

Memorandum 79-51

Subject: Study D-300 - Enforcement of Judgments (Provisions of
General Application)

Attached is a redraft of those portions of Division 1 (Definitions and General Provisions) that have been previously considered by the Commission. The redraft reflects the prior decisions of the Commission. Also enclosed is a rough draft of a part of the preliminary portion of the recommendation; this explains the matters covered in the attached redraft. The redraft should be reviewed with care so that you can raise any matters of concern at the meeting. The staff presents the following matters for consideration by the Commission.

§ 683.010. Judgment enforceable upon entry; automatic 10-day stay
for money judgment unless court otherwise orders

The Commission directed that the provision making a judgment enforceable upon entry be redrafted to adopt the 10-day stay for money judgments that is provided in the Federal Rules of Civil Procedure. The Commission wanted to review the redrafted provision for possible inclusion in the new comprehensive enforcement of judgments statute.

Section 683.010 as set out in the attached statutory provisions contains the 10-day stay provision. The inclusion of this provision requires the inclusion of a provision permitting the immediate recording of an abstract of judgment to create a judgment lien. The staff has also included a provision to authorize the court to make an order permitting enforcement of a money judgment upon entry.

The staff is of the view that the existing rule--that the judgment is enforceable upon entry--should be retained and that the 10-day stay provision should not be included. The staff doubts that the judgment creditor will resort to enforcement procedures unless it appears unlikely that the judgment debtor will voluntarily pay the judgment. The inclusion of the 10-day stay provision, in our view, unnecessarily complicates this section and other provisions of the statute. If there is a need for a stay, the judgment debtor can apply to the court for a stay under other statutory provisions that authorize the court to grant a stay for a much longer period than the 10-day stay provided by redrafted Section 683.010. The possible benefits of the 10-day stay

provision are offset, in our view, by the additional delay it causes the creditor in obtaining payment of the judgment and by the additional complexity it will add to the statute.

§ 683.020. Twenty-year period for enforcement of judgment

The staff believes that the Commission should reconsider the desirability of the policy reflected in subdivision (b) of this section. Subdivision (b) has the effect of not permitting an action on a judgment to obtain a new judgment which has a new 20-year period of enforceability. Section 683.020 now provides that the new judgment has the same period of enforceability as the original judgment. Subdivision (b) is difficult to draft and difficult to understand. We believe that it will create problems of administration since the new judgment will be enforceable only for a period that can be determined by determining the period for which the original judgment was enforceable. The problem of determining the period of enforceability of the new judgment will be especially difficult if the new judgment is for delinquent child or spousal support that was payable in installments. (See Section 683.020.) It also will be difficult to apply Section 683.040 (court order extending period judgment enforceable) when a new judgment has been obtained.

Consideration should be given to deleting subdivision (b) and to adding a provision permitting an action on a judgment to obtain a new judgment. The new judgment would have a new period of enforceability but would not extend the life of any liens under the old judgment unless otherwise provided in the statute. If this change were made, the 20-year period of enforceability could be reduced to 15 years and this change would reduce the period that court records must be retained. We doubt that very many creditors would bring an action on the judgment merely to obtain a new period of enforceability unless special circumstances exist.

§ 683.040. Court order extending period judgment enforceable

This section reflects the prior Commission decision that a judgment is enforceable for 20-years from entry unless a court order extending the time for enforcement is obtained within the 20-year period. This changes existing law which provides that the period enforcement was stayed is added to the period the judgment is otherwise enforceable. The advantage of the scheme provided by Section 683.040 is that the time

within which a judgment is enforceable is a flat 20-year period absent an order under Section 683.040.

§ 684.060. Service by person authorized by levying officer to make service

The last sentence has been added to this section. This sentence would not preclude recovery of reasonable costs of a registered process server in serving a writ of execution in cases where service of the writ by a registered process server is otherwise permitted.

§ 684.070. Proof of service of notice of court hearing required

This is a section which has been added by the staff to avoid the need to include specific comparable provisions in various statutory provisions.

§ 685.050. Interest on judgment

The staff is concerned that the rules on when interest ceases to accrue are unduly complex and tend to deprive the judgment creditor of interest that he or she should receive. We plan to prepare a separate memorandum containing our suggested simplification of this section. We also plan to revise this section to provide a rule governing when interest commences to accrue in the case of an installment payment judgment.

Respectfully submitted,

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Executive Secretary

TYPES OF JUDGMENTS ENFORCEABLE

Title 9 of the Code of Civil Procedure¹ provides for the enforcement of money judgments, judgments for the possession or sale of real or personal property, and judgments enforceable by contempt.² Its provisions are also available for the enforcement of a tax liability in a situation where the state is authorized to issue a warrant pursuant to particular sections in the Revenue and Taxation Code and the Unemployment Insurance Code.³ For the most part, however, Title 9 is concerned with enforcement of money judgments.

The scope of the proposed revision of Title 9 is essentially the same as that of existing law.⁴ The proposed law separates the provisions pertaining to the enforcement of the various types of judgments and clarifies the extent to which general provisions apply to nonmoney

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1. Sections 681-724e. Except as otherwise noted, all statutory citations are to the Code of Civil Procedure.
 2. See, e.g., Sections 682, 684. See the discussion under "Enforcement of Nonmoney Judgments" infra.
 3. Section 722.5. This provision applies where warrants are issuable pursuant to Sections 6776, 7881, 9001, 10111, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code or Section 1785 of the Unemployment Insurance Code. Four recently enacted warrant provisions are not listed in Section 722.5. See Rev. & Tax. Code §§ 3202, 16071, 38541, 40161. The proposed law omits the references to specific sections providing authority for issuing warrants to collect a tax so that further amendment will not be required when tax laws are revised.
 4. The proposed law would not, however, apply to enforcement of money judgments against public entities. The Commission submitted a recommendation on this aspect of this study to the 1980 Legislature. See Recommendation Relating to Enforcement of Claims and Judgments Against Public Entities, 15 Cal. L. Revision Comm'n Reports xxx (1980).

judgments. Under existing law, it is not always clear which provisions apply to which types of judgments.⁵

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5. The word "execution" leads a chameleon-like existence in existing law; it is frequently unclear whether "execution" or "writ of execution" refers to process to enforce money judgments and judgments for the possession or sale of property, process to enforce money judgments and judgments for the possession but not the sale of property, or only process to enforce money judgments. For example, Section 684 provides that a writ of execution may be used to enforce a money judgment or a judgment for the possession of real or personal property; a judgment for the sale of property may be enforced by a "writ reciting such judgment." Section 683 provides for the return of the "execution" not less than 10 nor more than 60 days after its receipt by the levying officer, but it was held in *Magnauid v. Traeger*, 66 Cal. App. 526, 530-31, 226 P. 990, ____ (1924), that a writ of execution for the 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. Section 681 was amended in 1955 to add a reference to "enforcement" of the judgment since it was felt that the word "execution" was arguably not broad enough to cover enforcement of a mortgage foreclosure decree, i.e., a judgment for the sale of real property. See Review of 1955 Code Legislation 101 (Cal. Cont. Ed. Bar 1955). Section 692 (sale on execution), seems on its face to apply only to the enforcement of money judgments, although it has been held that foreclosure sales of real and personal property should be made in the same manner as in a sale under a money judgment. See *Podrat v. Oberndorff*, 207 Cal. 457, 459-60, 278 P. 1035, ____ (1929) (personal property); *Johnson v. Tyrell*, 77 Cal. App. 179, 182, 246 P. 140, ____ (1926).

TIME FOR ENFORCEMENT OF JUDGMENTS

Under existing law, a writ or order for the enforcement of a judgment may be obtained as a matter of course within 10 years after the entry of the judgment.¹ The time during which the enforcement of the judgment is stayed or enjoined is excluded from the computation of the 10 years within which the writ or order may issue.² The judgment may be enforced after 10 years in the discretion of the court upon motion by the judgment creditor with notice to the judgment debtor.³ The judgment may also be renewed by bringing an action upon it within 10 years after entry.⁴ This scheme is a direct descendant of the common law rules concerning actionability and executability of a money judgment.⁵

1. Section 681. Section 681 and its companion provision pertaining to issuance after 10 years, Section 685, govern issuance of writs or orders for the enforcement of money judgments and judgments for the possession or sale of property. See, e.g., *Butcher v. Brouwer*, 21 Cal.2d 354, 132 P.2d 205 (1942) (money judgment); *Laubisch v. Roberdo*, 43 Cal.2d 702, 708-09, 713-15, 277 P.2d 9, 13, 16-17 (1954) (judgment for sale of real property); *City of Los Angeles v. Forrester*, 12 Cal. App.2d 146, 148-49, 55 P.2d 277, 278 (1936) (judgment for possession of real property); see 5 B. Witkin, *California Procedure Enforcement of Judgment* § 68, at 3443, § 199, at 3553 (2d ed. 1971); *Review of 1955 Code Legislation* 101 (Cal. Cont. Ed. Bar 1955).
2. Section 681.
3. Section 685. This provision requires the judgment creditor to file an affidavit stating the reasons for failure to enforce the judgment within the 10 years allotted by Section 681. See the cases cited in 5 B. Witkin, *California Procedure Enforcement of Judgment* § 202, at 3555 (2d ed. 1971).
4. Section 337.5 (statute of limitations); *Atkinson v. Adkins*, 92 Cal. App. 424, 426, 268 P. 461, 462 (1928).
5. At common law, a writ of the appropriate type--*leviari facias*, *fieri facias*, or *elegit*--could be issued to enforce a money judgment only for a year and a day after the signing of the judgment. If a writ was not issued within this time, the judgment became dormant and the judgment creditor was required to initiate proceedings to revive the judgment by means of a writ of *scire facias* or to bring an action of debt to renew the judgment. *Scire facias* could be obtained without application to the court for a period of 10 years after judgment. At a later time, the common law developed a rebuttable presumption of payment after 20 years. See *Riesenfeld, Collection of Money Judgments in American Law--A Historical Inventory and a Prospectus*, 42 Iowa L. Rev. 155, 156-59, 172-73 (1957).

The proposed law modernizes these rules. The time during which the judgment creditor may obtain the issuance of a writ by application to the clerk is extended to 20 years.⁶ The 20-year period runs from the date of entry of judgment and the time during which enforcement of the judgment is stayed or enjoined is not automatically excluded (as it is under existing law) in determining when the 20-year period ends. However, the proposed law provides for a court order--to be issued as a matter of right upon application of the judgment creditor within the 20-year period--extending the time for enforcement of the judgment for a period equal to the aggregate time during which enforcement of the judgment was stayed or enjoined by court order or by operation of law. This new scheme provides a time certain for the expiration of the judgment without the need to resort to the court records to determine the time during which enforcement was stayed or enjoined. At the same time, it permits the judgment creditor to obtain a court order extending the time for enforcement in the rare case where necessary and provides a clear rule that determines the additional time to be allowed for enforcement. The new scheme eliminates the need to retain court records

6. At least three states provide absolute limits on the time for enforcement of domestic judgments. In North Dakota, the life of a judgment is limited to 20 years from the date of entry. See N.D. Cent. Code § 28-20-35 (1975); Berg v. Torgerson, 100 N.W.2d 153 (N.D. 1959). In Oregon, a domestic judgment is executable for 10 years and may be extended by motion within that time for one more 10-year period. See Or. Rev. Stat. § 18-360 (1977); Newhouse v. Newhouse, 271 Or. 109, 530 P.2d 848 (1975). An Oregon domestic judgment may not be renewed by action. See Or. Rev. Stat. § 12-070 (1977); Mason v. Mason, 148 Or. 34, 34 P.2d 328 (1934). In Washington, the maximum life of a domestic judgment is limited to six years and it may not be revived by motion or renewed by action. See Wash. Rev. Code §§ 4.56.210 (1962), 4.56.190 (Supp. 1976); St. Germain v. St. Germain, 22 Wash.2d 747, 157 P.2d 981 (1945). In Ferry County Title & Escrow Co. v. Fogle's Garage, Inc., 4 Wash. App. 874, 484 P.2d 458 (1971), a sale of real property was enjoined because the six-year period was due to expire two days after the sale was scheduled and the statute required court confirmation of sale 10 days after the sale. New York provides a conclusive presumption of payment after 20 years (except where the indebtedness has been acknowledged in writing or is partially paid), but permits renewal of the judgment by action within the 20-year period. See N.Y. Civ. Prac. Law & R. § 211(b) (McKinney 1972); Levine v. Bronson, 4 N.Y.2d 241, 173 N.Y.S.2d 599 (1958).

after the 20-year period has expired unless a court order extending the time for enforcement is obtained within the 20-year period. Under existing law, there is no fixed time limit within which a court order may be obtained permitting enforcement of a judgment after the existing 10-year period has expired.⁷

At the end of the prescribed period, the judgment is no longer enforceable and all enforcement proceedings against the judgment creditor must cease.⁸ Although the selection of a 20-year period is somewhat arbitrary, as any such decision must be, the Commission has concluded that this is an adequate length of time for the enforcement of a judgment by a diligent creditor.⁹ This proposal benefits judgment creditors by eliminating the need to apply to the court after 10 years and to satisfy the vague standard of diligence developed under existing

7. See note 3, supra, and note 9 infra.

8. The rule announced in *Alonso Inv. Corp. v. Doff*, 17 Cal.3d 539, 551 P.2d 1243, 131 Cal. Rptr. 411, (1976), permitting the enforcement of a writ of execution after the expiration of the 10-year period provided by Section 681 if the writ had been timely issued, is not continued in the proposed law. The judgment creditor would be able to continue a creditor's suit against a third person holding property of or owing debts to the judgment debtor and enforce any judgment obtained in that suit after the time for enforcement of the original judgment against the judgment debtor had expired. See the discussion under "Creditors' Suits" infra.

9. Cases cited in *Long v. Long*, 76 Cal. App.2d 716, 722, 173 P.2d 840, 843 (1946), reveal that execution has been permitted under Section 685 for as much as 20 years after judgment. In *Hatch v. Calkins*, 21 Cal.2d 364, 371, 132 P.2d 210, 214 (1942), the court denied issuance of a writ of execution 29 years after entry of judgment for lack of diligence.

law.¹⁰ The 20-year limitation also eliminates the possibility of revival of stale judgments and, like a statute of limitations, provides surcease to those few debtors who have been subject to the pursuit of creditors for at least two decades.

In the case of installment judgments for the payment of money,¹¹ the proposed law codifies existing case law which holds that the time for enforcement runs from the time each installment falls due.¹²

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10. Prior to the amendment of Section 685 in 1933, the creditor could obtain issuance of a writ of execution "almost as a matter of right" after the expiration of the period prescribed by Section 681. *Butcher v. Brouwer*, 21 Cal.2d 354, 357, 132 P.2d 205, ____ (1942). However, in *Butcher* the court held that execution could issue only if the judgment creditor has

exercised due diligence in locating and levying upon property owned by the debtor, or in following available information to the point where a reasonable person would conclude that there was no property subject to levy within that time. And even though the creditor may have satisfied the court that he has proceeded with due diligence . . . , the court may still deny him its process if the debtor shows circumstances occurring subsequent to the five-year period upon which, in the exercise of a sound discretion, it should conclude that he is not now entitled to collect his judgment.

Id. at 358, 132 P.2d at _____. For the application of this standard in a variety of factual settings, see the cases cited in 5 B. Witkin, *California Procedure Enforcement of Judgment* § 202, at 3555 (2d ed. 1971).

11. See Civil Code §§ 4700 (child support), 4801 (spousal support); Code Civ. Proc. §§ 85 (installment payment of money judgment of municipal or justice court), 667.7 (periodic payment of future damages in action against provider of health care services); Labor Code § 5801 (installment payment of worker's compensation award); Veh. Code § 16380 (installment payment of vehicle accident damage judgment).
12. See, e.g., *Wolfe v. Wolfe*, 30 Cal.2d 1, 4, 180 P.2d 345, ____ (1947); *Lohman v. Lohman*, 29 Cal.2d 144, 150, 173 P.2d 657, ____ (1946); *DeUprey v. DeUprey*, 23 Cal. 352, 353 (1863).

In some cases, the proposed law permits issuance of a writ to enforce a judgment even though the writ is issued more than 20 years after the entry of the judgment.¹³ So that the levying officer will know that such a writ was properly issued, the proposed law requires that the application for the writ be accompanied by an affidavit stating facts that show that the issuance of the writ is not barred by the 20-year limit and that a copy of the affidavit be attached to the writ when issued.

Under existing law, the judgment creditor may bring an action on a domestic judgment for the purpose of obtaining a new judgment with a new period of enforceability or for some other purpose.¹⁴ The proposed law changes existing law to provide that the new judgment has a period of enforceability that runs from the date the original judgment was entered. Bringing an action on the judgment is no longer a method of extending the period of enforceability of the judgment.

13. A writ may be issued more than 20 years after entry of the judgment in two instances: (1) Where a court order has extended the period during which the judgment is enforceable for a time equal to the time during which enforcement of the judgment was stayed or enjoined and (2) where the judgment is payable in installments and the 20-year period has not run on the installment or installments sought to be collected.

14. E.g., where a spouse seeks to invoke contempt power of court in another county to enforce support judgment, or where an action to foreclose a lien is necessary because the judgment creating the lien did not direct sale of the security. See 5 B. Witkin, California Procedure Enforcement of Judgment § 192, at 3547 (2d ed. 1971).

INTEREST

Rate of Interest

The rate of interest on judgments in California is seven percent, set by the California Constitution. Article XV, Section 1, was amended in 1978 to permit the Legislature to change the rate by statute or to provide a variable rate, not to exceed 10 percent, but absent legislative action the Constitution provides a rate of seven percent. The Legislature has not acted to change the seven-percent rate.

Postjudgment interest serves two important functions--it compensates the judgment creditor for the loss of use of the money until the judgment is paid, and it acts as an incentive for the judgment debtor to pay the judgment promptly. When the rate of interest on judgments approximates the prevailing interest rate in the money market, these two functions are in fact fulfilled. The judgment creditor is compensated at a rate that would be obtainable were the judgment satisfied and the funds available for investment; the judgment debtor has no incentive to delay payment since it would not be advantageous to invest the money elsewhere.

When the rate of interest on judgments is below the market rate, however, neither of the functions of postjudgment interest is satisfied. The judgment creditor is not fully compensated for the loss of use of the money and the judgment debtor is inclined to defer payment of the judgment as long as possible in order to make money by investing at the market rate. This is the situation in California at present. With the interest rate on judgments at seven percent and the market rate at 12 percent or higher--the judgment debtor may delay payment as long as possible and make five percent interest during the period of delay.

The insurance industry is perhaps the most identifiable group that benefits from maintaining a below market rate of interest on judgments. Insurance companies must maintain large reserves, which can be invested at market, so that any delay in payment of a judgment that accrues interest at a low rate is advantageous. In fact, when an insurance company loses a judgment, it frequently files a notice of appeal and obtains a stay of enforcement, thereby giving it the benefit of several months' delay in payment. Ordinarily the appeal is not pursued further

unless there is a legitimate issue justifying an appeal in the case. Prosecution of an appeal for the sole reason of delaying payment of the judgment is infrequent; the costs of appeal may outweigh any profit to be made by exploitation of the interest rate differential. Even so, where a large judgment is appealed by an insurer, the appeals process can take several years and the loss of money to the creditor and the gain to the debtor by having a low interest rate on judgments can be substantial. And for less responsible debtors than insurance companies, there remains an incentive to avoid prompt and voluntary payment for as long as possible thereby forcing resort to execution with its delays.

For these reasons, most jurisdictions are raising their rates of interest on judgments. The following chart indicating the changes that have occurred in the various jurisdictions in the past decade is instructive.

<u>Rate</u>	<u>Number of States in 1968</u>	<u>Number of States in 1978</u>
4%	1	0
5%	5	1
6%	40	26
7%	4	5
8%	0	11
8.5%	0	1
9%	0	1
10%	0	5
	<u>50</u>	<u>50</u>

The Commission believes that California's interest rate on judgments should be increased to a rate that more nearly approximates market rate. One possible approach is to adopt a flexible or variable interest rate on judgments based on a standard such as the prime rate, Federal Reserve Bank discount rate, or treasury bill discount rate.¹ Ideally, such a variable rate would be continuously revised by a state agency and

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1. Senate Bill 101 (Rains) was introduced in the Legislature at the 1979 session to provide a variable interest rate based on the Federal Reserve Bank of San Francisco rate on advances to member banks. This rate would fluctuate monthly and thereby provide a constant corrective so that the legal rate of interest would approximate the market rate at the time of entry of judgment. The bill failed to obtain approval of the Judiciary Committee of the Senate.

the interest accruing on the judgment would continuously change. The Commission believes that such a scheme would be too complex and would be impractical to administer.

An alternative is to allow the interest rate to vary from time to time and to have a single rate for each judgment based on the rate in effect at the time of entry. This scheme would make the interest rate on a judgment a rough approximation of market rate at the time of entry, although if the judgment took more than a brief period to satisfy this interest rate could easily become out of line with changing market rates. Also, this scheme would necessitate a procedure to preserve a record of the interest rate in effect at the time of entry of the judgment. The Commission believes that there is too much administration for too little benefit in this scheme.

A third alternative--the one recommended by the Commission--is to fix the interest rate on judgments at 10 percent but to reserve to the Legislature the right to lower the rate at any time both as to judgments thereafter entered and judgments previously entered. The virtues of this scheme are:

(1) It is simple--there is no need for bureaucratic computations of market rates; there will be a single rate known by debtor, creditor, and levying officers.

(2) It is accurate--it appears unlikely that the market rate will drop below 10 percent in the foreseeable future.

(3) It satisfies the functions of postjudgment interest to compensate the judgment creditor as nearly as possible and give the judgment debtor an incentive for prompt payment.

Fixing the rate at 10 percent creates a danger of inequity should the market rate drop below 10 percent and the debtor in fact be unable to pay the judgment. But the proposed law allows the Legislature to enact legislation to change the interest rate on judgments and to make the new rate applicable to all judgments, whether entered before or after the rate change. This will avoid the inequity that might otherwise result.

Interest on Costs

The existing statutes are silent on the question whether interest accrues on costs that have been incurred during the enforcement process. Generally, interest accrues on "judgments." Costs may be taxed by the court or determined upon motion, and thereafter are entered "on the margin of the judgment" and are included in writs subsequently issued to enforce the judgment.² Whether this makes costs part of the judgment for purposes of interest is not clear. The Judicial Council form of the writ of execution, through a quirk of draftsmanship, provides for interest on costs if there has been a partial satisfaction of the judgment but for no interest on costs otherwise.³

The proposed law provides that costs advanced by the judgment creditor draw interest from (1) the date the court order allowing the costs is filed or (2) if a memorandum of costs is filed and no motion to tax is made, the date of expiration of the time for making the motion. Interest compensates the judgment creditor (inadequately, perhaps, at the present rate of seven percent) for the loss of use of money, and collection costs advanced by the judgment creditor are actual expenditures whose use the judgment creditor has lost.

Compound Interest

Prior to 1918, compounding of interest on judgments was statutorily prohibited. This provision was repealed in 1918, and neither the present statutes nor the Constitution preclude compounding of interest on judgments. Case law disfavors compound interest.⁴ Courts have occasionally awarded compound interest on judgments, usually in cases involving fraud.⁵

2. Code Civ. Proc. § 1033.7.

3. See Writ of Execution (Form Approved by the Judicial Council of California, effective January 1, 1978).

4. See, e.g., Fuller v. White, 33 Cal.2d 236 (1948).

5. See, e.g., McNulty v. Copp, 125 Cal. App.2d 697 (1954).

The Judicial Council writ of execution form, again through a drafting peculiarity, permits the compounding of interest from the date of issuance of the writ until the date of levy where there has been a partial satisfaction of the judgment, but not otherwise.⁶

The proposed law does not allow compound interest. Compound interest has the effect of allowing interest at a rate in excess of the rate of interest set by the Constitution or by statute. The Constitution now permits the Legislature by statute to vary the rate of interest (not to exceed 10 percent). This method—not the compounding of interest—should be used to establish the proper rate of interest on judgments.

Stopping Interest

Theoretically, the judgment creditor is entitled to interest up to the date the judgment is fully satisfied. As a practical matter, however, where there is a levy under a writ, the levying officer needs to stop accrual of interest at some point in order to compute the interest and make payments. This is particularly true where there are several items of property levied on and sold at different times.

Under existing practice, interest ceases to accrue at the date of levy. The proposed law continues this rule as to levies on personal property. Stopping interest early gives the judgment creditor an incentive to have property that has been levied on sold promptly. Also, the interest lost between the time of levy and the time of sale is ordinarily quite small. This is not necessarily true, however, under the proposed legislation in the case of a levy on real property, since there is a statutory 140-day delay between the date of levy and sale of real property. For this reason, the proposed law provides that interest continues to accrue in case of a levy on real property up to the date of sale. Where there is a sale of real and personal property as a unit, interest also ceases to accrue at the time of sale.

6. Writ of Execution (Form Approved by the Judicial Council of California, effective January 1, 1978).

SERVICE OF WRITS, NOTICES, AND OTHER PAPERS

Existing law provides a variety of methods of service of writs, notices, and other papers in connection with the enforcement of a judgment.¹ Some provisions permit use of ordinary mail, others require certified or registered mail, and others permit service by personal delivery or ordinary mail.

The proposed law provides general provisions for the service of writs, notices, and other papers. These provisions apply unless a particular provision otherwise provides. Generally the proposed law permits service by personal delivery or by first-class mail, postage prepaid. First-class mail is preferable to certified or registered mail because it is cheaper and more likely to be received expeditiously.

The proposed law requires service on the attorney for the judgment creditor (rather than on the judgment creditor) if the judgment creditor has an attorney of record in the action or proceeding and the attorney still represents the judgment creditor. When some action is required within a short time to protect the judgment creditor's interests, serving the attorney directly will give the attorney more time to take the necessary action.

The proposed law permits the judgment debtor to file a request in the action that service be made on the judgment debtor's attorney rather than on the judgment debtor. This provision is also designed to give

1. Notice provisions vary under existing law. See, e.g., Sections 11 (certified mail complies with registered mail requirement), 682a (bank notice to holder of joint account levied upon sent by registered mail), 682.1 (copy of writ of execution mailed to judgment debtor after levy), 688(b) (service of writ of execution on judgment debtor by personal delivery or by mail), 689 (demand for undertaking sent to judgment creditor by registered or certified mail), 689b(3) (demand for undertaking or deposit sent to judgment creditor by registered or certified mail), 690.2(d) (notification by levying officer to judgment debtor of multiple vehicle registration), 690.30(b)(2) (notification by levying officer to judgment creditor of nature of account into which social security payments are directly deposited), 690.31(1) (copies of papers in dwelling exemption proceedings sent to judgment debtor and certain third persons by first-class mail), 692, para. 2 (notice of personal property sale mailed or delivered to judgment debtor), 692, para. 3 (notice of real property sale sent by certified mail or delivered to judgment debtor), 692a (notice of sale mailed to persons requesting notice), 710(d) (notice mailed by court clerk to parties interested in condemnation award).

the attorney more time to take any action needed to protect the interests of the judgment debtor.

The existing wage garnishment statute includes a provision that permits the judgment debtor or the judgment debtor's agent to deliver personally a notice or document that otherwise would be served by the levying officer.² This is permitted only if the notice or document runs in the judgment debtor's favor and the permission of the levying officer is obtained. The proposed law generalizes this provision to cover a writ, order, notice, or other paper and extends the provision to cover personal delivery by the judgment creditor or the judgment creditor's agent. Permission of the levying officer must be obtained. The cost of service is not a recoverable cost, but this would not affect the right to recover the cost of service by a registered process server to the extent otherwise permitted.

Whenever the proposed law requires service of notice of a court hearing, proof of service must be made at or before the hearing to the satisfaction of the court.³ This general requirement supersedes comparable provisions of existing law applicable to particular notices.⁴

The proposed law requires the judgment creditor to include in the instructions to the levying officer the correct name and address of any person required to be given notice by the levying officer. The judgment creditor is required to use reasonable diligence to ascertain the correct name and address of the person. The levying officer relies on the instructions unless the levying officer has actual knowledge that the name or address included in the instructions is incorrect.

2. Section 723.101(c), as amended by 1979 Cal. Stats. ch. 66, § 3.

3. The proposed law specifies methods, consistent with existing law, for proof of service.

4. See, e.g., Section 723.105(e) (hearing on claim of exemption from wage garnishment).

COSTS

Existing provisions governing the award and collection of the costs incurred in enforcing a judgment are scattered.¹ The proposed law collects these various provisions in one place and makes clarifying organizational and drafting improvements. The proposed law also corrects one substantive defect in the costs provisions. Under existing law, a levying officer who makes a levy under the writ collects, in addition to the costs entered on the writ, "the commissions and costs of the levying officer";² no provision is made for review of the amount collected. The proposed law adds a provision to enable the judgment debtor to have the costs collected by the levying officer under a writ taxed by the court within six months after their collection.

PROTECTION OF LEVYING OFFICER AGAINST LIABILITY

Existing law contains various provisions that give the levying officer protection against liability for actions taken in connection with the enforcement of a judgment.³ The proposed law replaces these provisions with a general provision that the levying officer is not liable for actions taken in conformance with the provisions of the proposed law. The immunity under the proposed law extends to actions taken in reliance on information contained in the written instructions

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1. See Sections 682.2, 1032.6, 1033.7. Provisions relating to advance deposit of costs of the levying officer are found in Section 488.050 (incorporated by Section 688(b)) and Government Code Sections 6100 and 24350.5.
 2. Section 682.2.
 3. See Sections 262 (judgment creditor's instructions must be in writing to discharge levying officer from liability), 262.1 (levying officer required to execute all process regular on its face and issued by competent authority), 689 (levying officer not liable to third person for levy, etc., if no third-party claim delivered or if provisions of Section 689 followed), 689b(9) (levying officer not liable for levy, etc., if undertaking given), 697 (levying officer not liable for more than amount bid by subsequent purchaser where first bidder fails or refuses to pay amount bid at execution sale).

of the judgment creditor except to the extent the levying officer has actual knowledge that the information is incorrect. This immunity does not limit any liability the judgment creditor may have for incorrect information given in the instructions.⁴

The Attachment Law protects the levying officer from liability for loss by fire, theft, injury, or damage to personal property while in the possession of the levying officer either in a warehouse or in the custody of a keeper or en route to or from a warehouse unless the levying officer is negligent in the care or handling of the property.⁵ A levying officer acting under the proposed law is given the same protection.

FORMS

The proposed law gives the Judicial Council authority to make rules for practice and procedure under the law and to prescribe forms for applications, notices, orders, writs, and other documents.¹ The proposed law provides forms for writs and other important notices and documents, but the Judicial Council is given the authority to supersede and supplement the statutory forms.

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4. The proposed law imposes on the judgment creditor a duty to use reasonable diligence to ascertain the correct name and address of any person required to be given notice and to include that information in the written instructions given to the levying officer.
 5. Section 488.060(b).
 1. Under existing law, the Judicial Council has issued approved forms for the general writ of execution (covering money judgments and judgments for the possession of property) and for the writ of execution against a dwelling house. A statutory form of the writ of execution on a money judgment is provided by Section 682.1 and a statutory form for notice of proposed levy on a dwelling is provided by Section 690.31.

Code of Civil Procedure §§ 680.010-724.xxx (added). Enforcement of judgments

SEC. ____ . Title 9 (commencing with Section 680.010) is added to Part 2 of the Code of Civil Procedure, to read:

TITLE 9. ENFORCEMENT OF JUDGMENTS

DIVISION 1. DEFINITIONS AND GENERAL PROVISIONS

CHAPTER 1. SHORT TITLE AND DEFINITIONS

§ 680.010. Short title

680.010. This title shall be known and may be cited as the Enforcement of Judgments Law.

Comment. Section 680.010 is new and provides a convenient means of referring to this title.

[Remainder of this Chapter to be drafted.]

968/652

CHAPTER 2. GENERAL PROVISIONS

§ 681.010. Provisions for enforcing judgments

681.010. Except as otherwise provided by statute:

(a) A money judgment is enforceable as provided in Division 2 (commencing with Section 695.010).

(b) A judgment for possession of personal property is enforceable as provided in Chapter 2 (commencing with Section 714.010) of Division 3.

(c) A judgment for possession of real property is enforceable as provided in Chapter 3 (commencing with Section 715.010) of Division 3.

(d) A judgment for sale of real or personal property is enforceable as provided in Chapter 4 (commencing with Section 716.010) of Division 3.

(e) A judgment requiring performance of an act not described in subdivisions (a) through (d) or requiring forbearance from performing an act is enforceable as provided in Chapter 5 (commencing with Section 717.010) of Division 3.

Comment. Section 681.010 supersedes former Section 684. It refers to the provisions of this title that provide the means available for the

enforcement of a judgment entered in this state. See Section [701.190] ("judgment" defined). The introductory clause recognizes that this title does not provide the exclusive means for enforcing all judgments entered in this state. See, e.g., Civil Code § 4701 (payment of child support enforceable by order for wage assignment). Also an order for support of a spouse or child is enforceable by contempt as well as by proceedings under this title. See In re Hendricks, 5 Cal. App.3d 793, 85 Cal. Rptr. 220 (1970). See also 5 B. Witkin, California Procedure Enforcement of Judgment § 158, at 3519-20 (2d ed. 1971). See also Gov't Code §§ 942, 965.6, 965.7, 965.8, 965.9, 970.1, 970.2 (enforcement of money judgments against public entities).

A money judgment entered in another state is not enforceable pursuant to this title until a California judgment has been entered based on the sister state money judgment. See Sections 1710.10(c) ("sister state judgment" defined), 1710.25 (entry of California judgment), 1710.35 (enforcement), 1710.60 (action on judgment). A support order issued in another state is enforceable in the same manner as a support order rendered in this state after it has been registered in California. See Sections 1698 (registration of foreign support order), 1699 (enforcement). A federal district court judgment entered or registered in this state is enforceable in the manner provided by federal law which to some extent incorporates state enforcement procedures. See Fed. R. Civ. P. 69(a) (enforcement of district court money judgment); 28 U.S.C. § 1963 (1976) (registration of judgment of one district court in another district). A money judgment of a court of a foreign nation is enforceable pursuant to Section 1713.3.

CROSS-REFERENCES

Defined terms

Money judgment § _____
Period of enforceability §§ 683.010-683.050

404/996

§ 681.020. Personal delivery in lieu of mailing

681.020. Whenever under this title a writ, notice, order, or other paper is required or permitted to be mailed, whether by first-class, certified, or registered mail, it may be delivered personally to the person to whom it is required or permitted to be mailed. Personal delivery as provided in this section is deemed to satisfy the provision that requires or permits the paper to be mailed.

Comment. Section 681.020 is new. For provisions applicable where a person is required to be served personally or by mail, see Sections 684.010-684.070.

Note. The need for retaining this section is still under study by the staff.

§ 681.030. Remedies of state tax agency

681.030. (a) Where a statute authorizes a state agency to issue a warrant directed to a levying officer for the collection of an amount required to be paid to the state and the warrant is given by the statute the same effect as a writ of execution, the state agency authorized to issue the warrant may use any of the remedies available to judgment creditors under this title.

(b) Where jurisdiction of a court is required for the enforcement of such remedies, jurisdiction is conferred upon any of the following courts:

(1) The superior court.

(2) The municipal or justice court if the amount sought to be collected does not exceed the jurisdictional amount of such court and the legality of the liability being enforced is not contested by the person against whom enforcement is sought.

(c) The proper court for the enforcement of such remedies is a court of any of the following counties:

(1) The county where the person against whom enforcement is sought resides.

(2) The county where the property against which enforcement is sought is situated.

(3) If the person against whom enforcement is sought does not reside in this state, any county of this state.

Comment. Section 681.030 supersedes former Section 722.5. See also Sections [706.130] (third-party claims), 703.100 (exemptions). The remedies available to the state agency under Section 681.030 include those provided in [miscellaneous creditors' remedies]. Remedies such as examinations of the judgment debtor or a third person holding property of the person owing money to the state or indebted to such person may be used by the state agency whether or not a warrant has been issued.

29/329

§ 681.040. Rules for practice and procedure; forms

681.040. (a) The Judicial Council may provide by rule for the practice and procedure in proceedings under this title.

(b) The Judicial Council may prescribe the form of the applications, notices, orders, writs, and other documents under this title. A

form prescribed by the Judicial Council under this section supersedes any corresponding form provided in this title and is deemed to comply with this title. The Judicial Council may prescribe forms in languages other than English.

Comment. Section 681.040 authorizes the Judicial Council to adopt and revise forms which supersede those provided in Chapter 19 (commencing with Section 693.010). The last two sentences of subdivision (b) are drawn from comparable provisions formerly contained in Section 723.120 (wage garnishment).

21984

CHAPTER 3. PERIOD FOR ENFORCEMENT

§ 683.010. Judgment enforceable upon entry; automatic 10-day stay for money judgment unless court otherwise orders

683.010. (a) Except as otherwise provided by statute or in the judgment, a judgment is enforceable under this title upon entry.

(b) Except as provided in subdivisions (c) and (d), a money judgment is not enforceable under this title until the expiration of 10 days after its entry.

(c) Nothing in subdivision (b) prevents the recording, at any time after entry of a money judgment, of an abstract of the judgment to create a judgment lien.

(d) A party may apply on noticed motion to the court in which the action or proceeding is pending for an order permitting enforcement of a money judgment upon entry; and the court, in its discretion, may make the order if the court determines that the interest of justice so requires. The order shall be included in the judgment as entered.

Comment. Subdivision (a) of Section 683.010 continues the substance of a portion of former Section 681, but the former provision applied to all judgments, including money judgments. Under Section 683.010, special rules apply to money judgments. See subdivisions (b)-(d).

Subdivision (b) is drawn from Rule 62 of the Federal Rules of Civil Procedure ("Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry."). The automatic 10-day stay gives the judgment debtor a short time within which to pay a money judgment before the judgment creditor resorts to execution or other procedures to enforce the judgment. The 10-day automatic stay also allows time for the judgment debtor to apply for a longer stay under Section 918 or another applicable provision.

Subdivision (c) is consistent with the general rule that a stay does not prevent the recording of an abstract or certified copy of the

judgment to create a judgment lien. See Section 918 and Industrial Indem. Co. v. Levine, 49 Cal. App.3d 698, 122 Cal. Rptr. 712 (1975). Nothing in Section 683.010 limits the discretion of the court to make an order under Section 918 expressly preventing the recording of the abstract or certified copy of the judgment during the 10-day automatic stay period and thereafter.

Subdivision (d) is new and permits the court to order that a money judgment be enforceable upon entry, notwithstanding the 10-day automatic stay provided by subdivision (b).

Nothing in Section 683.010 limits the authority of the court to stay enforcement of a judgment under any other applicable statutory provisions, such as Sections 916-923.

968/673

§ 683.020. Twenty-year period for enforcement of judgment

683.020. (a) Except as otherwise provided in this chapter, upon the expiration of 20 years after the date of entry of a money judgment or a judgment for possession or sale of property:

(1) The judgment may not be enforced.

(2) All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease.

(3) Any lien created by an enforcement procedure pursuant to the judgment is extinguished.

(b) For the purposes of subdivision (a), a judgment obtained in an action brought in a court of this state on a judgment entered in this state is deemed to have been entered on the date the original judgment was entered.

Comment. Section 683.020 supersedes the first sentence of former Section 681 (which provided a 10-year enforcement period) and former Section 685 (which permitted revival of the judgment after the 10-year period on motion of the judgment creditor). Under Section 683.020, a judgment is enforceable for 20 years; at the end of this period, enforcement of the judgment is barred and any liens created by the enforcement process are extinguished. No further action, including levy, sale, collection, or delivery pursuant to the judgment, or pursuant to a writ or order issued to enforce the judgment, may take place. The rule announced in *Alonso Inv. Corp. v. Doff*, 17 Cal.3d 539, 541-43, 551 P.2d 1243, ___, 131 Cal. Rptr. 411, ___ (1976), permitting the enforcement of a writ of execution after the expiration of the 10-year period if the writ had been timely issued, is not continued.

Section 683.020 applies only to money judgments and judgments for the possession or sale of property. Accordingly, other judgments--such as those governed by Chapter 5 (commencing with Section 717.010) of Division 3--are not subject to the 20-year rule of Section 683.020.

The introductory clause of subdivision (a) of Section 683.020 recognizes that the period of enforceability may be longer than 20 years

in two situations:

(1) Section 683.040 provides for a court order extending the time for enforcement of the judgment for a period equal to the aggregate time during which enforcement of the judgment was stayed or enjoined by court order or by operation of law.

(2) Section 683.030 provides special rules applicable to money judgments payable in installments.

The 20-year enforcement period is not extended for any other reason. The statement in *Nutt v. Nutt*, 247 Cal. App.2d 166, 168, 55 Cal. Rptr. 380, ___ (1966), that the absence from the state of the judgment debtor and the debtor's property tolls the running of the time to seek a writ of execution under former Section 681, is no longer applicable. However, a judgment may be used as an offset after the expiration of the 20-year period if the claim of the judgment debtor (against which the judgment is offset) existed during the 20-year period during which the judgment was enforceable. See Section 431.70 and Comment thereto.

Subdivision (b) of Section 683.020 prevents the extension of the period of enforceability of a judgment entered in this state by bringing an action on it. This changes former law. See *Atkinson v. Adkins*, 92 Cal. App. 424, 426, 268 P. 461, ___ (1928). Under subdivision (b) the new judgment has a period of enforceability that dates from the date the original judgment was entered. Subdivision (b) does not apply where an action is brought in California on a judgment that was not entered in California, as where an action is brought in California on a sister state judgment. See Section 1710.60 (action on sister state judgment). However, once a judgment has been entered in California, subdivision (b) makes clear that a later judgment resulting from an action on the original California judgment does not extend the period of enforceability. An action may be brought on a California judgment for a purpose other than extending its period of enforceability. See 5 B. Witkin, *California Procedure Enforcement of Judgment* § 192, at 3547 (2d ed. 1971).

CROSS-REFERENCES

Defined terms

Judgment § _____

Money judgment § _____

968/675

§ 683.030. Time for enforcement of installment judgment

683.030. If a money judgment is payable in installments, the 20-year period of enforceability prescribed by Section 683.020 runs as to each installment from the date the installment becomes due.

Comment. Section 683.030 codifies case law concerning the time within which installment judgments may be enforced. See, e.g., *Wolfe v. Wolfe*, 30 Cal.2d 1, 4, 180 P.2d 345, ___ (1947); *Lohman v. Lohman*, 29 Cal.2d 144, 150, 173 P.2d 657, ___ (1946); *DeUprey v. DeUprey*, 23 Cal. 352, 353 (1863). The most common form of installment judgment is for

spousal or child support. See Civil Code §§ 4700 (child support) and 4801 (spousal support). See also Code Civ. Proc. §§ 85 (municipal or justice court may order installment payment of money judgment), 667.7 (periodic payment of future damages in action against provider of health care services); Labor Code § 5801 (installment payment of worker's compensation award); Veh. Code § 16380 (installment payment of vehicle accident damage judgment).

12751

§ 683.040. Court order extending period judgment enforceable

683.040. (a) If enforcement of a judgment is stayed or enjoined by court order or by operation of law, the judgment creditor may apply by noticed motion for an order extending the period the judgment is enforceable under this chapter. The court shall determine the time during which enforcement of the judgment was stayed or enjoined by court order or by operation of law and shall make an order extending the period the judgment is enforceable by an additional time equal to the time the enforcement of the judgment was stayed or enjoined. An order may not be made under this subdivision after the expiration of the period during which the judgment is enforceable.

(b) If a judgment lien has been created by the recording of an abstract of the judgment, the period of the existence of the judgment lien is extended to include the additional period the judgment is enforceable under this chapter if, within 20 years after the date of entry of the judgment, a copy of the court order made under subdivision (a) is recorded in the same place where the abstract of the judgment was recorded to create the judgment lien.

Comment. Subdivision (a) of Section 683.040 supersedes the second sentence of former Section 681. The former provision provided for the automatic exclusion (in computing the 10-year period of enforceability under former law) of any time during which enforcement of the judgment was stayed or enjoined. Unlike the former provision, this chapter provides for a fixed 20-year period of enforceability that is not automatically extended by the period during which enforcement was stayed or enjoined. Instead, the period during which enforcement was stayed or enjoined is added to the 20-year period only if the judgment creditor obtains a court order extending the period of enforceability of the judgment under this section. The judgment creditor is entitled to the order as a matter of right upon a court determination of the duration of the period during which enforcement was stayed or enjoined. This change is made so that the time during which a judgment may be enforced can be more easily determined. Absent a court order under Section 683.040, the

period of enforceability expires 20 years after the date of entry of the judgment (Section 683.020) or 20 years from the date the installment payment was due (Section 683.030), whether or not enforcement of the judgment was stayed or enjoined during the 20-year period. See also the Comment to Section 683.020.

Subdivision (b) is a new provision that is designed to avoid the need to check the court files to determine whether a judgment was stayed or enjoined in order to know whether a judgment lien is still in existence. The effect of the provisions in this chapter is that a judgment lien created by a recording of an abstract of a judgment can safely be disregarded after the expiration of the 20-year period of enforceability unless a copy of the court order obtained under subdivision (a) of Section 683.040 is recorded before the expiration of the 20-year period.

21986

§ 683.050. Application for writ more than 20 years after entry of judgment

683.050. Where the judgment creditor applies for a writ for the enforcement of a money judgment or a judgment for possession or sale of property and the application is made more than 20 years after the date of the entry of the judgment, the application shall be accompanied by an affidavit of a person having knowledge of the facts stating facts that show that the issuance of the writ sought in the application is not barred under this chapter. A copy of the affidavit shall be attached to the writ when issued.

Comment. Section 683.050 establishes a new requirement designed to provide information to the court clerk and levying officer when a writ is sought more than 20 years after the judgment was entered. An affidavit will satisfy the requirements of this section if it states that the 20-year period of Section 683.020 has been extended for a specified period of time by court order under Section 683.040. Also, where the judgment is a money judgment payable in installments, the affidavit will be sufficient if it states that the 20-year period has not run as to the installment or installments covered by the application for the writ. Section 683.050 does not apply to a judgment for child or spousal support; Section [703.120] requires that the creditor obtain a court order for the issuance of the writ where a judgment for support is sought to be enforced by a writ of execution.

18548

CHAPTER 4. MANNER OF SERVICE OF WRITS, NOTICES,
AND OTHER PAPERS

§ 684.010. Service on judgment creditor's or judgment debtor's attorney

684.010. (a) Subject to Chapter 1 (commencing with Section 283) of Title 5 of Part 1, when a writ, notice, order, or other paper is required to be served under this title:

(1) If the paper is required to be served on the judgment creditor, it shall be served on the judgment creditor's attorney of record rather than on the judgment creditor if the judgment creditor has an attorney of record in the action or proceeding.

(2) If the paper is required to be served on the judgment debtor, it shall be served on the attorney specified by the judgment debtor rather than on the judgment debtor if:

(A) The judgment debtor has filed in the action or proceeding and served on the judgment creditor a request that service on the judgment debtor under this title be made by serving the attorney specified in the request; and

(B) Such request has not been revoked by the judgment debtor by filing in the action or proceeding and serving on the judgment creditor a notice revoking the request.

(b) Subdivision (a) does not apply to subpoenas and other process to require the attendance of a party or to papers to bring a party into contempt.

Comment. The introductory clause of subdivision (a) and paragraph (1) of subdivision (a) of Section 684.010 are drawn from the second and third sentences of Section 1015. Paragraph (2) in effect gives the judgment debtor the option either to have papers served on the judgment debtor or on the judgment debtor's attorney. The introductory clause to subdivision (a) recognizes that, if the applicable procedure is followed, an attorney of record referred to in paragraph (1) or an attorney designated in a request filed under paragraph (2) may withdraw from the case, be discharged, or be replaced by another attorney.

Subdivision (b) is drawn from a provision of Section 1015.

404/987

§ 684.020. Manner of service on attorney

684.020. When service on an attorney is required under Section 684.010, service on the attorney shall be made in any of the following ways:

(a) By personal delivery to the attorney.

(b) By service in the manner provided in subdivision (1) of Section 1011.

(c) By mail in the manner provided in Section 684.040.

Comment. Subdivisions (a) and (b) of Section 684.020 are comparable to the relevant portions of Section 1011. Subdivision (c) refers to a provision that is comparable to a portion of the first sentence of subdivision (a) of Section 1013.

§ 684.030. Manner of personal service

684.030. (a) Subject to subdivisions (b) and (c), when a writ, notice, order, or other paper is required to be personally served under this title, service shall be made in the same manner as a summons is served under Chapter 4 (commencing with Section 413.10) of Title 5.

(b) Where the paper is required to be personally served under this title and service on an attorney is required under Section 684.010, service shall be made on the attorney in the manner provided in Section 684.020.

(c) Where the service is on (1) a financial institution, (2) a title insurance company or underwritten title company (as defined in Section 12402 of the Insurance Code), or (3) an industrial loan company (as defined in Section 18003 of the Financial Code), service shall be made at the office or branch thereof which has actual possession of the property levied upon or at which the deposit account levied upon is carried and shall be made upon the officer, manager, or other person in charge of such office or branch at the time of service.

Comment. Subdivision (a) of Section 684.030 adopts by reference the manner for service of summons. Subdivision (b) makes clear that when personal service is required on the judgment debtor or judgment creditor, service on the attorney in the manner provided in Section 684.020 is required in cases where service is required on the attorney instead of on the judgment debtor or judgment creditor (Section 684.010). Subdivision (c) is the same in substance as subdivision (a) of Section 488.040 (attachment).

CROSS-REFERENCES

Defined terms

Financial institution § _____

§ 684.040. Manner of service by mail; extension of time for exercising right or performing act

684.040. (a) Except as otherwise provided in this title, when a writ, notice, order, or other paper is to be served by mail under this title, it shall be sent by first-class mail (unless some other type of mail is specifically required) and shall be deposited in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed as follows:

(1) Where an attorney is being served in place of the judgment creditor or judgment debtor as provided in Section 684.010, to the attorney at the last address as given by the attorney on any document filed in the proceeding and served on the party making the service.

(2) Where any other person is being served, to such person at the person's current mailing address, if known, or otherwise at the address as last given by the person on any document filed in the proceeding and served on the party making the service.

(3) If the mailing cannot be made as provided in paragraph (1) or (2), to the person at the person's last known residence address, if known, or otherwise at the person's last known business address.

(b) Service by mail is complete at the time of the deposit; but, if within a given number of days after the service a right may be exercised or an act is to be done by the person served, the time within which the right may be exercised or the act may be done is extended:

(1) Five days if the place of address is within the State of California.

(2) Ten days if the place of address is outside the State of California but within the United States.

(3) Twenty days if the place of address is outside the United States.

(c) The writ, notice, order, or other paper served by mail under this section shall bear a notation of the date and place of mailing or be accompanied by an unsigned copy of the affidavit or certificate of mailing. This subdivision is directory only.

Comment. Section 684.040 is drawn from Section 1013. The manner of computing time under subdivision (b) is the same as under the comparable portion of Section 1013.

405/000

§ 684.050. Name and address supplied by judgment creditor

684.050. (a) If the levying officer is required by any provision of this title to serve any writ, order, notice, or other paper on any person or give any notice to any person, the judgment creditor shall include in the instructions to the levying officer the correct name and address of the person. The judgment creditor shall use reasonable diligence to ascertain the correct name and address of the person.

(b) Unless the levying officer has actual knowledge that the name or address included in the instructions is incorrect, the levying officer shall rely thereon in serving the writ, order, notice, or other paper on the person or giving the notice to the person.

Comment. Section 684.050 is a specific application of Section 687.010 (instructions to levying officer). The address to be supplied by the judgment creditor varies in particular provisions of this title. See, e.g., Sections 684.040 (address for service), [703.310] (address shown by the records of tax assessor). See also Section 687.040 (liability of levying officer for action taken in reliance on information supplied by judgment creditor).

405/002

§ 684.060. Service by person authorized by levying officer to make service

684.060. Where a provision of this title provides for service by the levying officer of a writ, order, notice, or other paper that runs in the favor of a particular person, personal service of the paper may be made by the person or the person's agent if the levying officer's permission is given. The levying officer's permission shall be evidenced by a certificate signed by the levying officer. If service is made by a person or the person's agent pursuant to this section, the cost of such service is not a recoverable cost.

Comment. Section 684.060 is derived from a sentence formerly contained in Section 723.101(c) (personal service of notice or document by wage garnishment debtor). The last sentence of Section 684.060 is new, but does not affect the right to recover cost of service by a registered process server to the extent otherwise permitted. See Section [687(b), (c)].

27/937

§ 684.070. Proof of service of notice of court hearing required

684.070. Whenever service of notice of a court hearing is required under this title, proof of the giving of such notice shall be made at or before the hearing to the satisfaction of the court.

Comment. Section 684.070 is a new provision that establishes a general requirement that supersedes comparable requirements of former law, such as that formerly found in Section 723.105(e). As to the manner of making proof of service, see Section 684.080.

§ 684.080. Proof of giving of notice

684.080. When proof of notice is required in proceedings under this title, proof may be made as follows:

(a) Proof of notice by personal delivery may be made by the affidavit of the person making the delivery, showing the time and place of delivery and the name of the person to whom delivery was made.

(b) Proof of service by mail may be made in the manner prescribed in Section 1013a.

(c) Proof of posting may be made by the affidavit of the person who posted the notice.

(d) Proof of publication may be made by the affidavit of the publisher or printer, or the foreman or principal clerk of the publisher or printer, showing the time and place of publication.

(e) Proof of notice, however given, may be made by testimonial evidence.

Comment. Subdivision (a) of Section 684.080 is drawn from subdivision (a) of Section 417.10. Subdivision (d) is drawn from subdivision (b) of Section 417.10. The remainder of Section 684.080 is consistent with civil practice generally.

968/684

CHAPTER 5. COSTS AND INTEREST

§ 685.010. Right to costs of enforcing judgment

685.010. The judgment creditor is entitled to reasonable and necessary costs of enforcing a judgment.

Comment. Section 685.010 supersedes former Section 1032.6. The reference to superior, municipal, and justice courts in former Section 1032.6 is not continued because it is unnecessary. Recoverable costs may be limited by statute. See, e.g., Section [703.260(d)] (cost of registered process server).

CROSS-REFERENCES

Defined terms

Costs § [701.140]

Court § [701.150]

Judgment § [701.190]

Judgment creditor § [701.200]

§ 685.020. Memorandum of costs of enforcing judgment

685.020. (a) The judgment creditor may claim under this section the following costs of enforcing a judgment:

(1) Statutory fees for preparing and issuing, and recording and indexing, an abstract of judgment.

(2) Statutory fees for issuing a writ for the enforcement of the judgment.

(3) Statutory costs of the levying officer for performing the duties under a writ.

(4) Costs incurred in connection with any proceeding under Chapter 6 (commencing with Section 708.010) of Division 2 which have been approved as to amount, reasonableness, and necessity by the judge or referee conducting the proceeding.

(b) Before the judgment is fully satisfied but not later than six months after the costs have been incurred, the judgment creditor claiming costs under this section shall file a memorandum of costs with the court clerk and serve personally or by mail a copy on the judgment debtor. The memorandum of costs shall be executed under oath by a person who has knowledge of the facts and shall state that to the person's best knowledge and belief the costs are correct, are reasonable and necessary, and have not been satisfied.

(c) Within 10 days after the memorandum of costs is served on the judgment debtor, the judgment debtor may apply by noticed motion to have the costs taxed by the court. The court shall make an order allowing or disallowing the costs to the extent justified under the circumstances of the case.

Comment. Section 685.020 continues the substance of the first paragraph of former Section 1033.7, with the exception of the references in former law to the fee for issuance of a writ of prohibition. A motion under this section may be determined at chambers. See Section 166.

The costs of issuance of a writ and the levying officer's costs are automatically added to the amount to be satisfied as provided by Section 685.060. If the property levied upon under the writ is insufficient to satisfy the accrued costs, the judgment creditor must resort to the memorandum of costs procedure in this section in order to have the unsatisfied costs added to the judgment. See Section 685.040 (addition of costs to judgment).

CROSS-REFERENCES

Defined terms

Costs § [701.140]
Court § [701.150]
Judgment § [701.190]
Judgment creditor § [701.200]
Judgment debtor § [701.210]
Levying officer § [701.220]
Writ § [701.290]
Manner of service §§ 684.010-684.040

368/240

§ 685.030. Motion for costs of enforcing judgment

685.030. (a) The judgment creditor may claim costs, other than those that may be claimed under Section 685.020, by noticed motion. The motion shall be made before the judgment is satisfied in full, but not later than six months after the costs have been incurred. The costs that may be claimed under this section include costs incurred, but not approved by the court or referee, in a proceeding under Chapter 6 (commencing with Section 708.010) of Division 2.

(b) The notice of motion shall describe the costs claimed, shall state their amount, and shall be supported by an affidavit of a person who has knowledge of the facts stating that to the person's best knowledge and belief the costs are correct, are reasonable and necessary, and have not been satisfied.

(c) The court shall make an order allowing or disallowing the costs to the extent justified under the circumstances of the case.

Comment. Section 685.030 continues the substance of the second paragraph of former Section 1033.7.

CROSS-REFERENCES

Defined terms

Costs § [701.140]
Court § [701.150]
Judgment § [701.190]
Judgment creditor § [701.200]

368/242

§ 685.040. Addition of costs to judgment

685.040. (a) Costs are added to and become a part of the judgment:

(1) Upon the filing of an order allowing the costs pursuant to this chapter.

(2) If a memorandum of the costs is filed pursuant to Section 685.030 and no motion to tax is made, upon the expiration of the time for making the motion.

(b) The costs added to the judgment pursuant to this section are included in the amount of the judgment remaining unsatisfied.

Comment. Section 685.040 supersedes the last paragraph of former Section 1033.7.

CROSS-REFERENCES

Defined terms

Costs § [701.140]

Judgment § [701.190]

404/298

§ 685.050. Interest on judgment

685.050. (a) Interest accrues at the rate of 10 percent per annum on the amount of a judgment remaining unsatisfied. The Legislature reserves the right to change this rate at any time and set the rate at not less than seven percent per annum and not more than 10 percent per annum for any judgment regardless of the date of entry of the judgment or the date any obligation upon which the judgment is based was incurred.

(b) Interest commences to accrue on the date of entry of judgment and ceases to accrue at the earliest of the following times:

(1) If the judgment is satisfied in full pursuant to a writ under this title:

(A) The date of sale of real property sold pursuant to the writ or of real and personal property sold as a unit pursuant to the writ.

(B) The date of levy on personal property sold pursuant to the writ if the personal property is not sold as a unit with real property.

(C) The date property is received by the levying officer if the property is collected by the levying officer rather than sold pursuant to the writ.

(2) If the judgment is satisfied in full other than pursuant to a writ under this title, the date the judgment is satisfied in full.

(3) If the judgment is partially satisfied pursuant to a writ under this title or is otherwise partially satisfied, as to the part satisfied, the date the part is satisfied.

(c) For the purpose of this section, the date a judgment is satisfied in full or part is the earliest of the following:

(1) The date satisfaction is actually received by the levying officer.

(2) The date satisfaction is actually received by the judgment creditor.

(3) The date satisfaction is tendered to or deposited in court for the judgment creditor.

(4) The date of such other performance as has the effect of satisfaction.

Comment. Subdivision (a) of Section 685.050 alters the legal rate of interest on judgments from seven to 10 percent as permitted by Article XV, Section 1 of the California Constitution. The Legislature reserves the right to alter the interest rate as to both past and future judgments at any time. Subdivision (a) also recognizes that the judgment on which interest accrues may include subsequently added costs in addition to any court costs and prejudgment interest included in the judgment as entered. See Section 685.040 (subsequent costs included in amount of judgment remaining unsatisfied).

The introductory portion of subdivision (b) codifies the rule as to the time postjudgment interest commences to run. See, e.g., Dixon Mobile Homes, Inc. v. Walters, 48 Cal. App.3d 964, ___ Cal. Rptr. ___ (1975).

Subdivision (b)(1)(A) provides for the running of interest to the date of sale in the case of a sale of real property in recognition of the delay in such a sale under Section [703.630]. Subdivision (b)(1)(B) is drawn in part from former Section 682.1 (writ form—interest under writ to date of levy). Subdivision (b)(1)(C) makes clear that where property is collected rather than sold, interest continues to accrue as to the amounts collected until each amount is actually received. For example, if installment payments on a note are being collected by the levying officer, interest ceases to accrue on the portion of the judgment satisfied by each installment collected on the date that installment is received by the levying officer.

Subdivision (b)(2) distinguishes between satisfaction pursuant to a writ and other satisfaction. Interest ceases to accrue as of the date of actual satisfaction except where collection is made pursuant to a writ, in which case it may cease as of an earlier date.

Subdivision (b)(3) distinguishes between full and partial satisfaction. In case of a partial satisfaction, regardless of the means, interest continues to accrue as to the part satisfied until the date the part is actually satisfied.

Subdivision (c) codifies the common law rule on the time interest ceases to accrue. See, e.g., Beeler v. American Trust Co., 28 Cal.2d 435, ___ P.2d ___ (1946) (tender of amount due); Pinecrest Prods., Inc. v. RKO Teleradio Pictures, Inc., 14 Cal. App.3d 6 (1970) (deposit with court). See also Section 724.010 (judgment deemed satisfied in full if judgment creditor accepts different performance in full satisfaction).

CROSS-REFERENCES

Defined terms

Court § [701.150]
Judgment § [701.190]
Judgment creditor § [701.200]
Judgment debtor § [701.210]
Writ § [701.290]

368/244

§ 685.060. Costs and interest under writ

685.060. (a) If a writ is issued pursuant to this title to enforce a judgment, the costs and interest to be satisfied in a levy under the writ are:

(1) The statutory fee for issuance of the writ.

(2) If the judgment creditor has filed an affidavit with the court clerk stating the amount of interest that has accrued from the date of entry of the judgment to the date of issuance of the writ, the amount of the accrued interest.

(3) The amount of interest that accrues on the amount of the judgment remaining unsatisfied from the date of issuance of the writ until the date interest ceases to accrue as determined pursuant to subdivision (b) of Section 685.050.

(4) The levying officer's statutory costs for performing the duties under the levy.

(b) In a levy under the writ, the levying officer shall collect the amount of costs and interest entered on the writ pursuant to paragraphs (1) and (2) of subdivision (a), compute and collect the amount of additional interest required to be collected by paragraph (3) of subdivision (a) by reference to the daily interest entered on the writ, and determine and collect the amount of additional costs pursuant to paragraph (4) of subdivision (a).

Comment. Section 685.050 supersedes former Section 682.2 and a portion of former Section 1033.7. In addition to the costs collected pursuant to this section, the levying officer will also collect previously allowed costs that have been added to the judgment and are included in the amount of the judgment remaining unsatisfied. See Section 685.040. This section applies not only to writs of execution but also to writs of possession and of sale as well.

CROSS-REFERENCES

Contents of writ of execution § [703.130]

Defined terms

Costs § [701.140]

Court § [701.150]

Judgment § [701.190]

Judgment creditor § [701.200]

Levying officer § [701.220]

Writ § [701.290]

368/245

§ 685.070. Motion to tax costs collected by levying officer

685.070. Within six months after a writ is returned, the judgment debtor may apply by noticed motion to have the costs collected by the levying officer pursuant to Section 685.060 taxed by the court. The court shall make an order allowing or disallowing the costs collected to the extent justified under the circumstances of the case. The judgment debtor has the burden of showing that the costs collected were not reasonable or were not necessary. If costs collected are disallowed, the court shall order the entry of judgment against the judgment creditor in the amount of disallowed costs or shall order the amount of disallowed costs to be set off against any amount of the judgment against the judgment debtor remaining unsatisfied.

Comment. Section 685.070 is intended to provide a remedy for the judgment debtor in a case where costs are collected by the levying officer pursuant to Section 685.060. If the costs of issuing a writ and the levying officer's costs are not collected under the writ, the judgment creditor must resort to the memorandum procedure provided by Section 685.020 and the objections of the judgment debtor may be asserted by way of a motion to tax pursuant to subdivision (c) of Section 685.020.

CROSS-REFERENCES

Defined terms

Costs § [701.140]

Court § [701.150]

Judgment § [701.190]

Judgment creditor § [701.200]

Judgment debtor § [701.210]

Levying officer § [701.220]

Writ § [701.290]

§ 685.080. Deposit of levying officer's costs

685.080. (a) Except as otherwise provided by law:

(1) As a prerequisite to the performance by the levying officer of a duty under this title, the judgment creditor shall deposit a sum of money with the levying officer sufficient to pay the costs of performing the duty.

(2) As a prerequisite to the taking of property into custody by the levying officer, whether by keeper or otherwise, the judgment creditor shall deposit with the levying officer a sum of money sufficient to pay the costs of taking the property and keeping it safely for a period not to exceed 15 days. In the event that continuation of the custody of the property is required, the levying officer shall, from time to time, demand orally or in writing that the judgment creditor deposit additional amounts to cover estimated costs for periods not to exceed 30 days each. A written demand may be mailed to the judgment creditor. The judgment creditor shall be given not less than three business days after receipt of the demand within which to comply with the demand. In the event that the amount so demanded is not paid within the time specified in the oral or written demand, the levying officer shall release the property in the manner provided by Section [703.240].

(b) The levying officer is not liable for failure to take or hold property unless the judgment creditor has fully complied with the provisions of this section.

Comment. Subdivision (a)(1) of Section 685.080 makes more specific the requirement that costs of the levying officer be paid in advance. See Gov't Code §§ 6100, 24350.5.

Subdivision (a)(2) is comparable to Section 488.050 (expenses in attachment) and recognizes the practice under former law of making an oral demand for costs.

The introductory clause of subdivision (a) recognizes that there are exceptions to the general rule stated in Section 685.080, such as where certain governmental agencies are judgment creditors. See Labor Code § 101 (Labor Commissioner). Similarly, certain creditors may not be required to prepay costs. See Section 1677 (collection of support payments under Uniform Reciprocal Enforcement of Support Act); *Martin v. Superior Court*, 176 Cal. 289, 296-97, 168 P. 135, ____ (1917) (actions in forma pauperis).

Subdivision (b) is comparable to Section 488.060(a) (attachment).

CROSS-REFERENCES

Defined terms

Costs § [701.140]

Judgment creditor § [701.200]

Levying officer § [701.220]

21978

CHAPTER 6. DEATH OF JUDGMENT CREDITOR OR JUDGMENT DEBTOR

§ 686.010. Enforcement after death of judgment creditor

686.010. After the death of the judgment creditor, the judgment may be enforced as provided in this title by the judgment creditor's executor or administrator or successor in interest.

Comment. Section 686.010 continues the substance of subdivision 1 of former Section 686. The judgment is enforceable by the executor or administrator or successor in interest in the same manner as by a judgment creditor.

21980

§ 686.020. Enforcement after death of judgment debtor

686.020. After the death of the judgment debtor, enforcement of a judgment against the judgment debtor is governed by the provisions of the Probate Code.

Comment. Section 686.020 makes clear that, although various provisions of the Probate Code permit use of enforcement procedures provided in this title, the enforcement of a judgment against the judgment debtor after the death of the judgment debtor is governed by the Probate Code. See, e.g., Prob. Code §§ 716, 730, 732, 950.

404/949

CHAPTER 7. LEVYING OFFICERS

§ 687.010. Instructions to levying officer

687.010. (a) The judgment creditor shall give the levying officer instructions in writing, signed by the judgment creditor or the judgment debtor's attorney, containing the information needed or requested by the levying officer to comply with the provisions of this title, including but not limited to an adequate description of any property to be levied upon and an indication whether the property is a dwelling and if so whether it is real or personal property.

(b) Subject to subdivision (c), the levying officer shall act in accordance with the written instructions to the extent the actions are taken in conformance with the provisions of this title.

(c) Except to the extent the levying officer has actual knowledge that the information is incorrect, the levying officer may rely on any information contained in the written instructions.

Comment. Subdivision (a) of Section 687.010 is based on subdivision (a) of Section 488.010 (attachment) and on parts of subdivisions 2 and 3 of former Section 692 (sale of personal and real property). See also Sections 684.050 (address for notices), [703.140] (writ of execution), [708.130] (writ of possession of personal property), [709.130] (writ of possession of real property), [710.130] (writ of sale).

Subdivisions (b) and (c) are consistent with Sections 262 (signed written instructions as excuse) and 687.040 (liability of levying officer). See also Section 684.050 (reliance on name and address given in instructions).

08/947

§ 687.020. Execution of certain commercial paper by levying officer

687.020. (a) When a check, draft, money order, or other order for the withdrawal of money from a financial institution, the United States, any state, or any public entity within any state, payable to the judgment debtor on demand, comes into the possession of a levying officer pursuant to this title, the levying officer shall promptly endorse and present it for payment.

(b) The levying officer shall endorse the check, draft, money order, or other order by writing the name of the judgment debtor thereon and the name and official title of the levying officer and giving the title of the court and the cause in which the writ or other enforcement process was issued. The endorsement is as valid as if endorsed by the judgment debtor. No financial institution or public entity on which the check, draft, money order, or other order is drawn is liable to any person by reason of paying to the levying officer rather than the judgment debtor the check, draft, money order, or other order by reason of the endorsement. No levying officer is liable by reason of endorsing, presenting, and obtaining payment of the check, draft, money order, or other order.

(c) If it appears from the face of the check, draft, money order, or other order that it has been tendered to the judgment debtor in

satisfaction of a claim or demand and that endorsement thereof is considered a release and satisfaction by the judgment debtor of the claim or demand, the levying officer shall not endorse the check, draft, money order, or other order unless the judgment debtor has first endorsed it to the levying officer. If the judgment debtor does not endorse the check, draft, money order, or other order to the levying officer, the levying officer shall hold it for 30 days and is not liable to the judgment debtor or to any other person for delay in presenting it for payment. At the end of the 30-day holding period, the levying officer shall return it to the maker.

Comment. Section 687.020 continues the substance of subdivision (g) of former Section 688 (which incorporated Section 488.520 in the Attachment Law by reference) except that Section 687.020(1) is not limited to situations where commercial paper comes into the possession of a levying officer or a receiver pursuant to a writ of execution and (2) provides for the return of the instrument to the maker after 30 days.

CROSS-REFERENCES

Defined terms

Financial institution § _____

09046

§ 687.030. Manner of custody

687.030. Except as otherwise provided by statute, where the method of levy upon property requires that the property be taken into custody or where the levying officer is otherwise directed to take property into custody, the levying officer may do so by any of the following methods:

- (a) Removing the property to a place of safekeeping.
- (b) Installing a keeper.
- (c) Otherwise obtaining possession or control of the property.

Comment. Section 687.030 continues the substance of the second sentence of subdivision (c) of former Section 688 except that this section is not limited to custody under a writ of execution. The introductory clause recognizes exceptions to this general rule. See Sections [703.370] (keeper for tangible personal property of a going business), [703.380] (keeper for personal property used as dwelling).

Subdivision (c) is intended to provide levying officers with a degree of flexibility in determining efficient and economical means of securing custody of personal property levied upon. Under this subdivision use of a keeper is not required in cases where the property is not moved to a place of safekeeping, but the custody obtained must be sufficient to prevent removal of the property. Such custody will be useful where property such as large construction equipment is levied upon.

§ 687.040. Liability of levying officer

687.040. (a) The levying officer is not liable for actions taken in conformance with the provisions of this title including actions taken in reliance on any information contained in the written instructions of the judgment creditor except to the extent the levying officer has actual knowledge that the information is incorrect. Nothing in this subdivision limits any liability the judgment creditor may have for incorrect information given in the written instructions.

(b) The levying officer is not liable either to the judgment debtor or the judgment creditor for loss by fire, theft, injury, or damage of any kind to personal property while in the possession of the levying officer either in a warehouse or in the custody of a keeper or en route to or from a warehouse unless the levying officer is negligent in the care or handling of the property.

Comment. Subdivision (a) of Section 687.040 supersedes the second sentence of the sixth paragraph of former Section 689, the fourth sentence of former Section 689b(9), former Section 697, and the second sentence of Section 488.370(b) (attachment of accounts receivable and choses in action) insofar as it was incorporated by former Section 688(b). For other provisions concerning the levying officer's liability, see Sections [703.220(b)] (quick sale of perishable property), [703.240(e)] (release), [703.370(a)] (payment by cash equivalent in keeper levy), [703.650] (sale without notice).

Subdivision (b) is comparable to Section 488.060(b) (attachment).