

Memorandum 81-80

Subject: Study D-300 - Enforcement of Judgments (AB 707)

At the last meeting, the Commission directed the staff to redraft the exemption for household furnishings. This exemption has been redrafted to read as follows:

704.020. (a) Household furnishings, appliances, provisions, wearing apparel, and other personal effects ~~ordinarily and reasonably necessary for an average household~~, are exempt in the following cases:

~~(a)~~ (1) If ordinarily and reasonably necessary to, and personally used or procured for use by the judgment debtor and members of the judgment debtor's family at the judgment debtor's principal place of residence.

~~(b)~~ (2) Where the judgment debtor and the judgment debtor's spouse live separate and apart, if ordinarily and reasonably necessary to, and personally used or procured for use by the spouse and members of the spouse's family at the spouse's principal place of residence.

(b) In determining whether an item of property is "ordinarily and reasonably necessary" under subdivision (a), the court shall take into account both of the following:

(1) The extent to which the particular type of item is ordinarily found in a household.

(2) Whether the particular item has extraordinary value as compared to the value of items of the same type found in other households.

The Comment to Section 704.020 would be revised to read:

Comment. Section 704.020 supersedes the first sentence of former Section 690.1 and makes clear that the exemption applies to a second household where the spouses live separate and apart. Section 704.020 continues the ordinarily and reasonably necessary standard but includes a new provision in subdivision (b) which is designed to permit the creditor to reach an item such as an antique having extraordinary value or an extraordinarily valuable piano or painting ~~limits the exemption to items that are necessary for the average household~~. ~~This limitation is intended to eliminate the unfairness inherent in the "station in life" test as applied~~ Subdivision (b) is intended to change the result in cases such as Independence Bank v. Heller, 275 Cal. App.2d 84, 79 Cal. Rptr. 868 (1969), and Newport Nat'l Bank v. Adair, 2 Cal. App.3d 1043, 83 Cal. Rptr. 1 (1969).

Respectfully submitted,

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Executive Secretary