

Memorandum 82-66

Subject: Study D-300 - Enforcement of Judgments (Assembly Bill 2332--
Prejudgment Attachment)

Assembly Bill 2332 was introduced to effectuate the Commission's recommendation relating to attachment. A copy of this recommendation is attached.

The State Bar Subcommittee on Debtor/Creditor Relations has advised us that it has a number of technical suggestions and one major substantive objection relating to the Commission's recommendation. We hope to have a written report from the State Bar Subcommittee which we can provide you prior to the May meeting.

This memorandum presents for Commission consideration the substantive objection of the State Bar Subcommittee. The objection is to the recommended provision which would permit the defendant to obtain the release of the attachment lien on his or her dwelling at any time prior to judgment without regard to the value of the dwelling. This matter is discussed on pages 709-710 of the attached recommendation. The recommended statutory provision is set out on the top of page 755 of the recommendation.

The recommended legislation provides two protections for a dwelling:

(1) The recommended legislation includes a provision which permits release of the attachment lien, without regard to the value of the dwelling. This is the provision to which objection is made.

(2) The recommended legislation changes existing law to provide that an exemption for real property may be claimed at any time before judgment. (Existing law provides that an exemption is generally waived if the defendant does not claim it under the applicable procedure within the time allowed.)

These two provisions were intended to provide protection for a dwelling in case the dwelling is attached.

The State Bar Section is not alone in its objection to the provision that permits release of a dwelling without regard to its value. We have been advised by a representative of the banks that he is recommending that the California Bankers Association also object to this provision. Neither the State Bar Section nor the banks object to the provision that permits a claim of an exemption for real property at any time before

judgment, thereby avoiding the possible waiver of the exemption by inadvertent failure to claim the exemption within the time provided by existing law.

The staff recommends that the recommended legislation be revised to remove the provision objected to by the State Bar Section and the banks. The recommended legislation will still benefit defendants, because it will still include the provision to protect against inadvertent waiver of the dwelling exemption.

Respectfully submitted,

John H. DeMouilly
Executive Secretary