerk to the levying officer in order to permit such officer to either release the property attached or to continue to hold it to sell it, in accordance with the provisions of the writ previously delivered to him. Such officer, unless an appeal from the judgment is waived, or the judgment has otherwise become final, shall continue to hold such property under attachment or execution, continuing the sale of any property held under execution until such judgment becomes final. However, if a claim to exemption under Section 690.6 is allowed by such judgment, the debtor shall be entitled to a release of the earnings so exempted at the

expiration of three days, unless otherwise ordered by the court, or unless the levying officer shall have been served with a copy of a notice of appeal from the judgment.

(k) When any documents required hereunder are served by mail, the provisions of this code relating to service by mail shall be applicable thereto.

(l) Whenever the time allowed for an act to be done hereunder is extended by the court, written notice thereof shall be given promptly to the opposing party, unless such notice be waived, and to the levying officer.

(m) An appeal lies from any judgment under this section. Such appeal shall be taken in the manner provided for appeals in the court in which the proceeding is had. [1970 ch 1523 § 56; 1972 ch 649 § 2, effective August 9, 1972; 1974 ch 1251 § 3, operative July 1, 1975; 1976 ch 437 § 47; 1977 ch 305 § 4, effective July 8, 1977.] *Cal Jur 3d Creditors' Rights and Remedies* §§ 27, 28, 29, 31, 32, 33, 34. *Enforcement of Judgments* §§ 28, 121-127; *Cal Practice* § 57:22; *Witkin Procedure 2d* pp 3407, 3409, 3441, 3455, 3456, 3457, 3458, 3459, 3485, 4319, 4332.

§ 690.51. [Exemptions where tax warrant issued: Jurisdiction of court to make determination.] In cases in which a warrant or notice of levy is issued by the State of California, or a department or agency thereof, pursuant to Section 1755 or 1785 of the Unemployment Insurance Code, or Section 6776, 7881, 9001, 10111, 18906, 25191, 30341, or 32365 of the Revenue and Taxation Code, for the collection of tax liability owed to the state, a department or agency thereof, the tax debtor shall be entitled to the exemptions provided in Sections 690.1 to 690.51, inclusive, and, where applicable, the provisions of Section 690.50 shall govern the assertion and determination thereof. The superior court of the county, or city and county, in which the property levied upon is located shall have jurisdiction to hear and determine the validity of the claim of exemption or the value of the property claimed exempt, whether or not the value of the property determines the right to exemption, in like manner as if the property were levied upon by writ of execution issued by such court. [1970 ch 1523 § 51; 1971 ch 873 § 2; 1977 ch 305 § 5, effective July 8, 1977.] *30 Cal Jur 3d Enforcement of Judgments* § 25; *Cal Jur 2d Rel & Ch Soc* § 26; *Cal Practice* §§ 57:7, 57:18; *Witkin Procedure 2d* p 3407.

§ 690.52. [Property not exempt.] No ar-

ticle, however, or species of property, mentioned in Sections 690.1 to 690.29, inclusive, of this code is exempt from execution issued upon a judgment recovered for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon. [1970 ch 1523 § 55 operative July 1, 1975; 1974 ch 1251 § 5, operative July 1, 1975; 1977 Ch 305 § 6, effective July 8, 1977.] *Cal Jur 3d Creditors' Rights and Remedies* §§ 9, 15. *Enforcement of Judgments* § 20; *Cal Jur 2d Rel & Ch Soc* § 26; *Cal Practice* §§ 57:7, 57:18; *Witkin Procedure 2d* p 3409.

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CHAPTER 7. EXEMPTIONS FROM ENFORCEMENT
OF MONEY JUDGMENTS

Article 1. General Provisions

§ 707.110. Property subject to enforcement of money judgment

707.110. (a) Except as otherwise provided in subdivision (b), the following property is subject to the enforcement of a money judgment pursuant to this title:

(1) All of the judgment debtor's property.

(2) Except as provided in Section 702.155, all property which, when owned by the judgment debtor, was subject to an attachment lien, judgment lien, execution lien, or other lien in favor of the judgment creditor arising in the action or from enforcement of the judgment.

(b) Property which is not subject to the enforcement of a money judgment pursuant to Article 3 (commencing with Section 707.410) or pursuant to other law may not in any manner be applied toward the satisfaction of a money judgment.

Comment. Subdivision (a)(1) of Section 707.110 supersedes a portion of subdivision (a) of former Section 688. The reference in former law to "any interest" in property and the enumeration of certain types of property ("goods, chattels, moneys or other property") are deleted; the deletion is not intended to limit in any way the scope of property subject to the enforcement of a money judgment. Generally, property interests that are assignable may, by some procedure, be reached to satisfy a money judgment. See *Murphy v. Allstate Ins. Co.*, 17 Cal.3d 937, 945-46, 553 P.2d 584, ___, 132 Cal. Rptr. 424, ___ (1976). See also A. Freeman, *Law of Executions* §§ 110, 112, 159, 162 (3d ed. 1900); 2 *id.* §§ 172, 177; 3 *id.* § 425. Except to the extent provided in Article 6 (commencing with Section 705.610) of Chapter 5 (order of assignment of right to future payments), a debt which is uncertain or contingent in the sense that it may never become due and payable may not be reached. See *Javorek v. Superior Court*, 17 Cal.3d 629, 640, 552 P.2d 728, ___, 131 Cal. Rptr. 768, ___ (1976); *Dawson v. Bank of America*, 100 Cal. App.2d 305, 309, 223 P.2d 280, ___ (1950); *Clecak v. Dunn*, 95 Cal. App. 537, 540, 272, P. 1104, ___ (1928).

Subdivision (a)(2) continues former law. See the last portion of subdivision 1 of former Section 682 (real property subject to judgment lien); *Riley v. Nance*, 97 Cal. 203, 31 P. 1126 (1893) (property subject to attachment lien when owned by eventual judgment debtor); *Puissegur v. Yarbrough*, 29 Cal.2d 409, 412-13, 175 P.2d 830, ___ (1946) (property subject to execution lien when owned by judgment debtor); *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242, ___ (1909) (judgment in supplementary proceedings or creditor's suit relates back to time of garnishment of debt by service of writ of execution); *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 29-30, 87 P.2d 830, ___

(1939) (creditor's suit creates equitable lien on property sought to be reached from time of service of process). For provisions concerning the creation of liens, see Sections 488.500, 488.510 (attachment lien), 486.110 (temporary protective order in attachment), 674 (judgment lien), 703.250 (execution lien), 704.____ (lien of earnings withholding order), 705.120 (lien of order for examination of judgment debtor), 705.130 (lien of order for examination of judgment debtor's debtor), 705.250 (lien of creditor's suit), 705.340 (receiver's lien), 705.420 (lien of charging order), 705.510 (lien on cause of action and nonfinal judgment), 705.620 (lien of assignment order), 705.780 (lien on money owed judgment debtor as creditor of public entity). See also Section 702.150 (relation back of liens). The introductory clause of subdivision (a)(2) recognizes that a lien may not follow property when it is transferred to a bona fide purchaser. See Section 702.155 and the Comment thereto.

This section does not restrict the property which is liable for the debts of a spouse pursuant to Civil Code Sections 5116, 5120, 5121, 5122, 5123, 5131, and 5132. Where a spouse's separate property is sought to be applied to the debt of the other spouse incurred for necessities pursuant to the liability provided in Civil Code Section 5121, the spouse whose separate property is sought to be reached must be made a party to the action for the purpose of obtaining a limited personal judgment. *Credit Bureau of Santa Monica Bay Dist., Inc. v. Terranova*, 15 Cal. App.3d 854, 860, 93 Cal. Rptr. 538, ____ (1971). However, if property has been levied upon, the spouse who is not a judgment debtor may claim that the property may not be applied to the satisfaction of the judgment because it is the spouse's separate property. This claim may be made by way of the third-party claims procedure in Chapter 6 (commencing with Section 706.110). *Sherwood v. Cornfield*, 216 Cal. App.2d 364, 369, 31 Cal. Rptr. 264, ____ (1963); *Adler v. Blair*, 169 Cal. App.2d 92, 336 P.2d 971 (1959). But cf. *White v. Gobey*, 130 Cal. App. Supp. 789, 791, 18 P.2d 876, ____ (1933) (husband allowed to claim exemption for his earnings levied upon to satisfy judgment against wife alone where husband's earnings liable under community property laws).

Subdivision (b)(1) supersedes former Section 690(b) which provided that property for which a claim of exemption was not required to be filed was not subject to levy of attachment or execution in any manner. The category of property exempt without filing a claim of exemption is not continued in this title since it does not differ from property which is not subject to enforcement of a money judgment. Property which has been determined to be exempt by a court or which is exempt because the judgment creditor has failed to oppose a claim of exemption may not (without a showing of changed circumstances under Section 707.310) be applied toward the satisfaction of the judgment just as is the case with property which is not subject to enforcement of a money judgment. However, if a timely claim of exemption is not made, property described as exempt may be reached. See Section 707.120(c).

Subdivision (b)(3) recognizes that subdivisions (b)(1) and (b)(2) do not comprehensively describe property which is not subject to the enforcement of a money judgment. For example, property in custodia legis is not subject to execution under certain circumstances. See, e.g., *Robbins v. Bueno*, 262 Cal. App.2d 79, 68 Cal. Rptr. 347 (1968); *North v. Evans*, 1 Cal. App.2d 64, 36 P.2d 133 (1934); *Hawi Mill & Plantation Co. v. Leland*, 56 Cal. App. 224, 205 P. 485 (1922); 5 B. Witkin,

California Procedure Enforcement of Judgment §§ 21-24, at 3402-05 (2d ed. 1971). The portion of a cemetery containing human remains is not subject to enforcement of a money judgment. See Peebler v. Danziger, 104 Cal. App.2d 491, ___, 231 P.2d 895, ___ (1951). Other statutes designate certain property as being not subject to enforcement of a money judgment. See, e.g., Civil Code § 765 (estates at will); Educ. Code § 21116 (educational endowment funds); Health & Saf. Code §§ 7925 (money from purchase of unused cemetery lands), 32508 (hospital endowment funds); Labor Code §§ 270.5 (property held in trust by logging employer, except on claim by employee), 270.6 (property held in trust by employer of certain salespersons, except on claim by employee). Federal law also precludes the application of certain types of property to the satisfaction of a money judgment. See, e.g., 22 U.S.C. § 1104 (___) (foreign service retirement); 33 U.S.C. § 916 (___) (longshoreman retirement); 42 U.S.C. § 407 (___) (social security); 45 U.S.C. § 2281 (___) (railroad retirement).

4435

§ 707.120. Applicability of exemptions

707.120. (a) Except as otherwise provided by law, property that is exempt pursuant to this chapter is exempt from all procedures for the enforcement of a money judgment.

(b) Exemptions do not apply where the judgment to be enforced is for the purchase price of the property or is for the foreclosure of a mortgage or other lien on the property.

(c) An exemption is waived unless it is claimed pursuant to the applicable procedure.

Comment. Subdivision (a) of Section 707.120 makes clear that the exemptions provided by this chapter apply regardless of the procedure selected for the enforcement of a money judgment. This provision supersedes subdivision (a) of former Section 690. However, certain exemptions do not apply where a judgment for child or spousal support is being enforced. See Section 707.150.

Subdivision (b) is the same in substance as former Section 690.52.

Subdivision (c) continues the principle of subdivision (a) of former Section 690 but is broader in its application since it is not limited to exemptions provided in this chapter. Former law also referred to exemptions "from execution" whereas this section makes clear that exemptions apply in all proceedings for the enforcement of a money judgment. See subdivision (a). Where property is levied upon under a writ of execution, the applicable procedure for claiming an exemption is that provided in Article 2 (commencing with Section 707.210) of this chapter. This procedure is also incorporated in other instances, such as in a case where property is attached under an ex parte writ of attachment (see Section 485.610) or where a warrant or notice of levy for the collection of taxes is treated as a writ of execution (see Section 707.180). If the property is sought to be reached by some process other

than a levy under a writ, such as an order in examination proceedings (see Sections 705.110-705.190) or an assignment order (see Sections 705.610-705.630), the procedures for claiming exemptions provided by this chapter which involve a levying officer do not apply. In these situations, a court hearing is required and exemption claims will be determined at such time or later upon noticed motion. See Sections 705.160(c) (determination of exemption claim in examination proceedings), 707.215 (general provision).

100/915

§ 707.130. Exemptions cumulative

707.130. The exemptions provided by this chapter are cumulative.

Comment. Section 707.130 makes clear that a judgment debtor is entitled to claim as many exemptions as the law permits. Hence, for example, if a motor vehicle which the judgment debtor uses in a trade meets the criteria of the exemption provided in Section 707.430, the judgment debtor may obtain an exemption under that section and apply the entire \$2,500 exemption of Section 707.470 to tools.

968/707

§ 707.140. Exemption rights of spouse

707.140. The spouse of a judgment debtor may claim exemptions as provided in this chapter where the judgment creditor seeks to satisfy the judgment out of the community property or the spouse's separate property which is liable for the satisfaction of the judgment, regardless of whether the spouse is a judgment debtor.

Comment. Section 707.140 establishes the right of a nondebtor spouse of a judgment debtor to claim exemptions for community property and for separate property of the nondebtor spouse which is sought to be applied to the satisfaction of a money judgment against the judgment debtor pursuant to the community property laws. See Civil Code §§ 5116, 5120, 5121, 5122, 5125, 5131, 5132. Such a provision is not without precedent in California cases. See *White v. Gobey*, 130 Cal. App. Supp. 789, 791, 19 P.2d 876, ____ (1933) (husband allowed to claim exemption for his earnings levied upon to satisfy judgment against wife where husband's earnings liable under community property laws). Section 707.140 permits the nondebtor spouse to take advantage of exemptions to the same extent as if the nondebtor spouse were a judgment debtor. It also has the effect of making the same amount of property liable for the satisfaction of a judgment regardless of whether the property is community property and the judgment is against one or both spouses or the property is held in joint tenancy and the judgment is against both spouses. For example, a \$10,000 deposit account which is community property would be exempt in the amount of \$4,000 (\$2,000 exemption under Section 707.480 for each spouse) whether the judgment was against one or both spouses. Similarly, if the judgment is against both spouses, each

may claim a \$2,000 exemption in the respective half interest where the account is held in joint tenancy. However, if the account is held in joint tenancy, the nondebtor spouse may not claim an exemption since only the judgment debtor's interest in the joint tenancy account is levied upon.

This section does not change the amount of property exempt where the exemption is not limited either in terms of the number of items, such as one motor vehicle (see Section 707.430), or in terms of monetary amount, such as \$2,000 in a deposit account (see Section 707.480) or jewelry worth \$500 (see Section 707.450). Consequently, a husband and wife may claim as exempt only so much of the household furnishings which are community property liable for the satisfaction of the judgment as is reasonably necessary for one household inasmuch as there can be only one principal place of the residence under Section 707.440. The spouse must meet the terms of the exemption in order to make a successful claim.

A nondebtor spouse who claims that the community property or separate property is not liable for the satisfaction of the judgment pursuant to the community property laws, may not assert the claim pursuant to this chapter. Such a claim is normally asserted by way of the third-party claims procedure in Chapter 6 (commencing with Section 706.110). See the Comment to Section 707.110.

4443

§ 707.150. Exemptions inapplicable against support judgment

707.150. (a) The exemptions provided by this chapter do not apply where the judgment being enforced is for child or spousal support.

(b) Where property for which an exemption is provided by this chapter is sought to be applied toward the satisfaction of a judgment for child or spousal support, the court shall, upon motion of an interested party, make an equitable division of the property that takes into account the needs of all the persons the judgment debtor is required to support. The court shall effectuate the equitable division by an order determining the amount of the property to be applied toward the satisfaction of the judgment.

Comment. Subdivision (a) of Section 707.150 provides a general exception to the application of the exemptions provided by Sections 707.410-707.580. Former Section 690.18 provided such a exception applicable only to the exemption of pensions, annuities, and retirement, disability, death, or other benefits, from a public entity or under the federal Employee Retirement Income Security Act of 1974.

Subdivision (b) codifies and makes generally applicable the case law concerning the equitable division of earnings levied upon to enforce a support judgment. See *Rankins v. Rankins*, 52 Cal. App.2d 231, 234-35, 126 P.2d 125, ____ (1942).

§ 707.160. Tracing exempt amounts

707.160. (a) An exempt amount remains exempt after it is paid to the judgment debtor and an exempt amount may be traced from one form of money to another and into and out of deposit accounts.

(b) The tracing of exempt amounts in deposit accounts shall be accomplished by application of the principle of first-in first-out.

(c) The judgment debtor has the burden of tracing exemptions pursuant to this section.

Comment. Section 707.160 provides the general rule concerning the duration of an exemption for payments to the judgment debtor through a change in form. Subdivision (a) is consistent with decisions under prior law. See, e.g., *Kruger v. Wells Fargo Bank*, 11 Cal.3d 352, 367, 521 P.2d 441, ___, 113 Cal. Rptr. 449, ___ (1974) (unemployment benefits in checking account); *Holmes v. Marshall*, 145 Cal. 777, 782-83, 79 P. 534, ___ (1905) (life insurance benefits deposited in bank account); *Bowman v. Wilkinson*, 153 Cal. App.2d 391, 395-96, 314 P.2d 574, ___ (1957) (life insurance check converted to cashier's check and deposited in attorney's trust account). See also former Sections 690.18(a) (pension benefits exempt in debtor's possession and when deposited), 690.30 (direct deposit of social security payments); *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 416-17 (1973) (disability benefits in bank account); *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 162 (1962) (veterans' benefits in savings and loan account). This section applies to any fund which is exempt as provided in this chapter. See Sections [707.410 (proceeds from homestead)], 707.430 (proceeds from motor vehicle), 707.470 (proceeds from tools of trade), 707.480 (deposit accounts and money), 707.490 (deposit account into which Social Security benefits are paid), 707.500 (life insurance benefits), 707.510 (retirement benefits), 707.520 (unemployment benefits), 707.530 (disability and health benefits), 707.450 (worker's compensation), 707.550 (aid), and 707.570 (relocation benefits).

Subdivision (b) specifies the manner of tracing exempt amounts in a deposit account. This has the effect of changing the rule in *California United States Bond & Mortgage Corp. v. Grodzins*, 139 Cal. App. 240, 34 P.2d 193 (1934), which held that an attachment defendant spent the exempt portion of life insurance benefits first, thereby preserving and "earmarking" the nonexempt portion for creditors.

Subdivision (c) states the rule under former law concerning the burden of tracing exempt funds. This is consistent with the general burden on the judgment debtor in exemption determinations. See Section 707.280(b).

968/995

§ 707.170. Adjustments of dollar amounts of exemptions

707.170. (a) Except as provided in subdivision (f), as used in this section:

(1) "Index" means an index stated as the average of the Consumer Price Index (all items, 1967 equals 100) for the Los Angeles-Long Beach area and for the San Francisco-Oakland area compiled by the Bureau of Labor Statistics of the United States Department of Labor.

(2) "Reference Base Index" means the Index for June [1978--June of the even-numbered year immediately preceding the operative date of this section].

(b) The dollar amounts of the exemptions provided in this chapter change as provided in this section to correspond to changes in the cost of living as reflected in changes in the Index. The dollar amounts of the exemptions change on January 1 of each odd-numbered year if difference between the Index for the preceding June and the Reference Base Index is not less than 10 percent of the Reference Base Index.

(c) The dollar amounts of exemptions provided in this chapter change by a percentage which is the highest multiple of 10 percent not exceeding the difference computed pursuant to subdivision (b) between the Index for the preceding June and the Reference Base Index.

(d) The Judicial Council shall compute the changes in dollar amounts and adopt a rule announcing the changes before December 1 of the year immediately preceding the year in which the change occurs.

(e) If the Index is revised to change its base year, a revised Reference Base Index shall be determined by multiplying the Reference Base Index by the rebasing factor furnished by the Bureau of Labor Statistics of the United States Department of Labor. If the Index is otherwise revised, the percentage of change shall be calculated on the basis of the revised Index. If the Index is superseded, the change in the cost of living shall be calculated on the basis of an index represented by the Bureau of Labor Statistics as most accurately reflecting changes in the purchasing power of the dollar for consumers.

Comment. Section 707.170 is new so far as concerns the laws relating to exemptions from enforcement of money judgments. It is derived in part from other provisions in California law which rely upon the Consumer Price Index for a determination of adjustments in the cost of living. See Govt. Code §§ 9360.9 (legislative retirement system), 21221(c) (public employees' retirement benefits), 31870 (county employee's retirement benefits), 82001 (campaign spending limits); Welf. & Inst. Code §§ 11453 (AFDC payments), 12201(i) (aged, blind, and disabled payments). Section 707.170 is also based on provisions in some uniform

laws. See Uniform Consumer Credit Code § 1.106 (1974 version); Uniform Exemptions Act § 2. See also [11 U.S.C. § 104 (Supp. ___ 197_) (adjustments of dollar amounts under Bankruptcy Act determined by Judicial Conference based on change in cost of living)].

Under Section 707.170, the dollar amounts of exemptions provided in this chapter automatically change on January 1 of each odd-numbered year if the change in the Index (as defined in subdivision (a)(1)) is great enough. This change in the Index is figured from June to June of even-numbered years. See subdivisions (a)(2), (b). The Judicial Council is given the responsibility of determining whether the requisite change in the Index has occurred and the amount of the change in the dollar amount of each of the exemptions provided by this chapter. See subdivision (d).

It should be noted that this section does not apply to exemptions not provided by this chapter. Subdivision (b). Hence, the exemption of earnings from garnishment pursuant to Chapter 4 (Sections 704.110-704.____) is not changed in the manner stated here. Similarly, exemptions provided in this chapter which depend on Chapter 4 for a determination of the exempt amount are not governed by this section.

The following examples illustrate the operation of this section in the case of the exemption of deposit accounts provided by Section 707.480:

(1) Assume that the Reference Base Index (which, pursuant to subdivision (a)(2), is the Index for June 1980) is 190. If the Index for June 1982 is 205, the change from the Reference Base Index is approximately eight percent. Since the change is less than 10 percent, no change in dollar amounts of exemptions occurs. Note that the calculation is made on the basis of a percentage change in the Index, not on the basis of a change in Index points.

(2) If the Index for June of 1984 is 222, the change from the Reference Base Index of 190 is approximately 17 percent so a change in the amount of the exemption occurs. The portion in excess of 10 percent, however, is disregarded pursuant to subdivision (c). Ten percent of \$2,000 is \$200 so the deposit account exemption is \$2,200 beginning on January 1, 1985.

(3) If the Index for June of 1986 is 226, the change from the Reference Base Index of 190 is approximately 19 percent. The portion in excess of 10 percent is disregarded, indicating a 10-percent change in the dollar amount of exemptions. However, no change in exemption amounts occurs because the change was already made in the previous adjustment.

(4) If the Index for June of 1988 is 234, the change from the Reference Base Index of 190 is approximately 23 percent so a change should occur. The portion of 23 percent in excess of a multiple of 10 percent (here three percent) is disregarded so a 20-percent change in the exemption is indicated. Twenty percent of \$2,000 is \$400 so the deposit account exemption is \$2,400 beginning on January 1, 1989.

(5) If the Index for June of 1990 is 220, the change from the Reference Base Index of 190 is approximately 16 percent. Note that a decline in the Index from 1988 to 1990 indicates an increase in the purchasing power of the dollar although it is still an overall decrease since the Reference Base Index of 190 in 1980. The portion in excess of

10 percent is disregarded so a 10-percent change is indicated in the dollar amount of the exemption as stated in Section 707.480. Ten percent of \$2,000 is \$200 so the deposit account of exemption is \$2,200 beginning on January 1, 1991.

(6) If the Bureau of Labor Statistics revises the Index in 1990 by changing the components of the Consumer Price Index, the revised Index should be used as provided in subdivision (e). If a new base period is selected, such as 1990 equals 100, the Reference Base Index will have to be revised when the determination of the changes is made in 1992. In this hypothetical case, the rebasing factor would be approximately 0.455. The revised Reference Base Index is 86.4 (190 times 0.455). If the Index for June of 1992 is 112 (1990 equals 100), the change from the revised Reference Base Index is approximately 31 percent. A 30-percent change in the amount of the exemption provided by statute is indicated so the deposit account exemption is \$2,600 beginning on January 1, 1993.

4456

§ 707.180. Exemptions from tax liability

707.180. (a) The provisions of this chapter apply where a warrant or notice of levy is issued by the state, or a department or agency thereof, pursuant to Section 1755 or 1785 of the Unemployment Insurance Code, or Section 6776, 7881, 9001, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code, for the collection of tax liability owed to the state, or a department or agency thereof. For the purpose of this section, "judgment creditor" means the state, or a department or agency thereof, and "judgment debtor" means the tax debtor.

(b) Claims of exemption shall be heard and determined in the superior court of the county, or city and county, where the property is levied upon as if the property were levied upon under a writ of execution issued from such court.

(c) If the levy is not made by a levying officer, the claim of exemption and the notice of opposition shall be filed directly with the court.

Comment. Section 707.180 continues the substance of former Section 690.51. Subdivision (c) clarifies the procedure where the levy is made by the agency. See Unemp. Ins. Code § 1755.

Article 2. Procedure for Claiming Exemptions
After Levy of Execution

§ 707.210. Claimant

707.210. As used in this article, "claimant" means an individual judgment debtor, a person authorized to exercise the rights of the judgment debtor, a spouse of the judgment debtor entitled to claim exemptions pursuant to Section 707.140, and the spouse or a dependent of an individual judgment debtor who claims the exemptions on behalf of the judgment debtor.

Comment. Section 707.210 specifies the persons who are entitled to claim exemptions on behalf of the judgment debtor. Under former Section 690.50(a), only the judgment debtor and the agent of the judgment debtor were expressly authorized to claim an exemption. The reference to persons authorized to exercise rights of the judgment debtor includes agents, guardians, conservators, and persons holding a power of attorney. Subdivision (b) extends this right to the spouse and dependents of a judgment debtor since a major purpose of the exemption laws is to protect such persons. Note that the right afforded by subdivision (b) to claim exemptions on behalf of the judgment debtor is different from the right of a nondebtor spouse to claim exemptions as provided in Section 707.140.

100/902

§ 707.215. Applicable procedure for claiming exemption

707.215. (a) Except as otherwise provided by statute, where property has been levied upon under a writ of execution, an exemption may be claimed for the property as provided in this article.

(b) Where property is sought to be applied toward the satisfaction of a money judgment other than by levy under a writ of execution, the claimant may apply to the court on noticed motion for an order determining the claim of exemption as provided in this article except that the claim of exemption shall be filed with the court not later than 10 days after service of the process which created a lien on the property and the notice of opposition shall be filed with the court not later than 10 days after the date of the mailing of the notice of the claim of exemption.

Comment. Section 707.215 indicates the scope of the application of the exemption procedure provided in this article. As noted in the introductory clause in subdivision (a), special exemption procedures apply in certain cases where property has been levied upon. See, e.g., Sections 704.____ (garnished earnings), 704.410 (dwellings), 707.490

(deposit accounts consisting of Social Security benefits). Where the property is reached by some procedure other than levy under a writ of execution (see Sections 705.110-705.795), there is no levying officer with whom to file the claim of exemption. Consequently, subdivision (b) provides that a claim of exemption shall be filed with the court.

16/973

§ 707.220. Claim of exemption

707.220. (a) The claimant shall, within 10 days from the date the notice of levy was mailed or delivered to the judgment debtor, file with the levying officer a claim of exemption, together with a copy thereof.

(b) The claim of exemption shall be executed under oath and shall include all of the following:

(1) The name of the claimant and an address within this state where service by mail may be made upon the claimant of the notice of opposition to the claim of exemption.

(2) The name and address of the judgment debtor if the claimant is not the judgment debtor.

(3) A description of the property which is claimed to be exempt.

(4) A citation of the section in this chapter or other law upon which the claim is based.

(5) A statement of the facts necessary to support the claim.

(6) Points and authorities supporting any legal issues raised.

Comment. Section 707.220 continues the substance of subdivision (a) of former Section 690.50 except that subdivision (b) prescribes in greater detail the contents of the claim. The form of the claim of exemption is prescribed by the Judicial Council pursuant to Section 702.280. See Section 707.210 ("claimant" defined).

16/972

§ 707.230. Notice of claim of exemption

707.230. Upon the filing of the claim of exemption, the levying officer shall promptly mail to the judgment creditor, at the address stated in the application for the writ, both of the following:

(a) A copy of the claim of exemption.

(b) A notice of claim of exemption which states that the claim of exemption has been filed and that the levying officer will release the property unless a notice of opposition to the claim of exemption is filed with the levying officer by the judgment creditor within 10 days after the date of the mailing of the notice of claim of exemption.

Comment. Section 707.230 is substantially the same as subdivision (b) of former Section 690.50. The five-day period provided by former law for giving the notice of opposition has been increased to 10. See Section 702.200 (personal delivery permitted). The form of the notice of claim of exemption is prescribed by the Judicial Council pursuant to Section 702.280.

968/708

§ 707.240. Contest of exemption claim

707.240. In order to contest the claim of exemption, the judgment creditor shall, within 10 days after the date of the mailing of the notice of claim of exemption (1) file with the levying officer a notice of opposition to the claim of exemption and (2) file with the court a notice of motion for an order determining the claim of exemption.

Comment. Section 707.240 supersedes portions of subdivisions (c) and (e) of former Section 690.50. Section 707.240, unlike former law, does not provide the claimant with the right to request a hearing on the claim of exemption since, if the judgment creditor does not file a notice of opposition and file a notice of motion for an order determining the claim of exemption within the time provided, the property is released pursuant to Section 707.270, making a hearing unnecessary. Consequently, the delay between the filing of the counteraffidavit and the notice of motion provided by subdivision (e) of former Section 690.50 has been eliminated.

The 10-day period for filing the notice of opposition and notice of motion runs from the date of mailing the notice of claim of exemption. This specific provision is intended to take precedence over the general provisions of Section 1013 (extra time to act after mail service). Cf. *Labarthe v. McRae*, 35 Cal. App.2d 734, 97 P.2d 251 (1939) (provision for running of time for notice of intention to move for new trial from receipt of notice of entry of judgment controls over Section 1013).

16/971

§ 707.250. Contents of notice of opposition

707.250. The notice of opposition to the claim of exemption shall be executed under oath and shall include all of the following:

- (a) The name and address of the judgment creditor.
- (b) The date of mailing of the notice of claim of exemption.
- (c) An allegation that the property is not exempt within the meaning of the section of this chapter or other law relied upon or that the value of the judgment debtor's interest in the property claimed to be exempt, exclusive of liens and encumbrances superior to the judgment creditor's lien, is in excess of the amount stated in the applicable section.

(d) A statement of the facts necessary to support the allegation.

(e) Points and authorities supporting any legal issues raised.

Comment. Section 707.250 is derived from a portion of subdivision (c) of former Section 690.50 but prescribes in greater detail the contents of the notice of opposition. The form of the notice of opposition is prescribed by the Judicial Council pursuant to Section 702.280. The value of the judgment debtor's interest in the property is determined by its market value, not its forced sale value. See *Wade v. Rathbun*, 23 Cal. App.2d Supp. 758, ___, 67 P.2d 767, ___ (1937).

16/970

§ 707.260. Notice of motion for hearing

707.260. (a) If the notice of opposition to the claim of exemption and the notice of motion are filed as provided by Section 707.240, the hearing on the motion shall be held not later than 20 days from the date the notice of motion was filed unless continued by the court for good cause.

(b) Not less than 10 days prior to the hearing, the judgment creditor shall mail notice of the hearing to the levying officer and shall mail a notice of the hearing and a copy of the notice of the opposition to the claim of exemption to the claimant and to the judgment debtor, if other than the claimant. Mailing is deemed made when the notice of the hearing and a copy of the notice of opposition to the claim of exemption are deposited in the mail, postage prepaid, addressed to the person to whom notice is to be mailed at the address stated in the claim of exemption. The judgment creditor shall file proof of mailing with the court.

(c) After receiving the notice of the hearing and before the date set for the hearing, the levying officer shall file the claim of exemption and the notice of opposition to the claim of exemption with the court.

Comment. Section 707.260 supersedes portions of subdivision (e) of former Section 690.50. The 10-day period for service of the notice of hearing is not subject to Section 1013. See *Welden v. Davis Auto Exch.*, 153 Cal. App.2d 515, 521-22, 315 P.2d 33, 37 (1957). See Section 707.210 ("claimant" defined).

§ 707.270. Release

707.270. If the levying officer does not receive a notice of opposition to the claim of exemption within the time prescribed by Section 707.240 and a notice of the hearing within the time prescribed by Section 707.260, the levying officer shall immediately release the property to the extent it is claimed to be exempt in the manner provided by Section 703.290.

Comment. Section 707.270 supersedes subdivisions (d) (release if no counteraffidavit served) and (f) (release if no motion) of former Section 690.50.

§ 707.280. Pleadings; conduct of hearing; order

707.280. (a) The claim of exemption and notice of opposition to the claim of exemption filed by the levying officer with the court constitute the pleadings, subject to the power of the court to permit amendments in the interests of justice. The claimant's claim of exemption shall be deemed controverted by the judgment creditor's notice of opposition to the claim of exemption.

(b) At a hearing under this section, the judgment debtor has the burden of proof.

(c) Where no evidence other than the claim of exemption and the notice of opposition to the claim of exemption is offered, the court, if satisfied that sufficient facts are shown thereby, may make its determination thereon. If the court is not so satisfied, the court shall order the hearing continued for the production of other evidence, oral or documentary.

(d) At the conclusion of the hearing, the court by order shall determine whether or not the property is exempt, in whole or in part. The order is determinative of the right of the judgment creditor to apply the property toward the satisfaction of the judgment. No findings are required in a proceeding under this section.

(e) A copy of any order entered in the court shall be immediately transmitted by the clerk to the levying officer in order to permit the levying officer to either release the property or to apply the property toward the satisfaction of the judgment.

Comment. Section 707.280 continues the substance of portions of subdivisions (i) and (j) of former Section 690.50, with the exception of the provision requiring court order of disposition of property and proceeds, which is unnecessary. See, e.g., Section 703.750 (disposition of proceeds). Subdivision (e) serves the same purpose as the first sentence of subdivision (j) of former Section 690.50 but varies in its terminology as explained in the Comment to Section 707.300. See Section 707.210 ("claimant" defined).

16/967

§ 707.290. Appeal

707.290. An appeal lies from any order made under this article and shall be taken in the manner provided for appeals in the court in which the proceeding takes place.

Comment. Section 707.290 is the same as subdivision (m) of former Section 690.50.

100/909

§ 707.300. Maintenance of lien, orders, during pendency of proceedings

707.300. (a) The levying officer shall maintain the custody of property in custody and the lien of execution pending the final determination of the claim of exemption. The property may not be sold prior to the final determination except pursuant to an order of the court.

(b) At any time while the exemption proceedings are pending, upon motion of the judgment creditor or a claimant, or upon its own motion, the court may (1) order the sale of any perishable property held by the levying officer and direct the disposition of the proceeds of the sale and (2) make such other orders as may be proper under the particular circumstances of the case.

(c) An order made under subdivision (b) may be modified or vacated by the court at any time during the pendency of the exemption proceedings upon such terms as may be just.

Comment. Subdivision (a) of Section 707.300 is substantively similar to subdivision (h) and the second sentence of subdivision (j) of former Section 690.50; however, this subdivision refers to custody of the property and liens of execution in place of the provisions of former law that the levying officer "retain physical possession of the property . . . capable of physical possession" and that the levy on "property not capable of physical possession . . . remain in full force and effect." This usage reflects a change in terminology in the levy procedures. See Sections 703.310-703.440. Subdivision (a) of Section

707.300 simply requires, as did former Section 690.50(h), that the levying officer preserve the status quo by maintaining the lien in whatever form it takes.

Subdivisions (b) and (c) continue the substance of subdivision (g) of former Section 690.50.

See Section 707.210 ("claimant" defined).

100/913

§ 707.310. Prohibition against levy on property determined to be exempt

707.310. If the judgment creditor fails to oppose a claim of exemption within the time allowed by Section 707.240 or if property is determined to be exempt pursuant to Section 707.280, the judgment creditor may not levy upon or otherwise seek to apply the property toward the satisfaction of the same money judgment unless the judgment creditor shows, upon noticed motion, that a change in circumstances occurring after the property was determined to be exempt, or after the time for opposing a claim of exemption has expired, makes the exemption invalid, in whole or in part.

Comment. Section 707.310 is new. This section makes clear that the judgment creditor may not subject property to the satisfaction of a money judgment where it has been determined to be exempt in a hearing on a claim of exemption or where the judgment creditor has not filed a notice of opposition to a claim of exemption within the time provided. Section 707.310 only prohibits the application of such property toward the satisfaction of the same judgment. The judgment creditor may again levy upon or otherwise seek to reach the property if the judgment creditor shows that a change in circumstances makes the property non-exempt.

100/905

§ 707.320. Liability for interference with exemption rights; exemption of damages awarded

707.320. (a) The judgment debtor may apply to the court on noticed motion for an order assessing damages caused by the application or attempted application of the following types of exempt property toward the satisfaction of the judgment:

(1) Property which is exempt because the judgment creditor has failed to oppose a claim of exemption within the time allowed by Section 707.240.

(2) Property determined to be exempt pursuant to Section 707.280.

(3) Property which is not subject to enforcement of a money judgment.

(b) Damages awarded pursuant to subdivision (a) are exempt both before and after collection. Upon application of the judgment debtor, the court may order the damages awarded against the judgment creditor set off against the judgment.

Comment. Section 707.320 provides an expeditious remedy through which the judgment debtor may be compensated for improper application to the satisfaction of the judgment or attempted application of exempt property or property not subject to enforcement of a money judgment. This remedy is in addition to other remedies such as abuse of process or injunction. See Czap v. Credit Bureau of Santa Clara Valley, 7 Cal. App.3d 1, 5-7, 86 Cal. Rptr. 417, ____ (1970).

Article 3. Exempt Property§ 707.410. Dwelling

707.410. [The drafting of this section awaits the conclusions of a consultant's study and Commission action thereon.]

4457

§ 707.420. Cemetery plot

707.420. (a) As used in this section:

(1) "Cemetery" has the meaning provided by Section 7003 of the Health and Safety Code.

(2) "Family plot" is a plot which satisfies the requirements of Section 8650 of the Health and Safety Code.

(3) "Plot" has the meaning provided by Section 7022 of the Health and Safety Code.

(b) A family plot is not subject to the enforcement of a money judgment.

(c) Except as provided in subdivision (c), a cemetery plot for one person is exempt.

(d) Land held for the purpose of sale or disposition as cemetery plots or otherwise is not exempt.

(e) Notwithstanding subdivision (b) of Section 707.120, property dedicated as a cemetery by a cemetery authority is not subject to enforcement of a claim on a debt due from an individual owner of a cemetery plot.

Comment. Section 707.420 supersedes portions of former Section 690.24 which provided an exemption for a cemetery lot not exceeding one-quarter of an acre in size. Subdivision (b) recognizes that family plots are inalienable. See Health & Saf. Code § 8650. Under subdivision (c) and the spouse's exemption right provided in Section 707.140, lots for two persons may be exempted in the case of a married debtor. This is consistent with the spouse's vested right of interment. See Health & Saf. Code § 8601. Subdivision (d) continues the substance of the third paragraph of former Section 690.24. Subdivision (e) continues the substance of the fourth paragraph of former Section 690.24.

§ 707.430. Motor vehicle; proceeds

707.430. (a) The judgment debtor's interest, not exceeding one thousand five hundred dollars (\$1,500) in value, exclusive of liens and encumbrances superior to the judgment creditor's lien, in one motor vehicle is exempt. The fair market value of the motor vehicle may be determined by reference to used car price guides customarily used by California automobile dealers.

(b) If the motor vehicle is sold, or if it has been lost, damaged, or destroyed, the proceeds of sale or of insurance or other indemnification are exempt in the amount of one thousand five hundred dollars (\$1,500) for a period of 90 days after the sale, in the case of a voluntary sale, or after receipt of the proceeds by the judgment debtor, in all other cases.

Comment. Section 707.430 supersedes subdivisions (a) and (e) of former Section 690.2. Subdivision (a) of this section increases the motor vehicle exemption from \$500 to \$1,500. Under subdivision (a), the court is permitted to refer to used car price guides, but is not required to do so as under former Section 690.2(a). See also Section 707.170 (adjustments of dollar amounts of exemptions).

Subdivision (b) provides an exemption for proceeds of sale, or of insurance or other indemnification, whereas subdivision (e) of former Section 690.2 exempted "any amount representing the motor vehicle exemption." Cf. *Houghton v. Lee*, 50 Cal. 101, ____ (1875) (exemption of proceeds from insurance on homestead). Subdivision (b) also makes clear that the 90-day period during which proceeds are exempt runs from the receipt of the proceeds by the judgment debtor except in the case of a voluntary sale in which case the period runs from the date of sale. This principle is derived from the provisions exempting the proceeds from the sale of a homestead. See Civil Code §§ 1257, 1265; *Chase v. Bank of America*, 227 Cal. App.2d 259, 263-64, 38 Cal. Rptr. 567, ____ (1964).

It should be noted that this exemption protects only one motor vehicle where the judgment debtor has more than one motor vehicle but that another motor vehicle may be exempt pursuant to Section 707.370 (tools of trade). See Section 707.130 (exemptions cumulative).

15329

§ 707.440. Household furnishings, wearing apparel, personal effects

707.440. The judgment debtor's interest, not exceeding three hundred dollars (\$300) per item in value, exclusive of liens and encumbrances superior to the judgment creditor's lien, in household furnishings, appliances, wearing apparel, provisions, and other personal

effects, reasonably necessary for one household and personally used or procured for use by the judgment debtor and members of the judgment debtor's household at their principal place of residence, are exempt.

Comment. Section 707.440 supersedes former Section 690.1 which provided an exemption for like items "ordinarily and reasonably necessary to, and personally used by, the debtor and his resident family." Section 707.440 continues the reasonably necessary standard in modified form but places a limit on the value of the item. This value limitation, in conjunction with the standard of reasonably necessary items for one household, is intended to eliminate the unfairness inherent in the station in life test as applied in cases such as *Independence Bank v. Heller*, 275 Cal. App.2d 84, 79 Cal. Rptr. 868 (1969), and *Newport Nat'l Bank v. Adair*, 2 Cal. App.3d 1043, 83 Cal. Rptr. 1 (1969). The spouse of the judgment debtor is not entitled to claim as exempt furnishings and other items for a second household since there may be only one principal place of residence under the terms of this section.

15330

§ 707.450. Jewelry, heirlooms, works of art

707.450. The judgment debtor's interest, not exceeding five hundred dollars (\$500) in aggregate value, exclusive of liens and encumbrances superior to the judgment creditor's lien, in jewelry, heirlooms, and works of art is exempt.

Comment. Section 707.450 provides a \$500 exemption for items likely to be of sentimental value. This section supersedes portions of former Section 690.1 which provided an exemption for wearing apparel and furnishings "ordinarily and reasonably necessary to, and personally used by, the debtor and his resident family" and an exemption for works of art "of or by the debtor and his resident family." The property exempt under Section 707.450 depends upon an estimation of its value rather than upon its being ordinarily and reasonably necessary to the judgment debtor. It should be noted that jewelry, heirlooms, and works of art may also be exempt under the exemption for household furnishings, wearing apparel, and personal effects, not exceeding \$300 in value per item provided by Section 707.440. See Section 707.170 (adjustments of dollar amounts of exemptions).

405/332

§ 707.460. Prosthetic and orthopedic appliances

707.460. Prosthetic and orthopedic appliances personally used by the judgment debtor or a member of the judgment debtor's family are exempt.

Comment. Section 707.460 is the same as former Section 690.5 except that under this section the exemption covers such items owned by the judgment debtor but used by members of the judgment debtor's family.

§ 707.470. Tools, etc., used in trade, business, or profession; proceeds

707.470. (a) The judgment debtor's interest, not exceeding two thousand five hundred dollars (\$2,500) in aggregate value, exclusive of liens and encumbrances superior to the judgment creditor's lien, in tools, implements, instruments, uniforms, books, equipment, one vehicle, one vessel, and other personal property reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood, is exempt.

(b) If an item exempt pursuant to subdivision (a) is sold, or if it has been lost, damaged, or destroyed, the proceeds of sale or of insurance or other indemnification are exempt in an amount not exceeding two thousand five hundred dollars (\$2,500) less the value of other items exempt pursuant to subdivision (a). The proceeds are exempt for a period of 90 days after the sale, in the case of a voluntary sale, or after receipt of the proceeds by the judgment debtor, in all other cases.

Comment. Subdivision (a) of Section 707.470 continues the substance of former Section 690.4. See Section 707.170 (adjustments of dollar amounts of exemptions).

Subdivision (b) provides an exemption for the proceeds of sale or of insurance or other indemnification analogous to that provided by Section 707.430(b).

27/867

§ 707.480. Deposit accounts and money

707.480. Except as otherwise provided in Section 707.490, any combination of deposit accounts and money is exempt in the maximum aggregate amount of two thousand dollars (\$2,000).

Comment. Section 707.480 supersedes former Section 690.7 (\$1,000 of savings deposits in, shares or other accounts in, or shares of stock of, savings and loan associations) and former Financial Code Section 15406 (\$1,500 of shares or certificates in credit unions) and extends the exemption to cover bank accounts. See Section 701.____ ("deposit account" defined). Section 707.480 also aggregates the deposit account exemption with money. Under this section, \$2,000 is exempt regardless of whether the account or share is in a bank, savings and loan association, or credit union, or any combination thereof. See Sections 703.____ (order permitting levy on deposit accounts in amounts less than \$2,000),

703.____ (levy on account into which social security payments are directly paid), 707.490 (exemption of deposit account into which social security payments are directly deposited), 707.170 (adjustment of dollar amounts of exemptions).

12/824

§ 707.490. Deposit account in which social security payments are directly deposited

707.490. (a) For the purposes of this section, "payments authorized by the Social Security Administration" means regular retirement and survivors' benefits, supplemental security income benefits, coal miners' health benefits, and disability insurance benefits.

(b) A deposit account in which payments authorized by the Social Security Administration are directly deposited by the United States government is not subject to the enforcement of a money judgment in the maximum amount of five hundred dollars (\$500) where one depositor is the designated payee of the directly deposited payments or seven hundred fifty dollars (\$750) where two or more depositors are the designated payees of the directly deposited payments unless such depositors are joint payees of directly deposited payments which represent a benefit to only one of the depositors in which case five hundred dollars (\$500) is not subject to the enforcement of a money judgment.

(c) A deposit account consisting of an amount in excess of the amount not subject to the enforcement of a money judgment pursuant to subdivision (b) is exempt to the extent that such account consists of payments authorized by the Social Security Administration or of other amounts which are exempt. The financial institution shall either place the excess amount in a suspense account or otherwise prohibit withdrawal of the excess amount pending notification of the judicial determination of the exempt status of the excess amount and shall notify the levying officer in writing of the nature and balance of the deposit account of the judgment debtor within 10 business days after the levy. Promptly upon receipt of the notice, the levying officer shall notify the judgment creditor of the nature and balance of the deposit account.

(d) Notwithstanding Article 2 (commencing with Section 707.210), an excess amount exempt under subdivision (c) shall be determined as follows:

(1) A judgment creditor who desires to claim that the excess amount is not exempt shall deliver an affidavit alleging that the excess amount is not exempt to the levying officer within five days after the levying officer notifies the judgment creditor of the nature and balance of the deposit account. The affidavit shall be in the form of the notice of opposition provided by Section 707.250, and a hearing shall be set and held, and notice given, as provided by Sections 707.260 and 707.275. The judgment debtor shall file a counteraffidavit supporting the exemption not later than 10 days before the date set for the hearing and mail a copy to the judgment creditor and to the levying officer. For the purpose of this paragraph, the "notice of opposition to the claim of exemption" in Sections 707.250, 707.260, and 707.275 means the affidavit under this paragraph.

(2) If the judgment creditor does not deliver the affidavit to the levying officer and give notice to the judgment debtor within the time provided, the property shall be released and a hearing may not be held. If the judgment debtor does not file the counteraffidavit and mail a copy to the judgment creditor within the time provided, the excess amount of the deposit account remains subject to the lien of execution and shall be applied toward the satisfaction of the judgment, and a hearing may not be held.

(3) The affidavit and counteraffidavit shall be filed by the levying officer with the court before the date set for the hearing and constitute the pleadings, subject to the power of the court to permit amendments in the interests of justice.

(4) At a hearing under this subdivision, the judgment debtor has the burden of proof.

(5) At the conclusion of the hearing, the court by order shall determine whether or not the excess amount of the deposit account is exempt, in whole or in part. The order is determinative of the right of the judgment creditor to have the property levied upon or otherwise to apply the excess amount toward the satisfaction of the judgment. In the order, the court shall provide for the disposition of the excess amount. No findings are required in a proceeding under this subdivision.

(6) If the court determines that all or part of the excess amount is exempt, a certified copy of the order shall be transmitted forthwith

by the clerk to the financial institution in order to permit the financial institution to comply with the order. The order shall be complied with within three business days of its receipt.

Comment. Section 703.490 supersedes former Section 690.30. Social Security payments are directly deposited pursuant to 31 U.S.C. § 492 (1970, Supp V 1975). Subdivision (a) continues subdivision (c) of former Section 690.30. Subdivision (b) continues the substance of the first paragraph and subdivision (a) of former Section 690.30. Subdivision (c) continues the substance of the introductory paragraph and paragraph (1) of subdivision (b) of former Section 690.30. The last sentence of subdivision (c) makes explicit what was implicit in a portion of paragraph (2) of subdivision (b) of former Section 690.30.

Subdivision (d) supersedes paragraphs (2), (3), and (4) of subdivision (b) of former Section 690.30. However, subdivision (d) clarifies the procedure applicable to claiming exemptions for excess amounts in deposit accounts described in this section and the relation between this procedure and the procedure provided by Article 2 (commencing with Section 707.210) (which supersedes former Section 690.50, incorporated by reference in former Section 690.30). Paragraph (1) of subdivision (d) requires the judgment debtor to file a counteraffidavit. Former Section 690.30 was silent on this matter but seemed to require some showing by the judgment debtor since the last sentence of paragraph (2) of subdivision (b) of former Section 690.30 placed the burden of showing the excess amount to be exempt on the judgment debtor. The second sentence of paragraph (2) of subdivision (d) of this section provides that a hearing is not held if the judgment debtor does not comply with paragraph (1) of subdivision (d) by filing the counteraffidavit within the time provided and sending a copy to the judgment creditor and the levying officer. This provision assures that a hearing will not be held where the judgment debtor is prepared to concede that the excess amount is not exempt. Paragraph (5) of subdivision (d) of this section supersedes paragraph (3) of subdivision (b) of former Section 690.30. The provision for an order determining priority or dividing the property between several creditors is not continued. Paragraph (4) of subdivision (b) of former Section 690.30 is continued in paragraph (6) of subdivision (d) of this section.

Where a deposit account is not one described by subdivision (b), the procedures provided in Article 2 (commencing with Section 707.210) apply to the determination of the exemption provided for deposit accounts generally in Section 707.490. Where an account described in subdivision (b) exceeds the amount not subject to enforcement, the exemption provided by subdivision (c) is determined pursuant to subdivision (d), not by Article 2 procedures. See subdivision (d), providing an exception to Article 2 (determination of exemption where property described as "exempt"). See Sections 701.____ ("deposit account" defined), 703.290 (release), 707.170 (adjustment of dollar amounts of exemptions).

§ 707.500. Life insurance, endowment, annuity policies; death benefits

707.500. (a) Unmatured life insurance, endowment, and annuity policies are not subject to the enforcement of a money judgment.

(b) With respect to judgment creditors of the insured or a spouse or dependent of the insured:

(1) The aggregate loan value of unmatured life insurance, endowment, and annuity policies is exempt in an amount not exceeding five thousand dollars (\$5,000).

(2) Benefits from matured life insurance, endowment, and annuity policies, and death benefits, payable to a beneficiary who is the insured or a spouse or dependent of the insured, are exempt to the extent reasonably necessary for the support of the beneficiary or a spouse or dependent of the beneficiary.

(c) If a homestead exemption has not been taken pursuant to Section 707.410, the exemption provided by paragraph (1) of subdivision (b) is increased by ____ thousand dollars (\$____). If the exemption provided by this subdivision is taken and the claimant later claims a homestead exemption, the homestead exemption shall be reduced by the amount of the exemption provided by this subdivision.

Comment. Section 707.500 supersedes the exemptions provided in former Sections 690.9 (life insurance represented by \$500 annual premium) and 690.10 (group life insurance) and portions of former Section 690.18 (death benefits from public entity).

The exemptions provided in subdivision (b) are available only against creditors of the insured or a spouse or dependent of the insured. Under former law, the exemption was available to any person, including creditors of the judgment debtor and artificial persons. See Jackson v. Fisher, 56 Cal.2d 196, 363 P.2d 479, 14 Cal. Rptr. 439 (1961). See Section 707.170 (adjustment of dollar amounts of exemptions).

Subdivision (c) is new. It affords a larger exemption of the loan value of life insurance where no homestead exemption is claimed.

968/999

§ 707.510. Retirement benefits

707.510. (a) As used in this section, "retirement benefits" means money held for payment or paid as an annuity, pension, or retirement allowance under a retirement plan of a public entity, private employer, or other private entity, including a profit-sharing plan designed and used for retirement purposes.

(b) Before payment, retirement benefits are not subject to the enforcement of a money judgment.

(c) After payment, retirement benefits are exempt.

Comment. Section 707.510, in conjunction with Section 707.150 (exemptions not applicable in case of support judgment), supersedes the provisions relating to exemptions for retirement benefits (other than disability payments from retirement plans covered by Section 707.530) provided by former Section 690.18 [as proposed to be amended by SB 1360].

405/355

§ 707.520. Unemployment benefits and contributions

707.520. (a) Contributions by workers payable to the Unemployment Compensation Disability Fund and by employers payable to the Unemployment Fund are not subject to the enforcement of a money judgment.

(b) Before payment, the following benefits are not subject to the enforcement of a money judgment:

(1) Unemployment compensation benefits payable under Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code.

(2) Unemployment compensation disability benefits payable under Part 2 (commencing with Section 2601) of Division 1 of the Unemployment Insurance Code.

(3) Extended duration benefits payable under Part 3 (commencing with Section 3501) of Division 1 of the Unemployment Insurance Code.

(4) Federal-state extended benefits payable under Part 4 (commencing with Section 4001) of Division 1 of the Unemployment Insurance Code.

(5) Incentive payments payable under Division 2 (commencing with Section 5000) of the Unemployment Insurance Code.

(6) Benefits under a plan or system established by an employer which makes provision for employees generally or for a class or group of employees for the purpose of supplementing unemployment compensation benefits.

(c) After payment, the benefits described in subdivision (b) are exempt.

Comment. Section 707.520 continues the substance of former Sections 690.16 and 690.175 and portions of Unemployment Insurance Code Sections 988 and 1342.

§ 707.530. Disability and health benefits

707.530. (a) Before payment, benefits from a disability or health insurance policy or program are not subject to the enforcement of a money judgment. After payment, such benefits are exempt.

(b) Subdivision (a) does not apply to a claim by a provider of health care whose claim arises out of the judgment debtor's condition for which the benefits are collected.

Comment. Section 707.530 supersedes former Section 690.11 (disability or health insurance benefits represented by \$500 annual premium) and portions of former Section 690.18 (disability benefits from retirement plans).

405/354

§ 707.540. Worker's compensation

707.540. Except as provided by Chapter 1 (commencing with Section 4900) of the Labor Code, before payment, a claim for worker's compensation or compensation awarded or adjudged is not subject to the enforcement of a money judgment. After payment, the award is exempt.

Comment. Section 707.540 continues the substance of former Section 690.15.

405/346

§ 707.550. Aid

707.550. Before payment, aid provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or similar aid provided by a charitable organization, to the judgment debtor or for the benefit of the judgment debtor is not subject to the enforcement of a money judgment. After payment, such aid is exempt.

Comment. Section 707.550 is based on former Sections 690.14 and 690.19. However, Section 707.550 makes clear that all aid given under Division 9 of the Welfare and Institutions Code is not subject to the enforcement of a money judgment whereas the scope of former Section 690.19 was unclear. Section 707.550 does not continue the second sentence of former Section 690.19 which provided that, as against the claim of the county, the property of a debtor who had received "support from public moneys" is exempt only to the extent allowed by the limited exemptions provided by Welfare and Institutions Code Section 17409. This provision of former Section 690.19 denied recipients of county aid the exemptions available to other judgment debtors and, therefore, is constitutionally suspect under the equal protection clause. Cf. James v. Strange, 407 U.S. 128 (1972) (Kansas statute imposing liability on

indigent defendant for costs of counsel provided the defendant and denying exemptions available to other judgment debtors held unconstitutional). See also Welf. & Inst. Code § 10052 ("aid" defined).

Section 707.550 also expands the category of nongovernmental aid that is exempt. Former Section 690.14 applied only to fraternal benefit societies.

405/339

§ 707.560. Employee's bond

707.560. An employee's bond given pursuant to Article 2 (commencing with Section 400) of Chapter 3 of Part 1 of Division 2 of the Labor Code is not subject to the enforcement of a money judgment except in an action between the employer and the employee or applicant, or their successors in interest or assignees.

Comment. Section 707.560 continues the substance of a provision formerly included in Labor Code Section 404.

27/872

§ 707.570. Relocation benefits

707.570. Before payment, relocation benefits for displacement from a dwelling actually owned or rented by the judgment debtor which are to be paid by a public entity pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, are not subject to the enforcement of a money judgment. After payment, such benefits are exempt.

Comment. Section 707.570 supersedes Section 690.8a. The last sentence of Section 707.570 requires the debtor to claim an exemption for such benefits after payment, whereas under former law these benefits were designated as exempt without filing a claim.

27/823

§ 707.580. Licenses

707.580. Except as provided in Section 705.330, a license to engage in any business, profession, or activity issued by a public entity is not subject to the enforcement of a money judgment.

Comment. Section 707.580 is derived from a portion of subdivision (e) of former Section 688 which precluded levy or sale on execution of "licenses issued by this state to engage in any business, profession, or activity."