

Memorandum 80-33

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

This memorandum analyzes the comments we received concerning the general provisions relating to execution in the Tentative Recommendation Relating to Enforcement of Judgments (Sections 703.120-703.260). A revised staff draft of these provisions is attached to this memorandum along with a revised explanatory text. (The letters of comment referred to were previously sent to you attached to Memorandum 79-29 and the Second Supplement thereto--if you need another copy, please let the staff know.)

CHAPTER 3. EXECUTION

Article 1. General Provisions§ 699.010. Execution lien (TR § 703.200)

Mr. Rick Schwartz suggests that the duration of the lien of execution be extended from one to two or three years. (Exhibit 12.) The three-year period of a lien of attachment cited by Mr. Schwartz as an example is intended to provide a sufficient time for bringing an action to judgment. This need is not present in the execution context. The staff recommends no change in this provision.

§ 699.020. Payment by debtor of judgment debtor (TR § 703.180)

Lieutenant Bernard Morgan states that this section should specifically refer to issuance of the writ to the levying officer. (Exhibit 9.) The staff sees nothing wrong with this provision. Existing Section 716 refers to the officer "having" the writ; Section 699.020 says "after delivery of a writ of execution to a levying officer and before its return". The officer will not have the writ if it not delivered to him and presumably will not accept the writ if it is not directed to him.

Mr. Frederick Holden asks what procedure a creditor may follow to ensure continued payment from the third person under this provision. (Exhibit 13.) Section 699.020 is not a method of enforcement; it

protects a third person who voluntarily pays over and it clarifies the levying officer's authority to receive payments that have not been levied upon. If the creditor wants a lien on the obligation, a garnishment or some other enforcement procedure will be necessary.

Professor Vern Countryman states that he assumes this section would be limited to persons designated in the judgment creditor's instructions. (Exhibit 4.) The staff sees nothing in the existing provision or in the tentative recommendation to support this assumption, nor do we see a need to limit Section 699.020 in this manner.

§ 699.030. Levy on property in private place (TR § 703.170)

Lieutenant Bernard Morgan of the Los Angeles Marshal's Office and Mr. Frederick Holden find the term "private place" to be too vague. (Exhibits 9 and 13.) "Private place" is the term used by the Supreme Court in *Blair v. Pitchess*, 5 Cal.3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971). The staff does not believe this constitutional concept is susceptible of precise definition.

Lieutenant Morgan is also concerned that this provision will restrict the traditional authority of the levying officer to enter a debtor's house to levy upon property if it may be done peaceably. See Marshal's Manual § 361 (rev. 1977) (citing *People v. Sylva*, 143 Cal. 62 (1904)). The staff questions whether the common law rules concerning peaceable entry continue to apply after Blair. The staff has revised this provision to make clear that the levying officer can simply demand delivery but if delivery is refused can do no more without a court order. Once a court order to seize property in a private place is obtained, the levying officer may use reasonable force to the same extent as in a claim and delivery seizure of property in a private place.

Mr. Holden states that it is unclear whether the order must be sought before or after issuance of the writ of execution. The staff has revised the first sentence of subdivision (b) to state that the motion for the order may be made before or after issuance of a writ of execution. However, the judgment creditor may find it difficult to get an allowance of costs of obtaining the order before a writ is served and delivery refused.

§ 699.040. Turnover order in aid of execution (TR § 703.210)

Mr. Frederick Holden states that personal service of the turnover order can be expensive, especially if the person to be served deliberately avoids service. (Exhibit 13.) The staff recommends no change in this section, however, because personal service is necessary to make the turnover order enforceable by contempt.

§ 699.050. Satisfaction from or release of attached property (TR § 703.230)

The staff recommends that this provision be revised as presented in the attached draft. Section 703.230 in the tentative recommendation permitted the judgment creditor to levy on other property while holding some property under attachment and permitted the judgment debtor to obtain the release of attached property by a motion if it was unnecessary to satisfy the judgment. The existing law is defective as well, because it seems to require the sale of attached property before any other property may be levied upon under execution.

§ 699.060. Release of property (TR § 703.240)

Mr. Carl Olsen suggests that the levying officer should be required to deposit proceeds from the sale of unclaimed released property with the clerk rather than with the county treasurer as provided by Section 703.240(b) of the tentative recommendation. (Exhibit 14.) He states that it is more logical for the clerk to hold the funds, apparently because the person entitled to them would first look to the clerk. The staff recommends no change. This provision is consistent with Civil Code Section 1988 which provides for the deposit with the county treasurer of proceeds from the sale of a tenant's property remaining on the premises after the tenancy has terminated. A sentence has been added to the Comment regarding disposition of the unclaimed funds.

§ 699.080. Levy by registered process server (TR § 703.260)

Until very recently, levying officers were the only ones authorized to levy and serve notices that accompany levy. In 1978, the law was amended to permit garnishment by registered process servers in cases where the property levied upon is in the possession of a third person and does not have to be sold, delivered, or taken into custody. See

Section 687(b). If the writ is served by a registered process server, a levying officer is to perform the remaining duties. See Section 687(c). This scheme was continued in Section 703.260 of the tentative recommendation. Suggestions have been made to expand the enforcement role of persons other than levying officers. Mr. Steven Kipperman states that "it would save time and money to all parties concerned if attorneys could serve [writs of execution] in the same manner as a summons and complaint upon the holder of the property, particularly where it is a debtor of the judgment debtor." (Exhibit 1.) Mr. Frederick Holden suggests that the judgment creditor, the judgment creditor's attorney, or a registered process server should be permitted to record and serve the writ and notice of levy where real property (Section 703.310) or growing crops or standing timber is levied upon and to serve the writ and notice of levy where a mobile home or vessel used as a dwelling is levied upon. (Exhibit 13.)

In response to these suggestions, the staff has revised this section to permit registered process server levies on real property, growing crops and timber to be cut, and mobile homes and vessels (when levy is by service or posting). Levies on real property, crops, or timber are accomplished by recording the writ and notice of levy with the county recorder, but the registered process server would also be required to serve an occupant of the property, or if no one is present when service is attempted, to post the property. In the case of personal property used as a dwelling (mobile homes and vessels), levy may be accomplished by service on an occupant or posting. Levy on mobile-homes may also be accomplished by use of a keeper, but that requires participation by public officials and is not relevant to levy by registered process servers.

Mr. Frederick Holden suggests that the fees for garnishment by a registered process server be made a recoverable cost. (Exhibit 13.) Under Section 703.260(c) and (d) in the tentative recommendation, the levying officer receives the normal fee of \$8.50 for processing the writ and the fee for the process server is not recoverable. The existing provision from which Section 703.260 was derived is silent as to the recoverability of the fee of the process server and our conversation with a proponent of the bill shed no light on the issue. Section

703.260 is consistent with Section 1032b(a) which restricts fees for service to an amount not exceeding what a public officer would be allowed. Since the levying officer receives the normal fee, there is no slack to be taken up by the process server. It should be noted, however, that Section 1032b(b) permits the court to allow recovery of "reasonable and necessary costs necessarily incurred in effecting service." The staff has revised this provision so that the recoverability of the process server's fee is governed by the provisions of Section 1032b which would permit recovery of the standard \$8.50 fee or a larger amount in cases of unusually difficult service. However, this may sometimes be unjust to the judgment debtor since the difficulty of service could result because of the evasions of a garnishee over which the judgment debtor may have no control.

§ 699.510. Issuance of writ of execution (TR § 703.120)

Reaction to the proposal that the judgment creditor's attorney be empowered to issue a writ of execution, a writ of possession, or a writ of sale was largely adverse, generally because of the likelihood of error and the possibility of abuse. The Committee on Administration of Justice of the State Bar opposes the proposal. (Exhibit 22.) The Sheriffs' Association Committee expresses reservations, although the efficiency of the procedure was recognized. (Exhibit 8.) Lieutenant Bernard Morgan of the Los Angeles Marshal's Office, Carl Olsen, County Clerk of San Francisco, and the Municipal Court Clerks Association oppose the proposal. (Exhibits 9, 14, 16.) Marshal Sgobba of San Diego states that court personnel typically discover mistakes in computation of the amount owing, the names of defendants, and the selection of the proper form. (Exhibit 7.) Several private attorneys also oppose or have reservations about the proposal. (Exhibits 2, 13, 18.) Four commentators, however, approve the proposal. Mr. Steven Kipperman states that it would be a "leap forward eliminating the cumbersome clerks' offices." (Exhibit 1.) Ms. Jane Fennelly writes that it may take as long as six weeks to issue a writ. (Exhibit 19.) Mr. Emmett Serochi and Mr. William Lake also approve the proposal. (Exhibits 6 and 20.) The staff recommends the deletion of the provisions for attorney issuance of writs.

The second sentence has been added to subdivision (a) in response to a comment by Mr. Carl Olsen (Exhibit 14.)

Subdivision (c) has been revised consistent with the staff recommendation regarding enforcement of support judgments by execution discussed in Memorandum 80-30.

§ 699.530. Period of leviability (TR § 703.140)

Two writers specifically approve the extension of the period of leviability of a writ from 60 to 90 days. (Exhibits 2 and 6.) Mr. Rick Schwartz, however, suggests that the period be extended to at least 160 days in order to reduce paperwork. (Exhibit 12.) The staff recommends no change in this provision. Although the tentative recommendation allows levies only during the first 90 days after issuance of a writ, collections and sales may take place under the writ until a year after its issuance. See Section 699.540 (return of writ of execution). This is a significant increase over the existing limitations which require the writ to be returned 60 days after delivery to the levying officer. The 90-day limitation on leviability ensures that the amount to be satisfied as stated on the writ is relatively current and that the levying officer will have enough time after levy to complete the sale of property, taking into account the possibility of third-party claims and exemption claims.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

ENFORCEMENT OF MONEY JUDGMENTS

Execution

Introduction

Several enforcement procedures are available for collection of a money judgment,¹ the simplest and most common being execution. With certain exceptions, all of the judgment debtor's nonexempt property, tangible and intangible, may be levied upon under a writ of execution. In general, the property levied upon is sold in the case of tangible property or either collected or sold in the case of a debt.

Issuance and Return of Writ of Execution

Under existing law, a writ of execution for enforcement of a money judgment is issued by the clerk of the court where the judgment is

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1. In general, nonexempt property interests that are assignable may, by some procedure, be reached to satisfy a money judgment. See *Murphy v. Allstate Ins. Co.*, 17 Cal.3d 937, 945-46, 553 P.2d 584, 589-90, 132 Cal. Rptr. 414, 429-30 (1976). For a discussion of exempt property, see "Exemptions From Enforcement of Money Judgments" infra.

For a discussion of procedures to reach property not subject to levy of execution, see "Miscellaneous Procedures for Enforcement of Money Judgments" infra. In three situations, property that is not owned by the judgment debtor is also subject to execution or some other enforcement procedure:

1. Under the community property laws, the community property is liable for the satisfaction of the debts of either spouse and, if the debt was incurred for necessities of life after marriage, the separate property of the nondebtor spouse may also be applied to the judgment against the other spouse. See Civil Code §§ 5116, 5120, 5121, 5122, 5125, 5132. See "Liability of Marital Property," infra.

2. Property that was subjected to a lien when owned by the debtor and later transferred may also be reached. See Section 682 (real property subjected to judgment lien); *Riley v. Nance*, 97 Cal. 203, 31 P. 1126 (1893) (property subjected to attachment lien when owned by debtor); *Puissegur v. Yarbrough*, 29 Cal.2d 409, 412-13, 175 P.2d 830, 832 (1946) (property subjected to execution lien when owned by judgment debtor).

3. Where the debtor makes a fraudulent conveyance, the creditor may "disregard the conveyance and . . . levy execution upon the property conveyed." Civil Code § 3439.09.

entered upon application of the judgment creditor.² A writ may be issued to the levying officer in each county in which the judgment debtor has property that the judgment creditor desires to reach.³ Only one writ to enforce the judgment may be outstanding in a county at a time.⁴

The writ of execution may be in force for one year from its date of issuance, but it must be returned to the court clerk between 10 and 60 days after its delivery to the levying officer.⁵ The return provides an account of the levying officer's activities in executing the writ and the amounts collected in satisfaction of the judgment.⁶ If proceeds are

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2. See Section 682. Under existing law, a court hearing is required before a writ of execution may be issued to enforce a judgment for support of a child or spouse. See Civil Code § 4380; *Messenger v. Messenger*, 46 Cal.2d 619, 630, 297 P.2d 988, ____ (1956); *Jackson v. Jackson*, 51 Cal. App.3d 363, 366-68, 124 Cal. Rptr. 101, ____ (1975). In the interest of efficiency and economy, the proposed law permits resort to execution in such cases without prior court approval so long as amounts sought to be collected are not more than 10 years overdue. Existing law also requires that a judgment creditor who seeks to execute upon a dwelling house (for which a homestead declaration has not been recorded) apply to the court in the county where the house is located. See Code Civ. Proc. § 690.31; *Krause v. Superior Court*, 78 Cal. App.3d 499, 505, 144 Cal. Rptr. 194, 197 (1978). For the proposed modification of this feature of existing law, see the discussion under "Dwelling Exemption" infra.
 3. See Sections 682, 687. The writ may also be issued to a registered process server where the judgment creditor seeks to levy upon a debt owed the judgment debtor by a third person. See the discussion under "Registered Process Server," infra.
 4. See Section 683; 32 Ops. Cal. Att'y Gen. 22 (1958). Section 690.31 may create an implied exception to this general rule because the special writ issued pursuant to court order under that section for the purpose of levying upon a dwelling presumably may not be used for a levy on other property and, correspondingly, a general writ of execution issued by the clerk to the same county may not be used against a dwelling.
 5. See Sections 683, 688(e). The writ may, however, be retained to complete a sale after its return date. See Section 683(c).
 6. See Section 682.1; Marshal's Manual of Procedure § 404 (rev. 1977).

received after the writ has been returned or if a sale has not been completed before the return date, the writ may be redelivered to the levying officer who then makes an alias return.⁷

The writ of execution states the amount due on the judgment at the time of its issuance.⁸ The clerk also enters the amount of interest accruing daily and the fee for issuance of the writ, and the levying officer adds the costs of levy and sale to the amount to be collected under the writ.⁹

The proposed law would modify these procedures in several important respects. In order to provide more time for locating and levying on property, the writ of execution would be leviable at any time during the first 90 days after its issuance, rather than 60 days after its delivery to the levying officer. If property is levied upon during the 90-day period, the writ would be retained by the levying officer for the purpose of selling or collecting thereafter during the life of the writ, thus avoiding the need for redelivery of the writ and an alias return. The creditor would also be able to obtain another writ of execution for the same county after the first writ is at least 90 days old so that additional property may be levied upon while the sale or collection process continues under the first writ. Writs would be returnable after the duties thereunder have been performed, but not later than one year after issuance.¹⁰

If no property is levied upon during the first 90 days after the writ is issued, the writ would be returnable promptly after the expiration of the 90-day period. The writ would also be returnable at the written request of the judgment creditor in order to permit issuance of a new writ when the time for levy under the prior writ has almost expired without any property having been levied upon. Ultimately, the writ would be returnable when the time for enforcement of the judgment has expired.

7. See Section 683.

8. See Sections 682, 682.2.

9. See Section 682.2.

10. In the case of a levy upon an interest of an heir, devisee, or legatee in personal property in the estate of a decedent, the writ would be returnable as late as one year after the date the decree distributing the interest is final.

Levy Under Writ of Execution

The levying officer executes the writ of execution¹¹ pursuant to the instructions of the judgment creditor describing the nature and location of the property to be levied upon.¹² Under existing law, the levying officer is required first to apply property previously attached in the action to the satisfaction of the judgment, and then to levy upon personal property and finally upon real property.¹³ This rule is ineffective, however, because the levying officer follows the instructions of the judgment creditor as to the property to be levied upon. The order of levy rule is not continued in the proposed law because it is not efficient and is not necessarily beneficial to either the debtor or the creditor. For example, the creditor may have attached real property before entry of the judgment in a case where liquid assets such as earnings or bank accounts can be more efficiently and economically reached after judgment.¹⁴ The proposed law would protect the judgment debtor from excessive levies by requiring the judgment creditor to either release attached property or levy upon it under execution before any other property may be levied upon. The creditor should not be

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11. Service of the writ on a third person may also be accomplished by a registered process server if the levy does not require the sale, delivery, or custody of the property levied upon. Sections 682, 687. See the discussion under "Registered Process Server," infra.
 12. See Section 262 (levying officer not liable for carrying out signed instructions); cf. Section 692 (instructions for sale of property); see generally Marshal's Manual of Procedure § 301.1 (rev. 1977); Cal. State Sheriffs' Association, Civil Procedural Manual 4.05 (1978).
 13. Sections 682, 684.2. The preferential protection of real property from the claims of creditors dates from feudal times and is recognized in clause 9 of the Magna Carta.
 14. An individual debtor's real property may be attached before entry of judgment (Section 487.010(c)(1)), but the creditor may not attach earnings (Section 487.020(c)) or accounts receivable, chattel paper, or choses in action with an individual balance of less than \$150 (Section 487.010(c)(2)).

prevented from reaching real property because there may be some personal property which might be applied to the satisfaction of the judgment. In some cases, the creditor may wish to levy on the real property because a levy on personal property would be likely to give rise to an exemption claim or a third-party claim. In other cases, real property rather than personal property might be levied upon because the levy on and sale of the personal property could be made at a great sacrifice to the debtor, as in the case of used furniture or intangibles.

General Rules Governing Levy

Under the proposed law, property is levied upon, i.e., seized in the eyes of the law, in four ways:

(1) By taking custody and serving a writ and notice of levy. Custody and service are employed where tangible personal property to be levied upon is in the judgment debtor's possession.

(2) By serving a writ and notice of levy without taking custody (garnishment). Service alone is used for a levy upon intangible personal property or tangible personal property under the control of a third person.

(3) By filing or recording of a writ and notice of levy. Filing or recording is used to levy upon real property, property under estate administration, or a judgment.

(4) By delivering a writ and instructions to levy to the levying officer. Delivery of a writ and instructions to the levying officer constitutes a "paper levy" upon property already levied upon by the levying officer.¹

The levy procedures under the proposed law are largely the same as existing procedures which in general incorporate the rules governing levy under a writ of attachment.² The proposed law makes specific provision for the manner of levy upon particular types of property, rather than incorporating the attachment provisions. This avoids the need to resolve conflicts in the terminology in the attachment and

1. See O'Connor v. Blake, 29 Cal. 312, 315 (1865); Colver v. W.B. Scarborough Co., 73 Cal. App. 441, 443, 238 P. 1104 (1925).

2. See Section 688(b).

execution contexts and results in a more convenient statutory scheme for practitioners and levying officers since the vast majority of levies take place after judgment.

The proposed law also employs the terminology of the Commercial Code to the extent practicable. For example, references to things in action and debts in existing law³ are replaced by references to accounts receivable and general intangibles in the proposed law.⁴

Under the proposed law, both a copy of the writ of execution and a notice of levy are served whenever service is required in the course of a levy. The notice of levy informs the person served of the capacity in which the person is served (such as judgment debtor, garnishee, or interest holder of record), the property that is levied upon, the person's rights under the levy (including the right to make a third-party claim or to claim an exemption), and the person's duties under the levy (such as the requirement that a garnishee file a memorandum with the levying officer). Notice of levy is required to be given promptly to the judgment debtor in every case. Levy is valid, however, even if no notice is given to the judgment debtor or a third person, provided that the essential levy requirements are satisfied.⁵

Execution Liens

A levy creates a lien upon the property levied upon which runs for one year from the date of the issuance of the writ.⁶ This general principle is continued in the proposed law. The proposed law's clarification of the method of levy applicable to a particular type of property

3. See Sections 688(b), 691.

4. Under the proposed law, and "account receivable" means an "account" as defined by Commercial Code Section 9106 and "general intangibles" means "general intangibles" as defined in Section 9106.

5. This continues a feature of attachment levies that apply under the incorporation provision of Section 688(a). See, e.g., Sections 488.310(e), 488.320(b), 488.330(c).

6. See Section 688(e). The lien of execution has a longer duration in the case of a levy on interests or claims of heirs, devisees, or legatees in assets of decedents remaining in the hands of executors or administrators.

is intended to facilitate the determination of the exact time a lien is created which is a necessary step in determining the priorities among various creditors.⁷

Registered Process Server

The proposed law expands the role of registered process servers in levying of property pursuant to writs of execution. Under existing law, a registered process server may levy where the property levied upon is not in the possession of the judgment debtor and is not to be sold by, delivered to, or taken into custody.⁸ Thus, the registered process server may levy on intangible property where the method of levy is by service of a third person and money is to be collected (as in the case of accounts receivable, deposit accounts, and general intangibles). The proposed law continues this aspect of existing law and also permits a registered process server to levy on real property, growing crops, and timber to be cut, where the method of levy is by recording a copy of the writ and a notice of levy with the county recorder. Registered process servers would also be permitted to levy on personal property used as a dwelling, such as a mobilehome or vessel, where the method of levy is by posting or serving an occupant.⁹ The proposed law also makes clear that the registered process server is to serve persons required to be served as an adjunct of levy, such as the judgment debtor, an occupant of real property, or a co-obligee of an account receivable or general intangible.¹⁰

7. See the discussions under "Effect of Liens" [infra] and "Distribution of Proceeds of Sale and Collection" infra.

8. Section 687.

9. See the discussion under "Methods of Levy on Particular Types of Property" infra. The proposed law provides an alternative method of levy on personal property used as a dwelling that involves a keeper taking possession and eventual removal of the occupants. The registered process server would not be involved in this type of levy.

10. See the discussion under "Methods of Levy on Particular Types of Property" infra.

After levy and any other service or posting is accomplished, the registered process server is required by the proposed law to mail or deliver the writ to the levying officer along with an affidavit stating the activities of the registered process server. The levying officer then performs the remaining duties under the writ, such as receiving garnished amounts, selling real property, crops, or timber, processing any third-party claims or exemption claims, and returning the writ to the court clerk.

Existing law does not make clear whether the fee of the registered process server is a recoverable cost of collection. The proposed law incorporates the general standard for recovery of the costs of employing a registered process server which allows recovery of the fee charged by public officers for the same duties or a larger fee in the case of an unusually difficult service.¹¹ The levying officer's fee for completing the processing of the writ and returning it to the court is also recoverable under the general rules.¹²

Levy on Property in a Private Place

The right of the judgment creditor to cause a levying officer to seize property from the possession of the judgment debtor is limited by the debtor's right to privacy.¹ The proposed law permits the judgment creditor to apply to the court ex parte, or on noticed motion if the court so directs, for an order directing the levying officer to seize property in a private place consistent with constitutional protections. As a prerequisite to issuance of such an order, the judgment creditor

11. See Section 1032b.

12. See the discussion under "Costs of Enforcement" supra.

1. This right to privacy and the protection of the security of the home derives from early common law. See 2 A. Freeman, *Law of Executions* § 256 (3d ed. 1900). In *Blair v. Pitchess*, 5 Cal.3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971), the prejudgment claim and delivery procedure was held unconstitutional partly because the seizure of the property in a private place constituted an unreasonable intrusion on the debtor's privacy in the absence of probable cause. Cf. *Camara v. Municipal Court*, 387 U.S. 523, 528-29 (1967) (attempted warrantless search by municipal health inspector).

must describe with particularity both the property sought to be levied upon and the place where it is to be found. The court must be satisfied that there is probable cause to believe that the property is located in the place described.

Turnover Orders

The proposed law would make available a turnover order remedy derived from the laws pertaining to claim and delivery and attachment.² The judgment creditor would be able to obtain an order on ex parte application, or on noticed motion if the court so directs, requiring the judgment debtor to transfer possession of property sought to be levied upon or documentary evidence of title to property or a debt sought to be levied upon. The order would be enforceable by the power of the court to punish for contempt. Use of a turnover order in appropriate cases may avoid the need to obtain an order for a levy on property in a private place, would facilitate reaching intangible assets with a situs outside California, and by permitting a turnover of evidence of title, would facilitate eventual collection of a debt or sale of property such as a motor vehicle.

Disposition of Perishable Property

The proposed law makes specific provision for the prompt sale by the levying officer or a receiver of perishable property that has been levied upon.³ Such property may be sold pursuant to court order obtained on noticed motion of the judgment creditor. However, if the levying officer determines that the property is so perishable or subject to deterioration or depreciation that there is not time to obtain a court order, the levying officer may take any action necessary to preserve its value or may sell the property. The levying officer would be protected from liability if the determination is made in good faith.

2. See Sections 482.080 (attachment), 512.070 (claim and delivery).

3. This provision is derived from Section 488.530 (attachment), and portions of Sections 689 (third-party claims proceedings) and 690.50(g) (exemption proceedings).

Release of Property

Existing law incorporates the provisions of the Attachment Law pertaining to the release of property which has been levied upon.⁴ The proposed law continues the substance of existing law but adds a provision for property to be sold if the person from whom it was taken cannot be found, with the proceeds deposited in the county treasury payable to the order of such person.

4. See Section 488.560.

CHAPTER 3. EXECUTION

Article 1. General Provisions§ 699.010. Execution lien

699.010. (a) Except as provided in subdivision (b), a levy on property under a writ of execution creates an execution lien on the property from the time of levy until the expiration of one year after the date of issuance of the writ.

(b) An execution lien on an interest of the judgment debtor as an heir, devisee, or legatee in property in the estate of a decedent continues for a period of one year after the decree distributing the interest has become final.

Comment. Subdivision (a) of Section 699.010 continues the substance of the first portion of former Section 688(e). The running of the lien is not tolled during a stay of enforcement. Property is not affected by issuance of a writ or the delivery of a writ to the levying officer and no execution lien attaches to the property until levy. Subdivision (b) supersedes the last portion of the first sentence of former Section 688(e). For general provisions governing liens under this division, see Article 1 (commencing with Section 697.010) of Chapter 2.

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§ 699.020. Payment by debtor of judgment debtor

699.020. At any time after delivery of a writ of execution to a levying officer and before its return, a person indebted to the judgment debtor may pay to the levying officer the amount of the debt or so much thereof as is necessary to satisfy the judgment. The levying officer shall give a receipt for the amount paid and such receipt is a discharge for the amount paid.

Comment. Section 699.020 continues the substance of former Section 716.

§ 699.030. Levy on property in private place

699.030. If personal property sought to be levied upon is located in a private place of the judgment debtor:

(a) The levying officer shall demand delivery of the property by the judgment debtor and shall advise the judgment debtor that the judgment debtor may be liable for costs and attorney's fees incurred in any further proceedings to obtain delivery of the property. If the judgment debtor does not deliver the property, the levying officer shall make no further effort to obtain delivery of the property but shall promptly notify the judgment creditor.

(b) The judgment creditor may apply to the court ex parte, or on noticed motion if the court so directs or a court rule so provides, before or after issuance of the writ and before or after demand is made pursuant to subdivision (a), for an order directing the levying officer to seize the property in the private place. The application for the order shall describe both the property sought to be levied upon and the place where it is to be found with particularity according to the best knowledge, information, and belief of the judgment creditor. The court may not issue the order unless the judgment creditor establishes that there is probable cause to believe that property sought to be levied upon is located in the place described. The levying officer, at the time delivery of the property pursuant to the order is demanded, shall announce his or her identity, purpose, and authority. If the property is not voluntarily delivered, the levying officer may cause the building or enclosure where the property is believed to be located to be broken open in such a manner as the levying officer reasonably believes will cause the least damage, but if the levying officer reasonably believes that entry and seizure of the property will involve a substantial risk of death or serious bodily harm to any person, the levying officer shall refrain from entering and shall promptly make a return to the court setting forth the reasons for believing that the risk exists. In such a case, the court shall make such orders as may be appropriate.

Comment. Subdivision (a) of Section 699.030 states the limit of a levying officer's authority to obtain property in a private place without further court authorization. Whether the judgment debtor who fails to deliver property is liable for costs of obtaining further court authorization depends on the circumstances of the case. See Sections 685.____ (reasonable and necessary costs) and 685.____ (motion for costs).

Subdivision (b) is based on comparable provisions relating to claim and delivery. See Sections 512.010, 512.060, 512.080, 514.010, and Comments thereto. If the levying officer gains entrance into a private place pursuant to an order issued under this section, the levying officer's authority to levy upon property is restricted by the terms of the order.

13/600

§ 699.040. Turnover order in aid of execution

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

(1) Possession of the property sought to be levied upon where the prescribed method of levy is by taking the property into custody.

(2) Possession of documentary evidence of title to property of or a debt owed to the judgment debtor that is sought to be levied upon. An order pursuant to this paragraph may be served when the property or debt is levied upon or thereafter.

(b) The court may issue an order pursuant to this section upon a showing of need for the order.

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

Comment. Section 699.040 is analogous to Section 482.080 (providing for turnover order when a writ of attachment is issued). See also Section 512.070 (providing for turnover order when writ of possession issued under claim and delivery statute).

§ 699.050. Satisfaction from or release of attached property

699.050. If property of the judgment debtor is subject to a lien of attachment in favor of the judgment creditor, no additional property of the judgment debtor may be levied upon under a writ of execution in favor of the judgment creditor until the attached property either is levied upon under a writ of execution or otherwise applied to the satisfaction of the judgment or is released.

Comment. Section 699.050 supersedes former Section 684.2, which appeared to make the levying officer responsible for applying attached property to the satisfaction of the judgment upon delivery of a writ of execution. This division requires a new levy appropriate to the type of property held under an attachment lien. See, e.g., Sections 700.210 (real property interest), 700.250 (tangible personal property in custody of levying officer), 700.370 (accounts receivable and general intangibles). Release is governed by Section 699.060. A lien of attachment continues after judgment until it expires by its own terms or is merged in a judgment lien, execution lien, or the lien of some other postjudgment enforcement procedure. See Sections 488.510 (duration of attachment lien), 697.010 (relation back of liens); Bagley v. Ward, 37 Cal. 121, 131 (1869); Balzano v. Traeger, 93 Cal. App. 640, 643-44, 270 P. 249, ____ (1928).

§ 699.060. Release of property from lien and custody

699.060. (a) The levying officer shall release property or proceeds from the sale of property upon the receipt of a written direction from the judgment creditor or a certified copy of a court order for release or when otherwise required by this title to release the property. Release extinguishes any execution lien or attachment lien created by a levy performed by the levying officer or registered process server on behalf of the judgment creditor.

(b) If the property to be released has been taken into custody under the levy, it shall be released to the person from whom it was taken unless otherwise ordered by the court. If the person does not claim the property to be released, the levying officer shall retain custody of the property and shall serve personally or by mail on such person a notice of where possession of the property may be obtained. If

the person does not claim the property within 30 days after the notice is served, the levying officer shall sell the property, other than cash or its equivalent, in the manner provided by Article 3 (commencing with Section 703.610). The levying officer shall deposit the proceeds of sale and cash or its equivalent, after first deducting the levying officer's costs, with the county treasurer of the county where the property is located, payable to the order of the person.

(c) If the property to be released has not been taken into custody under the levy, the levying officer shall release the property by issuing a written notice of release and serving it personally or by mail on the person served with a copy of the writ and a notice of levy to create the lien.

(d) If the property to be released was levied upon by recording or filing a copy of the writ and a notice of levy, the levying officer shall record or file a written notice of release in the same office.

(e) The levying officer is not liable for releasing property in accordance with this section nor is any other person liable for acting in conformity with the release.

Comment. Section 699.060 supersedes the portion of subdivision (b) of former Section 688 that incorporated the manner of release of attachment. Section 699.060 is generally similar to Section 488.560 (release of attachment). Subdivision (b), however, provides for property to be sold and the proceeds deposited in the county treasury if the person to whom property is to be released does not appear. See also Gov't Code §§ 50050-50055 (disposition of unclaimed money in county treasury).

§ 699.070. Sale of or receiver for perishable property or during pendency of proceedings

699.070. (a) Upon application by the judgment creditor, the judgment debtor, or a person who has filed a third-party claim pursuant to Chapter 6 (commencing with Section 706.110), made to the court ex parte, or on noticed motion if the court so directs or a court rule so provides, and a showing that property levied upon is perishable or will greatly deteriorate or greatly depreciate in value or that for some other reason the interests of the parties will be best served thereby,

the court may order the property to be sold or may appoint a receiver or direct the levying officer to take any action necessary to preserve the value of the property or to sell the property. Except as otherwise provided in the order of the court, a sale of property pursuant to this section shall be made in the manner provided by Article 6 (commencing with Section 701.510) and the proceeds shall be applied toward the satisfaction of the judgment in the manner provided by Article 7 (commencing with Section 701.810).

(b) If the levying officer determines that property levied upon is extremely perishable or will greatly deteriorate or greatly depreciate in value before a court order pursuant to subdivision (a) could be obtained, the levying officer may take any action necessary to preserve the value of the property or may sell the property. The levying officer is not liable for a determination made in good faith under this subdivision.

(c) If a receiver is appointed, the court shall fix the daily fee of the receiver and may order the judgment creditor to pay the fees and expenses of the receiver in advance or may direct that the whole or any part of the fees and expenses be paid from the proceeds of any sale of the property.

(d) Except as otherwise provided in this section, the provisions of Chapter 5 (commencing with Section 564) and Chapter 5a (commencing with Section 571) of Title 7 govern the appointment, qualifications, powers, rights, and duties of a receiver appointed under this section.

Comment. Section 699.070 is analogous to Section 488.530 (attachment) and supersedes provisions relating to disposition of perishable property in former Sections 689 (third-party claims proceedings) and 690.50(g) (exemption proceedings).

045/073

§ 699.080. Levy by registered process server

699.080. (a) A registered process server may levy under a writ of execution on the following types of property:

(1) Real property, pursuant to Section 700.010.

(2) Growing crops or timber to be cut, pursuant to Section 700.020.

(3) Personal property used as a dwelling, pursuant to subdivision (a) of Section 700.080.

(4) Deposit accounts, pursuant to Section 700.140 or 700.160.

(5) Accounts receivable or general intangibles, pursuant to Section 700.170.

(b) If a registered process server levies on property pursuant to subdivision (a), the registered process server shall comply with the applicable levy, posting, and service provisions of Article 4 (commencing with Section 700.010), shall deliver any bond required by Section 700.160, and shall request any third person served to give a garnishee's memorandum to the levying officer in compliance with Section 701.030.

(c) At the time of levy under this section or promptly thereafter, the writ of execution, an affidavit of the registered process server stating the manner of levy performed, and proof of service of the writ and notice of levy on other persons as required by Article 4 (commencing with Section 700.010), shall be mailed to the levying officer.

(d) Upon receipt of the fee provided by Section 26725 of the Government Code, the levying officer shall perform all other duties under the writ as if the levying officer had levied under the writ and shall return the writ to the court.

(e) The recovery of the fee for services of a registered process server under this section is governed by Section 1032b.

Comment. Section 699.080 supersedes subdivisions (b) and (c) of former Section 687. This section expands and clarifies the role of the registered process server in levying on property pursuant to a writ of execution.

Subdivision (a) of Section 699.080 continues the principle of former law that a registered process server may levy where the property levied upon is not in the possession of the judgment debtor and is not to be sold by, delivered to, or taken into custody by the person serving the writ. Subdivision (a) goes beyond former law by permitting levies by registered process servers on real property and on growing crops and timber to be cut, since these types of property are levied upon by recording a writ and notice of levy with the county recorder (see Sections 700.010 and 700.020), and on personal property used as a dwelling where levy is accomplished by service or posting rather than taking custody (see Section 700.280(a)).

Subdivision (b) makes clear that the registered process server is required to perform certain duties ancillary to the levy that would normally be performed by the levying officer at the time of levy or promptly thereafter. Subdivision (c) requires that the levying officer be provided with the information necessary to perform the remaining duties under the writ and to make a return on the writ. The affidavit of the registered process server may be personally delivered to the levying officer. See Section 681.020 (mailing includes personal delivery). Subdivision (d) continues the substance of former Section 687(c). Subdivision (e) incorporates the general standard for recovery of the costs of employing a registered process server.

29/330

Article 2. Writ of Execution and Notice of Levy

§ 699.510. Issuance of writ of execution

699.510. (a) Except as otherwise provided in subdivision (c), after entry of a money judgment, a writ of execution shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer or a registered process server in the county where property sought to be levied upon is located. Separate writs shall be issued for separate counties.

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

(c) If the judgment creditor seeks a writ of execution to enforce a judgment made or entered pursuant to the Family Law Act, Part 5 (commencing with Section 4000) of Division 4 of the Civil Code, in addition to the requirements of this article the judgment creditor shall comply with Section [4383] of the Civil Code.

Comment. Subdivision (a) of Section 699.510 supersedes portions of the first sentences of former Sections 681 and 682 pertaining to issuance of writs of execution, and continues the substance of the first and last sentences of former Section 687. The time during which a writ of execution may be issued is determined pursuant to Chapter 3 (commencing with Section 683.010) of Division 1. Where writs of execution are issued for two or more counties, the judgment creditor has a special duty to see that an excessive levy is not made. Cf. *White Lighting Co. v. Wolfson*, 68 Cal.2d 336, 347-50, 438 P.2d 345, ___, 66 Cal. Rptr. 697,

____ (1968) (excessive attachment as abuse of process). The same duty to avoid an excessive levy would exist, for example, where one writ is retained after the 90-day period for the purpose of completing a sale or continuing a collection and the judgment creditor obtains another writ to reach other property in the same county.

Subdivision (b) supersedes prior law under which no more than one writ could be outstanding in one county for the enforcement of the same judgment. See former Section 683, para. 2; 32 Ops. Cal. Att'y Gen. 22 (1958). Subdivision (b) permits the issuance of a writ of execution for a particular county once every 90 days and Section 699.530 provides a 90-day period during which property may be levied upon under the writ. Hence, only one writ at a time provides authority for levy in a given county although several writs might be outstanding. This arrangement provides the judgment creditor with needed flexibility; one writ may be retained by the levying officer for the purpose of completing a sale or continuing collection while another writ may be issued to reach newly discovered property. This is particularly important in a case where there is a need to levy upon other property in a county where real property has been levied upon since Section 701.____ delays the sale of real property for at least 140 days after levy.

Subdivision (c) makes clear that a judgment creditor seeking to enforce a support judgment is required to comply with Civil Code Section 4383 which requires approval of the court before installments more than 10 years overdue may be enforced by execution.

The provisions of this section are subject to limitations provided elsewhere. See, e.g., Sections 681.____ (stay of enforcement), 683.010-____ (time for enforcement), 686.____ (enforcement after death of judgment debtor). See also Sections _____, 699.080 (levy by registered process server).

29/331

§ 699.520. Contents of writ of execution

699.520. (a) The writ of execution shall contain the following information:

- (1) The date of issuance of the writ.
- (2) The name of the judgment creditor.
- (3) The name and mailing address of the judgment debtor.
- (4) The date the judgment was entered.
- (5) The amount of the judgment as entered and the amount due on the date the writ is issued.
- (6) The amount of interest accruing daily from the date the writ is issued.

(7) Whether any person has requested notice of sale under the judgment and, if so, the name and mailing address of any such person.

(b) The writ of execution shall require the levying officer to whom it is directed to satisfy the judgment.

Comment. Section 699.520 prescribes the essential elements of a writ of execution. It supersedes a portion of the introductory paragraph and subdivision 1 of former Section 682, former Section 682.1, and portions of former Sections 682.2 and 692a. See also Section 699.530 (execution of writ). The writ of execution is directed to the levying officer and provides the basis for the levying officer's authority under this chapter. Some duties under the writ may be performed by a registered process server. See Section 699.080.

29/336

§ 699.530. Delivery and execution of writ

699.530. (a) Upon delivery of the writ of execution to the levying officer to whom the writ is directed, together with the written instructions of the judgment creditor, the levying officer shall execute the writ pursuant to this title.

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

Comment. Subdivision (a) of Section 699.530 continues the practice under former law, i.e., that the levying officer will not act until the judgment creditor delivers the writ of execution and written instructions to levy upon specific property. See Sections 262 (instructions of a party or the party's attorney not an excuse from liability unless in writing), 687.010 (instructions to levying officer). Subdivision (a) also supersedes the first portion of the first sentence of former Section 691. The mandatory order of levy provided in subdivision 1 of former Section 682 and former Section 684.2 is not continued, but the judgment creditor's instructions may designate the order of levy. See also Sections 685.____ (amount to satisfy includes accrued costs, interest, and levying officer's costs), 685.____ (deposit of costs), 699.080 (levy by registered process server), 699.710 (property subject to levy of execution).

Subdivision (b) prescribes the time within which property may be levied upon under a writ of execution. The 90-day period runs from the date of issuance of the writ, whereas under the first paragraph of former Section 683 the writ was to be returned within 60 days after its delivery to the levying officer.

§ 699.540. Contents of notice of levy

699.540. The notice of levy required by Article 4 (commencing with Section 700.010) shall inform the person notified of all of the following:

- (a) The capacity in which the person is notified.
- (b) The property that is levied upon.
- (c) The person's rights under the levy, including the right to claim an exemption pursuant to Chapter 4 (commencing with Section 703.010) and the right to make a third-party claim pursuant to Chapter 5 (commencing with Section 706.010).
- (d) The person's duties under the levy.

Comment. Section 699.540 prescribes the contents of the notice of levy. A statutory form is provided in Section 693.____. The Judicial Council has authority to supersede the statutory form. See Section 693.010. The notice of levy of execution is similar to the notice of attachment provided by Section 488.020. Under prior law, the notice of levy was recognized by Section 688(b), but there was no provision for an official form of the notice. Instead, the form of the notice of levy was determined by the levying officers. See, e.g., Marshal's Manual §§ 302.1, 344.1 (rev. 1977); Cal. State Sheriffs' Association, Civil Procedural Manual 4.10-4.11, 4.19-4.20, 4.23-4.24 (1978). The notice of levy is directed to the person being notified whereas the writ of execution is directed to the levying officer or a registered process server. See Sections 699.510 (issuance of writ) and 699.520 (contents of writ of execution). The judgment creditor must supply written instructions to the levying officer which provide sufficient information to complete the notice of levy. See Sections 687.010 (instructions to levying officer), 699.530 (delivery of instructions to levying officer).

§ 699.550. Effect of failure to give notice of levy

699.550. In any case where, pursuant to a levy, a copy of the writ of execution and a notice of levy are required to be posted or to be served on or mailed to the judgment debtor or other person by Article 4 (commencing with Section 700.010), failure to post, serve, or mail the copy of the writ and the notice does not affect the lien created by the levy.

Comment. Section 699.550 is analogous to portions of Sections 488.310-488.430 (method of levy in attachment) which were incorporated by former Section 688. This section is intended to preserve the validity of a levy that complies with the statutory procedure in a case where additional postings, service, or mailings have been omitted. For example, an instrument in the hands of a third person is levied upon at the time the third person is served. See Section 700.110(a)(2). The levy is effective to create a lien even though no notice is given the judgment debtor (as required by Section 700.110(c)) or the obligor under the instrument (as required by Section 700.110(b)), but the rights of the obligor are not affected until notice is given (see Section 700.110(b)).

29/343

§ 699.560. Return of writ of execution

699.560. (a) Except as otherwise provided in subdivision (b), the levying officer to whom the writ of execution is delivered shall return the writ to the court, together with a report of the levying officer's actions and an accounting of amounts collected and costs incurred, at the earliest of the following times:

(1) One year from the date of issuance of the writ or, in the case of a levy upon an interest of an heir, devisee, or legatee in personal property in the estate of a decedent, one year after the date the decree distributing the interest has become final.

(2) Promptly after all of the duties under the writ are performed.

(3) When return is requested in writing by the judgment creditor.

(4) If no levy takes place under the writ within 90 days after its issuance, promptly after the expiration of the 90-day period.

(5) Upon expiration of the time for enforcement of the judgment.

(b) If an earnings withholding order has been issued and served upon the employer as provided in Division 4 (commencing with Section 723.010) within 90 days after issuance of a writ, the writ shall be returned as provided in Section 723.026.

Comment. Section 699.560 supersedes the first, third, and fourth paragraphs of former Section 683. Under this section, the period at the end of which the writ must be returned runs from the date of issuance of the writ rather than from the date the writ was delivered to the levying officer. The provision of former Section 683 that the writ could not be

returned before the expiration of 10 days is not continued. If a levy takes place under the writ, any sale of property or collection of a debt under the writ must be completed before the expiration of a year from the date of issuance of the writ under which levy took place except in the case of an interest in a decedent's estate. Ultimately, return must be made at the expiration of the period of enforceability of a judgment provided by Chapter 3 (commencing with Section 683.010) of Division 1. Redelivery of the writ, alias writs, and alias returns are not authorized. See former Sections 683, 688(e).

[The provisions of this section are incorporated for the purpose of returns of writs of possession and writs of sale. See Sections 714.____, 715.____, 716.____.]