

First Supplement to Memorandum 78-17

Subject: Study D-39.200 - Enforcement of Judgments (Comprehensive Statute--Exemptions)

The Commission has previously approved the following section governing exemption rights of the spouse of a judgment debtor:

§ 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 otherwise 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.

Existing law is unclear. Where two unrelated heads of households are jointly liable on the same judgment, there should be no question that each debtor may claim a complete set of exemptions. We have not been able to determine whether the fact of marriage between debtors makes a difference although there are reasons to believe that it does since community property is liable for debts of either spouse and several exemption provisions are drafted in terms of the family rather than the individual. Nor is it known whether it makes a difference in the number of claimable exemptions if the judgment is against one or both spouses or if the property liable is community or separate. The most useful statement appears in *White v. Gobey*, 130 Cal. App. Supp. 789, 791, 19 P.2d 876 (1933) where the husband's earnings were levied upon to satisfy the wife's debt for necessities incurred before marriage and it was held that the common necessities exception to the total exemption of earnings was applicable only where the debt was incurred during marriage:

Respondent contends that the exemption can be availed of only by a "judgment debtor", and that the appellant is not one. But, while the appellant was not joined as a defendant in the action, and is, therefore, not a judgment debtor in the technical sense, nevertheless, the very theory upon which his earnings were levied upon is that his liability was in the nature of that of a debtor (to the extent of community earnings). . . . The husband cannot be treated for one purpose as a judgment debtor, and then not be permitted to assert the rights that every judgment debtor has.

. . . An ordinary loan obtained by him to carry on his business, if reduced to judgment, could not be collected out of earnings, if the debtor made a proper showing under subdivision 10 of section 690 of the Code of Civil Procedure; and it is difficult to see how a debt contracted by the woman who afterwards becomes his wife is in any better position, or surrounded with any greater legal immunity, than an ordinary debt of his own.

We believe the principle of the approved section is sound--i.e., to permit the nondebtor spouse to take advantage of exemptions to the same extent as if the nondebtor spouse were a judgment debtor. However, the manner of achieving this result--by doubling exemptions in community property except where an exemption is specifically a household exemption, such as furnishings or a dwelling--is likely to be politically unacceptable and is at odds with the generally stated policy of the exemption laws to protect an amount of property sufficient to support the debtor and the debtor's dependents. See *Bailey v. Superior Court*, 215 Cal. 548, 554, 11 P.2d 865, 867 (1932) ("The underlying purpose of the statute exemption from execution certain property is to provide for the support and welfare of the family of the person claiming exemption."). It is also unclear how it applies to certain exemptions.

The following provision is suggested as an alternative which would achieve the same basic policy but would not double exemptions:

Alternative § 707.140. Exemption rights of married judgment debtors

707.140. Where the property of a married person is sought to be applied toward the satisfaction of a money judgment, the married person and the spouse are entitled to only one set of exemptions, regardless of whether one or both spouses are judgment debtors.

The approved draft treats spouses as if they are unrelated joint judgment debtors and community property as if it is separate property and is based on the assumption that if the spouses held their property in joint tenancy, each would be able to claim a set of exemptions for it. The alternate draft takes nearly the opposite approach by ignoring joint tenancy for the purpose of applying exemption laws based on the assumption that in general the exemption laws are based on the family unit (a principle consistent with the treatment of property liable for debts under the community property laws). Neither draft affects the principle that only the debtor spouse's interest in jointly owned property may be reached by creditors (except for debts for necessities incurred during marriage as provided by Civil Code Section 5121).

By way of illustration, under the approved draft the spouses would be entitled to two \$2,000 deposit account exemptions and two motor vehicle exemptions regardless of whether the judgment was against one or

both spouses. Under the alternate draft they would be entitled to one deposit account and one motor vehicle exemption regardless of whether the judgment was against one or both spouses. Under either draft, separate property of the nondebtor spouse is not subject to enforcement, except for necessities pursuant to Civil Code Section 5121. Where one spouse is the judgment debtor and the spouses have both community and separate deposit accounts, the alternate draft reflects the better policy since the single exemption may be claimed for the community account--no exemption is needed for the separate account because it may not be reached.

It should also be noted that a transfer of the debtor spouse's interest to the nondebtor spouse, such as by way of changing community property to separate property, is voidable as a fraudulent conveyance. See Wikes v. Smith, 465 F.2d 1142 (9th Cir. 1972).

Respectfully submitted,

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