

#D-39.200

7/19/78

Memorandum 78-49

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

Attached to this memorandum is a draft of Chapters 8-11 of the Enforcement of Judgments Law dealing with enforcement of nonmoney judgments. These provisions have been substantially revised since they were last considered in June 1977. Existing law and the proposed statute are discussed in the preliminary text and in the Comments.

Respectfully submitted,

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ENFORCEMENT OF NONMONEY JUDGMENTS

Introduction

Existing law contains a few scattered references to enforcement of judgments other than money judgments--i.e., judgments for the sale or possession of property or requiring the performance of some other act. The extent to which the provisions concerning enforcement of money judgments govern the enforcement of these other types of judgments is not clear. The proposed law is designed to make clear which aspects of the law relating to the enforcement of money judgments apply to other judgments and to make enforcement procedures uniform to the extent practicable.

Another source of confusion under existing statutory and case law derives from the variety of names given the writs or other process used in the course of enforcing nonmoney judgments. The writ used to enforce a judgment for possession of personal property has been termed a writ of possession¹ or a writ of execution.² The writ used to enforce a judgment for possession of real property has been termed a writ of possession,³ a writ of restitution,⁴ a writ of execution,⁵ a writ of assistance,⁶

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1. See E. Jackson, California Debt Collection Practice § 17.39 (Cal. Cont. Ed. Bar 1968). It may also be called a writ for delivery of the possession of property. Id., at 391.
 2. See Sections 682, para. 4, 684. The form approved by the Judicial Council is entitled "writ of execution" and boxes are to be checked to indicate that it applies to possession of personal property.
 3. See Section 1166a.
 4. See Section 1174(d).
 5. See Sections 682, para. 4, 684. The form approved by the Judicial Council is entitled "writ of execution" and boxes are to be checked to indicate that it applies to possession of real property.
 6. See Rafferty v. Kirkpatrick, 29 Cal. App.2d 503, 505, 85 P.2d 147, ___ (1938). The writ of assistance has been used to put the purchaser at a foreclosure sale of real property into possession where the defendant refuses to surrender possession. The writ of assistance derives from equity practice. See 1 A. Freeman, Law of Executions § 37d, at 155 (3d ed. 1900); Dinkelspiel, Enforcement of Judgments, in California Remedies for Unsecured Creditors § 16, at 140 (Cal. Cont. Ed. Bar 1957).

or a writ of enforcement.⁷ The process used to enforce a judgment for the sale of property has been termed a writ of enforcement⁸ or an order of sale.⁹ Under the proposed law, money judgments would be enforceable by a writ of execution, judgments for the possession of property would be enforceable by a writ of possession, and judgments for the sale of property would be enforceable by a writ of sale.

Uniform Procedures

Under the proposed law, provisions concerning the time within which judgments may be enforced, stays of enforcement, and other procedural provisions¹⁰ would apply to enforcement of judgments for sale and for possession, as well as to money judgments. Technical requirements concerning issuance, leviability, and return would be the same for writs of execution, possession, and sale.¹¹ The proposed law would continue the substance of existing law except as noted below.

Judgments for Possession of Personal Property

Upon entry of a judgment for possession of personal property, such as in an action for specific recovery of personal property,¹² the judg-

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7. See *Hamilton v. Waters*, 93 Cal. App.2d 866, 868, 210 P.2d 67, ____ (1949).
 8. See *Laubisch v. Roberdo*, 43 Cal.2d 702, 712, 277 P.2d 9, ____ (1954). Section 684 refers to a writ used to enforce a judgment for sale as a "writ reciting such judgment."
 9. *Id.* In *Knapp v. Rose*, 32 Cal.2d 530, 534, 197 P.2d 7, ____ (1948), the court said that it was immaterial whether the writ used to sell real property was entitled a writ of enforcement, writ of execution, or order of sale if it was sufficient in substance. See also Govt. Code § 26829 (fee for issuing order of sale).
 10. See the discussion under "General Provisions" supra.
 11. See the discussion under "Execution" supra. Under existing law, it has been held that a writ of restitution remains in force beyond the 60-day period provided by Section 683 insofar as the writ directed the restitution of the premises although it had expired insofar as it directed the levying officer to levy on property to satisfy damages awarded in the judgment. See *Magnaud v. Traeger*, 66 Cal. App. 526, 530-31, 226 P. 990, ____ (1924).
 12. See generally 3 B. Witkin, *California Procedure Pleading* §§ 554-63, at 2194-203 (2d ed. 1971). The action for specific recovery is frequently referred to as a claim and delivery action, and a distinction is sometimes made between replevin, where the original taking was wrongful, and detinue, where the original taking was lawful. *Id.* § 554, at 2195-96.

ment creditor is entitled to issuance of a writ of possession of personal property. The levying officer, pursuant to the judgment creditor's instructions, attempts to take possession of the property, if it is not already in the levying officer's custody under a prejudgment writ of possession.¹³ The proposed law incorporates the manner of levy under a writ of execution (except that a keeper would not be required to be installed for two days in the case of a levy upon a going business, as under execution).¹⁴ This would permit the levying officer to serve a writ of possession on a third person who is neither a party to the action nor an agent of the judgment debtor, whereas under existing law property may not be sought in the hands of a third person, making it necessary to join the third person in the action or sue the third person afresh.¹⁵ If the third person resists the levy, the judgment creditor would be able to bring an action against the third person for the recovery of the property. The third person could comply with the levy and rely upon the third-party claims procedure for a determination of title as between the third person and the judgment creditor.¹⁶

If property cannot be taken into custody, whether it is lost, destroyed, hidden, or in the hands of a third person, the judgment creditor is entitled to satisfy the judgment out of the property of the judgment debtor that is not exempt from execution for the value of the property as determined in the judgment for possession.¹⁷ For this

13. See Section 684.1. Possession may be obtained prior to judgment by way of the provisional remedy of claim and delivery. See Sections 511.010-516.050. Under the proposed law, if the property is already in the custody of the levying officer, delivery of the post-judgment writ of possession constitutes a paper levy. See the discussion under "Paper Levy" supra.

14. See the discussion under "Manner of Levy" supra.

15. See Section 684.1 (incorporating Section 514.010); E. Jackson, California Debt Collection Practice §§ 10.15-10.18 (Cal. Cont. Ed. Bar 1968).

16. See the discussion under "Third-Party Claims" supra.

17. See Sections 627, 667, 682, para. 4, 682.2. It is not necessary to determine the value of the property if it has already been taken into the custody of the levying officer pursuant to claim and delivery proceedings. See Section 627; Webster v. Mountain Monarch Gold Mining Co., 6 Cal. App.2d 450, 454-55, 44 P.2d 646, ____ (1935).

purpose, the writ of possession is treated as a writ of execution. Whether or not the property awarded the judgment creditor can be found, the writ of possession is treated as a writ of execution for the purpose of satisfying costs and damages awarded in the judgment and costs and interest accruing thereafter.¹⁸ The proposed law also makes clear that the judgment creditor is entitled to resort to all of the remedies available for the enforcement of a money judgment, such as an examination proceeding, a creditor's bill, or an assignment order,¹⁹ for the purpose of collecting costs, interest, damages, and the value of the property if possession cannot be obtained.

The proposed law would permit the judgment creditor to seek an order, enforceable by the power to punish for contempt, requiring the judgment debtor to turn the property over to the judgment creditor directly. This order is the same as that available in claim and delivery proceedings prior to judgment.²⁰

The proposed law would also permit the appointment of a receiver to enforce the judgment in an appropriate case.²¹

Judgments for Possession of Real Property

Upon entry of a judgment for possession of real property, such as in an action for unlawful detainer, forceable entry, ejectment, or quiet title,²² the judgment creditor is entitled to a writ of possession of

18. See Section 682, para. 4.

19. See the discussion under "Special Procedures for Enforcement of Money Judgments" supra.

20. See Section 512.070.

21. Existing law does not specifically authorize appointment of a receiver to enforce a judgment for possession of personal property although Section 564, para. 3, authorizes appointment of a receiver "[a]fter judgment, to carry the judgment into effect." See the discussion under "Receivers" supra.

22. See generally 3 B. Witkin, California Procedure Pleading §§ 506-16, at 2164-70 (unlawful detainer), §§ 517-21, at 2170-72 (forceable entry), §§ 522-34, at 2173-83 (ejectment and quiet title) (2d ed. 1971).

real property. Under the proposed law, the levying officer would execute the writ of possession of real property in the manner provided by existing law for enforcement in unlawful detainer cases.²³

Like the writ of possession of personal property, the writ of possession of real property may be treated as a writ of execution for the purpose of levying on other property of the judgment debtor in order to satisfy costs, interest, and damages awarded in the judgment and costs and interest accruing thereafter.²⁴ The proposed law would make clear that the judgment creditor is entitled to resort to other remedies for collection of a money judgment in order to satisfy any monetary liability.²⁵

The proposed law would also permit the appointment of a receiver to enforce a judgment for possession of real property in an appropriate case.²⁶

Judgments for Sale of Real or Personal Property

Upon entry of a judgment for the sale of real or personal property, such as in an action to foreclose a mortgage or other lien or to enforce a security interest,²⁷ the judgment creditor is entitled to issuance of a writ of sale. The proposed law would require a levy in the same manner as under execution, whereas existing law permits sale under an order of sale issued by the court and does not require an actual levy.²⁸

23. See Section 1174(c)-(d). The proposed law also incorporates the procedure for disposition of personal property remaining on the premises provided by Section 1174(e)-(m).

24. See Section 682, para. 4, 682.2.

25. See the discussion under "Special Procedures for Enforcement of Money Judgments" supra.

26. Existing law does not specifically authorize appointment of a receiver to enforce a judgment for possession of real property although Section 564, para. 3, authorizes appointment of a receiver "[a]fter judgment, to carry the judgment into effect." See the discussion under "Receivers" supra.

27. See generally 3 B. Witkin, California Procedure Pleading §§ 539-42, at 2185-88 (2d ed. 1971); Code Civ. Proc. § 726 (mortgage foreclosure); Com. Code § 9501(1) (foreclosure of security interest).

28. See, e.g., Knapp v. Rose, 32 Cal.2d 530, ___, 197 P.2d 7, ___ (1948); Southern Cal. Lumber Co. v. Ocean Beach Hotel Co., 94 Cal. 217, 222-24, 26 P. 627, ___ (1892).

The proposed law provides that the property is to be sold in the same manner as under execution,²⁹ but the proceeds would be distributed in the manner provided in the judgment.³⁰

The writ of sale could be treated as a writ of execution for the purpose of collecting costs, interest, and damages, but the judgment creditor may be limited by the judgment to resort to proceeds of the property if it is designated as security for such amounts.³¹

The proposed law would permit the judgment creditor to obtain an order, enforceable by the power to punish for contempt, requiring the judgment debtor to transfer to the levying officer property to be sold and documentary evidence of title to the property. This order is similar to the turnover order which would be available under the proposed law for the enforcement of a money judgment.

The proposed law would also permit the appointment of a receiver to enforce a judgment for sale of real or personal property.³²

Other Types of Judgments

Under the proposed law, as under existing law, other types of judgments requiring a person to perform some act other than the payment of money, the delivery of possession of property, or the sale of property, or requiring a person to refrain from performing an act,³³ are

29. This continues a principle of existing law. See *Johnson v. Tyrell*, 77 Cal. App. 179, 182, 246 P. 140, ____ (1926) (foreclosure sale of real property); *Podrat v. Oberndorff*, 207 Cal. 457, 459-60, 278 P. 1035, ____ (1929) (foreclosure sale of personal property). It should be noted that the proposed law would revise the sale provisions, as discussed under "Execution Sales" supra.

30. This continues existing law. See Sections 684, 726, 727.

31. This continues existing law. See Section 726.

32. Existing law does not specifically authorize appointment of a receiver to enforce a judgment for sale of property although Section 564, para. 3, authorizes appointment of a receiver "[a]fter judgment, to carry the judgment into effect." See the discussion under "Receivers" supra. A receiver may be appointed at the commencement of a foreclosure action and continued in possession until sale of the property. See *Boyd v. Benneyan*, 204 Cal. 23, 25, 266 P. 278, ____ (1928).

33. Many types of judgments are self-executing and do not require enforcement, such as, for example, declaratory judgments, marital dissolutions, and corporate dissolutions.

enforceable by the power to punish for contempt.³⁴ The provision of existing law requiring service of a certified copy of the judgment on the person against whom the judgment is rendered³⁵ is not continued in the proposed law. A court may exercise its contempt power when the person against whom the judgment was rendered has notice or knowledge of the judgment and has the ability to comply but wilfully refuses to do so.³⁶

34. See Sections 1209-1222.

35. See Section 684.

36. See *Phillips v. Superior Court*, 22 Cal.2d 256, 257-58, 137 P.2d 838, ____ (1943) (person must have notice, actual knowledge, or have been present in court); *Mossman v. Superior Court*, 22 Cal. App.3d 706, 711-12, 99 Cal. Rptr. 638, ____ (1972) (knowledge of attorney imputable to contemnor); *In re Moulton*, 100 Cal. App.2d 559, 562, 224 P.2d 76, ____ (1950) (inability to comply).

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CHAPTER 8. ENFORCEMENT OF JUDGMENT FOR
POSSESSION OF PERSONAL PROPERTY

§ 708.110. Application for writ of possession of personal property

708.110. (a) After the entry of a judgment for the possession of personal property, upon application of the judgment creditor, the clerk of the court shall issue a writ of possession of personal property directed to the levying officer in each county requested by the judgment creditor where property sought to be levied upon is located.

(b) Writs of possession of personal property may be issued successively upon further application until the judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 90 days after the issuance of a prior writ for that county unless the prior writ was earlier returned.

Comment. Section 708.110 is analogous to Section 703.120 relating to writs of execution. It is based in part on former Sections 681 and 687 and supersedes a portion of former Section 684. See Section 703.120 and the Comment thereto. Subdivision (b), providing for successive writs of possession, is made necessary by the provisions of Section 708.160 concerning the return of the writ.

§ 708.120. Contents of writ of possession of personal property

708.120. The writ of possession of personal property shall state the date of issuance, shall describe the property to be levied upon, shall state its value, if specified in the judgment or a supplemental order, and shall require the levying officer to whom it is directed to enforce the judgment.

Comment. Section 708.120 prescribes the essential elements of a writ of possession issued to enforce a judgment for the possession of personal property. See also Sections 702.160(b) (Judicial Council to prescribe form of writs), 702.540 (notation on writ of request for notice of sale), 708.130 (execution of writ). The value of the property may not have been determined, such as where the property is already in the custody of the levying officer pursuant to claim and delivery proceedings. See Section 627; *Webster v. Mountain Monarch Gold Mining Co.*, 6 Cal. App.2d 450, 454--55, 44 P.2d 646, ___ (1935).

§ 708.130. Delivery and execution of writ of possession of personal property

708.130. (a) The judgment creditor shall deliver the writ of possession of personal property to the levying officer to whom the writ is directed, together with written instructions.

(b) The levying officer shall execute the writ by:

(1) Levying upon the property described in the writ and delivering it to the judgment creditor.

(2) Satisfying in the same manner as under a writ of execution the amount of costs and damages recovered in the judgment and accrued costs, interest, and the levying officer's costs entered on the writ.

(3) If the property cannot be taken into custody, complying with Section 708.150.

(c) The levying officer may not levy upon any property under the writ after the expiration of 90 days from the date the writ was issued.

(d) If the judgment creditor does not deliver the writ to the levying officer, the judgment creditor may return the writ to the court clerk.

Comment. Subdivision (a) of Section 708.130 continues the substance of prior law and is analogous to Section 703.140.

Subdivision (b) is derived from subdivision 4 of former Section 682 and former Sections 682.2 and 684.1. The manner of levy under subdivision (b)(1) is prescribed in Section 708.140. A judgment enforceable under this chapter is one that entitles the judgment creditor to specific property, *i.e.*, the judgment creditor is not obligated to accept merely the value of the property. *Griffith v. Reddick*, 41 Cal. App. 458, 461-62, 182 P. 984, ____ (1919). The value of the property is substituted where delivery is impossible. See Section 667; *Drinkhouse v. Van Ness*, 202 Cal. 359, 374, 260 P. 869, ____ (1927). See also Section 708.150 (judgment for possession satisfied as if money judgment). The value of the property is generally alleged and determined in the action. See Sections 627, 667; 3 B. Witkin, *California Procedure Pleading* § 555, at 2197, § 563, at 2203-04 (2d ed. 1971); *cf.* Section 512.010 (allegation of value of property in claim and delivery proceedings). The items recoverable under subdivision (b)(2) may be satisfied from any property of the judgment debtor which is subject to enforcement of a money judgment. See Sections 707.120, 707.130, 707.150. The requirement of subdivision 4 of former Section 682 that costs and damages be satisfied first from personal property and only then from real property is not continued. "Damages" includes any rents and profits recovered in the judgment. The judgment creditor may also seek to satisfy costs and damages by wage garnishment pursuant to Chapter 4 (commencing with

Section 704.110) or by the special procedures provided by Chapter 5 (commencing with Section 705.110). See Section 702.110(a). The exemptions provided by Chapter 7 (commencing with Section 707.110) apply to enforcement of the part of the judgment awarding costs and damages.

Subdivision (c) is the same as Section 703.140(c) (execution).

Subdivision (d) is the same as Section 703.140(d) (execution).

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§ 708.140. Manner of levy

708.140. (a) Except as provided in subdivision (b), property shall be levied upon under a writ of possession of personal property in the same manner as under a writ of execution.

(b) Where the property which is the subject of the judgment is levied upon:

(1) The notice of levy prescribed by Section 703.150 need not describe the property which is levied upon.

(2) The levying officer is not required to place a keeper in charge of tangible personal property of a going business.

Comment. Section 708.140 supersedes former Section 684.1 which incorporated the manner of levy under prejudgment writs of possession provided by Section 514.010. Through its incorporation of the manner of levy under a writ of execution, subdivision (a) of Section 708.140 continues the substance of much of prior law. See, e.g., Sections 703.170 (levy on property in private place), 703.320 (levy on tangible personal property in judgment debtor's possession), 703.350 (levy on tangible personal property in levying officer's custody), 703.380 (levy on personal property used as dwelling), and the Comments thereto. Subdivision (a) is a new provision permitting levy on property in the hands of a person who is not a party to the action and is not the agent of the judgment debtor.

Subdivision (b) provides exceptions to the general levy provisions applicable when the writ of possession is sought to be enforced by obtaining possession of the property that is the subject of the judgment. Paragraph (1) makes clear that the notice of levy need not describe the property to be seized because it is required to be described in the writ of possession. Where a levy for costs or damages or for the value of the property takes place under a writ of possession, however, the notice of levy must describe the property levied upon. See Section 703.150 (contents of notice of levy). Paragraph (2) permits the immediate seizure of tangible personal property of a going business which is the subject of the judgment. See Section 703.370 (keeper for business property levied upon under writ of execution).

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§ 708.150. Writ of possession of personal property unsatisfied

708.150. (a) If the property described in the writ of possession of personal property cannot be taken into custody, the levying officer

shall make a demand upon the judgment debtor for the property. If the property is not then obtained, the levying officer shall so state on the face of the writ. Thereafter the judgment for the possession of the property may be enforced in the same manner as a money judgment for the value of the property specified in the judgment or a supplemental order.

(b) The writ may, under the circumstances described in subdivision (a), be treated as a writ of execution.

Comment. Section 708.150 generally continues former law and practice. See Section 667 and subdivision 4 of former Section 682; Marshal's Manual of Procedure § 623.1 (J. Matarazzo ed. n.d.); Cal. State Sheriffs' Ass'n, Civil Procedural Manual § 7.26 (rev. 1975). The judgment creditor may instruct the levying officer to levy on property of the judgment debtor as if the writ of possession were a writ of execution issued pursuant to Chapter 3 (commencing with Section 703.110). The creditor may also seek to garnish the judgment debtor's wages pursuant to Chapter 4 (commencing with Section 704.110) or may employ appropriate special procedures pursuant to Chapter 5 (commencing with Section 705.110). See Section 702.110(a). The exemptions provided by Chapter 7 (commencing with Section 707.110) apply to enforcement for the value of the property or for costs and damages. The judgment creditor may obtain a writ of execution where the writ of possession has expired or been returned. A levy may be made under the writ of possession only during the first 90 days after its issuance. See Section 703.130(c).

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§ 708.160. Return of writ of possession of personal property

708.160. The writ of possession of personal property is subject to the return provisions of Section 703.250 (return of writ of execution).

Comment. Section 708.160 is new. Prior statutory law did not explicitly provide for a return date in the case of a writ of possession of personal property. See former Section 683. This section differs from the rule in *Magnauid v. Traeger*, 66 Cal. App. 526, 530-31, 226 P. 990, ___ (1924), where it was held that a writ of possession of real property remained in force insofar as it directed the restitution of the premises although it had expired insofar as it directed the levying officer to levy on property to satisfy the part of the judgment awarding damages. Under Section 708.130(c), the levying officer is authorized to take the property to be delivered to the judgment creditor into custody and to levy for costs and damages only during the first 90 days after issuance.

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§ 708.170. Issuance of order directing transfer

708.170. After entry of judgment for the possession of personal property, whether or not a writ of possession of personal property has

been issued, the court may issue an order directing the judgment debtor to transfer possession of the property to the judgment creditor. The order shall be personally served upon the judgment debtor and shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court.

Comment. Section 708.170 is based on a comparable provision applicable before judgment. See Section 512.070. This section makes clear that the court has power to issue a "turnover" order directing the judgment debtor to transfer possession to the judgment creditor. The order may be issued in lieu of or in addition to a writ.

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§ 708.180. Appointment of receiver

708.180. The court may appoint a receiver pursuant to Section 705.320 to enforce a judgment for the possession of personal property.

Comment. Section 708.180 is new. Former law did not specifically authorize appointment of a receiver to enforce a judgment for the possession of personal property. The appointment of a receiver is subject to the general rules concerning the time within which judgment may be enforced. See Section 702.210. Neither issuance nor return of a writ of possession is a prerequisite to appointment of a receiver.

CHAPTER 9. ENFORCEMENT OF JUDGMENT FOR
POSSESSION OF REAL PROPERTY

§ 709.110. Application for writ of possession of real property

709.110. (a) After the entry of a judgment for the possession of real property, upon application of the judgment creditor, the clerk of the court shall issue a writ of possession of real property directed to the levying officer in each county requested by the judgment creditor where property sought to be levied upon is located.

(b) Writs of possession of real property may be issued successively upon further application until the judgment is satisfied except that a new writ may not be issued for a county until the expiration of 90 days after the issuance of a prior writ for that county unless the prior writ was earlier returned.

Comment. Section 709.110 is analogous to Section 703.120 relating to writs of execution. It is based in part on former Sections 681 and 687 and supersedes a portion of former Section 684. See Section 703.120 and the Comment thereto. Subdivision (b), providing for successive writs of possession, is made necessary by the provisions of Section 709.150 concerning the return of the writ.

§ 709.120. Contents of writ of possession of real property

709.120. (a) The writ of possession of real property shall state the date of issuance, shall describe the property to be levied upon, and shall require the levying officer to whom it is directed to enforce the judgment.

(b) The writ shall include statements that:

(1) If the property is not vacated within five days from the date of service of a copy of the writ on the occupant or, if the copy of the writ is posted, within five days from the date a copy of the writ is mailed, the levying officer will remove the judgment debtor from the property and place the judgment creditor in possession thereof.

(2) Personal property remaining on the real property after the judgment creditor has been placed in possession will be sold or otherwise disposed of in accordance with Section 1174 of the Code of Civil Procedure unless the judgment debtor or other owner pays the judgment creditor the reasonable cost of storage and takes possession of the

personal property not later than 15 days after the time the judgment creditor takes possession of the real property.

Comment. Section 709.120 prescribes the essential elements of a writ of possession issued to enforce a judgment for the possession of real property. See also Section 702.160(b) (Judicial Council to prescribe form of writs), 702.540 (notation on writ of request for notice of sale), 709.130 (execution of writ).

Paragraph (1) of subdivision (b) is derived from the substantive requirements formerly found in Section 1174(d) and is continued in Section 709.130. Paragraph (2) makes applicable to all writs of possession of real property a feature formerly applicable only to writs served on tenants in unlawful detainer actions pursuant to Section 1174(d). See Section 709.140 (disposition of personal property).

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§ 709.130. Delivery and execution of writ of possession of real property

709.130. (a) The judgment creditor shall deliver the writ of possession of real property to the levying officer to whom the writ is directed, together with written instructions.

(b) The levying officer shall execute the writ by:

(1) Levying upon the property described in the writ and serving upon an occupant or posting a copy of the writ in the same manner as upon levy under a writ of execution pursuant to Section 703.310. If a copy of the writ is posted, the levying officer shall mail a copy of the writ to the judgment debtor at the judgment debtor's business or residence address last known to the judgment creditor or, if no such address is known, to the address of the real property.

(2) Satisfying in the same manner as under a writ of execution the amount of costs and damages recovered in the judgment, and accrued costs, interest, and the levying officer's costs entered on the writ.

(c) If the judgment debtor does not vacate the real property within five days after the date of service of a copy of the writ on the occupant or, if a copy of the writ is posted, within five days after the date a copy of the writ is mailed, the levying officer shall remove the judgment debtor from the property and place the judgment creditor in possession.

(d) The levying officer may not levy upon any property under the writ after the expiration of 90 days from the date the writ was issued.

(e) If the judgment creditor does not deliver the writ to the levying officer, the judgment creditor may return the writ to the court clerk.

Comment. Subdivisions (a)-(c) of Section 709.130 are derived from provisions formerly contained in subdivision (d) of Section 1174 relating to writs of restitution to enforce a judgment in an unlawful detainer action after default in payment of rent. The authority to levy under the writ of possession of real property in the same manner as under a writ of execution to satisfy amounts awarded by the judgment and various costs continues portions of subdivision 4 of former Section 682 and former Section 682.2. The items recoverable under subdivision (b)(2) may be satisfied from any property of the judgment debtor which is subject to enforcement of a money judgment. See Sections 707.120, 707.130, 707.150. The requirement of subdivision 4 of former Section 682 that costs and damages be satisfied first from personal property and only then from real property is not continued. "Damages" includes any rents and profits recovered in the judgment. The judgment creditor may also seek to satisfy costs and damages by wage garnishment pursuant to Chapter 4 (commencing with Section 704.110) or by the special procedures provided by Chapter 5 (commencing with Section 705.110). See Section 702.110(a). The exemptions provided by Chapter 7 (commencing with Section 707.110) apply to enforcement of the part of the judgment awarding costs and damages.

Subdivision (d) is the same as Section 703.140(c) (execution).

Subdivision (e) is the same as Section 703.140(d) (execution).

13/618

§ 709.140. Disposition of personal property

709.140. Personal property remaining on the premises after the judgment creditor is placed in possession of the real property shall be disposed of in the manner provided by subdivisions (e) to (m), inclusive, of Section 1174. For this purpose, references in Section 1174 and provisions incorporated by Section 1174 to the "landlord" shall be deemed to be references to the judgment creditor and references to the "tenant" shall be deemed to be references to the judgment debtor.

Comment. Section 709.140 is new. This section makes the procedure for disposition of personal property remaining on the premises where a tenant has vacated in an unlawful detainer action applicable to all situations where personal property remains on the premises after a judgment creditor has obtained possession of the real property pursuant to a writ of possession of real property.

§ 709.150. Return of writ of possession of real property

709.150. The writ of possession of real property is subject to the return provisions of Section 703.250 (return of writ of execution).

Comment. Section 709.150 is new. Prior statutory law did not explicitly provide for the return of a writ of possession or of restitution of real property. This section differs from the former rule that a writ for the restitution of real property remained in force beyond the 60-day limitation provided by former Section 683 insofar as it directed the restitution of the premises although it had expired insofar as it directed the levying officer to levy on property to satisfy the part of the judgment awarding damages. See *Magnauid v. Traeger*, 66 Cal. App. 526, 530-31, 226 P. 990, ____ (1924). Subdivision (a) of Section 709.150 makes the life of the writ of possession comparable to that of the writ of execution. See Section 703.250 (return of writ of execution). See also Section 708.160 (return of writ of possession of personal property). Under Section 709.130(d), the levying officer is authorized to levy upon real property for 90 days after issuance and place the judgment creditor in possession of the real property up to one year after its issuance before the writ must be returned.

12/823

§ 709.160. Appointment of receiver

709.160. The court may appoint a receiver as provided in Section 705.320 to enforce a judgment for the possession of real property.

Comment. Section 709.160 is new. Former law did not specifically authorize appointment of a receiver to enforce a judgment for the possession of real property. The appointment of a receiver is subject to the general rules concerning the time within which judgment may be enforced. See Section 702.210. Neither issuance nor return of a writ of possession is a prerequisite to appointment of a receiver.

CHAPTER 10. ENFORCEMENT OF JUDGMENT
FOR SALE OF PROPERTY

§ 710.110. Application for writ of sale

710.110. (a) After the entry of a judgment for the sale of real or personal property, upon application of the judgment creditor, the clerk of the court shall issue a writ of sale directed to the levying officer in each county requested by the judgment creditor where property sought to be levied upon is located.

(b) Writs of sale may be issued successively upon further application until the judgment is satisfied, except that a new writ of sale may not be issued for a county until the expiration of 90 days after the issuance of a prior writ for that county unless the prior writ was earlier returned.

Comment. Section 710.110 is analogous to Section 703.120 relating to writs of execution. It is based in part on former Sections 681, 684, and 687. See Section 703.120 and the Comment thereto. Subdivision (a) authorizes issuance of writs of sale to more than one county; it will be a rare case, however, in which a writ of sale for real property is needed in a county other than that where the judgment is entered.

Subdivision (b), providing for successive writs of sale, is made necessary by Section 703.250 (incorporated by Section 710.140) concerning the return of the writ.

Under this chapter, judgments for the sale of real or personal property are no longer enforced without resort to a writ of sale. The judgment is not enforced through an order of sale as was formerly the practice in some jurisdictions. See *Knapp v. Rose*, 32 Cal.2d 530, ___, 197 P.2d 7, ___ (1948). A levy is required in every case whereas under former law no levy was required since the property was directed to be sold by the judgment--a practice arising from distinctions between the manner of enforcing common law judgments and equitable decrees. See *Southern Cal. Lumber Co. v. Ocean Beach Hotel Co.*, 94 Cal. 217, 222-24, 26 P. 627, ___ (1892). The judgment may direct that a single parcel or contiguous parcels of real property situated in two or more counties be sold in one of the counties as if it were all situated therein. See Section 726.

§ 710.120. Contents of writ of sale

710.120. The writ of sale shall state the date of issuance and the material parts of the judgment for the sale of the real or personal property, shall describe the property to be levied upon and sold, and shall require the levying officer to whom it is directed to enforce the judgment.

Comment. Section 710.120 prescribes the essential elements of a writ of sale issued to enforce a judgment for the sale of real or personal property. See also Sections 702.160(b) (Judicial Council to prescribe form of writs), 702.540 (notation on writ of request for notice of sale), 710.130 (execution of writ). This section supersedes a portion of former Section 684. The writ of sale replaces the term "writ of enforcement"--a term frequently used by the courts although it did not appear in prior statutes. See, e.g., Laubish v. Roberdo, 43 Cal.2d 702, ___, 277 P.2d 9, ___ (1954); Knapp v. Rose, 32 Cal.2d 530, ___, 197 P.2d 7, ___ (1948).

09/747

§ 710.130. Delivery and execution of writ of sale

710.130. (a) The judgment creditor shall deliver the writ of sale to the levying officer to whom the writ is directed, together with written instructions.

(b) The levying officer shall execute the writ by:

(1) Levying upon the property described in the writ in the manner prescribed for levy under a writ of execution.

(2) Giving notice and selling the property levied upon in the manner prescribed for notice and sale under a writ of execution.

(3) Applying the proceeds of the sale in conformity with the judgment.

(4) Except as otherwise provided in the judgment, satisfying in the same manner as under a writ of execution the amount of costs, interest, and the levying officer's costs entered on the writ.

(c) The levying officer may not levy upon any property under the writ after the expiration of 90 days from the date the writ was issued.

(d) If the judgment creditor does not deliver the writ to the levying officer, the judgment creditor may return the writ to the court clerk.

Comment. Subdivisions (a) and (b) of Section 710.130 generally continue former law and practice regarding enforcement of a judgment for the sale of real or personal property. See former Section 684. Subdivision (a) is analogous to Section 703.140(a).

Paragraphs (1) and (2) of subdivision (b) of Section 710.130 incorporate the provisions for levy and sale under a writ of execution. See Sections 703.310-703.770. Under former law, the manner of sale appears to have been similar to that provided by subdivision (b). See Section 726 (foreclosure sale of real property by commissioner); Johnson v. Tyrell, 77 Cal. App. 179, 182, 246 P. 140, ___ (1926) (foreclosure sale of real property made in same manner as execution sales); Podrat v.

Oberndorff, 207 Cal. 457, 459-60, 278 P. 1035, ____ (1929) (foreclosure sale of personal property under chattel mortgage made in same manner as execution sale; personal property capable of manual delivery must be in the possession of the officer to make a sale); Marshal's Manual of Procedure §§ 452.1, 452.2 (J. Matarazzo ed. n.d.); Cal. State Sheriff's Ass'n, Civil Procedural Manual § 7.20 (rev. 1972). Section 710.130 changes the former practice under which the judgment debtor was requested to bring personal property to the sale and, if he refused, the judgment creditor had to bring a claim and delivery action. See Ely v. Williams, 6 Cal. App. 455, 457-58, 92 P. 393, ____ (1907); Marshal's Manual of Procedure, supra at §§ 452.1, 452.2; Civil Procedural Manual, supra at § 10.163 (rev. 1973). Under paragraph (3), if the judgment so directs, court costs, expenses of levy and sale, and attorney's fees (where appropriate), are satisfied out of the proceeds of the sale if the property is security for such amounts. See, e.g., Section 726. Paragraph (4) is a new provision based on Sections 708.130(b)(2) and 709.130(b)(2), but recognizes that the property to be sold may by contract be security for costs, in which case costs are paid out of the proceeds of sale, and additional property may not be levied upon. See Section 726. In appropriate cases, the items recoverable under this paragraph may be satisfied from any property of the judgment debtor which is subject to enforcement of a money judgment. See Sections 707.120, 707.130, 707.150. The judgment creditor may also seek to garnish the judgment debtor's wages pursuant to Chapter 4 (commencing with Section 704.110) or employ special procedures provided by Chapter 5 (commencing with Section 705.110). See Section 702.110(a). The exemptions provided by Chapter 7 (commencing with Section 707.110) apply in such cases.

Subdivision (c) is the same as Section 703.140(c) (execution).

Subdivision (d) is the same as Section 703.140(d) (execution).

10/003

§ 710.140. Return of writ of sale

710.140. The writ of sale is subject to the return provisions of Section 703.250 (return of writ of execution).

Comment. Section 710.140 is new. Prior statutory law did not provide for the return of a writ directing sale of specific property.

10/006

§ 710.150. Order directing transfer of property or documents by defendant

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

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

(2) Possession of any documentary evidence of title to any property which is to be sold. An order for the transfer of possession of documentary evidence of title issued pursuant to this paragraph may be enforced by the levying officer when the property is taken into custody or at any time thereafter.

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

Comment. Section 710.150 is comparable to Section 703.210.

10/008

§ 710.160. Appointment of receiver

710.160. The court may appoint a receiver as provided in Section 705.320 to enforce a judgment for the sale of real or personal property.

Comment. Section 710.160 makes clear that a receiver may be appointed to enforce a judgment for the sale of real or personal property. See also Sections 564-571, 705.320. Under former law, receivers were not expressly authorized to enforce such judgments, i.e., to sell the property. Cf. Section 726 (appointment of elisor or commissioner to sell property at conclusion of foreclosure action); Ramsey v. Furlott, 14 Cal. App.2d 145, 148, 57 P.2d 1007, ____ (1936) (appointment of "receiver and commissioner" to gather property and sell it is in effect appointment of commissioner). Receivers have been appointed at the commencement of a foreclosure action and continued in possession until sale. Boyd v. Benneyan, 204 Cal. 23, 25, 266 P. 278, ____ (1928).

The appointment of a receiver is subject to the general rules concerning the time within which judgment may be enforced. See Section 702.210.

CHAPTER 11. ENFORCEMENT OF JUDGMENT BY CONTEMPT§ 711.110. Enforcement by contempt

711.110. A judgment requiring a person to perform an act other than the payment of money, the delivery of possession of property, or the sale of property, or to refrain from performing an act, may be enforced by the power of the court to punish for contempt.

Comment. Section 711.110 supersedes a portion of former Section 684. See Sections 1209-1222 (contempt).