

Memorandum 80-16

Subject: Study D-300 - Enforcement of Judgments (Property Subject to Enforcement)

Attached is a draft of the provisions stating what property of a judgment debtor can be reached to satisfy a money judgment. Basically, all property that is transferable may be reached by some means, whether execution or otherwise. Some property that can be reached will turn out to be exempt in some situations. Some property may by special statute be made not subject to enforcement.

The major issue in this area is what property of a married judgment debtor can be reached in addition to the judgment debtor's separate property. Can all the community property be reached? Can the judgment debtor's spouse's separate property be reached? This is the subject of a separate research study and a separate memorandum.

Respectfully submitted,

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DIVISION 2. ENFORCEMENT OF MONEY JUDGMENTS

CHAPTER 1. GENERAL PROVISIONS

Article 1. Property Subject to Enforcement
of a Money Judgment

§ 695.010. All property of judgment debtor subject to enforcement

695.010. Except as otherwise provided by law, all property of the judgment debtor is subject to enforcement of a money judgment.

Comment. Section 695.010 supersedes the first portion of subdivision (a) of former Section 688. The reference in former law to "any interest" in property and the enumeration of types of property subject to enforcement is not continued; all property of the judgment debtor, regardless of type or interest, is subject to enforcement of a money judgment unless an exception is provided by law.

The introductory clause of Section 695.010 recognizes that some property that is not the judgment debtor's may also be subject to enforcement of a money judgment against the judgment debtor. See Section 695.020 (where judgment debtor is married). See also Section _____ (property subject to enforcement lien that is transferred remains subject to enforcement). The introductory clause also recognizes that some property of the judgment debtor is by law not subject to enforcement of a money judgment despite the general rule stated in Section 695.010. Property that is exempt by statute is exempt from all enforcement procedures. See Section 703.010. Property of a public entity is not subject to enforcement. See Section _____. Property that is not transferable is generally not subject to enforcement. See Section 695.030. Certain property held in a fiduciary capacity may not be subject to enforcement. See, e.g., Civil Code § 986(a)(6) (amounts held for payment of artists); Educ. Code § 21116 (educational endowment funds); Labor Code § 270.5 (property held by logging employer as fund for wages). Specific property may be made by other statutes not subject to enforcement. See, e.g., Civil Code § 765 (estate at will); Health & Saf. Code § 7925 (cemetery funds). Federal law protects certain property from enforcement. See, e.g., 42 U.S.C. § 407 (social security).

Property of the judgment debtor that is by law not subject to enforcement of a money judgment may not be reached by any enforcement process, whether execution or otherwise. Certain property of the judgment debtor may be subject to enforcement by some, but not all, enforcement procedures. See, e.g., Section 699.010 (property not subject to execution but subject to other enforcement procedures).

405/913

[§ 695.020. Where judgment debtor is married]

695.020. If the judgment debtor is married, the following property is subject to enforcement of a money judgment:

- (a) The separate property of the judgment debtor.

(b) The community property, to the extent provided in the community property laws.

(c) The separate property of the spouse of the judgment debtor, to the extent provided in Sections 5121 and 5132 of the Civil Code.

Comment. Section 695.020 incorporates the special rules governing the liability of a married person's property to the satisfaction of a judgment provided in the community property laws. See Civil Code §§ 5116, 5120, 5121, 5122, 5123, 5131, 5132. Where a spouse's separate property is sought to be applied to the debt of the other spouse incurred for necessities pursuant to the liability provided in Civil Code Sections 5121 and 5132, the spouse whose separate property is sought to be reached must be made a party to the action for the purpose of obtaining a limited personal judgment. Credit Bureau of Santa Monica Bay Dist., Inc. v. Terranova, 15 Cal. App.3d 854, 860, 93 Cal. Rptr. 538, 542 (1971). However, if property has been levied upon, the spouse who is not a judgment debtor may claim that the property may not be applied to the satisfaction of the judgment because it is the spouse's separate property. This claim may be made by way of the third-party claims procedure in Chapter ____ (commencing with Section ____). Sherwood v. Cornfield, 216 Cal. App.2d 364, 369, 31 Cal. Rptr. 264, 267-68 (1963); Adler v. Blair, 169 Cal. App.2d 92, 95, 336 P.2d 971, ____ (1959). This procedure is distinct from the procedure under Chapter ____ for claiming an exemption.]

Note. The Commission plans to review the law relating to liability of property of married persons to satisfy a judgment. A background study of this matter is in preparation.

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§ 695.030. Property not subject to enforcement

695.030. The following property of the judgment debtor is not subject to enforcement of a money judgment:

(a) Property that is not transferable. Notwithstanding this subdivision, surplus income of a spendthrift trust and a leasehold subject to a provision precluding transfer are subject to enforcement of a money judgment.

(b) The franchise of being a corporation.

Comment. The first sentence of subdivision (a) of Section 695.030 states the general rule that property is not subject to enforcement unless it is assignable. See, e.g., 1 A. Freeman, Law of Executions § 109 (3d ed. 1900); Murphy v. Allstate Insurance Co., 17 Cal.3d 937, 553 P.2d 584, 132 Cal. Rptr. 424 (1976) (choses in action founded upon torts subject to creditors' suits only if assignable by the law of the state); Lowenberg v. Greenebaum, 99 Cal. 162, 33 P. 794 (1893) (seat on stock exchange not subject to execution sale because transfer prohibited by Stock Exchange Constitution and bylaws).

The second sentence of subdivision (a) codifies existing case law. See, e.g., *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 87 P.2d 830 (1939) (spendthrift trust); *Farnum v. Hefner*, 79 Cal. 575, 21 P. 955 (1889) (lease).

Subdivision (b) continues a portion of former Section 724a.

32/175

§ 695.040. Release of property not subject to enforcement

695.040. Property that is not subject to enforcement of a money judgment shall not be levied upon or in any other manner applied to the satisfaction of a money judgment. If property that is not subject to enforcement of a judgment has been levied upon, the property may be released pursuant to the claim of exemption procedure provided in Article 2 (commencing with Section 703.510) of Chapter 4.

Comment. Section 695.040 is comparable to subdivision (b) of Section 703.510 (release of property exempt without making a claim).