

Memorandum 80-91

Subject: Study D-300 - Enforcement of Judgments (Wage Garnishment)

At the last meeting, the Commission discussed how the proposed Enforcement of Judgments Law might provide some additional protection to a judgment debtor who is not qualified to claim a homestead exemption.

The federal Bankruptcy Act provides a separate set of federal exemptions in bankruptcy, and the bankrupt can elect either the federal exemptions or the California exemptions. The Bankruptcy Act authorizes a state to make the state exemptions the exclusive exemptions in bankruptcy, in which case the federal exemptions are not available. A number of states have made their state exemptions the exclusive exemptions. The Commission has previously determined that it would not recommend that California exercise its option to make the California exemptions the exclusive exemptions in a proceeding under the federal Bankruptcy Act. The effect of this decision is to permit the renter in a bankruptcy proceeding to claim the blanket exemption of \$7,500 under the federal Bankruptcy exemptions for property that is not otherwise exempt. The homeowner will ordinarily choose to claim the California exemptions in bankruptcy since the dwelling exemption is considerably more than the \$7,500 allowed in the federal exemptions. The Commission decision has been approved as tending to alleviate the discrimination against renters in the California exemption scheme. See Exhibit 1 attached.

The Commission decided at the last meeting to restrict the "common necessities of life" exception which makes the hardship exemption in the wage garnishment law not applicable. Under the Commission's decision, the creditor can not defeat a hardship exemption claim by showing the debt was incurred for the common necessities of life if the judgment debtor is a renter unless the claim is for rent of a dwelling. Attached is a revised draft of the hardship exemption that implements the Commission decision. Also attached is the pertinent portion of the preliminary portion of the recommendation.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

LEGAL AID FOUNDATION OF LOS ANGELES

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September 12, 1980

Law Revision Commission
4000 Middlefield Road
Room D3
Palo Alto, California 94306

ATTENTION: JOHN DeMOULLY

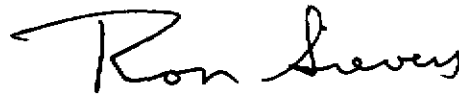
Dear Mr. DeMouilly:

I represent numerous clients who are in financial difficulty. Moreover, I have represented many debtors in regards to their financial problems in the past.

On behalf of my clients I wish to support the Commission's decision recommending that California not exercise its option to bar use of federal exemptions by California debtors in bankruptcy.

I have always felt that renters were discriminated against under California exemption statutes, your decision helps alleviate this problem.

Yours truly,

A handwritten signature in black ink, appearing to read "Ron Sievers". The signature is fluid and cursive, with a large initial "R" and a stylized "S".

RONALD L. SIEVERS
Attorney at Law

RLS:bd

WAGE GARNISHMENT

The proposed law continues the wage garnishment provisions of existing law with one substantive change and several technical changes.¹ The Commission has in the past recommended changes in the amount that can be withheld on a wage garnishment to protect a larger share of the disposable earnings of a debtor with a greater number of dependents,² but the proposed law makes no change in this aspect of existing law.³

The proposed law provides some additional relief to wage earning renters who are unable to take advantage of the generous homestead exemption available under California law.⁴ Existing law permits a judgment debtor to claim as exempt the portion of earnings that is necessary for the support of the judgment debtor and the judgment debtor's spouse and family supported in whole or in part by the judgment debtor.⁵ This hardship exemption is not applicable, however, where the

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1. The technical changes include: (1) the proposed law changes the name "Employees' Earnings Protection Law" to the more descriptive name "Wage Garnishment Law"; (2) the proposed law clarifies but does not change the substance of the existing provisions dealing with the amount of earnings that may be withheld; (3) the proposed law somewhat expands the types of state taxes that are subject to the wage garnishment law.
 2. Recommendations relating to wage garnishment are found in 10 Cal. L. Revision Comm'n Reports 701 (1971); 11 Cal. L. Revision Comm'n Reports 101 (1973), 12 Cal. L. Revision Comm'n Reports 901 (1974); 13 Cal. L. Revision Comm'n Reports 601 (1976); 13 Cal. L. Revision Comm'n Reports 1703 (1976). See also 14 Cal. L. Revision Comm'n Reports 255 (1978).
 3. The Commission recommends that no change be made in the basic withholding scheme in existing law at this time. This decision recognizes the long history of efforts of the Commission to improve the provisions relating to the amount to be withheld on a wage garnishment and the failure of the Legislature to adopt the Commission's recommendations.
 4. The proposed law continues the portion of existing law that affords a homestead exemption in the amount of \$45,000. See the discussion under "Homestead Exemption" infra.
 5. Section 723.051.

debt was incurred for the "common necessities of life."⁶ The proposed law eliminates the common necessities exception in a case where the judgment debtor does not own a dwelling used as the principal residence of the judgment debtor, the spouse or former spouse of the judgment debtor, or the family of the judgment debtor.⁷ The common necessities exception would still apply, however, and the special hardship exception would not be available if the debt was incurred for rent of a dwelling. A dwelling is one of the common necessities of life. But a landlord may be compelled involuntarily to continue to provide housing after a failure to pay rent. This is because if the tenant refuses to vacate the premises voluntarily, an unlawful detainer action will be required to recover possession of the property.

The special hardship exemption affords hardpressed wage earners who do not own homes an alternative to declaring bankruptcy in order to take advantage of the \$7,500 blanket exemption permitted by federal law for property not otherwise exempt.⁸

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6. Common necessities of life include food, clothing, shelter, and medical care--articles or services that may be regarded universally, or substantially so, as necessary to sustain life. See Los Angeles Fin. Co. v. Flores, 110 Cal. App.2d Supp. 850, 243 P.2d 139 (1952).
 7. A judgment debtor may exempt as much as \$45,000 of equity in a dwelling used as the principal residence. See the discussion under "Homestead Exemption" infra.
 8. See 11 U.S.C. § 522(d)(5). The Commission does not recommend providing a blanket exemption from enforcement of money judgments, such as the \$7,500 exemption applicable to any property in bankruptcy, because it is not administratively feasible unless all the debtor's property is before the court, as in bankruptcy proceedings. The availability of a blanket exemption from enforcement of money judgments would turn enforcement proceedings into quasi-bankruptcy proceedings and put an unacceptable administrative burden on the state courts.

706.051. (a) For the purposes of this section, "family of the judgment debtor" includes the spouse or former spouse of the judgment debtor.

(b) The portion of the judgment debtor's earnings which the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor is exempt from levy under this chapter unless one of the following exceptions applies:

(1) The debt was incurred for rent of a dwelling occupied by the judgment debtor or the family of the judgment debtor.

(2) The debt was incurred for other common necessities of life furnished to the judgment debtor or the family of the judgment debtor; but this exception applies only if the judgment debtor owns an interest (excluding a leasehold interest that has an unexpired term of less than 5 years) in real or personal property that is occupied as the principal dwelling of the judgment debtor, the judgment debtor and the family of the judgment debtor, or the family of the judgment debtor. The judgment creditor has the burden of proof to establish that the debt was incurred for the common necessities of life; the judgment debtor has the burden of proof to establish that the judgment debtor does not own an interest in property that would make the exception provided by this paragraph applicable.

(3) The debt was incurred for personal services rendered by an employee or former employee of the judgment debtor.

(4) The order is a withholding order for support under Section 706.030.

(5) The order is one governed by Article 4 (commencing with Section 706.070) (state tax order).

Comment. Section 706.051 continues former Section 723.051 but revises the former provision to provide the renter (who is not eligible to claim a homestead exemption) with an unqualified hardship exemption.

Subdivision (a) of Section 706.051 contains a new definition that is needed to simplify the drafting of the remainder of the section.

The introductory portion of subdivision (b) continues without substantive change the provision of former Section 723.051 that stated the

hardship exemption. Exceptions to the hardship exemption--cases where the exemption is not allowed even though the judgment debtor can show the necessity for exempting additional earnings--are set out in paragraphs (1)-(5).

Paragraphs (1) and (2) of subdivision (b) supersede the exception for "common necessities of life" provided by former Section 723.051. Paragraphs (1) and (2) break down the former common necessities of life exception into two separate exceptions, one for rent for a dwelling and the other for the other common necessities of life. If the debt was incurred for rent as described in paragraph (1), the exemption provided by Section 706.051 is not available. If the debt was incurred for one of the other common necessities of life, the exemption is not available if the judgment debtor owns a dwelling that is used as the principal residence of the judgment debtor, spouse or former spouse, or the family of the judgment debtor. Thus, where the debt was incurred for one of the common necessities of life, the judgment debtor is entitled to the exemption only if the judgment debtor proves both that the earnings sought to be exempt are necessary for support and also that the judgment debtor does not own such a dwelling. If the debt is incurred for dwelling rent described in paragraph (1), the judgment debtor is not entitled to the exemption under any circumstances, even though dwelling rent is one of the common necessities of life. A debt for dwelling rent is given special treatment under Section 706.051 in recognition that the landlord may be compelled involuntarily to continue to provide the housing after a failure to pay the rent. This is because if the tenant refuses to vacate the premises voluntarily, an unlawful detainer action will be required to recover possession of the property.

Paragraphs (3)-(5) of subdivision (b) continue the substance of portions of former Section 723.051. For a special provision applicable where the earnings withholding order is for the collection of delinquent support payments, see Section 706.052. See also Sections 706.075 (administrative hearing for possible relief from hardship in connection with a withholding order for taxes), 706.076(e) (amount of court issued withholding order for taxes).