

#D-312

1/2/80

First Supplement to Memorandum 80-3

Subject: Study D-312 - Creditors' Remedies (Community Property--
Exemptions)

In connection with the Commission's study of liability of marital property for claims of creditors, it will be necessary to review the exemptions of property from enforcement. A copy of the most recent version of the Commission's exemption scheme is attached as Exhibit 1. The scheme is based primarily on a model of a single, unmarried judgment debtor; with some exceptions, it avoids the circumstance of a married judgment debtor or married joint judgment debtors. We should go through the exemptions individually at the meeting, to the extent time permits, to determine whether any changes need to be made to accommodate married judgment debtors.

Respectfully submitted,

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Assistant Executive Secretary

EXHIBIT 1

Article 3. Exempt Property

§ 704.010. Motor vehicle; proceeds

704.010. (a) One motor vehicle is exempt if the judgment debtor's equity does not exceed one thousand dollars (\$1,000). For the purpose of determining the judgment debtor's equity, the fair market value of the motor vehicle shall be determined by reference to used car price guides customarily used by California automobile dealers unless the motor vehicle is not listed in such price guides.

(b) If the motor vehicle is sold, or if it has been lost, damaged, or destroyed, the proceeds of sale or of insurance or other indemnification are exempt in the amount of one thousand dollars (\$1,000) for a period of 90 days after the sale in the case of a voluntary sale, or 90 days after the receipt of proceeds in all other cases.

(c) If the judgment debtor has only one motor vehicle, proceeds of an execution sale of the motor vehicle are exempt in the amount provided in this section without making a claim. The levying officer shall consult and may rely upon the records of the Department of Motor Vehicles in determining whether the judgment debtor has only one motor vehicle.

Comment. Section 704.010 supersedes subdivisions (a), (d), and (e) of former Section 690.2. The exemption provided by this section is in addition to the exemption for a motor vehicle necessary as a tool of the trade. See Section 704.050.

Subdivision (a) increases the motor vehicle exemption from \$500 to \$1,000.

Subdivision (b) provides an exemption for proceeds of sale, or of insurance or other indemnification, whereas subdivision (e) of former Section 690.2 exempted "any amount representing the motor vehicle exemption." Cf. *Houghton v. Lee*, 50 Cal. 101, 103 (1875) (exemption of proceeds from insurance on homestead). Subdivision (b) also makes clear that the 90-day period during which proceeds are exempt runs from the receipt of the proceeds by the judgment debtor except in the case of a voluntary sale in which case the period runs from the date of sale. This principle is derived from the provisions exempting the proceeds from the sale of a homestead. See former Civil Code §§ 1257, 1265; *Chase v. Bank of America*, 227 Cal. App.2d 259, 263-64, 38 Cal. Rptr. 567, ____ (1964).

Subdivision (c) makes clear that the exemption of proceeds need not be claimed where there is only one motor vehicle. See Section 707.030. Section 701.810 requires distribution of such proceeds to the judgment debtor before the judgment creditor. See also Section ____ (sale price required to exceed liens required to be satisfied and proceeds exemption).

CROSS-REFERENCES

Defined terms

Equity § 703.000
Judgment debtor § ____
Levying officer § ____
Motor vehicle § ____

15329

§ 704.020. Household furnishings, wearing apparel, personal effects

704.020. Household furnishings, appliances, provisions, wearing apparel, and other personal effects, ordinarily and reasonably necessary for an average household and personally used or procured for use by the judgment debtor and members of the judgment debtor's household at the judgment debtor's principal place of residence, are exempt.

Comment. Section 704.020 supersedes the first sentence of former Section 690.1. Section 704.020 continues the ordinarily and reasonably necessary standard but makes clear that exemption is limited to items that are necessary for the average household. This limitation is intended to eliminate the unfairness inherent in the "station in life" test as applied in cases such as *Independence Bank v. Heller*, 275 Cal. App.2d 84, 79 Cal. Rptr. 868 (1969), and *Newport Nat'l Bank v. Adair*, 2 Cal. App.3d 1043, 83 Cal. Rptr. 1 (1969).

CROSS-REFERENCES

Defined terms

Judgment debtor § ____

§ 704.030. Materials for repair or improvement of dwelling

704.030. All material not exceeding one thousand dollars (\$1,000) in value, purchased in good faith for use in the repair or improvement of the judgment debtor's principal place of residence, is exempt as long as the material in good faith is about to be applied to the repair of the residence.

Comment. Section 704.030 continues a portion of former Section 690.17.

CROSS-REFERENCES

Defined terms

Judgment debtor § _____

15330

§ 704.040. Jewelry, heirlooms, works of art

704.040. Jewelry, heirlooms, works of art, and other personal effects are exempt to the extent the court determines that they reasonably have such sentimental or psychological value to the judgment debtor that it would be inequitable to subject them to enforcement of a money judgment.

Comment. Section 704.040 provides an exemption for items of sentimental value. This section supersedes portions of former Section 690.1 which provided an exemption for wearing apparel, furnishings, and works of art "of or by the debtor and his resident family." The exemption of property under Section 704.040 depends upon its sentimental or psychological value, rather than upon its being ordinarily and reasonably necessary to the judgment debtor as under the former provision.

CROSS-REFERENCES

Defined terms

Court § _____
Judgment debtor § _____

405/332

§ 704.050. Health aids

704.050. Health aids reasonably necessary to enable the judgment debtor or a spouse or dependent of the judgment debtor to work or sustain health, and prosthetic and orthopedic appliances, are exempt.

Comment. Section 704.050 supersedes former Section 690.5 which exempted prosthetic and orthopedic appliances used by the debtor. Section 704.050 is based on Section 5(2) of the Uniform Exemptions Act

(1976). The requirement that health aids be reasonably necessary to enable the individual to work or sustain health permits the exemption of such items as a wheel chair for a person unable to walk to work, an air conditioner for a person afflicted with asthma, or an elevator for a person unable to climb stairs, but does not permit the exemption of a swimming pool, sauna, bicycle, golf clubs, or gymnastic equipment merely because their use is conducive to maintaining good health.

CROSS-REFERENCES

Defined terms

Judgment debtor \$ _____

045/222

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

704.060. (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one motor vehicle, one vessel, and other personal property, which are reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood are exempt to the extent that the aggregate value of the judgment debtor's equity therein does not exceed two thousand five hundred dollars (\$2,500).

(b) If an item exempt pursuant to subdivision (a) is sold, or if it has been lost, damaged, or destroyed, the proceeds of sale or of insurance or other indemnification are exempt in an amount of two thousand five hundred dollars (\$2,500), less the value of other items exempt pursuant to subdivision (a), for a period of 90 days after the sale, in the case of a voluntary sale, or after receipt of the proceeds by the judgment debtor, in all other cases.

Comment. Subdivision (a) of Section 704.060 continues the substance of former Section 690.4 and a portion of former Section 690.17 (building materials not exceeding \$1,000).

Subdivision (b) provides an exemption for the proceeds of sale or of insurance or other indemnification analogous to that provided by Section 704.010(b) (motor vehicle).

CROSS-REFERENCES

Defined terms

Equity § 703.000

Judgment debtor \$ _____

Motor vehicle \$ _____

Vessel \$ _____

§ 704.070. Deposit accounts and money

704.070. (a) Any combination of deposit accounts (other than deposit accounts described in subdivisions (b) and (c)) and money is exempt in the maximum aggregate amount of five hundred dollars (\$500).

(b) Any combination of savings deposits (including "investment certificates" and "withdrawable shares" as defined in Sections 5061 and 5067 of the Financial Code) in, shares or other accounts in, or shares of stock of, any state or federal savings and loan association is exempt in the maximum aggregate amount of one thousand dollars (\$1,000).

(c) Any combination of shares and certificates for funds deposited in a credit union and all the accumulation thereon is exempt in the maximum aggregate amount of one thousand five hundred dollars (\$1,500).

(d) The amount of the exemption provided by this section is reduced by the amount of any funds in the deposit account or money traceable and exempt pursuant to this chapter or any other law providing an exemption. Application of the exemptions provided by this section shall be first to amounts in deposit accounts and money other than the deposit account or money before the court and then, if not exhausted, to the deposit account or money before the court.

Comment. Subdivision (a) of Section 704.070 is new. It provides an exemption for deposit accounts other than savings and loan and credit unions as well as for money. The \$500 exemption is a maximum, available only to the extent the deposit account does not consist of other exempt funds.

Subdivision (b) continues the substance of former Section 690.7 (\$1,000 of savings deposits in, shares or other accounts in, or shares of stock of, savings and loan associations). See also Section 704.080 (exemption of deposit account into which social security payments are directly deposited).

Subdivision (c) continues the substance of former Financial Code Section 15406 (\$1,500 of shares or certificates in credit unions).

Subdivision (d) adopts the rule that the deposit account exemption is applied first to property not levied upon. The intent of this rule is to subject the greatest amount subject to judicial process to enforcement of the judgment. See Section 703.520 (exemption claim discloses assets not levied upon).

Note. Treatment of joint accounts and community property accounts is deferred.

CROSS-REFERENCES

Defined terms

Court § _____
Deposit account § _____

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

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

(b) A deposit account in which payments authorized by the Social Security Administration are directly deposited by the United States government is exempt in the following amount without making a claim:

(1) Five hundred dollars (\$500) where one depositor is the designated payee of the directly deposited payments.

(2) Seven hundred fifty dollars (\$750) where two or more depositors are the designated payees of the directly deposited payments, unless such depositors are joint payees of directly deposited payments which represent a benefit to only one of the depositors, in which case the exempt amount is five hundred dollars (\$500).

(c) The amount of a deposit account described in subdivision (b) that exceeds the exemption provided in subdivision (b) is exempt to the extent that it consists of payments authorized by the Social Security Administration.

(d) Notwithstanding [Article 5 (commencing with Section 701.010) of Chapter 3], upon levy or service of other process the financial institution that holds the deposit account shall either place the amount that exceeds the exemption provided in subdivision (b) in a suspense account or otherwise prohibit withdrawal of the amount pending notification of the failure of the judgment creditor to file the affidavit required by this section or the judicial determination of the exempt status of the amount. Within 10 business days after the levy, the financial institution shall provide the levying officer with a written notice stating that the deposit account is one described in subdivision (b) and state the balance of the deposit account. Promptly upon receipt of the notice, the levying officer shall serve personally or by mail notice of the nature and balance of the deposit account on the judgment creditor.

(e) Notwithstanding the procedure prescribed in Article 2 (commencing with Section 703.510), whether there is an amount exempt under subdivision (c) shall be determined as follows:

(1) Within five days after the levying officer serves notice of the nature and balance of the deposit account to the judgment creditor, a judgment creditor who desires to claim that the amount is not exempt shall file with the court an affidavit alleging that the amount is not exempt and serve a copy on the levying officer. The affidavit shall be in the form of the notice of opposition provided by Section 703.560, and a hearing shall be set and held, and notice given, as provided by Sections 703.570 and 703.580. For the purpose of this subdivision, the "notice of opposition to the claim of exemption" in Sections 703.570 and 703.580 means the affidavit under this subdivision.

(2) If the judgment creditor does not serve the affidavit on the levying officer and give notice to the judgment debtor pursuant to Section 703.570 within the time provided in paragraph (1) of this subdivision, the levying officer, if any, shall release the property in the manner provided by Section _____ and shall notify the financial institution.

(3) The affidavit constitutes the pleading of the judgment creditor, subject to the power of the court to permit amendments in the interest of justice. The affidavit is deemed controverted and the judgment debtor is not required to file a counteraffidavit.

(4) At a hearing under this subdivision, the judgment debtor has the burden of proving that the excess amount is exempt.

(5) At the conclusion of the hearing, the court by order shall determine whether or not the amount of the deposit account is exempt pursuant to subdivision (c), in whole or in part and shall make appropriate order for the prompt disposition of the money. The order is determinative of the right of the judgment creditor to apply such amount toward the satisfaction of the judgment. No findings are required in a proceeding under this subdivision.

(6) Upon determining that all or part of the amount of the deposit account is exempt pursuant to subdivision (c), the clerk shall immediately transmit a certified copy of the order to the levying officer and the levying officer shall serve the copy of the order on the financial institution.

(f) If the judgment debtor claims that a portion of the amount is exempt other than pursuant to subdivision (c), the claim of exemption shall be made pursuant to Article 2 (commencing with Section 704.510).

If the judgment debtor also opposes the judgment creditor's affidavit regarding an amount exempt pursuant to subdivision (c), both exemptions shall be determined at the same hearing, provided the judgment debtor has complied with Article 2 (commencing with Section 704.510).

Comment. Section 704.080 supersedes former Section 690.30. Social Security payments may be directly deposited pursuant to 31 U.S.C. § 492 (1976). Subdivision (a) continues former Section 690.30(c). Subdivision (b) continues the substance of the first paragraph and subdivision (a) of former Section 690.30. Subdivision (c) continues the substance of the introductory paragraph of former Section 690.30(b). Subdivision (d) continues the substance of former Section 690.30(b)(1).

Subdivision (e) supersedes paragraphs (2), (3), and (4) of subdivision (b) of former Section 690.30. Subdivision (e), along with subdivision (f), clarifies the procedure applicable to claiming exemptions for excess amounts in deposit accounts described in this section and the relation between this procedure and the procedure provided by Article 2 (commencing with Section 703.510) (superseding former Section 690.50, incorporated by reference in former Section 690.30). Paragraph (6) supersedes former Section 690.30(b)(3). The provision for an order determining priority or dividing the property between several creditors is not continued. Paragraph (7) continues former Section 690.30(b)(4).

Where a deposit account is not one described by subdivision (b) or where an exemption of excess funds in a deposit account described in subdivision (b) is claimed on other grounds, the procedures provided in Article 2 (commencing with Section 703.510) apply to the determination of the exemption. See Section 704.070 and subdivision (f) of this section.

See also Section _____ (release).

CROSS-REFERENCES

Defined terms

Deposit account § _____
Judgment creditor § _____
Judgment debtor § _____
Levying officer § _____

999/322

§ 704.090. Inmate's trust account

704.090. The funds of a judgment debtor confined in a prison or facility under the jurisdiction of the Department of Corrections or the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for or to the credit of the judgment debtor, in an inmate's trust account or similar account by the state, county, or city, or any agency thereof, are exempt in the amount of one thousand dollars (\$1,000) without making a claim.

Comment. Section 704.090 supersedes former Section 690.21, which provided an exemption of \$40.

CROSS-REFERENCES

Defined terms

Judgment debtor § _____

101/153

§ 704.100. Life insurance, endowment, annuity policies

704.100. (a) Unmatured life insurance policies, including endowment and annuity policies (but not the loan value of such policies), are exempt without making a claim.

(b) The aggregate loan value of unmatured life insurance policies, including endowment, and annuity policies is subject to the enforcement of a money judgment but is exempt in the amount of five thousand dollars (\$5,000). Application of the exemption provided by this subdivision shall be first to policies other than the policy before the court and then, if not exhausted, to the policy before the court.

(c) Benefits from matured life insurance policies, including endowment, and annuity policies, paid or payable to the judgment debtor or the spouse or dependents of the judgment debtor, are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

Comment. Section 704.100 supersedes the exemptions provided in former Sections 690.9 (life insurance represented by \$500 annual premium), 690.10 (group life insurance), and 690.14 (fraternal benefit society). Under subdivision (a), the judgment creditor is precluded from reaching an unmatured policy except for its loan value; subdivision (b) protects a portion of the loan value. The loan value is not subject to execution (see Section [703.110(b)(7)]) but may be reached by some other appropriate procedure. See Sections _____ (examination of judgment debtor), _____ (order in examination proceedings), _____ (appointment of receiver), _____ (assignment order). Subdivision (a) prevents the judgment creditor from forcing the judgment debtor to surrender a life insurance policy for its cash value.

Subdivision (c) limits former law, which made the exemption of benefits available to any person, including creditors of the judgment debtor and artificial persons. See *Jackson v. Fisher*, 56 Cal.2d 196, 200, 363 P.2d 479, ___, 14 Cal. Rptr. 439, ___ (1961). Under subdivision (c), the exemption may be asserted against creditors of the judgment debtor or of the spouse or dependents of the judgment debtor. See *Holmes v. Marshall*, 145 Cal. 777, 779-82, 79 P. 534, ___ (1905).

CROSS-REFERENCES

Defined terms

Court § _____

Judgment debtor § _____

32464

§ 704.110. Public retirement and related benefits and contributions

704.110. (a) As used in this section:

(1) "Public entity" means the state, or a city, city and county, county, or other political subdivision of the state, or a public trust, public corporation, or public board, or the governing body of any of them, but does not include the United States except where expressly so provided.

(2) "Public retirement benefit" means a pension or an annuity, or a retirement, disability, death, or other benefit, paid or payable by a public entity.

(3) "Public retirement system" means a system established pursuant to statute by a public entity for retirement, annuity, or pension purposes, or payment of disability or death benefits.

(b) All money held, controlled, or in process of distribution by a public entity derived from contributions by the public entity or by an officer or employee of the public entity for public retirement benefit purposes, and all rights and benefits accrued or accruing to any person under a public retirement system, are exempt without making a claim.

(c) All money received by any person, a resident of the state, as a public retirement benefit or as a return of contributions and interest thereon from the United States or a public entity or from a public retirement system is exempt.

Comment. Section 704.110 continues the substance of subdivisions (a) and (b) of former Section 690.18, with drafting changes for purposes of uniformity. The exemption provided in subdivision (c) applies whether the money is in the actual possession of the retirement benefit recipient or has been deposited. See Section 703.080 (tracing exempt funds). For the exemption of vacation credits, see Section 704.113. For the exemption of benefits under the Unemployment Insurance Code, see Section 704.120. For the application of exemptions against court-ordered spousal and child support judgments, see Section 703.070.

§ 704.113. Public employee vacation credits

704.113. (a) As used in this section, "vacation credits" means vacation credits accumulated by a state employee pursuant to Section 18050 of the Government Code or by any other public employee pursuant to any law for the accumulation of vacation credits applicable to the employee.

(b) All vacation credits are exempt without making a claim.

(c) Amounts paid periodically or as a lump sum representing vacation credits are exempt to the same extent as earnings of a judgment debtor.

Comment. Subdivision (b) of Section 704.113 continues the substance of a portion of former Section 690.18(b).

Subdivision (c) makes clear that vacation pay is treated the same as earnings for exemption purposes. See Sections 723.050-723.052.

§ 704.115. Private retirement and related benefits and contributions

704.115. (a) As used in this section, "private retirement plan" means:

(1) Private retirement plans, including, but not limited to, union retirement plans.

(2) Profit-sharing plans designed and used for retirement purposes.

(3) Self-employed retirement plans and individual retirement annuities or accounts provided for in the Internal Revenue Code of 1954 as amended by the federal "Employee Retirement Income Security Act of 1974" (P.L. 93-406, 29 U.S.C. § 1001 et seq.) and by the "Tax Reform Act of 1976" (P.L. 94-455), to the extent the moneys held in the plans, annuities, or accounts do not exceed the maximum amounts exempt from federal income taxation under these acts.

(b) All money held, controlled, or in process of distribution by a private retirement plan, or the payment of benefits as an annuity, pension, retirement allowance, disability payment, or death benefit from a private retirement plan, and all contributions and interest thereon returned to any member of a private retirement plan, are exempt.

(c) The exemption provided by this subdivision does not apply to a private retirement plan described in subdivision (a)(3) with regard to

moneys withheld from employees' wages and contributions based on wages in employment under provisions of the Unemployment Insurance Code.

Comment. Section 704.115 continues the substance of subdivision (c) of former Section 690.18. The exemption provided in subdivision (b) applies whether money received by the judgment debtor is in the actual possession of the recipient or has been deposited. See Section 703.080 (tracing exempt funds). For the application of exemptions against court-ordered spousal and child support judgments, see Section 703.070.

405/355

§ 704.120. Unemployment benefits and contributions; strike benefits

704.120. (a) Contributions by workers payable to the Unemployment Compensation Disability Fund and by employers payable to the Unemployment Fund are exempt without making a claim.

(b) Before payment, money held for payment of the following benefits is exempt without making a claim:

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

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

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

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

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

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

(7) Unemployment benefits by a fraternal organization to bona fide members.

(8) Benefits payable by a union due to a labor dispute.

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

Comment. Section 704.120 supersedes former Sections 690.13, 690.16, and 690.175 and portions of former Section 690.18(b) and Unemployment Insurance Code Sections 988 and 1342. Subdivision (b)(8) is new.

§ 704.130. Disability and health benefits and contributions

704.130. (a) Before payment, benefits from a disability or health insurance policy or program are exempt without making a claim. After payment, the benefits are exempt.

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

Comment. Subdivision (a) of Section 704.130 supersedes former Section 690.11 (disability or health insurance benefits represented by \$500 annual premium), 690.13 (money used exclusively in payment of sick benefits by fraternal organization to bona fide members), 690.14 (fraternal benefit society funds), [and portions of former Section 690.18 (disability benefits from retirement plans)]. Subdivision (b) is new.

CROSS-REFERENCES

Defined terms

Judgment creditor § _____
Judgment debtor § _____

§ 704.140. Damages for personal injury

704.140. (a) A cause of action for personal injury is exempt without making a claim.

(b) An award of damages or a settlement arising out of personal injury to the judgment debtor is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

(c) Subdivision (b) does not apply if the judgment creditor is a provider of health care whose claim arises out of the personal injury for which the award or settlement was made.

Comment. Section 704.140 is new. A pending cause of action may only be reached by the lien procedure provided by Article 4 (commencing with Section 708.310) of Chapter 6.

CROSS-REFERENCES

Defined terms

Judgment creditor § _____
Judgment debtor § _____

§ 704.150. Damages for wrongful death

704.150. (a) A cause of action for wrongful death is exempt without making a claim.

(b) An award of damages or a settlement arising out of the wrongful death of a person of whom the judgment debtor was a spouse or a dependent is exempt to the extent reasonably necessary for support of the judgment debtor and the spouse and dependents of the judgment debtor.

Comment. Section 704.150 is new. A pending cause of action may only be reached by the lien procedure provided by Article 4 (commencing with Section 708.310) of Chapter 6.

CROSS-REFERENCES

Defined terms

Judgment debtor § _____

405/354

§ 704.160. Worker's compensation

704.160. Except as provided by Chapter 1 (commencing with Section 4900) of the Labor Code, before payment, a claim for worker's compensation or compensation awarded or adjudged is exempt without making a claim. After payment, the award is exempt.

Comment. Section 704.160 continues the substance of former Section 690.15.

405/346

§ 704.170. Aid

704.170. Before payment, aid provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or similar aid provided by a charitable organization or a fraternal benefit society as defined in Section 10990 of the Insurance Code, to the judgment debtor or for the benefit of the judgment debtor is exempt without making a claim. After payment, the aid is exempt.

Comment. Section 704.170 is based on former Sections 690.14 and 690.19. This section exempts local aid as well as federal aid administered by the state pursuant to the Welfare and Institutions Code. See also Welf. & Inst. Code § 10052 ("aid" defined).

Section 704.170 also expands the category of nongovernmental aid that is exempt. Former Section 690.14 applied only to fraternal benefit societies.

CROSS-REFERENCES

Defined terms

Judgment debtor § _____

§ 704.180. Relocation benefits

704.180. Before payment, relocation benefits for displacement from a dwelling actually owned or rented by the judgment debtor which are to be paid pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, are exempt without making a claim. After payment, the benefits are exempt.

Comment. Section 704.180 supersedes Section 690.8a. The last sentence of this section requires the debtor to claim an exemption for such benefits after payment, whereas under former law these benefits were designated as exempt without filing a claim.

CROSS-REFERENCES

Defined terms

Judgment debtor § _____

§ 704.190. Licenses

704.190. Except as provided in Section 705.330, a license to engage in any business, profession, or activity issued by a public entity is exempt without making a claim.

Comment. Section 704.190 is derived from a portion of subdivision (f) of former Section 688 which precluded levy or sale on execution of a "license issued by this state to engage in any business, profession, or activity." See Section _____ (receiver to sell liquor license).

§ 704.200. Cemetery plot

704.200. (a) As used in this section:

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

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

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

(b) A family plot is exempt without making a claim.

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

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

(e) Notwithstanding subdivision (b) of Section 703.010, the exemptions provided in this section apply to property dedicated as a cemetery by a cemetery authority where the judgment to be enforced is for a debt due from an individual owner for the purchase price of a cemetery plot.

Comment. Section 704.200 supersedes portions of former Section 690.24 which provided an exemption for a cemetery lot not exceeding one-quarter of an acre in size or, in the case of a religious or benevolent association or corporation, five acres in size. Subdivision (b) recognizes that family plots are inalienable. See Health & Saf. Code § 8650. Subdivision (c) exempts a cemetery lot for one person. See also Health & Saf. Code § 8601 (spouse's vested right of interment). Subdivision (d) continues the substance of the third paragraph of former Section 690.24. Subdivision (e) continues the substance of the fourth paragraph of former Section 690.24. The portion of land containing graves of human beings is not subject to enforcement of a money judgment. See Peebler v. Danziger, 104 Cal. App.2d 491, 493, 231 P.2d 895, ____ (1951).

406/239

Article 4. Dwelling Exemption

§ 704.710. Definitions

704.710. As used in this article:

(a) "Dwelling" includes but is not limited to the following:

(1) A house together with the outbuildings and the land upon which they are situated.

(2) A mobilehome together with the outbuildings and the land upon which they are situated.

(3) A waterborne vessel.

(4) A condominium, as defined in Section 783 of the Civil Code.

(5) A planned development, as defined in Section 11003 of the Business and Professions Code.

(6) A stock cooperative, as defined in Section 11003.1 of the Business and Professions Code.

(7) A community apartment project, as defined in Section 11004 of the Business and Professions Code.

(b) "Homestead" means the dwelling in which the judgment debtor or spouse of the judgment debtor actually resides.

Comment. Subdivision (a) of Section 704.710 supersedes the provisions of former law pertaining to the property that could be exempt as

a homestead or dwelling. See former Civil Code § 1237 (declared homestead); former Code Civ. Proc. §§ 690.3 (house trailer, mobile home, houseboat, boat, or other waterborne vessel), 690.31(a) (dwelling house). Subdivision (a) is intended to include all forms of property for which an exemption could be claimed under former law and any other property in which the judgment debtor or the judgment debtor's spouse actually resides.

Subdivision (b) is intended as a drafting aid.

CROSS-REFERENCES

Defined terms

Judgment debtor § _____

26758

§ 704.720. Dwelling exemption

704.720. One homestead is exempt if the equity of the judgment debtor does not exceed the amount of the dwelling exemption. The amount of the dwelling exemption is one hundred thousand dollars (\$100,000).

Comment. Section 704.720 supersedes Civil Code Sections 1238 and 1240 (providing for a declared homestead) and Code of Civil Procedure Sections 690.3 and 690.31(a) (providing for a claimed dwelling exemption). Unlike the former provisions, Section 704.720 does not specify the interest of the judgment debtor that is protected and does not limit the homestead in a leasehold to a long-term lease; any interest of the judgment debtor sought to be reached by the judgment creditor in the judgment debtor's dwelling is subject to the exemption. Section 704.720 makes clear that a judgment debtor may exempt only one dwelling even though the judgment debtor's family may live in more than one dwelling. The question whether a dwelling is exempt is determined under the circumstances prevailing as of the date of creation of the enforcement lien. See Section 703.110. The dwelling exemption does not apply where a lien on the property other than an enforcement lien is being foreclosed. See Section 703.010.

Section 704.720 also supersedes former Civil Code Section 1260 and former Code of Civil Procedure Sections 690.3(a) and 690.31(a), which provided an exemption of \$40,000 for heads of families and persons 65 years and older and \$25,000 for other persons. Section 704.720 increases the amount that is protected; however, if the judgment debtor's equity exceeds the increased amount, the dwelling may be sold and the amount of proceeds exempted is lower. See Section 704.730.

Note. The question whether a dwelling exemption may be obtained in more than one dwelling in the case of community property is reserved.

CROSS-REFERENCES

Defined terms

Dwelling § 704.710(a)

Equity § 703.000

Homestead § 704.710(b)

Judgment debtor § _____

§ 704.730. Exemption of dwelling proceeds

704.730. If a homestead is sold under this title to enforce a money judgment or is otherwise voluntarily or involuntarily sold, the judgment debtor's interest in the proceeds of sale is exempt in the amount of seven thousand five hundred dollars (\$7,500). Notwithstanding any other provision of this title, the exemption provided in this section applies against all liens and encumbrances on the property, regardless of the time the lien was created and regardless whether the lien was voluntary or involuntary.

Comment. Section 704.730 supersedes the first sentences of former Civil Code Section 1256 and former Code of Civil Procedure Section 690.31(k). It broadens them to include voluntary sales and other dispositions of the dwelling and deletes the six-month limitation for the proceeds exemption in favor of the general tracing provisions. See Section 703.080 (tracing of exempt amounts); see also the last portion of former Civil Code Section 1265. The amount of the proceeds exemption provided by Section 704.730 supersedes the amounts provided by former Civil Code Section 1260 and former Code of Civil Procedure Sections 690.3(a) and 690.31(a). It is consistent with the exemption for a residence prescribed in bankruptcy. See 11 U.S.C. § 522 (bankruptcy). The proceeds exemption is absolute and is not subject to preexisting or voluntary liens and encumbrances. For the procedures for removal of a judgment lien in the case of a voluntary sale or other disposition to enable the judgment debtor to obtain the exempt proceeds, see Section _____.

CROSS-REFERENCES

Defined terms

Dwelling § 704.710(a)

Homestead § 704.710(b)

Judgment debtor § _____