

Memorandum 80-35

Subject: Study D-300 - Enforcement of Judgments (Charging Orders)

This memorandum considers comments we have received concerning the provisions in the Tentative Recommendation Relating to Enforcement of Judgments relating to charging orders to reach a judgment debtor's interest in a partnership in a case where the partnership is not a debtor. (The comments referred to were sent to you previously as exhibits to Memorandum 79-29.) A revised staff draft of these provisions is attached hereto.

§ 708.310. Enforcement by charging order (TR § 705.410)

Mr. Frederick Holden states that this section "should provide for the ability of the judgment creditor to reach the partnership property itself to the extent of the debtor's interest, at least where the debt incurred was intended to, or actually did, benefit the partnership." (Exhibit 13, p. 18.) The staff is not sure what this comment means. The charging order procedure has replaced levy under a writ of execution as a means of reaching the debtor's interest in a partnership in the enforcement of a judgment against the partner but not against the partnership. Corp. Code § 15025(c); Baum v. Baum, 51 Cal.2d 610, 612-13, 335 P.2d 481 (1959). This is true even if the judgment debtors own the entire proprietary interest in the partnership. Evans v. Galardi, 16 Cal.3d 300, 311, 546 P.2d 313, 128 Cal. Rptr. 25 (1976). If a charging order is made pursuant to Corporations Code Section 15028 or 15522, the court may also appoint a receiver, make other orders appropriate under the circumstances, and may order the interest to be sold. See Ribero v. Callaway, 87 Cal. App.2d 135, 196 P.2d 109 (1948); Gose, The Charging Order Under the Uniform Partnership Act, 28 Wash. L. Rev. 1 (1953). If the partnership is no longer in existence, however, the judgment creditor may apparently resort to levy. Taylor v. S & M Lamp Co., 190 Cal. App.2d 700, 707-12, 12 Cal. Rptr. 323 (1961). One court has also reaffirmed an old equitable remedy of imposing a constructive trust on wrongfully appropriated property or its proceeds transferred to a third person who is not a bona fide purchaser without knowledge. King v.

King, 22 Cal. App.3d 319, 329, 99 Cal. Rptr. 200 (1971). The staff recommends that this section be revised for further clarification as set forth in the attached draft.

§ 708.320. Lien of charging order (TR § 705.420)

Mr. Rick Schwartz raises several questions concerning the lien of a charging order. (Exhibit 12, p. 5.) He states that a method is needed for putting the partnership on notice of the lien. The staff recommends that this section be revised to provide for the creation of the lien when the judgment debtor and the partnership are served with notice of motion for a charging order. We also have revised the lien provision for the sake of clarity.

Respectfully submitted,

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Charging Orders

A charging order is the usual means to reach the judgment debtor's interest in a partnership and apply it to the satisfaction of a money judgment.¹ This procedure is continued in the proposed law. Existing case law recognizes that a lien arises from a charging order but is unclear as to the time of its creation and its effect.² The proposed law provides for creation of the lien at the time the notice of motion for a charging order is served on the judgment debtor and on the other partners or the partnership and contains general provisions governing the effect of liens.³

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1. See Corp. Code §§ 15028 (charging order under Uniform Partnership Act), 15522 (charging order under Uniform Limited Partnership Act); 5 B. Witkin, California Procedure Enforcement of Judgment § 142, at 3504-06, Supp. at 29-30 (2d ed. 1971 & Supp. 1977); Gose, The Charging Order Under the Uniform Partnership Act, 28 Wash. L. Rev. 1 (1953).
 2. See Taylor v. S & M Lamp Co., 190 Cal. App.2d 700, 707-12, 12 Cal. Rptr. 323, 329-31 (1961).
 3. The lien provision in the proposed law is analogous to that provided in examination proceedings. See the discussions under "Examination Proceedings" supra and "Effect of Liens" supra.

Article 4. Charging Orders

§ 708.310. Enforcement by charging order

708.310. If a money judgment is rendered against a partner but not against the partnership, the judgment debtor's interest in the partnership may be applied toward the satisfaction of the judgment by an order charging the judgment debtor's interest pursuant to Section 15028 or 15522 of the Corporations Code.

Comment. Section 708.310 incorporates the charging order provisions of Corporations Code Sections 15028 and 15522. Where the existence of the partnership is not in dispute, the charging order is the usual manner for applying the interest of a partner in the partnership to the satisfaction of a judgment against a judgment debtor who is a partner. See Section 699.720(b) (property not subject to execution); *Evans v. Galardi*, 16 Cal.3d 300, 310, 546 P.2d 313, 128 Cal. Rptr. 25 (1976); *Baum v. Baum*, 51 Cal.2d 610, 335 P.2d 481 (1959). Enforcement pursuant to this section is subject to the general rules concerning the time within which judgments may be enforced. See Chapter 3 (commencing with Section 683.010) of Division 1.

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§ 708.320. Lien of charging order

708.320. (a) Service on the judgment debtor of notice of motion for a charging order on the judgment debtor and on the other partners or the partnership creates a lien on the judgment debtor's interest in the partnership.

(b) If a charging order is issued, the lien created pursuant to subdivision (a) continues under the terms of the order. If issuance of the charging order is denied, the lien is extinguished.

Comment. Section 708.320 is new. Former statutory law did not explicitly provide for a lien of a charging order. The lien of a charging order was recognized in case law, but the time of its creation and its effect were unclear. See *Taylor v. S & M Lamp Co.*, 190 Cal. App.2d 700, 707-12, 12 Cal. Rptr. 323, 329-31 (1961). Section 708.320 establishes the time of creation of the lien by reference to service of notice of motion for the charging order. Cf. *Ribero v. Callaway*, 87 Cal. App.2d 135, 138, 196 P.2d 109 (1948) (charging orders issued on noticed motion). This provision is analogous to the creation of a lien in an examination proceeding under Article 2 (commencing with Section 708.110) by service of the order of examination. See also Section 416.40 (service on partnership). For provisions governing the effect of liens, see Article 1 (commencing with Section 697.110) of Chapter 2.