

First Supplement to Memorandum 80-21

Subject: Study D-300 - Enforcement of Judgments (Time for Enforcement of Judgments)

Two new policy issues arose in the preparation of the draft statute concerning the time for enforcement of judgments attached to Memorandum 80-21. The first issue involves the interplay between the proposed statutory procedure for renewal of judgments and the traditional method of bringing an action on the judgment. The second issue concerns the treatment of judgments, orders, and decrees under the Family Law Act.

Actions on Judgments

The draft statute attached to Memorandum 80-21 specifically preserves the right to bring an action on a judgment. If such an action is brought for the purpose of extending the enforceability of the judgment, an apparent conflict arises with draft Section 683.020 which provides that enforcement procedures pursuant to the judgment shall cease at the end of 10 years from the date of entry of the judgment. However, a cause of action on a judgment does not accrue until the judgment is final. In *Turner v. Donovan*, 52 Cal. App.2d 236, 126 P.2d 187 (1942), it was held that an action could be maintained in 1939 on a 1931 judgment because the appeal was not final until 1935. (At the time this case was decided, the statute of limitations on such actions was five years; it is now 10 years under Section 337.5.) But see *Trenouth v. Farrington*, 54 Cal. 273 (1880) (statute of limitations begins to run on date of entry). It also appears that the running of the statute of limitations would be tolled by the absence of the debtor from the state pursuant to Section 351. Accordingly, the 10-year period under draft Section 683.020 could expire long before the 10-year statute of limitations of Section 337.5 had expired.

The staff believes there are three possible solutions of this apparent conflict:

1. A dual system could be specifically recognized in the proposed statute. This would mean that all enforcement of the original judgment and any statutory renewal would have to take place within 10 years after

entry, disregarding any stays or absences from the state. If the judgment is not renewed within this time, any benefit of the first judgment in the form of liens would be lost. However, the judgment creditor would still be able to reestablish the judgment by way of an action upon showing that the 10-year statute of limitations under Section 337.5 had not run under the traditional rules.

2. The statute of limitations on actions on judgments could be modified to be consistent with the 10-year from entry rule in the draft statute. Under this alternative, the 10-year statute of limitations of Section 337.5 would begin to run upon entry of the judgment and would not be tolled on appeal or because of the absence from the state of the judgment debtor. There would then be no inconsistency between the statutory and traditional methods of renewing judgments, although the statutory method would remain preferable because of its efficiency. The problem with this alternative is that it could require an action on a judgment which is not final, assuming that the appeal is not decided before the action on the judgment is commenced.

3. Actions on judgments for the purpose of extending enforceability could be abolished. It appears that Oregon has abolished such actions in favor of a 10-year enforcement period, renewable for one additional 10-year period. See Or. Rev. Stat. §§ 12-070, 18-360 (1977). This alternative might result in some confusion in a case where there is some other reason for bringing an action on a judgment such as to confer jurisdiction on another court or to recover from a surety since it still might be necessary to renew the original judgment by the proposed statutory procedure.

Judgments Under the Family Law Act

The draft statute attached to Memorandum 80-21 is specifically made inapplicable to judgments under the Family Law Act. See draft Section 683.060. The staff proposes this exception to the proposed rules concerning the 10-year basic period of enforceability and the statutory procedure for renewal by application. The reason for this exception lies in Civil Code Section 4380 which provides as follows:

4380. Any judgment, order, or decree of the court made or entered pursuant to this part may be enforced by the court by execution, the appointment of a receiver, contempt, or by such other order or orders as the court in its discretion may from time to time deem necessary.

Since a person seeking enforcement of a support order would need to apply to the court anyway, there does not seem to be any reason to require in addition the filing of an application for renewal with the clerk pursuant to the draft statute. There also does not seem to be anything gained by permitting a ministerial renewal of the judgment since it may only be enforced pursuant to the order of the court. Accordingly, the staff proposes that judgments under the Family Law Act, largely installment judgments for spousal or child support, be enforceable for 10 years from entry (if a lump-sum) or 10 years from the date each installment falls due (if an installment judgment) with no special showing. After 10 years, the court should consider the judgment creditor's diligence in enforcing the judgment before amounts due more than 10 years could be enforced. This is essentially the same as the scheme applicable to all money judgments under existing law. See Sections 681, 685. The judgment creditor would also be able to bring an action for past due installments and have them reduced to a lump sum, including interest and costs.

To implement this suggestion, the staff proposes the following draft of a new Civil Code Section 4382:

§ 4382. Lack of diligence for more than 10 years in seeking enforcement of money judgment

4382. The lack of diligence for more than 10 years in seeking enforcement of a judgment, order, or decree which requires the payment of money shall be considered by the court in determining whether to permit enforcement of the judgment, order, or decree under Section 4380. In the case of a judgment, order, or decree for the payment of money in installments, the 10-year period runs as to each installment from the date the installment became due.

Comment. The first sentence of Section 4382 is drawn from a portion of former Code of Civil Procedure Section 685 that applied to issuance of writs of execution to enforce judgments under the Family Law Act. See, e.g., *Lesh v. Lesh*, 8 Cal. App.3d 883, 87 Cal. Rptr. 632 (1970); *Nutt v. Nutt*, 247 Cal. App.2d 166, 55 Cal. Rptr. 380 (1966). Unlike former Section 605, Section 4382 applies to all enforcement procedures sought after the expiration of 10 years. The second sentence recognizes case law concerning the time

within which installment judgments may be enforced without a showing of diligence. See, e.g., Wolfe v. Wolfe, 30 Cal.2d 1, 4, 180 P.2d 345 (1947). Nothing in Section 4382 precludes the court from permitting enforcement after 10 years even though diligence is not shown if the court, in its discretion, determines that enforcement would be equitable in light of all the circumstances of the particular case.

This section is an exception to the general provisions governing time for enforcement and renewal of judgments provided by Sections 683.010-683.220 of the Code of Civil Procedure. See Code Civ. Proc. § 683.060 (general enforceability provisions inapplicable to judgments under Family Law Act).

Respectfully submitted,

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