

Memorandum 80-57

Subject: Study D-300 - Creditors' Remedies (Assignment of Judgments)

The existing law concerning how a judgment is assigned and the consequences of an assignment is unclear. Attached are the portions of the proposed recommendation dealing with this matter. This has not been previously considered by the Commission.

We have made several staff efforts to determine who an "assignee of record" is and how one becomes an "assignee of record." We have been unsuccessful.

Respectfully submitted,

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Executive Secretary

Assignment of Judgments

Existing law concerning how a judgment is assigned and the consequences of an assignment is unclear. The existing statute requires an "assignee of record" to give an acknowledgment of satisfaction if the judgment is satisfied,¹ but it is unclear how a person becomes an "assignee of record" since this matter is not covered by statute. In addition, the Commission has been advised an assignee cannot obtain a writ of execution unless the assignment is a matter of court record,² but existing statutes are silent on this matter and provide no procedures for making the assignment a matter of court record. Finally, priorities between conflicting assignments to bona fide assignees for value "without notice" depend on which assignee first notifies the judgment debtor in writing of the assignment,³ but it is unclear whether the constructive notice of a court record of such an assignment constitutes "notice" to the subsequent assignee.

The proposed law clarifies and improves the law relating to assignments of judgments as follows:

(1) The assignee of a judgment becomes an "assignee of record" by filing an acknowledgment of assignment of the judgment with the court clerk of the court where the judgment is entered.⁴ The content and manner of execution of the acknowledgment of assignment is prescribed by the proposed law.⁵ This fills the gap in existing law.

(2) As between conflicting assignments made to bona fide assignees for value without notice, the assignee first filing an acknowledgment of

1. Section 675.

2. Oral conversation with Carl Olsen, Clerk of the Superior Court, San Francisco.

3. Civil Code Section 955.1.

4. This makes clear when an assignee has the duty to give an acknowledgment of satisfaction of a judgment if the judgment has been satisfied.

5. This provision is consistent with the provision of the proposed law prescribing the contents and manner of execution of an acknowledgment of satisfaction of judgment.

assignment with the court clerk has priority. This changes the rule under existing law that gives such an assignee priority if the assignee first gives notice of the assignment in writing to the judgment debtor.⁶

(3) An assignee of a judgment can obtain a writ of execution or use other remedies to enforce the judgment only if the acknowledgment of assignment has been filed with the court clerk.⁷

(4) Notwithstanding the filing of the acknowledgment of assignment with the court, the judgment debtor is protected if he makes payment to the judgment creditor without notice of the assignment. The filing is not, of itself, notice to the judgment debtor so as to invalidate any payments made by the judgment debtor. This provision is consistent with existing law.⁸

The proposed law does not require the filing of an acknowledgment of assignment with the court clerk in order to accomplish the transfer of the assigned interest. However, the proposed law does make such a filing a significant factor in determining priorities between bona fide assignees for value without notice and in determining when the assignee may obtain a writ of execution or other remedy to enforce the judgment.

6. See Civil Code Section 955.1.

7. This codifies existing practice. See text at note 3, supra.

8. Civil Code Section 955.1.

Code of Civil Procedure

§ 673 (added). Acknowledgment of assignment of judgment

673. (a) An assignee of a right represented by a judgment may become an assignee of record by filing with the clerk of the court which entered the judgment an acknowledgment of assignment of judgment. An assignee of a judgment is not entitled to enforce the judgment under Title 9 (commencing with Section 680.010) unless an acknowledgment of assignment of judgment to that assignee has been filed under this section.

(b) An acknowledgment of satisfaction of judgment shall contain all of the following:

- (1) Title of the court.
- (2) The cause and number of the action.
- (3) The names of the judgment creditor and the judgment debtor.
- (4) The date of entry of the judgment and where it was entered on the records of the court.

(5) A statement describing the right represented by the judgment that is assigned to the assignee.

- (6) The name and mailing address of the assignee.

(b) The acknowledgment of assignment of judgment shall be made in the manner of an acknowledgment of a conveyance of real property.

(c) The acknowledgment of assignment of judgment shall be executed and acknowledged by the judgment creditor or by the prior assignee of record if there is one.

Comment. Section 673 is a new provision that prescribes the content and manner of execution of an acknowledgment of assignment of judgment. Although prior law referred to an "assignee of record" (see reference in former Section 675) (satisfaction of judgment), it was unclear how a person became an "assignee of record" since this matter was not covered by the statutes. Section 673 fills this gap. In addition, the Commission has been advised that the former practice was that an assignee of a judgment was not permitted to obtain a writ of execution unless that assignment was made a matter of record; the second sentence of subdivision (a) of Section 673 codifies this requirement.

The required contents and manner of execution of the acknowledgment of assignment of judgment are comparable to those specified in Section 724.060 (contents and manner of execution of acknowledgment of satisfaction of judgment).

The filing of the acknowledgment of assignment with the court under this section does not, of itself, give notice to the judgment debtor so

as to invalidate any payments made by the judgment debtor to the judgment creditor or a prior assignee of record. See Civil Code Section 954.5(c). The filing with the court may, however, affect the priorities between conflicting assignments. See Civil Code Section 954.5(b).

Nothing in Section 673 requires the filing of the acknowledgment of assignment of judgment with the court in order to accomplish the transfer of the interest in the judgment, but the failure to file precludes the use by the assignee of a writ of execution and other enforcement remedies and may affect the priorities where there are conflicting assignments of the same judgment.

10173

§ 954.5 Civil Code (added). Judgments; assignments; notice

954.5. (a) Subject to subdivisions (b) and (c), a transfer of a right represented by a judgment excluded from coverage of Division 9 of the Commercial Code by Section 9104(h) of the Commercial Code shall be deemed perfected as against third persons upon there being executed and delivered to the transferee an assignment thereof in writing.

(b) As between bona fide assignees of the same right for value without notice, the assignee first filing an acknowledgment of assignment of judgment with the court as provided in Section 673 of the Code of Civil Procedure has priority.

(c) The filing of an acknowledgment of assignment of the judgment with the court under Section 673 of the Code of Civil Procedure is not, of itself, notice to the judgment debtor so as to invalidate any payments made by the judgment debtor to the judgment creditor or to a prior assignee of record.

Comment. Section 954.5 continues the substance of a former portion of Section 955.1, but Section 954.5 changes prior law concerning the priorities of conflicting bona fide assignees of the same judgment for value without notice; such an assignee who first files an acknowledgment of assignment of judgment under Code of Civil Procedure Section 673 obtains a priority over other assignees of the same judgment. Under prior law formerly found in Section 955.1, the good-faith, for-value, without notice, assignee who first gave notice of the assignment in writing to the judgment debtor had priority, but it was unclear whether the filing with the court by an assignee of the assignment of the judgment (making the assignee an "assignee of record") gave the filing assignee a priority by giving constructive notice of the assignment to a later bona fide assignee of the same right for value.

Nothing in Section 954.5 requires the filing of an acknowledgment of assignment of judgment with the court in order to accomplish the transfer of the interest in the judgment; the section merely covers the priorities between conflicting bona fide assignees of the same right for value without notice and protects the judgment debtor who pays the judgment creditor without notice of the assignment.

10914

§ 955 (technical amendment). Nonnegotiable instruments; transfer; notice

955. A transfer other than one intended to create a security interest (Section 9102(1)(a) of the ~~Uniform~~ Commercial Code) of a nonnegotiable instrument which is otherwise negotiable within Division 3 of the ~~Uniform~~ Commercial Code but which is not payable to order or to bearer and a sale of accounts ~~;~~ ~~contract rights~~ or chattel paper as part of a sale of the business out of which they arose (Section 9104(f) of the ~~Uniform~~ Commercial Code) shall be deemed perfected against third persons when such property rights have been endorsed or assigned in writing and in the case of such instruments or chattel paper delivered to the transferee, whether or not notice of such transfer or sale has been given to the obligor; but such endorsement, assignment or delivery ~~shall~~ is not ~~be~~, of itself, notice to the obligor so as to invalidate any payments made by him to the transferor.

Comment. Section 955 is amended to delete the reference to "contract rights," since that term is no longer used in the Commercial Code.

10919

§ 955.1. General intangibles; assignments; priorities; notice to obligor

955.1. (a) Except as provided in Sections 954.5 and 955 and subject to subdivision (b) and (c), a transfer other than one intended to create a security interest (Section 9102(1)(a) of the ~~Uniform~~ Commercial Code) of any general intangible (Section 9106 of the ~~Uniform~~ Commercial Code) consisting of any right to payment ~~and the transfer of any right represented by a judgment (Section 9104(h) of the Uniform Commercial Code)~~ and any transfer of accounts ~~;~~ ~~contract rights~~ or chattel paper excluded from the coverage of Division 9 of the ~~Uniform~~

Commercial Code by Section 9104(f) thereof shall be deemed perfected as against third persons upon there being executed and delivered to the transferee an assignment thereof in writing .

(b) ~~;~~ ~~provided, however, that as~~ As between bona fide assignees of the same right for value without notice, the assignee first giving notice thereof to the obligor in writing ~~shall have~~ has priority .

(c) ~~;~~ ~~but such~~ Such an assignment ~~shall~~ is not ~~be~~, of itself, notice to the obligor so as to invalidate any payments made by him to the transferor.

Comment. Section 955.1 is amended to delete the reference to "contract rights," since that term is no longer used in the Commercial Code. The reference to a "right represented by a judgment" is deleted because this provision is superseded by Section 954.5. See that section and Comment thereto.