

#D-300

7/11/80

Memorandum 80-58

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

Attached to this memorandum is a copy of the portion of the enforcement of judgments recommendation relating to property subject to enforcement. This comprises Article 1 (commencing with Section 695.010) of Chapter 1 of Division 2. The explanatory text for this statute is included with the material attached to Memorandum 80-60. The substance of this statute has been approved, but the Commission has not considered this version of the draft. We have no new policy issues to raise.

Respectfully submitted,

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DIVISION 2. ENFORCEMENT OF MONEY JUDGMENTS

CHAPTER 1. GENERAL PROVISIONS

Article 1. Property Subject to Enforcement
of Money Judgment

§ 695.010. Property subject to enforcement of money judgment

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 (community property). See also Section 697.____ (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 of a money judgment under this division. See Gov't Code §§ 965.5, 970.1. Property that is not transferable is generally not subject to enforcement. See Section 695.020. 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 not subject to enforcement by other statutes. 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 699.720 (property not subject to execution but subject to other enforcement procedures).

CROSS-REFERENCES

Defined terms

Judgment debtor § 680. ____
Money judgment § 680. ____
Property § 680. ____

§ 695.020. Community property

695.020. If the judgment debtor is a married person, property of the community is subject to enforcement of a money judgment as provided in Section 5120.010 of the Civil Code.

Comment. Section 695.020 makes clear that community property, including the interest of a nondebtor spouse, is generally subject to enforcement of a money judgment. For exceptions to this rule, see Civil Code Section 5120.010 and the Comment thereto.

CROSS-REFERENCES

Defined terms

Judgment debtor § 680.____

Liability of marital property Civil Code §§ 5120.005-5120.060.

Note. Section 5120.010 is part of the Commission's Tentative Recommendation Relating to Liability of Marital Property for Debts (June 1980).

§ 695.030. Property not subject to enforcement of money judgment

695.030. (a) Property of the judgment debtor that is not transferable is not subject to enforcement of a money judgment.

(b) Notwithstanding subdivision (a), the following property is subject to enforcement of a money judgment:

(1) A leasehold subject to a provision precluding transfer.

(2) The judgment debtor's interest in a spendthrift trust, to the extent provided by law.

Comment. 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) (chase in action founded upon tort subject to creditor's suit only if assignable by the law of the state).

Subdivision (b) 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). See also 7 B. Witkin, Summary of California Law Trusts §§ 94-99, at 5452-60 (8th ed. 1974).

CROSS-REFERENCES

Defined terms

Judgment debtor § 680.____

Money judgment § 680.____

Property § 680.____

Spendthrift trust Civil Code § 859

§ 695.040. Release of property not subject to enforcement

695.040. Property that is not subject to enforcement of a money judgment may 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 Section 703.510(b) (release of property exempt without making a claim).

CROSS-REFERENCES

Defined terms

Money judgment § 680.____

Property § 680.____