

Memorandum 94-17

Decennial Review of Exemptions from Enforcement of Money Judgments

The Commission is charged with the responsibility of reviewing the dollar amount of debtors' exemptions under the Enforcement of Judgments Law every 10 years and recommending any changes in amounts "that appear proper." See Code Civ. Proc. § 703.120(a). The 10-year period runs from July 1, 1983, the operative date of the Enforcement of Judgments Law. The Commission's should prepare a report on this matter, whether or not it recommends any legislation, before the end of 1994. This memorandum presents background material on the exemptions and commentary of interested persons, as a basis for commencement of the Commission's study.

This memorandum also notes exemption issues raised by commentators. Note that the Commission's authority is not limited to consideration of exempt dollar amounts. Code of Civil Procedure Section 703.120(b) makes clear that the duty to make a decennial review of exempt amounts does not limit the Commission's authority to "maintain a continuing review of and submit recommendations concerning enforcement of judgments." The Commission is authorized to study many aspects of creditors' remedies law in its annual resolution to continue authority. See 1993 Cal. Stat. Res. Chs. 31, 96.

Attached to this memorandum are the following exhibits:

<i>Item</i>	<i>Exhibit pages</i>
1. Personal Property Exemptions (Code Civ. Proc. §§ 704.010-704.120)	1-18
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Background

The Enforcement of Judgments Law, operative July 1, 1983, was enacted on Commission recommendation. Part of that study involved modernizing the exemption statutes. Exemptions are necessary to protect an amount of property sufficient to support the judgment debtor and the judgment debtor's family and to facilitate the financial rehabilitation of the judgment debtor. See, generally, *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001, 2075-100 (1980); *1982 Creditors' Remedies Legislation*, 16 Cal. L. Revision Comm'n Reports 1001, 1079-109 (1982).

Exemptions based on need or on the type of property are immune from inflation and price changes, although overly specific exemptions can become obsolete over time. Exemptions in a fixed dollar amount are obviously subject to degradation as the purchasing power of a dollar shrinks. The Commission dealt with these issues when preparing the Enforcement of Judgments Law. Exemptions were modernized and generalized, and some fixed amount exemptions were increased to make some adjustment for the change in the value of the dollar. For example, the motor vehicle exemption was \$500; the Commission recommended that it be doubled to \$1000; and as finally enacted, the exemption was set at \$1200, probably for conformity with the federal bankruptcy exemption. A new dollar amount was set for jewelry, heirlooms, and works of art (\$2500) which had been governed by a much criticized station-in-life test under prior law.

Exemptions in fixed dollar amounts have the virtue of certainty and help prevent abuse that can occur where specific items of property are exempt without dollar limits. On the other hand, legislatures have historically been slow to adjust exempt amounts. The California savings and loan exemption in 1901 was \$1000 when the dollar was worth about seven times what it was in 1980. In addition, the law in 1980 provided a \$1500 credit union account exemption. In recognition of the history of these exemptions and the politics of the situation, in 1981 the Commission initially recommended addition of a \$250 bank account exemption and the reduction of the other exemptions by half. Even this failed in the legislature, resulting in a smashing success for the creditors' lobby: the special deposit account exemptions were abolished, leaving only the social security direct deposit exemption. However, debtors were given some protection by a new exemption for earnings paid within the previous 30 days, and a rule permitting tracing of exempt amounts. See Section 704.070.

Having been through the process of trying to determine an appropriate level for exemptions, such as for motor vehicles, tools of the trade, earnings, deposit accounts, homesteads, and other types of property, the Commission considered recommending enactment of an automatic scheme for adjusting dollar amounts. An early version of Section 104 in the Bankruptcy Code had provided for the automatic adjustment of exemptions every two years. And Section 2 of the Uniform Exemptions Act provides for adjustments biennially where there has been a 10% change. Ultimately, the Commission abandoned this attempt and recommended a section requiring a review of exempt amounts every 10 years. This approach may have been inspired by the then new Bankruptcy Code, which requires the Judicial Conference of the United States to transmit a recommendation to Congress and the President every six years for the “uniform percentage adjustment of each dollar amount” of federal bankruptcy exemptions. See 11 U.S.C. § 104.

Exemptions Subject to Dollar Amount

The Enforcement of Judgments Law provides the following dollar amount exemptions (for the full statutory text, see relevant sections in Exhibit pp. 1-38):

CCP	Type of Property	Amount	Notes
§ 704.010	Motor vehicle	\$1200	90-day proceeds exemption
§ 704.030	Residential repair materials	\$1000	
§ 704.040	Jewelry, heirlooms, art	\$2500	
§ 704.060	Tools of trade, business, or profession	\$2500	Additional \$2500 exemption for tools used by spouse; 90-day proceeds exemption
§ 704.080	Social Security direct deposits	\$500/\$750	One payee/two payees
§ 704.090	Inmate trust funds	\$1000	
§ 704.100	Life insurance loan value	\$4000	Additional \$4000 exemption for spouse

Recommendations to the Commission

Both the Debtor/Creditor Relations and Bankruptcy Committee of the Business Law Section and the Legal Services Section of the State Bar have recommended that exempt amounts be increased. (See Exhibit pp. 59-67.) The Legal Services Section recommends that all personal property exempt amounts (Article 3 exemptions) be increased by 54% (their derivation of the increase in

cost of living from the California Statistical Abstract) and rounded to the nearest \$50. This proposal would make the following changes:

CCP	Type of Property	Amount	Legal Services Proposal
§ 704.010	Motor vehicle	\$1200	\$1850
§ 704.030	Residential repair materials	\$1000	\$1550
§ 704.040	Jewelry, heirlooms, art	\$2500	\$3850
§ 704.060	Tools of trade, business, or profession	\$2500	\$3850
§ 704.080	Social Security direct deposits	\$500/\$750	\$770/\$1150
§ 704.090	Inmate trust funds	\$1000	\$1550
§ 704.100	Life insurance loan value	\$4000	\$6150

The Debtor/Creditor Relations and Bankruptcy Committee did not suggest any specific amounts, except to suggest that the Social Security direct deposit exemption (\$500/\$750) should at least be equal to the inmate trust fund exemption (currently \$1000).

Neither State Bar Section suggested any change in the homestead exemption, although the Debtor/Creditor Relations and Bankruptcy Committee intimated that it might have made some suggestions on the homestead exemption amount if there had been sufficient time for adequate analysis and debate.

Bankruptcy Judge Alan M. Ahart suggests that the federal-like bankruptcy wildcard exemption in Section 703.140(b)(1) & (5) be raised from \$7900 (\$7500 + \$400) to \$15,000 or so. (See Exhibit p. 54.)

N. James Richardson proposes that the motor vehicle exemption be raised 40% — from \$1200 to \$1700 — to reflect the increase in used car prices since 1982. (See Exhibit pp. 55-56.) Mr. Richardson bases his recommendation on the CPI new and used car price tables which follow his letter. (See Exhibit pp. 57-58.)

Changes in Exempt Amounts Since 1983

Legislative activity in the exemption area continues historical patterns:

Homestead. The homestead exemption is usually the focus of legislative attention in the exemption field because of the obvious importance of the home, the high level of the exemption, and the existence of interest groups that can effectively sponsor legislation. Under the Enforcement of Judgments Law as enacted in 1982, the basic homestead exemption in Section 704.730 was \$30,000 (for a single resident or where all residents were debtors) with a special exemption of \$45,000 for family units and persons over 65. In 1986, a \$60,000

exemption was added where a resident was over 65 or disabled. In 1988, the third tier exemption was increased from \$60,000 to \$75,000. In 1990, all three tiers were increased, to \$50,000, \$75,000, and \$100,000, respectively. The basic homestead exemption has been increased so that it is approximately the same as it was in 1982, measured by the home ownership component of the CPI for western states. (See Exhibit p. 50 — note that the factor should be applied to the 1983 exemptions, not the exemption as raised in 1990.) Using the 100/166 adjustment, the basic \$30,000 exemption would be \$49,800 and the second tier \$45,000 exemption would be \$74,700. The third tier, which was set at \$60,000 in 1986, if subject to the same factor, would be \$99,600.

Other exemptions. No other exemptions have been adjusted in amount since the enactment of the Enforcement of Judgments Law, nor have any new exemptions been added. A cursory review of bills introduced since 1983 does not even reveal any attempts to revise any other exemptions.

Relationship to Bankruptcy Exemptions

The only significant new wrinkle in the exemption statutes (other than revisions of the homestead exemption) was the enactment of the special California set of bankruptcy exemptions in Section 703.140. California has opted out of the federal exemption scheme (as permitted by 11 U.S.C. § 522(b)(1), see Exhibit p. 46), but has largely readopted the federal exemptions for bankruptcy purposes in Section 703.140(b). Spouses filing a joint bankruptcy petition may jointly choose either the regular exemptions from enforcement of a money judgment or the federal-like set in Section 703.140(b). If an individual petition is filed by a spouse, only the exemptions from enforcement of a money judgment may be used unless both spouses waive the right to claim those exemptions, in which case the federal-like exemptions under Section 703.140(b) are available. This convoluted structure was the third, and only successful, attempt to devise a way to force spouses to claim one set of exemptions. Otherwise, one spouse would claim the state exemptions to take advantage of the homestead exemption while the other spouse would claim the federal exemptions to pick up the cash amounts. The problem would not have been so dramatic if there were not such a great difference between the state and federal homestead amounts and if the state exemptions did not omit a wildcard exemption.

It is unfortunate that a decision on whether to petition for discharge in bankruptcy should be determined by the availability of a set of exemptions that

is not available to judgment debtors generally. The law would be vastly improved if the same set of exemptions applied to enforcement of judgments and in bankruptcy. This could be achieved if the desirable federal exemptions — desirable from a policy perspective — were incorporated into California law. Then the state could completely opt out of the federal exemptions. The major factor would be a homestead substitute exemption so that renters would be able to shield at least some assets just as homeowners can shield large amounts.

The Legal Services Section of the State Bar has recommended that the federal-like exemptions in Section 703.140(b) be doubled in amount. (See Exhibit pp. 61-62.) The Committee argues that this simply anticipates changes that “quite likely” will be made “this year or in the next year or two” as proposed in H.R. 1998. The staff would be concerned about doubling these exemptions in *anticipation* of action on the federal level. Our understanding is that there have been several bills in Congress since the mid-1980’s that attempted to make adjustments in the exempt amounts, but without success. What would be the effect of having a 2 × federal-like set of exemptions? Perhaps it would be possible to anticipate federal action, but make the increased levels contingent on passage of a similar federal increase.

On the other hand, if the general exemptions are to be increased, it may be necessary to increase the federal-like set just to keep them in step. In this view, what Congress does is not directly relevant — after all, California has opted out of the federal scheme. Depending on what the Commission decides to recommend concerning exemptions generally, it may be appropriate to adopt the Legal Services Section recommendation, but not for the purpose of keeping in step with anticipated federal legislation.

Automatic Adjustment of Exemptions Based on Changes in Cost of Living

Hundreds of California statutes provide for some adjustment based on the cost of living — a search on LawDesk finds over 300 statutes referring to cost of living or the Consumer Price Index. The staff has not exhaustively researched these statutes, but it appears that most of them depend on an existing regulatory authority with jurisdiction over the affected payment while others provide for submission of the determined adjustment for legislative approval.

There is no existing regulatory authority over exemptions, although it would be possible to set the base level of exemptions in the statutes and impose a duty on the Judicial Council or some other body to adjust the exempt amount, by rule

or regulation. The statute would set the rounding factor (e.g., to the nearest \$100 or the next lowest \$100) and the frequency (e.g., every four years). Obviously there would be opposition to this type of scheme from creditor interests since the dampening effect of the existing scheme would be lost.

There is also the question as to which CPI should be used. A variety of CPI descriptions exist: the California Consumer Price Index, the “all Urban Consumers” CPI, a local CPI, or simply the “Consumer Price Index.” There are some standard definitions that could be adopted (such as Rev. & Tax. § 2212). These are not major problems, however, and could be worked out if the Commission wishes to consider an automatic adjustment scheme.

An automatic cost of living adjustment need not apply to all exemptions. An obvious candidate for omission is the homestead exemption which has received periodic legislative attention and as a result has been adjusted upward as discussed above. There may be other exemptions that could appropriately be omitted from an automatic adjustment. If the Commission is interested in pursuing this type of scheme, the staff will consider these issues in detail.

Wildcard Exemption

A different way to approach the cost of living issue is to provide a new “wildcard” exemption. Rather than increasing exemptions by some multiplier, debtors could be provided with a monetary exemption that can be used for any type of property and combined with other exemptions. Thus, for example, \$2000 wildcard could be added to the tools of the trade exemption to protect tools worth \$4500. Or a motor vehicle with the grand value of \$3200 could be saved.

Seventeen states and the federal Bankruptcy Code provide a wildcard exemption. (See the chart at Exhibit pp. 40-41.) The maximum is \$5500 (Maryland) and the minimum is \$100 (Iowa). The federal bankruptcy wildcard is \$400, which is also the most common amount, although \$500 is the median. In addition, many states provide a homestead substitute to help ameliorate the discrimination against the renter. Twelve states provide from \$500 to \$7500 to debtors who do not claim a homestead. (Note that the federal homestead substitute is also a wildcard since the excess can be used to exempt any property.)

Obviously, addition of a new wildcard exemption or homestead substitute exemption would be opposed by creditor groups. And if the lesson the Commission learned in attempting to revise the deposit account exemption in

1981-82 is still valid, it might be thought foolhardy to even suggest consideration of this type of exemption. However, if it is likely that exemptions will be raised, a wildcard exemption might be more palatable to creditors if it is a lesser amount than the cumulative increases in the motor vehicle, tools of the trade, jewelry, heirlooms, and works of art, and life insurance loan value exemptions.

Homestead and Other Exemption Issues

The Legal Services Section also raises two homestead issues that are not directly related to exempt amounts. (See Exhibit p. 65.) Bankruptcy Judge Alan M. Ahart has also made a suggestions for limiting use of the declaration of homestead. (See Exhibit pp. 53-54.) Judge Ahart also suggests some limitations on one-person corporate pension plans.

These issues will be considered if the Commission decides to move forward with a debtor-creditor bill in the next legislative session.

Transitional Issues

The Enforcement of Judgments Law anticipated the transitional issue involved in changing exempt amounts. Section 703.050 applies the exemption in effect at the time of the attachment of the creditor's first lien on the property in question. In addition, Section 703.060 reserves the right of the Legislature to change exemptions and declares that contracts are deemed to have been made in recognition of the state's power to repeal, alter, and add statutes concerning liens, exemptions, and enforcement. This should deal with any transitional issues, although the staff will remain alert to any new problems of this nature. Specifically, there may be new issues in the bankruptcy context if the exemptions in Section 703.140(b) are revised.

Staff Recommendations

Proceeding from the assumption that the exemptions were set at an appropriate level when the Commission completed its work on the Enforcement of Judgments Law, it is clear that the personal property exemptions are now too low, as a result of the shrinking purchasing power of the dollar. Exemptions for personal property should be increased by an amount reflecting the appropriate cost of living indicator. The homestead exemption has been increased and receives occasional legislative attention, as discussed above — the staff does not recommend changing the homestead exemption amount.

The Commission should consider increasing the exemption amounts for personal property (Article 3 exemptions) by a factor of 1.5, 1.67, or 2, selectively or across the board. The staff is reluctant to suggest doubling the California federal-like bankruptcy exemptions before the federal exemptions have been doubled. The impact of this type of change needs to be given further study before it can be recommended. The operative date of any such change could be made contingent on passage of similar federal legislation.

The Commission should consider addition of a wildcard or homestead substitute exemption, possibly in place of across-the-board increases of monetary amounts.

Despite the appeal of an automatic exemption adjustment based on cost of living changes meeting a certain minimum level, the staff (somewhat reluctantly) is not pushing such a scheme. But if the Commission is interested in pursuing the matter, the staff could develop some proposals for further consideration.

Other exemption issues that have been raised by commentators should be given further consideration with a view toward making some additional procedural revisions in a bill in the 1995 legislative session, assuming that the Commission approves a bill on some aspect of debtor-creditor law. It would be of particular benefit if the confusion between the “automatic” homestead and the “declared homestead” statutes could be eliminated.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

Exhibit

Personal Property Exemptions in the Enforcement of Judgments Law

(Code Civ. Proc. §§ 704.010-704.210)

Article 3. Exempt Property

§ 704.010. Motor vehicles

704.010. (a) Any combination of the following is exempt in the amount of one thousand two hundred dollars (\$1,200):

(1) The aggregate equity in motor vehicles.

(2) The proceeds of an execution sale of a motor vehicle.

(3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

(b) Proceeds exempt under subdivision (a) are exempt for a period of 90 days after the time the proceeds are actually received by the judgment debtor.

(c) For the purpose of determining the equity, the fair market value of a motor vehicle shall be determined by reference to used car price guides customarily used by California automobile dealers unless the motor vehicle is not listed in such price guides.

(d) If the judgment debtor has only one motor vehicle and it is sold at an execution sale, the proceeds of the execution sale are exempt in the amount of one thousand two hundred dollars (\$1,200) without making a claim. The levying officer shall consult and may rely upon the records of the Department of Motor Vehicles in determining whether the judgment debtor has only one motor vehicle. In the case covered by this subdivision, the exemption provided by subdivision (a) is not available.

Added Stats 1982 ch 1364 § 2, operative July 1, 1983.

Comment. Section 704.010 supersedes subdivisions (a), (d), and (e) of former Section 690.2.

Subdivision (a) increases the motor vehicle exemption from \$500 to \$1,200, which is the same amount as is provided in the Bankruptcy Code. See 11 U.S.C. § 522(d)(2) (Supp. III 1979). Paragraph (1) of subdivision (a) applies the exemption to the judgment debtor's total equity in motor vehicles. Paragraph (2) continues the exemption for execution sale proceeds provided by former Section 690.2(e). Paragraph (3) provides a new exemption for insurance proceeds. *Cf. Houghton v. Lee*, 50 Cal. 101, 103 (1875) (exemption of proceeds from insurance of homestead).

Subdivision (b) continues the exemption period of former Section 690.2(e).

1 Subdivision (c) continues a portion of former Section 690.2(a).

2 Subdivision (d) supersedes a portion of former Section 690.2(d) and makes clear that an
3 exemption of proceeds is allowed without a claim where there is only one motor vehicle. See
4 also Section 703.030 (waiver of exemption). Section 701.810 requires distribution of the
5 exempt proceeds to the judgment debtor before any distribution is made to the judgment
6 creditor. See also Section 701.620 (sale price must exceed proceeds exemption).

7 **§ 704.020. Household furnishings and personal effects**

8 704.020. (a) Household furnishings, appliances, provisions, wearing apparel,
9 and other personal effects are exempt in the following cases:

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

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

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

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

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

24 (c) If an item of property for which an exemption is claimed pursuant to this
25 section is an item of the type ordinarily found in a household but is determined
26 not to be exempt because the item has extraordinary value as compared to the
27 value of items of the same type found in other households, the proceeds obtained
28 at an execution sale of the item are exempt in the amount determined by the court
29 to be a reasonable amount sufficient to purchase a replacement of ordinary value
30 if the court determines that a replacement is reasonably necessary. Proceeds
31 exempt under this subdivision are exempt for a period of 90 days after the
32 proceeds are actually received by the judgment debtor.

33 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

34 **Comment.** Section 704.020 supersedes the first sentence of former Section 690.1 and
35 makes clear that the exemption applies to a second household where the spouses live separate
36 and apart. Section 704.020 continues the ordinarily and reasonably necessary standard but
37 includes a new provision in subdivision (b) which is designed to permit the creditor to reach
38 an item such as an antique having extraordinary value or an extraordinarily valuable piano or
39 painting. Subdivision (b) is intended to change the result in cases such as *Independence Bank*
40 *v. Heller*, 275 Cal. App. 2d 84, 70 Cal. Rptr. 868 (1969), and *Newport Nat'l Bank v. Adair*, 2
41 Cal. App. 3d 1043, 83 Cal. Rptr. 1 (1969). Subdivision (c) provides a new limited proceeds
42 exemption. See also Sections 701.620 (sale price must exceed proceeds exemption), 701.810
43 (distribution of proceeds of execution sale).

1 **§ 704.030. Materials for repair or improvement of dwelling**

2 704.030. Material that in good faith is about to be applied to the repair or
3 improvement of a residence is exempt if the equity in the material does not exceed
4 one thousand dollars (\$1,000) in the following cases:

5 (a) If purchased in good faith for use in the repair or improvement of the
6 judgment debtor's principal place of residence.

7 (b) Where the judgment debtor and the judgment debtor's spouse live separate
8 and apart, if purchased in good faith for use in the repair or improvement of the
9 spouse's principal place of residence.

10 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

11 **Comment.** Section 704.030 continues a portion of former Section 690.17 and makes clear
12 that a second exemption is available where the spouses live separate and apart.

13 **§ 704.040. Jewelry, heirlooms, works of art**

14 704.040. Jewelry, heirlooms, and works of art are exempt to the extent that the
15 aggregate equity therein does not exceed two thousand five hundred dollars
16 (\$2,500).

17 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

18 **Comment.** Section 704.040 supersedes portions of former Section 690.1 which provided
19 an exemption for wearing apparel, furnishings, and works of art "of or by the debtor and his
20 resident family."

21 **§ 704.050. Health aids**

22 704.050. Health aids reasonably necessary to enable the judgment debtor or
23 the spouse or a dependent of the judgment debtor to work or sustain health, and
24 prosthetic and orthopedic appliances, are exempt.

25 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

26 **Comment.** Section 704.050 supersedes former Section 690.5 which exempted prosthetic
27 and orthopedic appliances used by the debtor. Section 704.050 is based on Section 5(2) of
28 the Uniform Exemptions Act (1976). The requirement that health aids be reasonably
29 necessary to enable the individual to work or sustain health permits the exemption of such
30 items as a wheel chair for a person unable to walk to work or an air conditioner for a person
31 afflicted with asthma, but does not permit the exemption of a swimming pool, sauna, bicycle,
32 or golf clubs merely because their use is necessary to sustain good health.

33 **§ 704.060. Personal property used in trade, business, or profession**

34 704.060. (a) Tools, implements, instruments, materials, uniforms, furnishings,
35 books, equipment, one commercial motor vehicle, one vessel, and other personal
36 property are exempt to the extent that the aggregate equity therein does not
37 exceed:

38 (1) Two thousand five hundred dollars (\$2,500), if reasonably necessary to and
39 actually used by the judgment debtor in the exercise of the trade, business, or
40 profession by which the judgment debtor earns a livelihood.

1 (2) Two thousand five hundred dollars (\$2,500), if reasonably necessary to and
2 actually used by the spouse of the judgment debtor in the exercise of the trade,
3 business, or profession by which the spouse earns a livelihood.

4 (3) Five thousand dollars (\$5,000), if reasonably necessary to and actually used
5 by the judgment debtor and by the spouse of the judgment debtor in the exercise
6 of the same trade, business, or profession by which both earn a livelihood. In the
7 case covered by this paragraph, the exemptions provided in paragraphs (1) and
8 (2) are not available.

9 (b) If property described in subdivision (a) is sold at an execution sale, or if it
10 has been lost, damaged, or destroyed, the proceeds of the execution sale or of
11 insurance or other indemnification are exempt for a period of 90 days after the
12 proceeds are actually received by the judgment debtor or the judgment debtor's
13 spouse. The amount exempt under this subdivision is the amount specified in
14 subdivision (a) that applies to the particular case less the aggregate equity of any
15 other property to which the exemption provided by subdivision (a) for the
16 particular case has been applied.

17 (c) Notwithstanding subdivision (a), a motor vehicle is not exempt under
18 subdivision (a) if there is a motor vehicle exempt under Section 704.010 which is
19 reasonably adequate for use in the trade, business, or profession for which the
20 exemption is claimed under this section.

21 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

22 **Comment.** Subdivision (a) of Section 704.060 supersedes former Section 690.4 and a
23 portion of former Section 690.17 (building materials not exceeding \$1,000). Subdivision (a)
24 makes clear that an additional exemption is available to the spouse of the judgment debtor as
25 well as to the judgment debtor.

26 Subdivision (b) provides a new exemption for proceeds analogous to that provided by
27 Section 704.010 (motor vehicle). See also Sections 701.620 (sale price must exceed proceeds
28 exemption), 701.810 (distribution of proceeds of execution sale), 703.520 (contents of claim
29 of exemption).

30 Subdivision (c) is a new provision that makes clear the relation between this section and
31 Section 704.010 (motor vehicle exemption).

32 **§ 704.070. Paid earnings**

33 704.070. (a) As used in this section:

34 (1) "Earnings withholding order" means an earnings withholding order under
35 Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

36 (2) "Paid earnings" means earnings as defined in Section 706.011 that were
37 paid to the employee during the 30-day period ending on the date of the levy.
38 For the purposes of this paragraph, where earnings that have been paid to the
39 employee are sought to be subjected to the enforcement of a money judgment
40 other than by a levy, the date of levy is deemed to be the date the earnings were
41 otherwise subjected to the enforcement of the judgment.

42 (3) "Earnings assignment order for support" means an earnings assignment
43 order for support as defined in Section 706.011.

1 (b) Paid earnings that can be traced into deposit accounts or in the form of cash
2 or its equivalent as provided in Section 703.080 are exempt in the following
3 amounts:

4 (1) All of the paid earnings are exempt if prior to payment to the employee they
5 were subject to an earnings withholding order or an earnings assignment order
6 for support.

7 (2) Seventy-five percent of the paid earnings that are levied upon or otherwise
8 sought to be subjected to the enforcement of a money judgment are exempt if
9 prior to payment to the employee they were not subject to an earnings
10 withholding order or an earnings assignment order for support.

11 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

12 *Amended Stats 1992 ch 163 § 38 (AB 2641), operative January 1, 1994.*

13 **Comment (1982).** Section 704.070 is new. Subdivision (b)(1) continues the protection of
14 wages that have already been garnished or subjected to a wage assignment for support for 30
15 days after they are paid. Subdivision (b)(2) applies an exemption analogous to that provided
16 by Section 706.050 to paid earnings that have not been garnished or subjected to a wage
17 assignment for support in the hands of the employer.

18 **Comment (1992).** Section 704.070 is amended to conform to the terminology of the
19 Family Code. See Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the
20 Family Code (earnings assignment order for support).

21 **§ 704.080. Deposit account in which social security payments are directly deposited**

22 704.080. (a) For the purposes of this section:

23 (1) “Deposit account” means a deposit account in which payments authorized
24 by the Social Security Administration are directly deposited by the United States
25 government.

26 (2) “Payments authorized by the Social Security Administration” means regular
27 retirement and survivors’ benefits, supplemental security income benefits, coal
28 miners’ health benefits, and disability insurance benefits.

29 (b) A deposit account is exempt without making a claim in the following
30 amount:

31 (1) Five hundred dollars (\$500) where one depositor is the designated payee of
32 the directly deposited payments.

33 (2) Seven hundred fifty dollars (\$750) where two or more depositors are the
34 designated payees of the directly deposited payments, unless such depositors are
35 joint payees of directly deposited payments which represent a benefit to only one
36 of the depositors, in which case the exempt amount is five hundred dollars
37 (\$500).

38 (c) The amount of a deposit account that exceeds the exemption provided in
39 subdivision (b) is exempt to the extent that it consists of payments authorized by
40 the Social Security Administration.

41 (d) Notwithstanding Article 5 (commencing with Section 701.010) of Chapter 3,
42 when a deposit account is levied upon or otherwise sought to be subjected to the
43 enforcement of a money judgment, the financial institution that holds the deposit

1 account shall either place the amount that exceeds the exemption provided in
2 subdivision (b) in a suspense account or otherwise prohibit withdrawal of such
3 amount pending notification of the failure of the judgment creditor to file the
4 affidavit required by this section or the judicial determination of the exempt status
5 of the amount. Within 10 business days after the levy, the financial institution
6 shall provide the levying officer with a written notice stating (1) that the deposit
7 account is one in which payments authorized by the Social Security
8 Administration are directly deposited by the United States government and (2)
9 the balance of the deposit account that exceeds the exemption provided by
10 subdivision (b). Promptly upon receipt of the notice, the levying officer shall
11 serve the notice on the judgment creditor. Service shall be made personally or by
12 mail.

13 (e) Notwithstanding the procedure prescribed in Article 2 (commencing with
14 Section 703.510), whether there is an amount exempt under subdivision (c) shall
15 be determined as follows:

16 (1) Within five days after the levying officer serves the notice on the judgment
17 creditor under subdivision (d), a judgment creditor who desires to claim that the
18 amount is not exempt shall file with the court an affidavit alleging that the
19 amount is not exempt and file a copy with the levying officer. The affidavit shall
20 be in the form of the notice of opposition provided by Section 703.560, and a
21 hearing shall be set and held, and notice given, as provided by Sections 703.570
22 and 703.580. For the purpose of this subdivision, the “notice of opposition to the
23 claim of exemption” in Sections 703.570 and 703.580 means the affidavit under
24 this subdivision.

25 (2) If the judgment creditor does not file the affidavit with the levying officer
26 and give notice of hearing pursuant to Section 703.570 within the time provided
27 in paragraph (1), the levying officer shall release the deposit account and shall
28 notify the financial institution.

29 (3) The affidavit constitutes the pleading of the judgment creditor, subject to
30 the power of the court to permit amendments in the interest of justice. The
31 affidavit is deemed controverted and no counteraffidavit is required.

32 (4) At a hearing under this subdivision, the judgment debtor has the burden of
33 proving that the excess amount is exempt.

34 (5) At the conclusion of the hearing, the court by order shall determine whether
35 or not the amount of the deposit account is exempt pursuant to subdivision (c) in
36 whole or in part and shall make an appropriate order for its prompt disposition.
37 No findings are required in a proceeding under this subdivision.

38 (6) Upon determining the exemption claim for the deposit account under
39 subdivision (c), the court shall immediately transmit a certified copy of the order
40 of the court to the financial institution and to the levying officer. If the order
41 determines that all or part of the excess is exempt under subdivision (c), with
42 respect to the amount of the excess which is exempt, the financial institution shall
43 transfer the exempt excess from the suspense account or otherwise release any

1 restrictions on its withdrawal by the judgment debtor. The transfer or release shall
2 be effected within three business days of the receipt of the certified copy of the
3 court order by the financial institution.

4 (f) If the judgment debtor claims that a portion of the amount is exempt other
5 than pursuant to subdivision (c), the claim of exemption shall be made pursuant to
6 Article 2 (commencing with Section 703.510). If the judgment debtor also
7 opposes the judgment creditor's affidavit regarding an amount exempt pursuant
8 to subdivision (c), both exemptions shall be determined at the same hearing,
9 provided the judgment debtor has complied with Article 2 (commencing with
10 Section 703.510).

11 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

12 **Comment.** Section 704.080 supersedes former Section 690.30. Social Security payments
13 may be directly deposited pursuant to 31 U.S.C. § 492 (1976). Subdivision (a) continues a
14 portion of the introductory clause and subdivision (c) of former Section 690.30. Subdivision
15 (b) continues the substance of the first paragraph and subdivision (a) of former Section
16 690.30. Subdivision (c) continues the substance of the introductory paragraph of former
17 Section 690.30(b). Subdivision (d) continues the substance of former Section 690.30(b)(1).

18 Subdivision (e) supersedes paragraphs (2), (3), and (4) of subdivision (b) of former Section
19 690.30. Subdivision (e), along with subdivision (f), clarifies the procedure applicable to
20 claiming exemptions for excess amounts in deposit accounts described in this section and the
21 relation between this procedure and the procedure provided by Article 2 (commencing with
22 Section 703.510) (superseding former Section 690.50, incorporated by reference in former
23 Section 690.30). The 5-day period under paragraph (1) is extended if the judgment creditor
24 was served by mail. See Section 684.120. Paragraph (5) supersedes former Section
25 690.30(b)(3). The provision of former law for an order determining priority or dividing the
26 property between several creditors is superseded by Section 701.810 (distribution of
27 proceeds). Paragraph (6) continues former Section 690.30(b)(4).

28 Where a deposit account is not one described by subdivision (a) or where an exemption of
29 excess funds in a deposit account described in subdivision (a) is claimed under another
30 exemption provision, the procedure provided in Article 2 (commencing with Section
31 703.510) applies to the determination of the exemption. See subdivision (f) of Section
32 704.080.

33 **§ 704.090. Inmate's trust account**

34 704.090. The funds of a judgment debtor confined in a prison or facility under
35 the jurisdiction of the Department of Corrections or the Department of the Youth
36 Authority or confined in any county or city jail, road camp, industrial farm, or
37 other local correctional facility, held in trust for or to the credit of the judgment
38 debtor, in an inmate's trust account or similar account by the state, county, or city,
39 or any agency thereof, are exempt without making a claim in the amount of one
40 thousand dollars (\$1,000). If the judgment debtor is married, each spouse is
41 entitled to a separate exemption under this section or the spouses may combine
42 their exemptions.

43 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

44 **Comment.** Section 704.090 supersedes former Section 690.21, which provided an
45 exemption of \$40.

1 **§ 704.100. Life insurance, endowment, annuity policies**

2 704.100. (a) Unmatured life insurance policies (including endowment and
3 annuity policies), but not the loan value of such policies, are exempt without
4 making a claim.

5 (b) The aggregate loan value of unmaturred life insurance policies (including
6 endowment and annuity policies) is subject to the enforcement of a money
7 judgment but is exempt in the amount of four thousand dollars (\$4,000). If the
8 judgment debtor is married, each spouse is entitled to a separate exemption under
9 this subdivision, and the exemptions of the spouses may be combined, regardless
10 of whether the policies belong to either or both spouses and regardless of
11 whether the spouse of the judgment debtor is also a judgment debtor under the
12 judgment. The exemption provided by this subdivision shall be first applied to
13 policies other than the policy before the court and then, if the exemption is not
14 exhausted, to the policy before the court.

15 (c) Benefits from matured life insurance policies (including endowment and
16 annuity policies) are exempt to the extent reasonably necessary for the support of
17 the judgment debtor and the spouse and dependents of the judgment debtor.

18 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

19 **Comment.** Section 704.100 supersedes the exemptions provided in former Sections 690.9
20 (life insurance represented by \$500 annual premium), 690.10 (group life insurance), and
21 690.14 (fraternal benefit society). Under subdivision (a), the judgment creditor is precluded
22 from reaching an unmaturred policy except for its loan value; this prevents the judgment
23 creditor from forcing the judgment debtor to surrender a life insurance policy for its cash
24 value.

25 Subdivision (b) protects a portion of the loan value of unmaturred insurance policies. It
26 provides for doubling of the exemption in the case of a married judgment debtor. Each
27 spouse may claim an exemption in the same policy or different policies. The loan value is not
28 subject to execution (see Section 699.720(a)) but may be reached by some other appropriate
29 procedure. See Sections 708.110 (examination of judgment debtor), 708.205 (order in
30 examination proceedings), 708.510 (assignment order). The exemption is applied first to
31 policies that are not levied upon. See Section 703.520 (exemption claim discloses policies not
32 levied upon).

33 The exemption of benefits under subdivision (c) is available to the judgment debtor
34 regardless of whether the judgment debtor was the insured or the beneficiary under the
35 policy. This is consistent with prior law. See *Jackson v. Fisher*, 56 Cal. 2d 196, 200, 363 P.2d
36 479, 14 Cal. Rptr. 439 (1961). Under subdivision (c), the exemption may be asserted against
37 creditors of the insured or of the spouse or dependents of the insured. See *Holmes v.*
38 *Marshall*, 145 Cal. 777, 779-82, 79 P. 534 (1905).

39 **§ 704.110. Public retirement and related benefits and contributions**

40 704.110. (a) As used in this section:

41 (1) "Public entity" means the state, or a city, city and county, county, or other
42 political subdivision of the state, or a public trust, public corporation, or public
43 board, or the governing body of any of them, but does not include the United
44 States except where expressly so provided.

45 (2) "Public retirement benefit" means a pension or an annuity, or a retirement,
46 disability, death, or other benefit, paid or payable by a public retirement system.

1 (3) “Public retirement system” means a system established pursuant to statute
2 by a public entity for retirement, annuity, or pension purposes or payment of
3 disability or death benefits.

4 (b) All amounts held, controlled, or in process of distribution by a public entity
5 derived from contributions by the public entity or by an officer or employee of
6 the public entity for public retirement benefit purposes, and all rights and benefits
7 accrued or accruing to any person under a public retirement system, are exempt
8 without making a claim.

9 (c) Notwithstanding subdivision (b), where an amount described in subdivision
10 (b) becomes payable to a person and is sought to be applied to the satisfaction of
11 a judgment for child , family, or spousal support against that person:

12 (1) Except as provided in paragraph (2), the amount is exempt only to the
13 extent that the court determines under subdivision (c) of Section 703.070.

14 (2) If the amount sought to be applied to the satisfaction of the judgment is
15 payable periodically, the amount payable is subject to an earnings assignment
16 order for support as defined in Section 706.011 or any other applicable
17 enforcement procedure, but the amount to be withheld pursuant to the
18 assignment order or other procedure shall not exceed the amount permitted to be
19 withheld on an earnings withholding order for support under Section 706.052.
20 The paying entity may deduct from each payment made pursuant to an earnings
21 assignment order under this paragraph an amount reflecting the actual cost of
22 administration caused by the assignment order up to two dollars (\$2) for each
23 payment.

24 (d) All amounts received by any person, a resident of the state, as a public
25 retirement benefit or as a return of contributions and interest thereon from the
26 United States or a public entity or from a public retirement system are exempt.

27 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

28 *Amended Stats 1992 ch 163 § 39 (AB 2641), operative January 1, 1994.*

29 **Comment (1982).** Section 704.110 continues the substance of subdivisions (a) and (b) of
30 former Section 690.18, with drafting changes for purposes of clarity and uniformity.
31 Subdivision (c) governs the application of the exemption for payable but unpaid benefits
32 against the enforcement of child or spousal support judgments. Subdivision (c)(1) applies the
33 general rule governing exemptions in support cases. Subdivision (c)(2) incorporates the
34 standard applicable to wage garnishments to enforce support judgments. See Section 706.052
35 and the Comment thereto. See also Civil Code § § 4701 (wage assignment for child support),
36 4801.6 (wage assignment for spousal support). The one dollar fee for administrative costs
37 provided by former Section 690.18(b) is increased to two dollars in subdivision (c)(2) of this
38 section. The two dollar fee is the same as that formerly provided in Government Code Section
39 21201 (public employees’ retirement).

40 The exemption provided in subdivision (d) applies whether the benefits are in the actual
41 possession of the retirement benefit recipient or have been deposited. See Section 703.080
42 (tracing exempt funds). The general rule governing exemptions in support cases provided by
43 Section 703.070 applies to benefits after they have been paid. For the exemption of vacation
44 credits, see Section 704.113. For the exemption of benefits under the Unemployment
45 Insurance Code, see Section 704.120.

46 **Comment (1992).** Section 704.110 is amended to conform to the terminology of the
47 Family Code. See Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the

1 Family Code (earnings assignment order for support). A reference to “family” support has
2 been added to subdivision (c). See Fam. Code § 4501 (family support order enforceable in
3 same manner and to same extent as child support order). See also Section 680.145 (“child
4 support” includes family support).

5 **§ 704.113. Public employee vacation credits**

6 704.113. (a) As used in this section, “vacation credits” means vacation credits
7 accumulated by a state employee pursuant to Section 18050 of the Government
8 Code or by any other public employee pursuant to any law for the accumulation
9 of vacation credits applicable to the employee.

10 (b) All vacation credits are exempt without making a claim.

11 (c) Amounts paid periodically or as a lump sum representing vacation credits are
12 subject to any earnings withholding order served under Chapter 5 (commencing
13 with Section 706.010) or any earnings assignment order for support as defined in
14 Section 706.011 and are exempt to the same extent as earnings of a judgment
15 debtor.

16 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

17 *Amended Stats 1992 ch 163 § 40 (AB 2641), operative January 1, 1994.*

18 **Comment (1982).** Subdivision (b) of Section 704.113 continues a portion of former
19 Section 690.18(b) which made vacation credits exempt without making a claim. Subdivision
20 (c) supersedes the portion of former Section 690.18(b) that made vacation credits that were
21 payable exempt except from enforcement of child or spousal support and makes clear that
22 vacation pay is treated the same as earnings for exemption purposes. See Sections 706.050-
23 706.052.

24 **Comment (1992).** Subdivision (c) of Section 704.113 is amended to conform to Section
25 706.011(b).

26 **§ 704.114. Compliance with order of wage assignment**

27 704.114. (a) Notwithstanding any other provision of law, service of an earnings
28 assignment order for support on any public entity described in Section 704.110,
29 other than the United States government, creates a lien on all employee
30 contributions in the amount necessary to satisfy a support judgment as
31 determined under Section 695.210 to the extent that the judgment remains
32 enforceable.

33 (b) The public entity shall comply with any request for a return of employee
34 contributions by an employee named in the order by delivering the contributions
35 to the clerk of the court from which the order issued, unless the entity has
36 received a certified copy of an order terminating the earnings assignment order
37 for support .

38 (c) Upon receipt of moneys pursuant to this section, the clerk of the court,
39 within 10 days, shall send written notice of the fact to the parties and to the
40 district attorney enforcing any order pursuant to Section 11475.1 of the Welfare
41 and Institutions Code.

42 (d) Moneys received pursuant to this section are subject to any procedure
43 available to enforce an order for support, but if no enforcement procedure is

1 commenced after 30 days have elapsed from the date the notice of receipt is sent,
2 the clerk shall, upon request, return the moneys to the public entity that delivered
3 the moneys to the court unless the public entity has informed the court in writing
4 that the moneys shall be released to the employee .

5 (e) A court shall not directly or indirectly condition the issuance, modification,
6 or termination of, or condition the terms or conditions of, any order for support
7 upon the making of a request for the return of employee contributions by an
8 employee.

9 *Added Stats 1989 ch 1359 § 8. Amended Stats 1992 ch 163 § 41 (AB 2641), operative*
10 *January 1, 1994 (ch 851 prevails), ch 851 § 2 (SB 1530), effective September 22, 1992.*

11 *Amended Stats 1993 ch 219 § 68 (AB 1500).*

12 **Note.** 1992 Cal. Stat. ch. 851, § 1 provides:

13 (a) The Legislature hereby finds and declares the following:

14 (1) Child support has been a legal right of California's children since 1872. Both fathers
15 and mothers have a legal and moral obligation to provide financial support for their children.

16 (2) Approximately half of all children will live in a single parent household before
17 reaching adulthood. The child poverty rate has been increasing over the last decade. In 1990,
18 a disproportionate number of the 1,600,000 children in California who lived with only one
19 parent were poor.

20 (3) Improvements in the establishment and payment of child support obligations could
21 substantially alleviate child poverty. Better enforcement of parental obligations to support
22 their children will not only benefit children and their families by providing a higher level of
23 support, but also reduce dependency on public assistance.

24 (b) Therefore, it is the intent of the Legislature in enacting this act to improve the well-
25 being of California's children by strengthening the state child support system, thereby
26 decreasing overall costs to the state's taxpayers while increasing the amount of financial
27 support collected on behalf of the state's children.

28 **Comment (1993).** Section 704.114 is amended to conform to the terminology of the
29 Family Code. See Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the
30 Family Code (earnings assignment order for support). The section has also been divided into
31 subdivisions and revised for clarity. See Section 706.011 ("earnings assignment order for
32 support" defined).

33 **§ 704.115. Private retirement and related benefits and contributions**

34 704.115. (a) As used in this section, "private retirement plan" means:

35 (1) Private retirement plans, including, but not limited to, union retirement plans.

36 (2) Profit-sharing plans designed and used for retirement purposes.

37 (3) Self-employed retirement plans and individual retirement annuities or
38 accounts provided for in the Internal Revenue Code of 1954 as amended, to the
39 extent the amounts held in the plans, annuities, or accounts do not exceed the
40 maximum amounts exempt from federal income taxation under that code.

41 (b) All amounts held, controlled, or in process of distribution by a private
42 retirement plan, for the payment of benefits as an annuity, pension, retirement
43 allowance, disability payment, or death benefit from a private retirement plan are
44 exempt.

1 (c) Notwithstanding subdivision (b), where an amount described in subdivision
2 (b) becomes payable to a person and is sought to be applied to the satisfaction of
3 a judgment for child , family, or spousal support against that person:

4 (1) Except as provided in paragraph (2), the amount is exempt only to the
5 extent that the court determines under subdivision (c) of Section 703.070.

6 (2) If the amount sought to be applied to the satisfaction of the judgment is
7 payable periodically, the amount payable is subject to an earnings assignment
8 order for support as defined in Section 706.011 or any other applicable
9 enforcement procedure, but the amount to be withheld pursuant to the
10 assignment order or other procedure shall not exceed the amount permitted to be
11 withheld on an earnings withholding order for support under Section 706.052.

12 (d) After payment, the amounts described in subdivision (b) and all
13 contributions and interest thereon returned to any member of a private retirement
14 plan are exempt.

15 (e) Notwithstanding subdivisions (b) and (d), except as provided in subdivision
16 (f), the amounts described in paragraph (3) of subdivision (a) are exempt only to
17 the extent necessary to provide for the support of the judgment debtor when the
18 judgment debtor retires and for the support of the spouse and dependents of the
19 judgment debtor, taking into account all resources that are likely to be available
20 for the support of the judgment debtor when the judgment debtor retires. In
21 determining the amount to be exempt under this subdivision, the court shall allow
22 the judgment debtor such additional amount as is necessary to pay any federal
23 and state income taxes payable as a result of the applying of an amount described
24 in paragraph (3) of subdivision (a) to the satisfaction of the money judgment.

25 (f) Where the amounts described in paragraph (3) of subdivision (a) are payable
26 periodically, the amount of such periodic payment that may be applied to the
27 satisfaction of a money judgment is the amount that may be withheld from a like
28 amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage
29 Garnishment Law).

30 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

31 *Amended Stats 1992 ch 163 § 42 (AB 2641), operative January 1, 1994.*

32 **Comment (1982).** Section 704.115 supersedes subdivision (d) of former Section 690.18.
33 Subdivision (c) governs the application of the exemption for payable but unpaid benefits
34 against enforcement of child or spousal support. Subdivision (c)(1) applies the general rule
35 governing exemptions in support cases. Subdivision (c)(2) recognizes that federal law
36 requires the protection of periodic payments pursuant to a pension or retirement program to
37 the same extent as wages. See Section 706.052 and the Comment thereto. The exemption
38 provided in subdivision (d) applies whether money received by the judgment debtor is in the
39 actual possession of the recipient or has been deposited. See Section 703.080 (tracing exempt
40 funds). The general rule governing exemptions in support cases provided by Section 703.070
41 applies to benefits after they have been paid.

42 Subdivisions (e) and (f) are new. Subdivision (e) requires that the court consider all
43 resources — such as social security payments and other income and assets — that are likely to
44 be available to the judgment debtor when the judgment debtor retires. Accordingly, where it
45 will be a number of years before the judgment debtor will retire, the court will take into
46 account not only all the assets of the judgment debtor at the time the exemption claim is

determined but also all the assets and income (including pension rights) that the judgment debtor is likely to acquire prior to retirement. Subdivision (f) recognizes that the federal law requires the protection of periodic payments pursuant to a retirement program. See 15 U.S.C. § § 1672(a), 1673(a).

Comment (1992). Subdivision (c) of Section 704.115 is amended to conform to the terminology of the Family Code. See Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code (earnings assignment order for support). A reference to “family” support has been added to subdivision (c). See Fam. Code § 4501 (family support order enforceable in same manner and to same extent as child support order). See also Section 680.145 (“child support” includes family support).

§ 704.120. Unemployment benefits and contributions; Strike benefits

704.120. (a) Contributions by workers payable to the Unemployment Compensation Disability Fund and by employers payable to the Unemployment Fund are exempt without making a claim.

(b) Before payment, amounts held for payment of the following benefits are exempt without making a claim:

(1) Benefits payable under Division 1 (commencing with Section 100) of the Unemployment Insurance Code.

(2) Incentives payable under Division 2 (commencing with Section 5000) of the Unemployment Insurance Code.

(3) Benefits payable under an employer’s plan or system to supplement unemployment compensation benefits of the employees generally or for a class or group of employees.

(4) Unemployment benefits payable by a fraternal organization to its bona fide members.

(5) Benefits payable by a union due to a labor dispute.

(c) After payment, the benefits described in subdivision (b) are exempt.

(d) During the payment of benefits described in paragraph (1) of subdivision (b) to a judgment debtor under a support judgment, the judgment creditor may, through the appropriate district attorney, seek to apply the benefit payment to satisfy the judgment as provided by Section 11350.5 of the Welfare and Institutions Code.

(e) During the payment of benefits described in paragraphs (2) to (5), inclusive, of subdivision (b) to a judgment debtor under a support judgment, the judgment creditor may, directly or through the appropriate district attorney, seek to apply the benefit payments to satisfy the judgment by an earnings assignment order for support as defined in Section 706.011 or any other applicable enforcement procedure. If the benefit is payable periodically, the amount to be withheld pursuant to the assignment order or other procedure shall be 25 percent of the amount of each periodic payment or any lower amount specified in writing by the judgment creditor or court order, rounded down to the nearest whole dollar. Otherwise the amount to be withheld shall be the amount the court determines under subdivision (c) of Section 703.070. The paying entity may deduct from each payment made pursuant to an assignment order under this subdivision an

1 amount reflecting the actual cost of administration caused by the assignment
2 order up to two dollars (\$2) for each payment.

3 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

4 *Amended Stats 1983 ch 155 § 16, effective June 30, 1983, operative July 1, 1983; Stats*
5 *1988 ch 261 § 1, effective July 5, 1988.*

6 *Amended Stats 1992 ch 163 § 43 (AB 2641), operative January 1, 1994.*

7 **Note.** 1988 Cal. Stat. ch. 261, § 6 provides:

8 SEC. 6. This act shall have no force and effect until the Director of Employment
9 Development determines that the Employment Development Department has acquired the
10 technical capability to comply with its provisions. Until that time, unemployment
11 compensation disability benefits may be applied to the satisfaction of a support judgment
12 creditor as was provided for prior to the enactment of this act, including a wage assignment in
13 accordance with Section 704.120 of the Code of Civil Procedure.

14 **Comment (1982).** Section 704.120 supersedes former Sections 690.13, 690.16, and
15 690.175 and portions of former Section 690.18(c) and (d) and Unemployment Insurance
16 Code Sections 988 and 1342. Subdivision (b)(8) is new. Subdivision (d) is a new provision
17 designed to implement Section 2335 of the federal Omnibus Budget Reconciliation Act of
18 1981, Pub. L. No. 97-35, pertaining to enforcement of child support. It is patterned after an
19 exception applicable to the exemption for retirement benefits. See Section 704.110.

20 **Comment (1983).** Subdivisions (e) and (f) have been added to Section 704.120 to preserve
21 the substance of Chapter 1072 of the Statutes of 1982 and subdivision (d)(2) of Section
22 704.120 has been revised to conform to Section 11350.5 added to the Welfare and
23 Institutions Code by that chapter.

24 **Comment (1992).** Subdivision (e) of Section 704.120 is amended to conform to the
25 terminology of the Family Code. See Chapter 8 (commencing with Section 5200) of Part 5 of
26 Division 9 of the Family Code (earnings assignment order for support).

27 **§ 704.130. Disability and health benefits**

28 704.130. (a) Before payment, benefits from a disability or health insurance
29 policy or program are exempt without making a claim. After payment, the benefits
30 are exempt.

31 (b) Subdivision (a) does not apply to benefits that are paid or payable to cover
32 the cost of health care if the judgment creditor is a provider of health care whose
33 claim is the basis on which the benefits are paid or payable.

34 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

35 **Comment.** Subdivision (a) of Section 704.130 supersedes former Sections 690.11
36 (disability or health insurance benefits represented by \$500 annual premium) and 690.14
37 (fraternal benefit society funds) and portions of former Sections 690.13 (money used
38 exclusively in payment of sick benefits by fraternal organization to bona fide members),
39 690.18 (disability benefits from retirement plans).

40 **§ 704.140. Damages for personal injury**

41 704.140. (a) Except as provided in Article 5 (commencing with Section
42 708.410) of Chapter 6, a cause of action for personal injury is exempt without
43 making a claim.

44 (b) Except as provided in subdivisions (c) and (d), an award of damages or a
45 settlement arising out of personal injury is exempt to the extent necessary for the

1 support of the judgment debtor and the spouse and dependents of the judgment
2 debtor.

3 (c) Subdivision (b) does not apply if the judgment creditor is a provider of
4 health care whose claim is based on the providing of health care for the personal
5 injury for which the award or settlement was made.

6 (d) Where an award of damages or a settlement arising out of personal injury is
7 payable periodically, the amount of such periodic payment that may be applied to
8 the satisfaction of a money judgment is the amount that may be withheld from a
9 like amount of earnings under Chapter 5 (commencing with Section 706.010)
10 (Wage Garnishment Law).

11 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

12 **Comment.** Section 704.140 is new. An award or settlement that will result from a cause of
13 action that is the subject of a pending action may be reached by the lien procedure provided
14 by Article 5 (commencing with Section 708.410) of Chapter 6, but the exemption provided
15 by subdivision (b) of Section 704.140 may be claimed in the pending action. See Section
16 708.450. See also Section 695.030 (property not subject to enforcement of money
17 judgment).

18 **§ 704.150. Damages for wrongful death**

19 704.150. (a) Except as provided in Article 5 (commencing with Section
20 708.410) of Chapter 6, a cause of action for wrongful death is exempt without
21 making a claim.

22 (b) Except as provided in subdivision (c), an award of damages or a settlement
23 arising out of the wrongful death of the judgment debtor's spouse or a person on
24 whom the judgment debtor or the judgment debtor's spouse was dependent is
25 exempt to the extent reasonably necessary for support of the judgment debtor
26 and the spouse and dependents of the judgment debtor.

27 (c) Where an award of damages or a settlement arising out of the wrongful
28 death of the judgment debtor's spouse or a person on whom the judgment debtor
29 or the judgment debtor's spouse was dependent is payable periodically, the
30 amount of such a periodic payment that may be applied to the satisfaction of a
31 money judgment is the amount that may be withheld from a like amount of
32 earnings under Chapter 5 (commencing with Section 706.010) (Wage
33 Garnishment Law).

34 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

35 **Comment.** Section 704.150 is new. An award or settlement that will result from a cause of
36 action that is the subject of a pending action may be reached by the lien procedure provided
37 by Article 5 (commencing with Section 708.410) of Chapter 6. See the Comment to Section
38 704.140. See also Section 695.030 (property not subject to enforcement of money
39 judgment).

40 **§ 704.160. Workers' compensation; Exceptions**

41 704.160. (a) Except as provided by Chapter 1 (commencing with Section 4900)
42 of Part 3 of Division 4 of the Labor Code, before payment, a claim for workers'
43 compensation or workers' compensation awarded or adjudged is exempt without

1 making a claim. Except as specified in subdivision (b), after payment, the award is
2 exempt.

3 (b) Notwithstanding any other provision of law, during the payment of
4 workers' compensation temporary disability benefits described in subdivision (a)
5 to a support judgment debtor, the support judgment creditor may, through the
6 appropriate district attorney, seek to apply the workers' compensation temporary
7 disability benefit payment to satisfy the support judgment as provided by Section
8 11350.1 of the Welfare and Institutions Code.

9 (c) Notwithstanding any other provision of law, during the payment of
10 workers' compensation temporary disability benefits described in subdivision (a)
11 to a support judgment debtor under a support judgment, including a judgment for
12 reimbursement of public assistance, the judgment creditor may, directly or through
13 the appropriate district attorney, seek to apply the temporary disability benefit
14 payments to satisfy the support judgment by an earnings assignment order for
15 support, as defined in Section 5208 of the Family Code , or any other applicable
16 enforcement procedure. The amount to be withheld pursuant to the earnings
17 assignment order for support or other enforcement procedure shall be 25 percent
18 of the amount of each periodic payment or any lower amount specified in writing
19 by the judgment creditor or court order, rounded down to the nearest dollar.
20 Otherwise, the amount to be withheld shall be the amount the court determines
21 under subdivision (c) of Section 703.070. The paying entity may deduct from
22 each payment made pursuant to an order assigning earnings under this
23 subdivision an amount reflecting the actual cost of administration of this
24 assignment, up to two dollars (\$2) for each payment.

25 (d) Unless the provision or context otherwise requires, the following definitions
26 govern the construction of this section.

27 (1) "Judgment debtor" or "support judgment debtor" means a person who is
28 owing a duty of support.

29 (2) "Judgment creditor" or "support judgment creditor" means the person to
30 whom support has been ordered to be paid.

31 (3) "Support" refers to an obligation owing on behalf of a child, spouse, or
32 family; or an amount owing pursuant to Section 11350 of the Welfare and
33 Institutions Code. It also includes past due support or arrearage when it exists.

34 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

35 *Amended Stats 1992 ch 848 § 10 (SB 1614), effective September 22, 1992.*

36 *Amended Stats 1993 ch 219 § 69 (AB 1500).*

37 **Comment (1982).** Section 704.160 continues the substance of former Section 690.15.

38 **Comment (1993).** Section 704.160 is amended to substitute references to "earnings
39 assignment order for support" and the Family Code section defining the term. These are not
40 substantive changes.

41 **§ 704.170. Aid provided to needy persons**

42 704.170. Before payment, aid provided pursuant to Division 9 (commencing
43 with Section 10000) of the Welfare and Institutions Code or similar aid provided

1 by a charitable organization or a fraternal benefit society as defined in Section
2 10990 of the Insurance Code, is exempt without making a claim. After payment,
3 the aid is exempt.

4 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

5 **Comment.** Section 704.170 is based on former Sections 690.14 and 690.19. Section
6 704.170 exempts local aid as well as federal aid administered by the state pursuant to the
7 Welfare and Institutions Code. See also Welf. & Inst. Code § 10052 (“aid” defined). Section
8 704.170 also expands the category of nongovernmental aid that is exempt. Former Section
9 690.14 applied only to fraternal benefit societies.

10 **§ 704.180. Relocation benefits**

11 704.180. Before payment, relocation benefits for displacement from a dwelling
12 which are to be paid pursuant to Chapter 16 (commencing with Section 7260) of
13 Division 7 of Title 1 of the Government Code or the federal “Uniform Relocation
14 Assistance and Real Property Acquisition Policies Act of 1970” (42 U.S.C. Sec.
15 4601 et seq.), as amended, are exempt without making a claim. After payment, the
16 benefits are exempt.

17 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

18 **Comment.** Section 704.180 supersedes Section 690.8a. Section 704.180 expands the
19 former exemption to include relocation benefits paid or payable by a public utility (Pub. Util.
20 Code § 600) or a quasi-public entity (Gov’t Code § 7260). The last sentence of this section
21 requires the debtor to claim an exemption for such benefits after payment, whereas under
22 former law these benefits were designated as exempt without filing a claim.

23 **§ 704.190. Financial aid provided to student by educational institution**

24 704.190. (a) As used in this section, “institution of higher education” means
25 “institution of higher education” as defined in Section 1141(a) of Title 20 of the
26 United States Code, as amended.

27 (b) Before payment, financial aid for expenses while attending school provided
28 to a student by an institution of higher education is exempt without making a
29 claim. After payment, the aid is exempt.

30 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

31 **Comment.** Section 704.190 is a new provision that provides an exemption for financial aid
32 provided to a student by an institution of higher education. The section adopts the definition
33 found in Section 1141(a) of Title 20 of the United States Code, as amended. This provision,
34 as amended by Pub. L. 44-382, Title I, § 181, Oct. 12, 1976, reads:

35 (a) The term “institution of higher education” means an educational institution in any
36 State which (1) admits as regular students only persons having a certificate of graduation
37 from a school providing secondary education, or the recognized equivalent of such a
38 certificate, (2) is legally authorized within such State to provide a program of education
39 beyond secondary education, (3) provides an educational program for which it awards a
40 bachelor’s degree or provides not less than a two-year program which is acceptable for full
41 credit toward such a degree, (4) is a public or other nonprofit institution, and (5) is accredited
42 by a nationally recognized accrediting agency or association or, if not so accredited, (A) is an
43 institution with respect to which the Commissioner has determined that there is satisfactory
44 assurance, considering the resources available to the institution, the period of time, if any,
45 during which it has operated, the effort it is making to meet accreditation standards, and the
46 purpose for which this determination is being made, that the institution will meet the

1 accreditation standards of such an agency or association within a reasonable time, or (B) is an
2 institution whose credits are accepted, on transfer, by not less than three institutions which are
3 so accredited, for credit on the same basis as if transferred from an institution so accredited.
4 Such term also includes any school which provides not less than a one-year program of
5 training to prepare students for gainful employment in a recognized occupation and which
6 meets the provisions of clauses (1), (2), (4), and (5). For purposes of this subsection, the
7 Commissioner shall publish a list a nationally recognized accrediting agencies or associations
8 which he determines to be reliable authority as to the quality of training offered. Such term
9 also includes a public or nonprofit private educational institution in any State which in lieu of
10 the requirement in clause (1), admits as regular students persons who are beyond the age of
11 compulsory school attendance in the State in which the institution is located and who have the
12 ability to benefit from the training offered by the institution.

13 **§ 704.200. Cemetery plot**

14 704.200. (a) As used in this section:

15 (1) "Cemetery" has the meaning provided by Section 7003 of the Health and
16 Safety Code.

17 (2) "Family plot" is a plot that satisfies the requirements of Section 8650 of the
18 Health and Safety Code.

19 (3) "Plot" has the meaning provided by Section 7022 of the Health and Safety
20 Code.

21 (b) A family plot is exempt without making a claim.

22 (c) Except as provided in subdivision (d), a cemetery plot for the judgment
23 debtor and the spouse of the judgment debtor is exempt.

24 (d) Land held for the purpose of sale or disposition as cemetery plots or
25 otherwise is not exempt.

26 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

27 **Comment.** Section 704.200 supersedes portions of former Section 690.24 which provided
28 an exemption for a cemetery lot not exceeding one-quarter of an acre in size or, in the case
29 of a religious or benevolent association or corporation, five acres in size. Subdivision (b)
30 recognizes that family plots are inalienable. See Health & Saf. Code § 8650. Subdivision (c)
31 exempts cemetery plots for the judgment debtor and spouse. See also Health & Saf. Code §
32 8601 (spouse's vested right of interment). Subdivision (d) continues the substance of the
33 third paragraph of former Section 690.24. The fourth paragraph of former Section 690.24,
34 relating to the application of the exemption against a judgment for the purchase price, is not
35 continued because it is no longer necessary. See Comment to Section 703.010(b). The
36 portion of land containing graves of human beings is not subject to enforcement of a money
37 judgment. See *Peebler v. Danziger*, 104 Cal. App. 2d 491, 493, 231 P.2d 895 (1951).

38 **§ 704.210. Property not subject to enforcement**

39 704.210. Property that is not subject to enforcement of a money judgment is
40 exempt without making a claim.

41 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

42 **Comment.** Section 704.210 is consistent with Section 695.040 (release of property not
43 subject to enforcement).

Homestead Exemption in the Enforcement of Judgments Law

(Code Civ. Proc. §§ 704.710-704.995)

Article 4. Homestead Exemption

§ 704.710. Definitions

704.710. As used in this article:

(a) “Dwelling” means a place where a person resides and may include but is not limited to the following:

(1) A house together with the outbuildings and the land upon which they are situated.

(2) A mobilehome together with the outbuildings and the land upon which they are situated.

(3) A boat or other waterborne vessel.

(4) A condominium, as defined in Section 783 of the Civil Code.

(5) A planned development, as defined in Section 11003 of the Business and Professions Code.

(6) A stock cooperative, as defined in Section 11003.2 of the Business and Professions Code.

(7) A community apartment project, as defined in Section 11004 of the Business and Professions Code.

(b) “Family unit” means any of the following:

(1) The judgment debtor and the judgment debtor’s spouse if the spouses reside together in the homestead.

(2) The judgment debtor and at least one of the following persons who the judgment debtor cares for or maintains in the homestead:

(A) The minor child or minor grandchild of the judgment debtor or the judgment debtor’s spouse or the minor child or grandchild of a deceased spouse or former spouse.

(B) The minor brother or sister of the judgment debtor or judgment debtor’s spouse or the minor child of a deceased brother or sister of either spouse.

(C) The father, mother, grandfather, or grandmother of the judgment debtor or the judgment debtor’s spouse or the father, mother, grandfather, or grandmother of a deceased spouse.

(D) An unmarried relative described in this paragraph who has attained the age of majority and is unable to take care of or support himself or herself.

(3) The judgment debtor’s spouse and at least one of the persons listed in paragraph (2) who the judgment debtor’s spouse cares for or maintains in the homestead.

(c) “Homestead” means the principal dwelling (1) in which the judgment debtor or the judgment debtor’s spouse resided on the date the judgment

1 creditor's lien attached to the dwelling, and (2) in which the judgment debtor or
2 the judgment debtor's spouse resided continuously thereafter until the date of
3 the court determination that the dwelling is a homestead. Where exempt proceeds
4 from the sale or damage or destruction of a homestead are used toward the
5 acquisition of a dwelling within the six-month period provided by Section
6 704.720, "homestead" also means the dwelling so acquired if it is the principal
7 dwelling in which the judgment debtor or the judgment debtor's spouse resided
8 continuously from the date of acquisition until the date of the court determination
9 that the dwelling is a homestead, whether or not an abstract or certified copy of a
10 judgment was recorded to create a judgment lien before the dwelling was
11 acquired.

12 (d) "Spouse" does not include a married person following entry of a judgment
13 decreeing legal separation of the parties, unless such married persons reside
14 together in the same dwelling.

15 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

16 *Amended Stats 1983 ch 155 § 17 effective June 30, 1983, operative July 1, 1983, ch 1159*
17 *§ 11, operative July 1, 1984.*

18 **Comment (1982).** Subdivision (a) of Section 704.710 supersedes the provisions of former
19 law pertaining to the property that could be exempt as a homestead or dwelling. See former
20 Civil Code § 1237 (declared homestead); former Code Civ. Proc. § § 690.3 (housetrailer,
21 mobilehome, houseboat, boat, or other waterborne vessel), 690.31(a) (dwelling house).
22 Subdivision (a) is intended to include all forms of property for which an exemption could be
23 claimed under former law and any other property in which the judgment debtor or the
24 judgment debtor's spouse actually resides.

25 Subdivision (b) continues the substance of former Civil Code Section 1261(2) except that
26 the minor grandchild of a deceased spouse and a child or grandchild of a former spouse are
27 included in the listing.

28 Subdivision (c) is intended to preclude a judgment debtor from moving into a dwelling
29 after creation of a judgment lien or after levy in order to create an exemption. Subdivision (c)
30 also makes clear that, even though an abstract of judgment has been recorded to create a
31 judgment lien, the existence of such lien does not prevent a homestead exemption on after-
32 acquired property which is acquired as the principal dwelling using exempt proceeds.
33 Subdivision (c) is an exception to the rule of Section 703.100 (time for determination of
34 exemption). See also Section 704.960 (homestead declaration relating to dwelling acquired
35 using exempt proceeds.)

36 Subdivision (d) preserves the effect of former Civil Code Sections 1300-1304 (married
37 person's separate homestead). The effect of subdivision (d) is to permit each spouse to claim
38 a separate homestead after entry of a judgment decreeing legal separation or of an
39 interlocutory judgment of dissolution of the marriage, because subdivision (c) of Section
40 704.720 is not applicable.

41 **Comment (1983).** Sections 704.710 and 704.930 are amended to delete "actually" which
42 appeared before "resides" or "resided" in various provisions of the sections. The word
43 "actually" is deleted to avoid a possible construction that a person temporarily absent (such
44 as a person on vacation or in the hospital) could not claim a dwelling exemption for his or
45 her principal dwelling, or file a homestead declaration on his or her principal dwelling,
46 merely because the person is temporarily absent, even though the dwelling is the person's
47 principal dwelling and residence.

1 **§ 704.720. Homestead exemption**

2 704.720. (a) A homestead is exempt from sale under this division to the extent
3 provided in Section 704.800.

4 (b) If a homestead is sold under this division or is damaged or destroyed or is
5 acquired for public use, the proceeds of sale or of insurance or other
6 indemnification for damage or destruction of the homestead or the proceeds
7 received as compensation for a homestead acquired for public use are exempt in
8 the amount of the homestead exemption provided in Section 704.730. The
9 proceeds are exempt for a period of six months after the time the proceeds are
10 actually received by the judgment debtor, except that, if a homestead exemption
11 is applied to other property of the judgment debtor or the judgment debtor's
12 spouse during that period, the proceeds thereafter are not exempt.

13 (c) If the judgment debtor and spouse of the judgment debtor reside in separate
14 homesteads, only the homestead of one of the spouses is exempt and only the
15 proceeds of the exempt homestead are exempt.

16 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

17 **Comment.** Subdivision (a) of Section 704.720 supersedes former Civil Code Section 1240
18 (providing for a declared homestead) and former Code of Civil Procedure Sections 690.3 and
19 690.31(a) (providing for a claimed dwelling exemption). As to the effect of a declaration of
20 homestead made under prior law, see Section 694.090. See also Section 704.970 (effect of
21 declared homestead). Unlike the former provisions, Section 704.720 does not specify the
22 interest that is protected and does not limit the homestead in a leasehold to a long-term lease;
23 any interest sought to be reached by the judgment creditor in the homestead is subject to the
24 exemption. The homestead exemption does not apply where a lien on the property other than
25 an enforcement lien is being foreclosed. See Section 703.010.

26 Subdivision (b) provides an exemption for proceeds of an execution sale of a homestead,
27 for proceeds from insurance or indemnifications for the damage or destruction of a
28 homestead, and for an eminent domain award or proceeds of a sale of the homestead for
29 public use. Subdivision (b) supersedes portions of former Civil Code Sections 1256 and 1265
30 and of former Code of Civil Procedure Sections 690.8 and 690.31(k). The exemption for
31 insurance proceeds was not found in former law. But see *Houghton v. Lee*, 50 Cal. 101, 103
32 (insurance proceeds for destruction of declared homestead exempt). See also Section
33 704.960 (proceeds of declared homestead). As under former law, proceeds of a voluntary
34 sale of the homestead are not exempt under the proceeds exemption provided by subdivision
35 (b). Compare Section 704.960 (exemption for proceeds of voluntary sale of declared
36 homestead).

37 Subdivision (c) is new. The spouses may select which of the homesteads is exempt; if the
38 spouses are unable to agree, the court determines which homestead is exempt. See Section
39 703.110 (application of exemptions to marital property). Note that a married person may,
40 after a decree of legal separation or an interlocutory judgment of dissolution of marriage, be
41 entitled to a homestead in his or her own right, and this right is not affected by subdivision
42 (c). See Section 704.710(d) ("spouse" defined) and the Comment thereto. See also Section
43 704.930 (person entitled to execute homestead declaration).

44 **§ 704.730. Amount of homestead exemption**

45 704.730. (a) The amount of the homestead exemption is one of the following:

1 (1) Fifty thousand dollars (\$50,000) unless the judgment debtor or spouse of
2 the judgment debtor who resides in the homestead is a person described in
3 paragraph (2) or (3).

4 (2) Seventy-five thousand dollars (\$75,000) if the judgment debtor or spouse of
5 the judgment debtor who resides in the homestead is at the time of the attempted
6 sale of the homestead a member of a family unit, and there is at least one member
7 of the family unit who owns no interest in the homestead or whose only interest
8 in the homestead is a community property interest with the judgment debtor.

9 (3) One hundred thousand dollars (\$100,000) if the judgment debtor or spouse
10 of the judgment debtor who resides in the homestead is at the time of the
11 attempted sale of the homestead any one of the following:

12 (A) A person 65 years of age or older.

13 (B) A person physically or mentally disabled and as a result of that disability is
14 unable to engage in substantial gainful employment. There is a rebuttable
15 presumption affecting the burden of proof that a person receiving disability
16 insurance benefit payments under Title II or supplemental security income
17 payments under Title XVI of the federal Social Security Act satisfies the
18 requirements of this paragraph as to his or her inability to engage in substantial
19 gainful employment.

20 (C) A person 55 years of age or older with a gross annual income of not more
21 than fifteen thousand dollars (\$15,000) or, if the judgment debtor is married, a
22 gross annual income, including the gross annual income of the judgment debtor's
23 spouse, of not more than twenty thousand dollars (\$20,000) and the sale is an
24 involuntary sale.

25 (b) Notwithstanding any other provision of this section, the combined
26 homestead exemptions of spouses on the same judgment shall not exceed the
27 amount specified in paragraph (2) or (3), whichever is applicable, of subdivision
28 (a), regardless of whether the spouses are jointly obligated on the judgment and
29 regardless of whether the homestead consists of community or separate property
30 or both. Notwithstanding any other provision of this article, if both spouses are
31 entitled to a homestead exemption, the exemption of proceeds of the homestead
32 shall be apportioned between the spouses on the basis of their proportionate
33 interests in the homestead.

34 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

35 *Amended Stats 1984 ch 454 § 1. Stats 1986 ch 1000 § 1, ch 1001 § 1. Amended Stats*
36 *1988 ch 1168 sec 1; Stats 1990 ch 155 § 1 (AB 2562).*

37 **Comment.** Subdivision (a) of Section 704.730 continues the substance of portions of
38 former Civil Code Section 1260(a) (amount of homestead exemption). Subdivision (a)(2)(B)
39 replaces the phrase "head of a family" with the phrase "family unit" and makes clear there
40 is no increased exemption if the members of the family unit also own interests in the
41 homestead (except a community property interest).

42 Subdivision (b) is new. It is intended to preclude the exemption of unduly large amounts
43 and the inequitable application of exemptions that might otherwise occur under subdivision

1 (a) because of the variety of ways that spouses can hold property and attempt to qualify for
2 increased exemptions.

3 **§ 704.740. Court order for sale; Exemption claim where court order for sale not required**

4 704.740. (a) Except as provided in subdivision (b), the interest of a natural
5 person in a dwelling may not be sold under this division to enforce a money
6 judgment except pursuant to a court order for sale obtained under this article and
7 the dwelling exemption shall be determined under this article.

8 (b) If the dwelling is personal property or is real property in which the judgment
9 debtor has a leasehold estate with an unexpired term of less than two years at the
10 time of levy:

11 (1) A court order for sale is not required and the procedures provided in this
12 article relating to the court order for sale do not apply.

13 (2) An exemption claim shall be made and determined as provided in Article 2
14 (commencing with Section 703.510).

15 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

16 *Amended Stats 1984 ch 538 § 26.*

17 **Comment (1982).** Subdivision (a) of Section 704.740 supersedes portions of former Civil
18 Code Sections 1245, 1249, and 1250 and former Code of Civil Procedure Section 690.31(c)
19 and (f).

20 Subdivision (b) incorporates the general procedures for claiming an exemption where the
21 dwelling levied upon is not subject to the delay of sale provision of Section 701.545 (120-
22 day delay of notice of sale of an interest in real property other than a leasehold estate with an
23 unexpired term of less than two years). Under former law, a housetrailer, mobilehome,
24 houseboat, boat, or other waterborne vessel in which the judgment debtor or the judgment
25 debtor's family actually resided could be claimed as exempt in a similar manner. See former
26 Sections 690(a), 690.3, 690.50. This section also applies to claims of exemption for certain
27 mobilehomes that under former law would have been determined as provided in former
28 Section 690.31 (judgment creditor's application for writ of execution on dwelling, including
29 a mobilehome as defined by Health & Safety Code § 18008). See also Health & Saf. Code §
30 18551(c) (mobilehome installed on foundation system deemed a fixture and a real property
31 improvement). The judgment creditor's instructions to the levying officer must indicate
32 whether property to be levied on is a dwelling. See Section 687.010.

33 **Comment (1984).** Subdivision (a) of Section 704.740 is amended to make clear that the
34 requirements of this article do not apply to the sale of an interest in a dwelling owned by a
35 corporation or other artificial person. This is a nonsubstantive amendment that recognizes
36 what was implicit under former law — that the procedure of this article is not relevant in cases
37 where the debtor is not entitled to exemptions. See Section 703.020 (only natural person
38 entitled to exemptions). Subdivision (a) is also amended to make clear that this article
39 provides the exclusive procedure for determining real property dwelling exemptions (other
40 than leaseholds of less than two years). Accordingly, the general procedures for claiming
41 exemptions from execution are not applicable, except as otherwise provided.

42 **§ 704.750. Application for order for sale**

43 704.750. (a) Promptly after a dwelling is levied upon (other than a dwelling
44 described in subdivision (b) of Section 704.740), the levying officer shall serve
45 notice on the judgment creditor that the levy has been made and that the
46 property will be released unless the judgment creditor complies with the

1 requirements of this section. Service shall be made personally or by mail. Within
2 20 days after service of the notice, the judgment creditor shall apply to the court
3 for an order for sale of the dwelling and shall file a copy of the application with
4 the levying officer. If the judgment creditor does not file the copy of the
5 application for an order for sale of the dwelling within the allowed time, the
6 levying officer shall release the dwelling.

7 (b) If the dwelling is located in a county other than the county where the
8 judgment was entered:

9 (1) The judgment creditor shall apply to a court of similar jurisdiction in the
10 county where the dwelling is located or, if there is no court of similar jurisdiction,
11 to a court of higher jurisdiction in that county.

12 (2) The judgment creditor shall file with the application an abstract of judgment
13 in the form prescribed by Section 674 or, in the case of a judgment described in
14 Section 697.320, a certified copy of the judgment.

15 (3) The judgment creditor shall pay a filing fee of twelve dollars (\$12). No law
16 library fee shall be charged.

17 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

18 **Comment.** Section 704.750 supersedes the introductory portion and the last two
19 paragraphs of former Civil Code Section 1245 and former Code of Civil Procedure Section
20 690.31(c). Unlike the former provisions which required the judgment creditor to apply for
21 issuance of a writ of execution, Section 704.750 requires the judgment creditor to apply for
22 an order for sale after the execution levy. This ensures that all writs will be issued out of the
23 court in which the judgment is entered. The 20-day period allowed to apply for the order and
24 to file the copy of the application is extended if the notice of levy is served by mail. See
25 Section 684.120. Notice of the application for an order for sale of the property must be given
26 the levying officer or the dwelling will be released. This requirement applies only to real
27 property dwellings and not to personal property dwellings or to dwellings with less than a
28 two-year leasehold. See Section 704.740(b).

29 **§ 704.760. Contents of application**

30 704.760. The judgment creditor's application shall be made under oath, shall
31 describe the dwelling, and shall contain all of the following:

32 (a) A statement whether or not the records of the county tax assessor indicate
33 that there is a current homeowner's exemption or disabled veteran's exemption
34 for the dwelling and the person or persons who claimed any such exemption.

35 (b) A statement, which may be based on information and belief, whether the
36 dwelling is a homestead and the amount of the homestead exemption, if any, and
37 a statement whether or not the records of the county recorder indicate that a
38 homestead declaration under Article 5 (commencing with Section 704.910) that
39 describes the dwelling has been recorded by the judgment debtor or the spouse
40 of the judgment debtor.

41 (c) A statement of the amount of any liens or encumbrances on the dwelling, the
42 name of each person having a lien or encumbrance on the dwelling, and the
43 address of such person used by the county recorder for the return of the
44 instrument creating such person's lien or encumbrance after recording.

1 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

2 **Comment.** Section 704.760 supersedes subdivisions (a)-(c) of former Civil Code Section
3 1245 and paragraphs (1)-(2) of former Code of Civil Procedure Section 690.31(c).

4 **§ 704.770. Notice of hearing**

5 704.770. (a) Upon the filing of the application by the judgment creditor, the
6 court shall set a time and place for hearing and order the judgment debtor to
7 show cause why an order for sale should not be made in accordance with the
8 application. The time set for hearing shall be not later than 45 days after the
9 application is filed or such later time as the court orders upon a showing of good
10 cause.

11 (b) Not later than 30 days before the time set for hearing, the judgment creditor
12 shall do both of the following:

13 (1) Serve on the judgment debtor a copy of the order to show cause, a copy of
14 the application of the judgment creditor, and a copy of the notice of the hearing
15 in the form prescribed by the Judicial Council. Service shall be made personally or
16 by mail.

17 (2) Personally serve a copy of each document listed in paragraph (1) on an
18 occupant of the dwelling or, if there is no occupant present at the time service is
19 attempted, post a copy of each document in a conspicuous place at the dwelling.

20 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

21 *Amended Stats 1985 ch 41 § 7.*

22 **Comment (1982).** Subdivision (a) of Section 704.770 supersedes the introductory portions
23 of former Civil Code Section 1246 and former Code of Civil Procedure Section 690.31(d).
24 Subdivision (b) supersedes former Civil Code Section 1257 and former Code of Civil
25 Procedure Section 690.31(l). A longer period of notice is required under subdivision (b) if
26 the judgment debtor is served by mail. See Section 684.120.

27 **Comment (1985).** Subdivision (b)(1) of Section 704.770 is amended to delete the
28 reference to a repealed statutory form and substitute a reference to the form prepared by the
29 Judicial Council.

30 **§ 704.780. Hearing**

31 704.780. (a) The burden of proof at the hearing is determined in the following
32 manner:

33 (1) If the records of the county tax assessor indicate that there is a current
34 homeowner's exemption or disabled veteran's exemption for the dwelling
35 claimed by the judgment debtor or the judgment debtor's spouse, the judgment
36 creditor has the burden of proof that the dwelling is not a homestead. If the
37 records of the county tax assessor indicate that there is not a current
38 homeowner's exemption or disabled veteran's exemption for the dwelling
39 claimed by the judgment debtor or the judgment debtor's spouse, the burden of
40 proof that the dwelling is a homestead is on the person who claims that the
41 dwelling is a homestead.

1 (2) If the application states the amount of the homestead exemption, the person
2 claiming the homestead exemption has the burden of proof that the amount of the
3 exemption is other than the amount stated in the application.

4 (b) The court shall determine whether the dwelling is exempt. If the court
5 determines that the dwelling is exempt, the court shall determine the amount of
6 the homestead exemption and the fair market value of the dwelling and shall
7 make an order for sale of the dwelling subject to the homestead exemption. The
8 order for sale of the dwelling subject to the homestead exemption shall specify
9 the amount of the proceeds of the sale that is to be distributed to each person
10 having a lien or encumbrance on the dwelling and shall include the name and
11 address of each such person. Subject to the provisions of this article, the sale is
12 governed by Article 6 (commencing with Section 701.510) of Chapter 3. If the
13 court determines that the dwelling is not exempt, the court shall make an order for
14 sale of the property in the manner provided in Article 6 (commencing with
15 Section 701.510) of Chapter 3.

16 (c) The court clerk shall transmit a certified copy of the court order (1) to the
17 levying officer and (2) if the court making the order is not the court in which the
18 judgment was entered, to the clerk of the court in which the judgment was
19 entered.

20 (d) The court may appoint a qualified appraiser to assist the court in determining
21 the fair market value of the dwelling. If the court appoints an appraiser, the court
22 shall fix the compensation of the appraiser in an amount determined by the court
23 to be reasonable, not to exceed similar fees for similar services in the community
24 where the dwelling is located.

25 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

26 *Amended Stats 1984 ch 538 § 26.5.*

27 **Comment (1982).** Section 704.780 supersedes former Civil Code Section 1247, a portion
28 of former Civil Code Section 1250, and a portion of subdivision (c), subdivision (e), and a
29 portion of subdivision (f) of former Code of Civil Procedure Section 690.31. Subject to the
30 requirements of Section 704.790, if an order for sale is obtained, the dwelling may be sold as
31 provided in Sections 701.510 *et seq.* Notice of sale provisions (Sections 701.540-701.560)
32 apply to the sale as well as the general provisions governing the sale itself (subject to Sections
33 704.800-704.850).

34 **Comment (1984).** Subdivision (b) of Section 704.780 is amended to make clear that the
35 court is not required to determine fair market value and the amount of liens to be satisfied
36 where the dwelling is not an exempt homestead. These determinations are relevant only where
37 the special minimum bid requirements provided by Section 704.800 apply — that is, where a
38 dwelling has been found to qualify for a homestead exemption. The sale of a non-exempt
39 dwelling is governed by the general procedures applicable to other types of property. It
40 should be noted, however, that the special procedures of Section 704.790, applicable where
41 the order for sale is obtained by default, continued to apply even though the property is
42 found not to qualify for an exemption.

43 The amendment of subdivision (a)(1) is a technical correction that makes clear where the
44 burden lies where there is neither a homeowner's nor a veteran's exemption.

1 **§ 704.790. Procedure after order of sale upon default**

2 704.790. (a) This section applies in any case where the court makes an order for
3 sale of the dwelling upon a hearing at which none of the following appeared:

4 (1) The judgment debtor.

5 (2) The judgment debtor's spouse.

6 (3) The attorney for the judgment debtor.

7 (4) The attorney for the judgment debtor's spouse.

8 (b) Not later than 10 days after the date of the order for sale, the judgment
9 creditor shall serve a copy of the order and a notice of the order in the form
10 prescribed by the Judicial Council:

11 (1) Personally or by mail on the judgment debtor and the judgment debtor's
12 spouse.

13 (2) Personally on an occupant of the dwelling or, if there is no occupant present
14 at the time service is attempted, post a copy of the order and notice in a
15 conspicuous place at the dwelling.

16 (c) Proof of service and of any posting shall be filed with the court and with the
17 levying officer. If the judgment creditor fails to comply with this subdivision and
18 with subdivision (b) in any case where this section applies, the dwelling may not
19 be sold under the order for sale.

20 (d) If, within 10 days after service of notice of the order, the judgment debtor or
21 the judgment debtor's spouse files with the levying officer a declaration that the
22 absence of the judgment debtor and the judgment debtor's spouse or the
23 attorney for the judgment debtor or the judgment debtor's spouse from the
24 hearing was due to mistake, inadvertence, surprise, or excusable neglect and that
25 the judgment debtor or spouse of the judgment debtor wishes to assert the
26 homestead exemption, the levying officer shall transmit the declaration forthwith
27 to the court. Upon receipt of the declaration, the court shall set a time and place
28 for hearing to determine whether the determinations of the court should be
29 modified. The time set for hearing shall be not later than 20 days after receipt of
30 the declaration. The court clerk shall cause notice of the hearing promptly to be
31 given to the parties.

32 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

33 *Amended Stats 1985 ch 41 § 8.*

34 **Amendments:**

35 **Comment (1982).** Subdivision (a) of Section 704.790 supersedes former Civil Code
36 Sections 1251 and 1257 and former Code of Civil Procedure Section 690.31(g) and (l).
37 Subdivision (d) supersedes former Civil Code Section 1252 and former Code of Civil
38 Procedure Section 690.31(h).

39 **Comment (1985).** Procedure after order of sale of dwelling upon default Subdivision (b)
40 of Section 704.790 is amended to delete the reference to a repealed statutory form and
41 substitute a reference to the form prepared by the Judicial Council.

1 **§ 704.800. Minimum bid**

2 704.800. (a) If no bid is received at a sale of a homestead pursuant to a court
3 order for sale that exceeds the amount of the homestead exemption plus any
4 additional amount necessary to satisfy all liens and encumbrances on the
5 property, including but not limited to any attachment or judgment lien, the
6 homestead shall not be sold and shall be released and is not thereafter subject to a
7 court order for sale upon subsequent application by the same judgment creditor
8 for a period of one year.

9 (b) If no bid is received at the sale of a homestead pursuant to a court order for
10 sale that is 90 percent or more of the fair market value determined pursuant to
11 Section 704.780, the homestead shall not be sold unless the court, upon motion
12 of the judgment creditor, does one of the following:

13 (1) Grants permission to accept the highest bid that exceeds the amount of the
14 minimum bid required by subdivision (a).

15 (2) Makes a new order for sale of the homestead.

16 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

17 **Comment.** Section 704.800 supersedes former Civil Code Sections 1253 and 1254. If the
18 property levied upon is not sold, the judgment creditor may not recover costs. See Section
19 704.840. See also Section 704.850 (distribution of proceeds).

20 **§ 704.810. Acceleration clauses and prepayment penalties**

21 704.810. Levy on a homestead that is subject to a lien or encumbrance is not by
22 itself grounds for acceleration of the obligation secured by the lien or
23 encumbrance, notwithstanding any provision of the obligation, lien, or
24 encumbrance and if the homestead is sold pursuant to court order under this
25 article the amount payable to satisfy a lien or encumbrance shall not include any
26 penalty for prepayment.

27 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

28 **Comment.** Section 704.810 is new. The first portion of Section 704.810 is intended to
29 preserve existing financing on a homestead when it is levied upon but not sold. The latter
30 portion is drawn from Section 1265.240 (no prepayment penalty where property acquired by
31 eminent domain).

32 **§ 704.820. Procedure where judgment debtor is co-owner or owns less than a fee**

33 704.820. If the dwelling is owned by the judgment debtor as a joint tenant or
34 tenant in common or if the interest of the judgment debtor in the dwelling is a
35 leasehold or other interest less than a fee interest:

36 (a) At an execution sale of a dwelling, the interest of the judgment debtor in the
37 dwelling and not the dwelling shall be sold. If there is more than one judgment
38 debtor of the judgment creditor, the interests of the judgment debtors in the
39 dwelling shall be sold together and each of the judgment debtors entitled to a
40 homestead exemption is entitled to apply his or her exemption to his or her own
41 interest.

1 (b) For the purposes of this section, all references in this article to the
2 “dwelling” or “homestead” are deemed to be references to the interest of the
3 judgment debtor in the dwelling or homestead.

4 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

5 **Comment.** Section 704.820 implements the intent of this article not to restrict the interest
6 of the judgment debtor for which a homestead exemption is available. A homestead
7 exemption is available to a judgment debtor regardless of whether the judgment debtor’s
8 interest is a fee, leasehold, or lesser interest. See Section 704.710(a) and Comment thereto. If
9 the judgment debtor’s interest is an interest in community property, the whole community
10 interest is subject to enforcement of the judgment. See Section 695.020 (liability of
11 community property).

12 **§ 704.830. Extensions of time and appeals**

13 704.830. The provisions of Sections 703.590 and 703.600 apply to
14 proceedings under this article.

15 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

16 **Comment.** Section 704.830 continues the substance of former Civil Code Sections 1258
17 (portion incorporating Code of Civil Procedure Section 690.50(l)) and 1259.1, and former
18 Code of Civil Procedure Section 690.31(m) (portion incorporating Code of Civil Procedure
19 Section 690.50(l)) and (n). It incorporates the provisions in the general exemption procedure
20 pertaining to extensions of time and appeals.

21 **§ 704.840. Costs**

22 704.840. (a) Except as provided in subdivision (b), the judgment creditor is
23 entitled to recover reasonable costs incurred in a proceeding under this article.

24 (b) If no bid is received at a sale of a homestead pursuant to a court order for
25 sale that exceeds the amount of the homestead exemption plus any additional
26 amount necessary to satisfy all liens and encumbrances on the property, the
27 judgment creditor is not entitled to recover costs incurred in a proceeding under
28 this article or costs of sale.

29 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

30 **Comment.** Section 704.840 supersedes former Civil Code Section 1259.

31 **§ 704.850. Distribution of proceeds of sale of homestead**

32 704.850. (a) The levying officer shall distribute the proceeds of sale of a
33 homestead in the following order:

34 (1) To the discharge of all liens and encumbrances, if any, on the property.

35 (2) To the judgment debtor in the amount of any applicable exemption of
36 proceeds pursuant to Section 704.720.

37 (3) To the levying officer for the reimbursement of the levying officer’s costs for
38 which an advance has not been made.

39 (4) To the judgment creditor to satisfy the following:

40 (A) First, costs and interest accruing after issuance of the writ pursuant to which
41 the sale is conducted.

1 (B) Second, the amount due on the judgment with costs and interest, as entered
2 on the writ.

3 (5) To the judgment debtor in the amount remaining.

4 (b) Sections 701.820 and 701.830 apply to distribution of proceeds under this
5 section.

6 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

7 **Comment.** Subdivision (a) of Section 704.850 continues the priority of distribution of
8 proceeds provided by subdivision (j) of former Section 690.31 and of former Civil Code
9 Section 1255. This section is an exception to the general rules on distribution of proceeds
10 provided by Section 701.810. Liens and encumbrances required to be satisfied under
11 subdivision (a)(1) include not only preferred labor claims to be satisfied pursuant to Section
12 1206 and the amount of any state tax lien (as defined in Government Code Section 7162) but
13 also any other liens and encumbrances.

14 Subdivision (b) makes clear that the general provisions governing the time for distributing
15 proceeds (Section 701.820) and the resolution of conflicting claims to proceeds (Section
16 701.830) apply to the distribution of proceeds from the sale of a homestead.

17 Article 5. Declared Homesteads

18 § 704.910. Definitions

19 704.910. As used in this article:

20 (a) “Declared homestead” means the dwelling described in a homestead
21 declaration.

22 (b) “Declared homestead owner” includes both of the following:

23 (1) The owner of an interest in the declared homestead who is named as a
24 declared homestead owner in a homestead declaration recorded pursuant to this
25 article.

26 (2) The declarant named in a declaration of homestead recorded prior to July 1,
27 1983, pursuant to former Title 5 (commencing with Section 1237) of Part 4 of
28 Division 2 of the Civil Code and the spouse of such declarant.

29 (c) “Dwelling” means any interest in real property (whether present or future,
30 vested or contingent, legal or equitable) that is a “dwelling” as defined in Section
31 704.710, but does not include a leasehold estate with an unexpired term of less
32 than two years or the interest of the beneficiary of a trust.

33 (d) “Homestead declaration” includes both of the following:

34 (1) A homestead declaration recorded pursuant to this article.

35 (2) A declaration of homestead recorded prior to July 1, 1983, pursuant to
36 former Title 5 (commencing with former Section 1237) of Part 4 of Division 2 of
37 the Civil Code.

38 (e) “Spouse” means a “spouse” as defined in Section 704.710.

39 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

40 **Comment.** Section 704.910 defines various terms used in this article in light of the
41 purposes of the article.

42 A primary purpose of this article is to continue the rule under former law that a judgment
43 lien does not attach to a declared homestead. [But see subdivision (c) of Section 704.950
44 which permits the attachment of the judgment lien to the surplus value of the homestead over

1 liens and encumbrances and the homestead exemption.] See the Comment to Section
2 704.950. For this reason, the description in subdivision (c) of Section 704.910 of the interest
3 in real property that may constitute a declared homestead is drawn from Section 697.340
4 (property to which judgment liens on real property attaches). This continues former law
5 which restricted a declared homestead to a dwelling that was real property. See former Civil
6 Code § 1237. By restricting the dwellings that may become declared homesteads to interests
7 in real property, the definition of “dwelling” excludes a dwelling that is personal property.
8 Thus, a boat or other waterborne vessel (although included within the definition set out in
9 Section 704.710) is not a “dwelling” for the purposes of this article. Likewise, unless a
10 mobilehome is so affixed to the land as to be treated as real property, the mobilehome
11 (although included within the definition set out in Section 704.710) is not a “dwelling” for
12 the purposes of this article. See Health and Safety Code § 18551.

13 The definitions in Section 704.910 are also designed to give the same effect to a
14 declaration of homestead under former law as is given to a homestead declaration recorded
15 pursuant to this article. “Homestead declaration” is defined in subdivision (d) to include a
16 declaration of homestead recorded under former law. “Declared homestead owner” is
17 defined in subdivision (b) to include the declarant or the declarant’s spouse in the case of a
18 declaration of homestead recorded under former law. However, the effect of a declaration of
19 homestead recorded under former law is limited to the effect given the homestead declaration
20 by this article. See Sections 704.950 (judgment lien does not attach to declared homestead
21 [except to the extent provided in subdivisions (b) and (c) of Section 704.950]) and 704.960
22 (exemption for proceeds of voluntary sale of declared homestead; investment of proceeds in
23 new dwelling and effect of selection of new dwelling as a declared homestead). Other effects
24 of a declaration of homestead under former law are not continued. See Section 694.090.
25 Accordingly, the restrictions imposed by former law on the conveyance or encumbrance of a
26 homestead are not continued. See Section 704.940. A declaration of homestead recorded
27 under former law can be abandoned using the procedure provided in Section 704.980,
28 without regard to the restrictions on abandonment of the homestead under former law.
29 Likewise, Section 704.990 (abandonment of declared homestead by operation of law) applies
30 to a homestead created by recording a declaration of homestead under former law.

31 Under the revised declared homestead procedure provided by this article, a “declared
32 homestead owner” as defined in subdivision (b) must not only be named as such in a
33 homestead declaration but also must be the owner of an interest in the declared homestead.
34 However, the declared homestead owner need not reside in the declared homestead if the
35 spouse of the declared homestead owner resides in the declared homestead. See Sections
36 704.920 and 704.930(a)(3). If a husband and wife are both owners of an interest in a
37 homestead (as where the property is community property or where the spouses hold the
38 property in joint tenancy or as tenants in common), they both may be named as declared
39 homestead owners in the same homestead declaration. See Section 704.930(a)(1). In addition,
40 a married person who is not the owner of an interest in the dwelling may execute,
41 acknowledge, and record a homestead declaration naming the other spouse who is an owner
42 of an interest in the dwelling as the declared homestead owner (see subdivisions (a)(3) and
43 (b)(2) of Section 704.930), but at least one of the spouses must reside in the dwelling as his
44 or her principal dwelling (see Section 704.920 and subdivision (a)(3) of Section 740.930).
45 Where unmarried persons hold interests in the same dwelling in which they both reside, they
46 must record separate homestead declarations if each desires to have a declared homestead.
47 Since former law did not provide for the naming of a “declared homestead owner” in a
48 declaration of homestead, subdivision (b) gives the declarant under a declaration of
49 homestead under former law and the spouse of such declarant the status of a “declared
50 homestead owner” for the purposes of this article.

1 **§ 704.920. Manner of selection of homestead**

2 704.920. A dwelling in which an owner or spouse of an owner resides may be
3 selected as a declared homestead pursuant to this article by recording a
4 homestead declaration in the office of the county recorder of the county where
5 the dwelling is located. From and after the time of recording, the dwelling is a
6 declared homestead for the purposes of this article.

7 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

8 **Comment.** Section 704.020 continues portions of former Civil Code Sections 1262, 1264,
9 1265, 1268, 1269, and 1303.

10 **§ 704.930. Execution and contents of homestead declaration**

11 704.930. (a) A homestead declaration recorded pursuant to this article shall
12 contain all of the following:

13 (1) The name of the declared homestead owner. A husband and wife both may
14 be named as declared homestead owners in the same homestead declaration if
15 each owns an interest in the dwelling selected as the declared homestead.

16 (2) A description of the declared homestead.

17 (3) A statement that the declared homestead is the principal dwelling of the
18 declared homestead owner or such person's spouse, and that the declared
19 homestead owner or such person's spouse resides in the declared homestead on
20 the date the homestead declaration is recorded.

21 (b) The homestead declaration shall be executed and acknowledged in the
22 manner of an acknowledgment of a conveyance of real property by at least one
23 of the following persons:

24 (1) The declared homestead owner.

25 (2) The spouse of the declared homestead owner.

26 (3) The guardian or conservator of the person or estate of either of the persons
27 listed in paragraph (1) or (2). The guardian or conservator may execute,
28 acknowledge, and record a homestead declaration without the need to obtain
29 court authorization.

30 (4) A person acting under a power of attorney or otherwise authorized to act
31 on behalf of a person listed in paragraph (1) or (2).

32 (c) The homestead declaration shall include a statement that the facts stated in
33 the homestead declaration are known to be true as of the personal knowledge of
34 the person executing and acknowledging the homestead declaration. If the
35 homestead declaration is executed and acknowledged by a person listed in
36 paragraph (3) or (4) of subdivision (b), it shall also contain a statement that the
37 person has authority to so act on behalf of the declared homestead owner or the
38 spouse of the declared homestead owner and the source of the person's
39 authority.

40 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

41 *Amended Stats 1983 ch 155 § 18, effective June 30, 1983, operative July 1, 1983.*

42 Amendments:

1 **Comment (1982).** Section 704.930 continues portions of former Civil Code Sections 1262,
2 1263, 1266, 1267, 1300, and 1301. Section 704.930 also makes clear that a homestead
3 declaration may be executed, acknowledged, and recorded by a guardian or conservator or
4 other person authorized to act on behalf of the declared homestead owner or spouse of the
5 declared homestead owner.

6 Section 704.930 applies only to a homestead declaration recorded pursuant to this article.
7 The section does not affect a declaration of homestead recorded under former law.

8 **Comment (1983).** See the Comment to Section 704.710.

9 **§ 704.940. Right to convey or encumber not limited; Evidentiary effect of homestead**

10 704.940. A homestead declaration does not restrict or limit any right to convey
11 or encumber the declared homestead. A homestead declaration, when properly
12 recorded, is prima facie evidence of the facts therein stated, and conclusive
13 evidence thereof in favor of a purchaser or encumbrancer in good faith and for a
14 valuable consideration.

15 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

16 **Comment.** The first sentence of Section 704.940 makes clear that the recording of a
17 homestead declaration does not restrict the right to convey or encumber the declared
18 homestead. The provisions of former law (e.g., former Civil Code § § 1242, 1243, 1243.5)
19 which gave a declaration of homestead that effect are not continued. See also Section
20 694.090. However, Section 704.930 has no effect on the other provisions of law that restrict
21 the right to convey or encumber community property. See Civil Code § § 5127, 5128. See
22 also Civil Code § 5102. The second sentence of Section 704.940 is drawn from a portion of
23 former Civil Code Section 1263.

24 **§ 704.950. Attachment of judgment lien to homestead**

25 704.950. (a) Except as provided in subdivisions (b) and (c), a judgment lien on
26 real property created pursuant to Article 2 (commencing with Section 697.310) of
27 Chapter 2 does not attach to a declared homestead if both of the following
28 requirements are satisfied:

29 (1) A homestead declaration describing the declared homestead was recorded
30 prior to the time the abstract or certified copy of the judgment was recorded to
31 create the judgment lien.

32 (2) The homestead declaration names the judgment debtor or the spouse of the
33 judgment debtor as a declared homestead owner.

34 (b) This section does not apply to a judgment lien created under Section
35 697.320 by recording a certified copy of a judgment for child , family, or spousal
36 support.

37 (c) A judgment lien attaches to a declared homestead in the amount of any
38 surplus over the total of the following:

39 (1) All liens and encumbrances on the declared homestead at the time the
40 abstract of judgment or certified copy of the judgment is recorded to create the
41 judgment lien.

42 (2) The homestead exemption set forth in Section 704.730.

43 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

44 *Amended Stats 1992 ch 163 § 44 (AB 2641), operative January 1, 1994.*

1 **Comment (1982).** Subdivision (a) of Section 704.950 continues former law. A judgment
2 lien does not attach to property subject to a prior homestead declaration; likewise, such a
3 judgment is not a lien on a surplus value therein over and above the amount of the homestead
4 exemption, regardless of the value of the property. *Yager v. Yager*, 7 Cal. 2d 213, 60 P.2d
5 422 (1936); *Boggs v. Dunn*, 160 Cal. 283, 116 P. 743 (1911); *Engelman v. Gordon*, 82 Cal.
6 App. 3d 174, 146 Cal. Rptr. 835 (1978). [This Comment was not revised to reflect the
7 addition of subdivision (c) to Section 704.950 prior to the enactment of the section.]
8 However, as under former law, a judgment creditor may reach the value of the equity in a
9 declared homestead in excess of the homestead exemption by levy of execution on the
10 property. See Section 704.970. See also former Civil Code § § 1245-1255; *Swearingen v.*
11 *Byrne*, 67 Cal. App. 3d 380, 136 Cal. Rptr. 736 (1977). In the proceedings following levy of
12 execution, the judgment creditor may also raise the issues of whether the judgment debtor is
13 entitled to a homestead exemption (as where neither the judgment debtor nor the spouse of
14 the judgment debtor occupies the property as their principal dwelling) or the amount of the
15 homestead exemption. See Sections 704.740-704.840, 704.970.

16 Subdivision (b) of Section 704.950 makes clear that a judgment lien on a judgment for
17 child or spousal support may attach to a declared homestead.

18 **Comment (1992).** Subdivision (b) of Section 704.950 is amended to make clear that the
19 section applies to a judgment for family support. See Fam. Code § 4501 (family support
20 order enforceable in same manner and to same extent as child support order). See also
21 Section 680.145 (“child support” includes family support).

22 **§ 704.960. Proceeds exemption after voluntary sale; Reinvestment of proceeds of**
23 **voluntary or involuntary sale and effect of new declaration**

24 704.960. (a) If a declared homestead is voluntarily sold, the proceeds of sale are
25 exempt in the amount provided by Section 704.730 for a period of six months
26 after the date of sale.

27 (b) If the proceeds of a declared homestead are invested in a new dwelling
28 within six months after the date of a voluntary sale or within six months after
29 proceeds of an execution sale or of insurance or other indemnification for damage
30 or destruction are received, the new dwelling may be selected as a declared
31 homestead by recording a homestead declaration within the applicable six-month
32 period. In such case, the homestead declaration has the same effect as if it had
33 been recorded at the time the prior homestead declaration was recorded.

34 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

35 **Comment.** Subdivision (a) of Section 704.960 continues the substance of the last portion
36 of former Civil Code Section 1265. As to the proceeds exemption where a dwelling is sold at
37 an execution sale, see Section 704.720. See also Section 704.970. Subdivision (b) of Section
38 704.960 continues the substance of former Civil Code Section 1265a. See also *Houghton v.*
39 *Lee*, 50 Cal. 101, 103 (1875) (proceeds from insurance on declared homestead exempt).

40 **§ 704.965. Determination of amount of exemption**

41 704.965. If a homestead declaration is recorded prior to the operative date of an
42 amendment to Section 704.730 which increases the amount of the homestead
43 exemption, the amount of the exemption for the purposes of subdivision (c) of
44 Section 704.950 and Section 704.960 is the increased amount, except that, if the
45 judgment creditor obtained a lien on the declared homestead prior to the
46 operative date of the amendment to Section 704.730, the exemption for the

1 purposes of subdivision (c) of Section 704.950 and Section 704.960 shall be
2 determined as if that amendment to Section 704.730 had not been enacted.

3 *Added Stats 1984 ch 454 § 2.*

4 **§ 704.970. Effect of article on rights after levy of execution**

5 704.970. Whether or not a homestead declaration has been recorded:

6 (a) Nothing in this article affects the right of levy pursuant to a writ of
7 execution.

8 (b) Any levy pursuant to a writ of execution on a dwelling (as defined in
9 Section 704.710) and the sale pursuant thereto shall be made in compliance with
10 Article 4 (commencing with Section 704.710) and the judgment debtor and the
11 judgment creditor shall have all the rights and benefits provided by that article.

12 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

13 **Comment.** Section 704.970 makes clear that the homestead declaration does not affect the
14 right of a judgment creditor to levy on the declared homestead pursuant to a writ of
15 execution. See the Comment to Section 704.950. Nor does the failure of a judgment debtor
16 to record a homestead declaration affect the judgment debtor's rights under the homestead
17 exemption when a dwelling is levied upon pursuant to a writ of execution. See Section
18 704.740. Section 704.970 continues the substance of former Civil Code Section 1259.2.

19 **§ 704.980. Declaration of abandonment**

20 704.980.(a) A declared homestead may be abandoned by a declaration of
21 abandonment under this section, whether the homestead declaration was
22 recorded pursuant to this article or pursuant to former Title 5 (commencing with
23 former Section 1237) of Part 4 of Division 2 of the Civil Code.

24 (b) A declaration of abandonment shall be executed and acknowledged in the
25 manner of an acknowledgment of a conveyance of real property. It shall be
26 executed and acknowledged by a declared homestead owner or by a person
27 authorized to act on behalf of a declared homestead owner. If it is executed and
28 acknowledged by a person authorized to act on behalf of a declared homestead
29 owner, the declaration shall contain a statement that the person has authority to
30 act on behalf of the declared homestead owner and the source of the person's
31 authority.

32 (c) The declaration of abandonment does not affect the declared homestead of
33 any person other than the declared homestead owner named in the declaration of
34 abandonment.

35 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

36 **Comment.** Section 704.980 supersedes provisions of the Civil Code which restricted the
37 right to record a declaration of abandonment of a declared homestead. See, e.g., former Civil
38 Code § § 1243, 1243.5, and 1244. Under Section 704.980, a declared homestead owner or a
39 person authorized to act on behalf of the declared homestead owner may execute,
40 acknowledge, and record a declaration of abandonment as to the declared homestead of that
41 declared homestead owner. Such abandonment does not affect the rights of any other person.
42 Accordingly, where married persons have their marriage dissolved and one continues to
43 reside in the declared homestead, the other may abandon the declared homestead and
44 establish a new declared homestead. In such case, the abandonment does not affect the right

1 of the former spouse who continues to reside in the declared homestead to retain the dwelling
2 as his or her declared homestead if that former spouse owns an interest in the dwelling.

3 **§ 704.990. Abandonment of homestead by recording homestead declaration for different**
4 **property**

5 704.990. (a) A declared homestead is abandoned by operation of law as to a
6 declared homestead owner if the declared homestead owner or a person
7 authorized to act on behalf of the declared homestead owner executes,
8 acknowledges, and records a new homestead declaration for the declared
9 homestead owner on different property. An abandonment under this subdivision
10 does not affect the declared homestead of any person other than the declared
11 homestead owner named in the new homestead declaration.

12 (b) Notwithstanding subdivision (a), if a homestead declaration is recorded
13 which includes property described in a previously recorded homestead
14 declaration, to the extent that the prior homestead declaration is still valid, the
15 new homestead declaration shall not be considered an abandonment of the prior
16 declared homestead.

17 *Added Stats 1982 ch 1364 § 2, operative July 1, 1983.*

18 **Comment.** Subdivision (a) of Section 704.990 is new and is designed to preclude a person
19 from having two declared homesteads on different property. Subdivision (b) continues the
20 substance of former Civil Code Section 1261.1.

21 **§ 704.995. Continuation of protection after death of declared homestead owner**

22 704.995. (a) The protection of the declared homestead from any creditor having
23 an attachment lien, execution lien, or judgment lien on the dwelling continues
24 after the death of the declared homestead owner if, at the time of the death, the
25 dwelling was the principal dwelling of one or more of the following persons to
26 whom all or part of the interest of the deceased declared homestead owner
27 passes:

28 (1) The surviving spouse of the decedent.

29 (2) A member of the family of the decedent.

30 (b) The protection of the declared homestead provided by subdivision (a)
31 continues regardless of whether the decedent was the sole owner of the declared
32 homestead or owned the declared homestead with the surviving spouse or a
33 member of the decedent's family and regardless of whether the surviving spouse
34 or the member of the decedent's family was a declared homestead owner at the
35 time of the decedent's death.

36 (c) The amount of the homestead exemption is determined pursuant to Section
37 704.730 depending on the circumstances of the case at the time the amount is
38 required to be determined.

39 *Added Stats 1984 ch 538 § 27.*

40 **Comment.** Section 704.995 is added to make clear that the surviving spouse or resident
41 family does not lose the declared homestead right by the death of a declared homestead
42 owner. Hence, the protection afforded the declared homestead from creditors continues even
43 though the person who recorded the homestead declaration or who was the sole or joint

1 owner is dead. This section rejects a contrary dictum in Estate of Grigsby, 134 Cal. App. 3d
2 611, 615, 184 Cal. Rptr. 886, 888 (1982) (“... the declared homestead does not survive the
3 death of one of the spouses.”). See also Prob. Code § 6528 (effect of probate homestead on
4 declared homestead). Subdivision (c) makes clear that where the right to a declared
5 homestead continues, the amount of the homestead exemption is determined under the
6 normal rules. For example, if the surviving spouse is not 65 years of age or older and does
7 not have another family member living in the dwelling, the dollar amount of the declared
8 homestead that is protected from creditors will be reduced. See Sections 704.730 (amount of
9 homestead exemption), 704.950 (attachment of judgment lien to surplus value).

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Comparison of Exemptions Nationwide

The chart on the following pages summarizes and compares the major exemptions nationwide and the federal bankruptcy exemptions (11 U.S.C. § 522). The numbers were abstracted from the appendix to Robin Leonard's self-help manual, *MONEY TROUBLES: LEGAL STRATEGIES TO COPE WITH YOUR DEBTS* (Nolo Press, 2d ed. 1993).

We have focused on exemptions having a specific dollar amount, particularly those that are comparable to California exemptions. We have not tried to summarize all exemptions, although some descriptive material appears in the chart.

Totals in the last two columns do not reflect exemptions that are not quantified. A *State Total* given in italics indicates that the homestead exemption is not tied to a dollar amount. The last column on the right totals personal property exemptions other than the insurance cash value figure which is omitted because it is difficult to determine how it works in a summary. Note, however, that some insurance cash value exemptions are substantial.

The top three rows of the chart compare California exemptions to the national average of monetary amounts, the national median, and to the federal bankruptcy exemptions. (Of course, the average and median figures cannot take into account unlimited exemptions.) Negative numbers are included in parentheses.

The following six rows show the maximum, average, minimum, median, mode, and count of the state information. (As a reminder: the *average* is the total of monetary amounts in the column divided by the number of items (count); the *median* is the number in the center of the range of amounts in the column; the *mode* is most common amount in the column.)

The chart has not been cite checked and thus is likely to contain some data entry errors. In addition, the law may have changed in one or more states since the original appendix was prepared for Ms. Leonard's book. It is believed, however, that the overall picture of exemptions is accurate and that the data provides a useful tool for comparison of California exemptions.

State Exemptions Compared

	Homestead \$\$ Amount	Homestead Special	Homestead Substitute	Wild Card	Motor Vehicle	Personal Property	Jewelry, Art, Etc.	Misc. \$\$ Amount	Misc. Items	Accounts & Cash	Tools of Trade	Insurance Cash Value	State Totals	Non-Ins. Pers. Prop.
Cal Variation from Average:	\$26,107		(\$3,667)	(\$1,224)	(\$1,122)	(\$3,890)	\$1,205	(\$325)		(\$1,607)	(\$158)	(\$9,235)	\$28,034	(\$1,396)
Cal Variation from Median:	\$40,000		(\$3,000)	(\$500)	(\$300)	(\$3,000)	\$1,750	\$0		(\$700)	\$750	(\$1,000)	\$39,100	\$600
Cal Variation from Federal:	\$42,500		(\$3,750)	(\$400)	\$0	\$0	\$2,000	\$1,000		\$0	\$1,750	\$0	\$43,100	(\$800)
Maximum:	\$100,000		\$7,500	\$5,500	\$20,000	\$30,000	\$5,000	\$5,000		\$7,500	\$10,000	\$100,000	\$192,300	\$30,000
Average:	\$23,893		\$3,667	\$1,224	\$2,322	\$3,890	\$1,295	\$1,325		\$1,607	\$2,658	\$13,235	\$33,166	\$8,596
Minimum:	\$0		\$500	\$100	\$500	\$500	\$250	\$100		\$150	\$75	\$500	\$17,000	\$300
Median:	\$10,000		\$3,000	\$500	\$1,500	\$3,000	\$750	\$1,000		\$700	\$1,750	\$5,000	\$22,100	\$8,000
Mode:	\$5,000		\$1,000	\$400	\$1,200	\$1,000	\$500	\$1,000		\$1,000	\$750	\$4,000	\$30,000	\$3,000
Count:	42		12	17	34	37	19	8		7	36	17	50	
	Homestead \$\$ Amount	Homestead Special	Homestead Substitute	Wild Card	Motor Vehicle	Personal Property	Jewelry, Art, Etc.	Misc. \$\$ Amount	Misc. Items	Accounts & Cash	Tools of Trade	Insurance Cash Value	State Totals	Non-Ins. Pers. Prop.
Alabama	\$5,000			\$3,000	\$3,000	\$3,000	\$1,000	\$1,000	Pets		\$2,800	\$10,000	\$8,000	\$3,000
Alaska	\$54,000												\$74,800	\$10,800
Arizona	\$100,000		\$1,000		\$1,500	\$1,500	\$1,100	\$500	Pets & animals	\$150	\$2,500	\$10,000	\$118,250	\$8,250
Arkansas	Unlimited	Acreage limits		\$500	\$1,200							\$500	\$2,200	\$1,700
California	\$50,000				\$1,200		\$2,500	\$1,000	Building materials Farm animals & tools		\$2,500	\$4,000	\$61,200	\$7,200
Colorado	\$30,000				\$1,000	\$2,800	\$500	\$5,000			\$1,500	\$5,000	\$45,800	\$10,800
Connecticut	\$0				\$1,500								\$1,500	\$1,500
Delaware	\$0			\$500							\$75		\$575	\$575
Florida	Unlimited	Acreage limits				\$1,000						All	\$1,000	\$1,000
Georgia	\$5,000	Excess may be used as wildcard	\$5,000	\$400	\$1,000	\$3,500	\$500				\$500	\$2,000	\$17,900	\$10,900
Hawaii	\$20,000				\$1,000		\$1,000				All		\$22,000	\$2,000
Idaho	\$50,000				\$1,500	\$4,000	\$250	\$1,000	Crops		\$1,000		\$57,750	\$7,750
Illinois	\$7,500			\$2,000	\$1,200						\$750		\$11,450	\$3,950
Indiana	\$7,500			\$4,000				\$100	Intangible property				\$11,600	\$4,100
Iowa	Unlimited	Acreage limits		\$100	\$5,000	\$4,000							\$9,100	\$9,100
Kansas	Unlimited	Acreage limits			\$20,000		\$1,000				\$7,500		\$28,500	\$28,500
Kentucky	\$5,000			\$1,000	\$2,500	\$3,000					\$3,000		\$14,500	\$9,500
Louisiana	\$15,000						\$5,000		Specific items		Items	\$35,000	\$55,000	\$5,000

State Exemptions Compared

	Homestead \$ Amount	Homestead Special	Homestead Substitute	Wild Card	Motor Vehicle	Personal Property	Jewelry, Art, Etc.	Misc. \$ Amount	Misc. Items	Accounts & Cash	Tools of Trade	Insurance Cash Value	State Totals	Non-Ins. Pers. Prop.
Maine	\$12,500	Excess may be used as wildcard to \$6000	\$6,000	\$400	\$2,500		\$750		Specific items		\$5,000	\$4,000	\$31,150	\$14,650
Maryland	\$0			\$5,500		\$500					\$2,500		\$8,500	\$8,500
Massachusetts	\$100,000				\$750	\$3,600			Specific items	\$500	\$500	All	\$105,350	\$5,350
Michigan	\$3,500		\$1,000			\$1,000			Specific items		\$1,000		\$6,500	\$3,000
Minnesota	Unlimited	Acreage limits			\$3,000	\$6,750			Farm tools, etc. to \$13,000		\$7,500	\$6,000	\$23,250	\$17,250
Mississippi	\$75,000					\$10,000							\$85,000	\$10,000
Missouri	\$8,000			\$400	\$500	\$1,000	\$500		Cooperative ass'n shares		\$2,000	\$5,000	\$17,400	\$4,400
Montana	\$40,000			\$1,200	\$1,200	\$4,500		\$500			\$3,000	\$4,000	\$53,200	\$9,200
Nebraska	\$10,000		\$2,500		\$1,500	\$1,500			Specific items		\$1,500	\$10,000	\$25,500	\$5,500
Nevada	\$95,000				\$1,500	\$3,000		\$1,500	Books		\$4,500		\$105,500	\$10,500
New Hampshire	\$30,000				\$1,000	\$3,200	\$500		Specific items		\$1,200		\$35,900	\$5,900
New Jersey	\$0					\$2,000			Specific items				\$2,000	\$2,000
New Mexico	\$20,000	Married, widowed, or supporting another	\$2,000	\$500	\$4,000		\$2,000		Specific items		\$1,500		\$30,000	\$10,000
New York	\$10,000		\$2,500		\$2,400	\$5,535			Specific items		\$600		\$21,035	\$11,035
North Carolina	\$10,000		\$3,500		\$1,500	\$3,500					\$750		\$19,250	\$9,250
North Dakota	\$80,000		\$7,500		\$1,200	\$2,600			Specific items		\$1,000	\$100,000	\$192,300	\$12,300
Ohio	\$5,000		\$500		\$1,000	\$2,100			Specific items	\$400	\$750		\$9,750	\$4,750
Oklahoma	Unlimited	Acreage limit			\$3,000	\$4,000			Specific items		\$5,000		\$12,000	\$12,000
Oregon	\$15,000			\$400	\$1,200	\$3,650				\$7,500			\$27,750	\$12,750
Pennsylvania	\$0			\$300					Specific items				\$300	\$300
Rhode Island	\$0					\$1,300			Specific items		\$500		\$1,800	\$1,800
South Carolina	\$5,000				\$1,200	\$2,500	\$500			\$1,000	\$750	All	\$10,950	\$5,950
South Dakota	Unlimited	Acreage limits				\$2,200						\$20,000	\$22,200	\$2,200
Tennessee	\$5,000					\$4,000			Specific items		\$750		\$9,750	\$4,750
Texas	Unlimited	Acreage limits				\$30,000						All	\$30,000	\$30,000
Utah	\$8,000					\$1,000	\$500		Specific items		\$3,000	\$1,500	\$14,000	\$4,500
Vermont	\$30,000			\$400	\$2,500	\$2,500	\$500		Specific items	\$700	\$5,000		\$41,600	\$11,600
Virginia	\$5,000		\$5,000		\$2,000	\$6,000	\$5,000		Specific items		\$10,000		\$33,000	\$28,000
Washington	\$30,000			\$1,000	\$2,500	\$4,200	\$1,000				\$5,000		\$43,700	\$13,700
West Virginia	\$7,500		\$7,500	\$400	\$1,200	\$1,000	\$500				\$750	\$4,000	\$22,850	\$11,350
Wisconsin	\$40,000				\$1,200	\$5,000				\$1,000	\$7,500	\$4,000	\$58,700	\$14,700
Wyoming	\$10,000				\$2,000	\$3,000					\$2,000		\$17,000	\$7,000
Federal Bankruptcy	\$7,500		\$3,750	\$400	\$1,200		\$500				\$750	\$4,000	\$18,100	\$6,600

Bankruptcy Exemptions

- **California: Code Civ. Proc. § 704.140**
- **Federal: 11 U.S.C. § 522**

California:

§ 703.140. Election of exemptions if bankruptcy petition is filed

703.140. (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:

(1) If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(2) If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(b) The following exemptions may be elected as provided in subdivision (a):

(1) The debtor's aggregate interest, not to exceed seven thousand five hundred dollars (\$7,500) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed one thousand two hundred dollars (\$1,200) in value, in one motor vehicle.

(3) The debtor's interest, not to exceed two hundred dollars (\$200) in value in any particular item, in household furnishings, household goods, wearing apparel,

1 appliances, books, animals, crops, or musical instruments, that are held primarily for
2 the personal, family, or household use of the debtor or a dependent of the debtor.

3 (4) The debtor's aggregate interest, not to exceed five hundred dollars (\$500)
4 in value, in jewelry held primarily for the personal, family, or household use of the
5 debtor or a dependent of the debtor.

6 (5) The debtor's aggregate interest, not to exceed in value four hundred dollars
7 (\$400) plus any unused amount of the exemption provided under paragraph (1),
8 in any property.

9 (6) The debtor's aggregate interest, not to exceed seven hundred fifty dollars
10 (\$750) in value, in any implements, professional books, or tools of the trade of the
11 debtor or the trade of a dependent of the debtor.

12 (7) Any unmatured life insurance contract owned by the debtor, other than a
13 credit life insurance contract.

14 (8) The debtor's aggregate interest, not to exceed in value four thousand
15 dollars (\$4,000) in any accrued dividend or interest under, or loan value of, any
16 unmatured life insurance contract owned by the debtor under which the insured
17 is the debtor or an individual of whom the debtor is a dependent.

18 (9) Professionally prescribed health aids for the debtor or a dependent of the
19 debtor.

20 (10) The debtor's right to receive any of the following:

21 (A) A social security benefit, unemployment compensation, or a local public
22 assistance benefit.

23 (B) A veterans' benefit.

24 (C) A disability, illness, or unemployment benefit.

25 (D) Alimony, support, or separate maintenance, to the extent reasonably
26 necessary for the support of the debtor and any dependent of the debtor.

27 (E) A payment under a stock bonus, pension, profitsharing, annuity, or similar
28 plan or contract on account of illness, disability, death, age, or length of service, to
29 the extent reasonably necessary for the support of the debtor and any dependent
30 of the debtor, unless all of the following apply:

31 (i) That plan or contract was established by or under the auspices of an insider
32 that employed the debtor at the time the debtor's rights under the plan or
33 contract arose.

34 (ii) The payment is on account of age or length of service.

35 (iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b),
36 408, or 409 of the Internal Revenue Code of 1954.

37 (11) The debtor's right to receive, or property that is traceable to, any of the
38 following:

39 (A) An award under a crime victim's reparation law.

40 (B) A payment on account of the wrongful death of an individual of whom the
41 debtor was a dependent, to the extent reasonably necessary for the support of
42 the debtor and any dependent of the debtor.

1 (C) A payment under a life insurance contract that insured the life of an
2 individual of whom the debtor was a dependent on the date of such individual's
3 death, to the extent reasonably necessary for the support of the debtor and any
4 dependent of the debtor.

5 (D) A payment, not to exceed seven thousand five hundred dollars (\$7,500), on
6 account of personal bodily injury, not including pain and suffering or
7 compensation for actual pecuniary loss, of the debtor or an individual of whom
8 the debtor is a dependent.

9 (E) A payment in compensation of loss of future earnings of the debtor or an
10 individual of whom the debtor is or was a dependent, to the extent reasonably
11 necessary for the support of the debtor and any dependent of the debtor.

12 *Added Stats 1984 ch 218 § 2.*

13 *Amended Stats 1993 ch 1111 § 1 (SB 651), effective October 10, 1993.*

14 **Note.** 1993 Cal. Stat. ch. 1111, § 2 provides:

15 The Legislature finds and declares that the amendment of Section 703.140 of the Code of
16 Civil Procedure by Section 1 of this act pertaining to exemptions in bankruptcy is not a
17 change in, but is declaratory of, existing law. The Legislature further finds and declares that
18 the decision in *In re Pladson*, 154 B.R. 305 (N.D. Cal. 1993), holding that the homestead
19 exemption is not available in bankruptcy, is not a correct interpretation of California law. The
20 Enforcement of Judgments Law provides exemptions for various forms of property,
21 including homesteads, and contains a number of special procedural protections for special
22 forms of property. It is not, and never has been, the intention of the Legislature to restrict any
23 of the exemptions in bankruptcy because of technical language concerning the procedures
24 for claiming exemptions in state money judgment enforcement proceedings under the
25 Enforcement of Judgments Law. See, e.g., *Tentative Recommendation Proposing the*
26 *Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001, 2095-96 (1980);
27 *1982 Creditors' Remedies Legislation*, 16 Cal. L. Revision Comm'n Reports 1001, 1098-99
28 (1982).

Federal

29 Bankruptcy Code, Title 11 § 522. Exemptions

30 (a) In this section —

31 (1) “dependent” includes spouse, whether or not actually dependent; and

32 (2) “value” means fair market value as of the date of the filing of the petition
33 or, with respect to property that becomes property of the estate after such date, as
34 of the date such property becomes property of the estate.

35 (b) Notwithstanding section 541 of this title, an individual debtor may exempt
36 from property of the estate the property listed in either paragraph (1) or, in the
37 alternative, paragraph (2) of this subsection. In joint cases filed under section 302
38 of this title and individual cases filed under section 301 or 303 of this title by or
39 against debtors who are husband and wife, and whose estates are ordered to be
40 jointly administered under Rule 1015(b) of the Bankruptcy Rules, one debtor may
41 not elect to exempt property listed in paragraph (1) and the other debtor elect to
42 exempt property listed in paragraph (2) of this subsection. If the parties cannot

1 agree on the alternative to be elected, they shall be deemed to elect paragraph (1),
2 where such election is permitted under the law of the jurisdiction where the case
3 is filed. Such property is —

4 (1) property that is specified under subsection (d) of this section, unless the
5 State law that is applicable to the debtor under paragraph (2)(A) of this
6 subsection specifically does not so authorize; or, in the alternative,

7 (2)(A) any property that is exempt under Federal law, other than subsection
8 (d) of this section, or State or local law that is applicable on the date of the filing
9 of the petition at the place in which the debtor's domicile has been located for
10 the 180 days immediately preceding the date of the filing of the petition, or for a
11 longer portion of such 180-day period than in any other place; and

12 (B) any interest in property in which the debtor had, immediately before the
13 commencement of the case, an interest as a tenant by the entirety or joint tenant
14 to the extent that such interest as a tenant by the entirety or joint tenant is
15 exempt from process under applicable nonbankruptcy law.

16 (c) Unless the case is dismissed, property exempted under this section is not
17 liable during or after the case for any debt of the debtor that arose, or that is
18 determined under section 502 of this title as if such debt had arisen, before the
19 commencement of the case, except —

20 (1) a debt of a kind specified in section 523(a)(1) or 523(a)(5) of this title;

21 (2) a debt secured by a lien that is —

22 (A)(i) not avoided under subsection (f) or (g) of this section or under
23 section 544, 545, 547, 548, 549, or 724(a) of this title; and

24 (ii) not void under section 506(d) of this title; or

25 (B) a tax lien, notice of which is properly filed; or

26 (3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title
27 owed by an institution-affiliated party of an insured depository institution to a
28 Federal depository institutions regulatory agency acting in its capacity as
29 conservator, receiver, or liquidating agent for such institution.

30 (d) The following property may be exempted under subsection (b)(1) of this
31 section:

32 (1) The debtor's aggregate interest, not to exceed \$7,500 in value, in real
33 property or personal property that the debtor or a dependent of the debtor uses
34 as a residence, in a cooperative that owns property that the debtor or a
35 dependent of the debtor uses as a residence, or in a burial plot for the debtor or a
36 dependent of the debtor.

37 (2) The debtor's interest, not to exceed \$1,200 in value, in one motor vehicle.

38 (3) The debtor's interest, not to exceed \$200 in value in any particular item or
39 \$4,000 in aggregate value, in household furnishings, household goods, wearing
40 apparel, appliances, books, animals, crops, or musical instruments, that are held
41 primarily for the personal, family, or household use of the debtor or a dependent
42 of the debtor.

1 (4) The debtor's aggregate interest, not to exceed \$500 in value, in jewelry
2 held primarily for the personal, family, or household use of the debtor or a
3 dependent of the debtor.

4 (5) The debtor's aggregate interest in any property, not to exceed in value
5 \$400 plus up to \$3,750 of any unused amount of the exemption provided under
6 paragraph (1) of this subsection.

7 (6) The debtor's aggregate interest, not to exceed \$750 in value, in any
8 implements, professional books, or tools, of the trade of the debtor or the trade of
9 a dependent of the debtor.

10 (7) Any unmaturing life insurance contract owned by the debtor, other than a
11 credit life insurance contract.

12 (8) The debtor's aggregate interest, not to exceed in value \$4,000 less any
13 amount of property of the estate transferred in the manner specified in section
14 542(d) of this title, in any accrued dividend or interest under, or loan value of, any
15 unmaturing life insurance contract owned by the debtor under which the insured
16 is the debtor or an individual of whom the debtor is a dependent.

17 (9) Professionally prescribed health aids for the debtor or a dependent of the
18 debtor.

19 (10) The debtor's right to receive —

20 (A) a social security benefit, unemployment compensation, or a local
21 public assistance benefit;

22 (B) a veterans' benefit;

23 (C) a disability, illness, or unemployment benefit;

24 (D) alimony, support, or separate maintenance, to the extent
25 reasonably necessary for the support of the debtor and any dependent of the
26 debtor;

27 (E) a payment under a stock bonus, pension, profitsharing, annuity,
28 or similar plan or contract on account of illness, disability, death, age, or length of
29 service, to the extent reasonably necessary for the support of the debtor and any
30 dependent of the debtor, unless —

31 (i) such plan or contract was established by or under the
32 auspices of an insider that employed the debtor at the time the debtor's rights
33 under such plan or contract arose;

34 (ii) such payment is on account of age or length of service; and

35 (iii) such plan or contract does not qualify under section 401(a),
36 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1986 (26 U.S.C.
37 401(a), 403(a), 403(b), 408, or 409).

38 (11) The debtor's right to receive, or property that is traceable to —

39 (A) an award under a crime victim's reparation law;

40 (B) a payment on account of the wrongful death of an individual of
41 whom the debtor was a dependent, to the extent reasonably necessary for the
42 support of the debtor and any dependent of the debtor;

1 (C) a payment under a life insurance contract that insured the life of
2 an individual of whom the debtor was a dependent on the date of such
3 individual's death, to the extent reasonably necessary for the support of the
4 debtor and any dependent of the debtor;

5 (D) a payment, not to exceed \$7,500, on account of personal bodily
6 injury, not including pain and suffering or compensation for actual pecuniary loss,
7 of the debtor or an individual of whom the debtor is a dependent; or

8 (E) a payment in compensation of loss of future earnings of the
9 debtor or an individual of whom the debtor is or was a dependent, to the extent
10 reasonably necessary for the support of the debtor and any dependent of the
11 debtor.

12 (e) A waiver of an exemption executed in favor of a creditor that holds an
13 unsecured claim against the debtor is unenforceable in a case under this title with
14 respect to such claim against property that the debtor may exempt under
15 subsection (b) of this section. A waiver by the debtor of a power under
16 subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i)
17 of this section to exempt property, or under subsection (i) of this section to
18 recover property or to preserve a transfer, is unenforceable in a case under this
19 title.

20 (f) Notwithstanding any waiver of exemptions, the debtor may avoid the
21 fixing of a lien on an interest of the debtor in property to the extent that such lien
22 impairs an exemption to which the debtor would have been entitled under
23 subsection (b) of this section, if such lien is —

24 (1) a judicial lien; or

25 (2) a nonpossessory, nonpurchase-money security interest in any —

26 (A) household furnishings, household goods, wearing apparel,
27 appliances, books, animals, crops, musical instruments, or jewelry that are held
28 primarily for the personal, family, or household use of the debtor or a dependent
29 of the debtor;

30 (B) implements, professional books, or tools, of the trade of the
31 debtor or the trade of a dependent of the debtor; or

32 (C) professionally prescribed health aids for the debtor or a
33 dependent of the debtor.

34 (g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt
35 under subsection (b) of this section property that the trustee recovers under
36 section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the
37 debtor could have exempted such property under subsection (b) of this section if
38 such property had not been transferred, if —

39 (1)(A) such transfer was not a voluntary transfer of such property by the
40 debtor; and

41 (B) the debtor did not conceal such property; or

42 (2) the debtor could have avoided such transfer under subsection (f)(2) of
43 this section.

1 (h) The debtor may avoid a transfer of property of the debtor or recover a
2 setoff to the extent that the debtor could have exempted such property under
3 subsection (g)(1) of this section if the trustee had avoided such transfer, if —

4 (1) such transfer is avoidable by the trustee under section 544, 545, 547, 548,
5 549, or 724(a) of this title or recoverable by the trustee under section 553 of this
6 title; and

7 (2) the trustee does not attempt to avoid such transfer.

8 (i)(1) If the debtor avoids a transfer or recovers a setoff under subsection (f)
9 or (h) of this section, the debtor may recover in the manner prescribed by, and
10 subject to the limitations of, section 550 of this title, the same as if the trustee had
11 avoided such transfer, and may exempt any property so recovered under
12 subsection (b) of this section.

13 (2) Notwithstanding section 551 of this title, a transfer avoided under section
14 544, 545, 547, 548, 549, or 724(a) of this title, under subsection (f) or (h) of this
15 section, or property recovered under section 553 of this title, may be preserved
16 for the benefit of the debtor to the extent that the debtor may exempt such
17 property under subsection (g) of this section or paragraph (1) of this subsection.

18 (j) Notwithstanding subsections (g) and (i) of this section, the debtor may
19 exempt a particular kind of property under subsections (g) and (i) of this section
20 only to the extent that the debtor has exempted less property in value of such
21 kind than that to which the debtor is entitled under subsection (b) of this section.

22 (k) Property that the debtor exempts under this section is not liable for
23 payment of any administrative expense except —

24 (1) the aliquot share of the costs and expenses of avoiding a transfer of
25 property that the debtor exempts under subsection (g) of this section, or of
26 recovery of such property, that is attributable to the value of the portion of such
27 property exempted in relation to the value of the property recovered; and

28 (2) any costs and expenses of avoiding a transfer under subsection (f) or (h)
29 of this section, or of recovery of property under subsection (i)(1) of this section,
30 that the debtor has not paid.

31 (l) The debtor shall file a list of property that the debtor claims as exempt
32 under subsection (b) of this section. If the debtor does not file such a list, a
33 dependent of the debtor may file such a list, or may claim property as exempt from
34 property of the estate on behalf of the debtor. Unless a party in interest objects,
35 the property claimed as exempt on such list is exempt.

36 (m) Subject to the limitation in subsection (b), this section shall apply
37 separately with respect to each debtor in a joint case.

CPI in the West: Average 1982-84 and November 1993
Maintenance and repairs, used cars, and homeownership costs¹

ANALYSIS:

$$\frac{\text{Nov. 1993 value}}{\text{average 1982-84 value}} = \frac{X}{\text{law 1992}}$$

X = the adjusted value for the end of 1993

(Remember that the average 1982-84 value will always be 100 since that period is used as the base year.)

Maintenance and repairs:

$$\frac{127.9}{100} = \frac{X}{1,000}$$

Adjusted value = \$1,280.

Used cars:

$$\frac{139.3}{100} = \frac{X}{1,200}$$

Adjusted value = \$1,671.60

**** Homeownership: (100 = Dec. 1982)**

$$\frac{166.4}{100} = \frac{X}{50,000} \quad \text{Adjusted value} = \$83,200.$$

$$\frac{166.4}{100} = \frac{X}{75,000} \quad \text{Adjusted value} = \$124,800.$$

$$\frac{166.4}{100} = \frac{X}{100,000} \quad \text{Adjusted value} = \$166,400.$$

¹ CPI Detailed Report Data for November 1993, U.S. Department of Labor, Table 11.

**CPI in the West: Average 1982 and November 1993
Maintenance and repairs and used cars²**

ANALYSIS:

Step #1:

Take the CPI values for 1982, 1983, and 1984 and average -----> "A"

Step #2:

$$\frac{A}{\text{CPI 1982 value where base year is 1977}} = \frac{100}{X} \quad (\text{CPI 1982 value where base year is 1982-84})$$

Step #3:

$$\frac{\text{1993 CPI value}}{X} = \frac{\text{adjusted value for 1993}}{\text{1982 law value}}$$

Maintenance and repairs:

Step #1:

$$148.7 + 151.5 + 156.6 = 456.8$$

Average = 152.3

Step #2:

$$\frac{152.3}{148.7} = \frac{100}{X} \quad X = 97.6$$

Step #3:

$$\frac{127.9}{97.6} = \frac{\text{adjusted value}}{1,000} \quad \text{Adjusted value} = \$1,310.$$

Used cars:

Step #1:

$$173.4 + 192.9 + 219.9 = 586.2$$

Average = 195.40

Step #2:

$$\frac{195.40}{173.4} = \frac{100}{X} \quad X = 88.74$$

Step #3:

$$\frac{139.3}{88.74} = \frac{\text{Adjusted value}}{1,200} \quad \text{Adjusted value} = \$1,883.71$$

² CPI Detailed Report Data for January 1983, January 1984, January 1985, and November 1993, U.S. Department of Labor, Table 23A.

CPI, the California Average, for November 1993³

ANALYSIS:

$$\frac{1993 \text{ CPI}}{1982-84 \text{ CPI}} = \frac{150.6}{100} = 1.51$$

1.51 x the amount in 1982 law = adjustment for 1993

(Remember that this CPI value had a base of the average value for 1982-84, not just 1982.)

Adjustments to exemption amounts:

s.704.010 -- Motor vehicles; equity and proceeds of sale or insurance

$$1,200 \times 1.51 = \$1,812.$$

s.704.030 -- Material for repair or improvement of residence

$$1,000 \times 1.51 = \$1,510.$$

s.704.040 -- Jewelry, heirlooms, and works of art

$$2,500 \times 1.51 = \$3,775.$$

s.704.060 -- Personal property necessary to and used in exercise of trade, business or profession

(a) (1) and (2) $2,500 \times 1.51 = \$3,775.$

(a) (3) $5,000 \times 1.51 = \$7,550.$

s.704.080 -- Deposit account; payments authorized by Social Security Administration

(b) (1) $500 \times 1.51 = \$755.$

(b) (2) $750 \times 1.51 = \$1,132.50$

s.704.090 -- Correctional facility inmates; funds in trust

$$1,000 \times 1.51 = \$1,510.$$

s.704.100 -- Life insurance policies

$$4,000 \times 1.51 = \$6,040.$$

s.704.730 -- Amount of homestead exemption

(a) (1) $50,000 \times 1.51 = \$75,500.$

(a) (2) $75,000 \times 1.51 = \$113,250.$

(a) (3) $100,000 \times 1.51 = \$151,000.$

(a) (3) (C) The levels of net income should also be adjusted --

$$15,000 \times 1.51 = \$22,650. \text{ and } 20,000 \times 1.51 = \$30,200.$$

³ California Economic Indicators November/December 1993, Department of Finance.

United States Bankruptcy Court
CENTRAL DISTRICT OF CALIFORNIA
312 NORTH SPRING STREET, RM 908
LOS ANGELES, CALIFORNIA 90012

OCT 11 1991

File: _____
Key: _____

PTS: 798-3745
(213) 894-3745

ALAN M. AHART
JUDGE

October 9, 1991

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Tentative Recommendation Relating to
Miscellaneous Creditors' Remedies
(September 1991)

Dear Sirs:

I endorse all of the proposed changes to the Wage Garnishment Law (WGL) set forth in the above-referenced Tentative Recommendation.

Since you propose to amend the WGL, I wish to call your attention to an additional discrepancy. The EMPLOYER'S RETURN (Wage Garnishment), Judicial Council of California Form 982.5(4), contains two separate warnings notifying an employer that if it does not complete and mail the RETURN, the employer may be subject to civil penalties and attorney fees. However, I am not aware of any statutory authority for assessing attorneys fees or civil penalties against an employer for failing to complete and send the RETURN. The WGL sets forth certain remedies for an employer's deferral or acceleration or failure to withhold or pay over earnings, but recovery of attorneys fees is not even authorized in these instances. See CCP § § 706.153 and 706.154. Consequently, I request that you either amend the WGL to provide for attorney fees and civil penalties against an employer that does not timely complete and mail the RETURN, or that you cause to revise the Form to delete the references to attorneys fees and civil penalties. I previously made this latter suggestion directly to the Judicial Council of California, but received no response. Perhaps you will have more success.

With respect to the Commission's review of debtors' exemptions, I have three proposals. First, with regard to the homestead exemption, I believe that the statute should be amended to clearly state that a debtor cannot utilize the declared homestead exemption if the debtor no longer resides at the property named in the Declaration of Homestead. See In Re

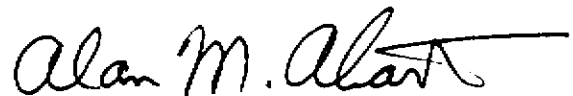
Anderson, 824 F2d 754 (9th Cir. 1987); and In Re Yau, 115 BR 245 (BC CD Cal 1990); but see In Re Figy, 102 BR 75 (BC SD Cal 1989).

Second, I believe that a one-person corporation should not be able to exempt funds held in a pension plan designed and used for retirement purposes without regard to the support limitation that applies to Keogh and other non-corporate pension plans. See In Re Cheng, ___ F2d ___ (9th Cir. 1991), 91 Daily Journal D.A.R. 10668 (September 3, 1991); In Re Bloom, 839 F2d 1376 (9th Cir. 1988). If such a change is not made, there will continue to be an undue incentive for high-income individuals with one-person corporations, such as doctors, lawyers, and dentists, to file bankruptcy and shield hundreds of thousands of dollars from the claims of creditors.

Finally, I believe the amount of the CCP § 703.140(b)(1), (5) "Wild Card" exemption ought to be increased. Currently, a debtor can exempt up to \$7900 in real and personal property by claiming this exemption. A debtor in bankruptcy who elects this exemption is, of course, a debtor that does not own a home. A debtor who owns a residence can now claim as exempt equity of at least \$50,000.00, and as much as \$100,000.00. In 1981 the ceiling for the homestead exemption was only \$45,000.00. If renters are to be treated in a fashion somewhat equivalent to homeowners, the "Wild Card" exemption should be raised substantially to, say, \$15,000.00. Such an increase might also encourage debtors who rent to save more of their disposable income, which would benefit the economy as a whole.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Alan M. Ahart". The signature is written in dark ink and is positioned above the printed name and title.

ALAN M. AHART

United States Bankruptcy Judge

AMA:bam

LAW OFFICES OF
KARP & RICHARDSON

2000 CHAMBER BUILDING

110 WEST "C" STREET

SAN DIEGO, CALIFORNIA 92101-3909

TELEPHONE (619) 233-6191

N. JAMES RICHARDSON

BOARD CERTIFIED

CONSUMER BANKRUPTCY LAW

BUSINESS BANKRUPTCY LAW

AMERICAN BANKRUPTCY BOARD OF CERTIFICATION

FACSIMILE
(619) 696-6521

Law Revision Commission

RECEIVED

OF COUNSEL

LOUIS M. KARP
BANKRUPTCY JUDGE RETIRED

November 24, 1993

File: _____

Re: _____

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: California Code of Civil Procedure Section 704.010

Dear Sir or Madam:

I am writing on behalf of our many clients who are faced with the reality of a need to seek relief under the United States Bankruptcy Code.

Over the past several years, our clients have expressed consternation over the dollar amount limit currently set in California Code of Civil Procedure § 704.010¹, which essentially provides that a motor vehicle of a judgment debtor, with a value not exceeding \$1,200.00, is exempt from enforcement of a money judgment. The "motor vehicle exemption" was intended primarily to protect the debtor's motor vehicle so that the debtor might have reliable transportation with which to go to work (or with which to find work).

The protection of this code section, however, has been significantly eroded due to considerable inflation in the value of the dollar. And, despite historically frequent amendments to the motor vehicle exemption since its original enactment in 1935, in the more recent past the Legislature has been silent on this issue.

¹§ 704.010. Motor vehicles; equity and proceeds of sale or insurance

(a) Any combination of the following is exempt in the amount of one thousand two hundred dollars (\$1,200):

- (1) The aggregate equity in motor vehicles.
- (2) The proceeds of an execution sale of a motor vehicle.
- (3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

(b) Proceeds exempt under subdivision (a) are exempt for a period of 90 days after the time the proceeds are actually received by the judgment debtor.

(c) For the purpose of determining the equity, the fair market value of a motor vehicle shall be determined by reference to used car guides customarily used by California automobile dealers unless the motor vehicle is not listed in such price guides.

(d) If the judgment debtor has only one motor vehicle and it is sold at an execution sale, the proceeds of the execution sale are exempt in the amount of one thousand two hundred dollars (\$1,200) without making a claim. The levying officer shall consult and may rely upon the records of the Department of Motor Vehicles in determining whether the judgment debtor has only one motor vehicle. In the case covered by this subdivision, the exemption provided by subdivision (a) is not available.

California Law Revision Commission
Re: California Code of Civil Procedure Section 704.010
November 24, 1993

Page Two

As your Commission is in a position to make necessary recommendations to the Legislature, I ask that you review the motor vehicle exemption and, in light of the increased value of motor vehicles generally, recommend to the Legislature that the exemption be adjusted upwards.

I have enclosed the Bureau of Labor Statistics Consumer Price Index (CPI) for motor vehicles (New and Used) which shows that since 1982 (the year the motor vehicle exemption was last revised), the average price of new cars has risen over 28% and the average price of used cars has risen over 34%. As the exemption determines the fair market value of a motor vehicle by referring to used car prices, I believe the CPI for used cars is a better indicator of where the dollar amount limit should be raised.

Hence, since there has been a 34.6% increase in used car prices between 1982 and 1992, the limit should be raised by at least this amount. Moreover, because the CPI for used cars for the first half of 1993 indicates a continuing trend upwards, and because the Legislature will require some time to adjust the exemption, my feeling is that raising the exemption 40% will more properly reflect the status of used car prices when the law is amended.

Thus, I ask that the motor vehicle exemption be increased 40%, from \$1,200.00 to \$1,700.00 (rounded up from \$1,680.00).

I seek your comments on the above and would very much appreciate a response.

Sincerely,

KARP & RICHARDSON


N. James Richardson

NJR:dca

Enclosures

U.S. Department of Labor
Bureau of Labor Statistics
Washington, D.C. 20212

Consumer Price Index

All Urban Consumers - (CPI-U)

U.S. city average

New cars

1982=100

YEAR	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEP.	OCT.	NOV.	DEC.	SEMIANNUAL		PERCENT CHANGE DEC-DEC AVG-AVG
													1ST HALF	2ND HALF	
1966	48.9	48.8	48.8	48.7	48.7	48.6	48.6	48.2	47.4	49.4	49.9	49.5			-0.2
1967	49.0	48.9	48.8	48.7	48.7	48.6	48.7	48.2	48.3	50.8	51.0	50.9	48.8	49.3	-1.8
1968	50.8	50.7	50.5	50.4	50.4	50.3	50.1	49.8	49.4	51.7	52.1	51.6	49.3	50.7	1.0
1969	51.4	51.4	51.5	51.2	51.2	51.2	51.1	50.8	50.0	52.3	52.8	52.7	51.3	51.5	2.8
1970	52.6	52.5	52.4	52.4	52.3	52.1	52.1	52.0	51.8	54.6	55.4	56.2	53.0	53.0	1.6
1971	56.9	56.8	56.3	56.1	56.1	56.1	56.1	53.9	52.0	53.8	54.0	54.4	53.2	53.2	2.9
1972	55.3	55.2	55.1	55.1	54.9	54.9	54.7	54.5	54.0	54.3	54.3	54.5	53.7	54.7	4.2
1973	54.8	54.7	54.6	54.8	54.8	54.7	54.7	54.5	53.8	53.2	53.3	53.2	54.8	54.8	-0.9
1974	55.6	55.5	55.6	55.8	56.3	57.4	58.2	58.2	58.4	61.0	61.4	61.6	57.9	57.9	5.7
1975	60.8	61.4	62.7	62.8	62.5	62.6	62.4	62.5	62.4	64.0	64.7	66.0	62.9	62.9	8.6
1976	66.1	66.3	66.3	66.2	66.3	66.3	66.2	66.2	66.1	68.6	68.9	69.2	66.9	66.9	6.4
1977	69.3	69.3	69.4	69.3	69.7	69.8	69.8	69.8	69.3	71.8	73.0	74.2	70.4	70.4	5.7
1978	74.4	74.3	74.3	74.3	75.2	75.7	75.8	75.8	75.7	76.6	78.1	78.8	73.8	73.8	7.9
1979	79.5	80.0	80.2	81.0	81.7	82.0	82.2	82.1	81.9	82.6	84.1	84.6	81.8	81.8	8.1
1980	85.7	86.4	86.3	87.2	88.2	88.0	88.3	89.3	89.6	89.7	90.8	90.9	88.4	88.4	
1981	91.3	91.1	90.1	91.7	94.1	94.7	94.9	94.6	94.3	94.9	96.3	97.1	93.7	93.7	6.0
1982	97.3	96.4	95.8	96.6	97.3	97.6	97.9	97.9	97.4	97.4	98.1	98.6	97.4	97.4	3.9
1983	99.1	99.2	99.2	99.1	99.4	99.4	99.3	99.6	99.9	100.7	101.6	102.0	99.9	99.9	2.6
1984	102.1	102.1	102.1	102.2	102.3	102.4	102.6	102.6	102.6	103.3	104.2	104.3	102.3	103.3	2.9
1985	105.0	105.4	105.5	105.5	105.7	105.8	105.8	105.8	105.7	106.6	107.6	108.1	105.5	106.6	3.2
1986	108.4	108.6	108.6	109.0	109.9	110.3	110.8	110.8	110.7	111.9	113.7	114.5	109.2	112.0	
1987	114.8	113.5	113.1	113.6	114.0	114.3	114.7	114.4	114.1	115.2	116.6	116.6	113.9	115.3	4.2
1988	116.2	116.2	116.0	115.9	116.3	116.3	116.3	116.3	116.8	117.2	118.7	119.1	116.2	117.3	3.6
1989	119.3	119.6	119.6	119.4	119.5	119.1	118.6	117.7	117.0	118.6	120.3	121.8	119.5	119.0	2.0
1990	122.3	121.9	121.3	120.7	120.7	120.3	119.8	119.5	119.0	120.5	122.1	123.5	121.2	120.7	1.5
1991	124.6	123.3	125.4	125.3	125.4	125.3	124.9	124.4	124.1	125.0	126.6	127.6	125.2	125.4	
1992	128.0	128.1	128.2	128.2	128.4	128.2	127.8	127.6	127.4	128.2	129.7	130.5	128.2	128.5	3.3
1993	130.9	130.9	130.9	131.1	131.3	131.0	130.9						131.0		2.3

28.176

08/17/93

PAGE 2

U.S. Department of Labor
Bureau of Labor Statistics
Washington, D.C. 20212

Consumer Price Index
ALL Urban Consumers - (CPI-U)
U.S. City Average

Used Cars
1982=100

YEAR	MONTH												SEMIANNUAL		PERCENT CHANGE	
	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEP.	OCT.	NOV.	DEC.	1ST HALF	2ND HALF	AVG.	DEC-DEC AVG-1982
1981	70.1	70.2	70.5	71.0	73.4	75.7	77.9	79.9	81.7	83.3	84.3	84.4	84.4	84.4	84.4	84.4
1982	84.0	83.8	84.1	83.4	87.3	87.3	90.6	91.2	91.2	91.8	93.0	93.6	93.6	93.6	93.6	93.6
1983	93.1	92.6	92.6	93.6	93.0	96.6	98.7	100.9	103.0	104.9	106.6	107.1	107.1	107.1	107.1	107.1
1984	107.0	107.0	108.5	110.8	113.2	114.4	114.7	114.9	115.0	115.2	114.9	114.6	110.1	114.9	112.5	114.0
1985	114.6	115.2	115.6	115.7	115.0	113.9	112.8	112.0	112.1	112.4	112.7	112.5	115.0	112.4	113.2	111.1
1986	112.0	111.0	110.0	109.2	108.9	108.6	107.9	107.2	107.7	108.0	108.1	106.8	110.0	107.6	108.8	104.3
1987	104.2	106.9	108.7	111.3	113.4	114.7	115.4	115.3	116.0	116.2	116.3	116.3	110.2	116.0	113.1	114.0
1988	116.0	116.0	116.1	116.6	117.0	117.6	117.9	119.2	119.9	119.7	119.7	120.2	116.6	119.4	118.0	114.0
1989	120.5	120.5	120.5	120.7	121.0	121.3	121.1	120.3	119.8	119.7	120.1	119.7	120.8	120.1	120.4	120.4
1990	118.9	117.4	116.6	116.2	116.9	117.6	118.2	118.3	118.3	118.1	117.2	117.1	117.3	117.9	117.6	117.6
1991	116.1	115.1	114.4	115.0	117.0	118.8	120.4	120.0	119.8	120.2	120.6	120.1	116.1	120.2	118.1	118.1
1992	117.8	116.1	115.7	117.9	120.3	123.1	124.8	126.4	127.7	129.1	129.9	129.0	118.5	127.8	123.2	123.2
1993	127.4	126.0	126.6	128.7	131.3	134.3	136.1						129.1			

34.6%



THE STATE BAR OF CALIFORNIA

OFFICE OF RESEARCH

555 FRANKLIN STREET, SAN FRANCISCO, CALIFORNIA 94102-4498

(415) 661-8200

April 28, 1994

Stan Ulrich
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Dear Stan:

Enclosed are the following comments we have received on the report on Creditors Remedies Matters circulated for comment by the California Law Revision Commission:

- 1) Legal Services Section April 26, 1994 comments on the report on Creditors Remedies Matters;
- 2) Business Law Section April 27, 1994 comments on attachment law; and
- 3) Business Law Section April 27, 1994 comments on exemption amounts.

These comments are those solely of the Legal Services Section and the Business Law Section and have not been reviewed or endorsed by the State Bar Board of Governors.

If you have any questions about this, please contact me.

Sincerely,

David C. Long
David C. Long
Director of Research

cc: Glenda Veasey
Patricia D. Lee, Chair of Legal Services Section
Roland E. Brandel, Chair of Business Law Section
Robin Leonard
Jeff Garsick
Mary Vivano
Susan Orloff
Ellen Miller

c:\work\david\letter\ulrick

**THE LEGAL SERVICES SECTION
THE STATE BAR OF CALIFORNIA**



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655 FRANKLIN STREET
SAN FRANCISCO, CALIFORNIA 94102-4680
(415) 361-8300

[illegible]

Stan Ulrich
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

April 26, 1994

Dear Mr. Ulrich:

The Legal Services Section of the State Bar of California submits the attached proposals regarding the review of the California exemptions. Although the Request for Legislative Proposals and Information invited comments on the revision of the dollar amount of debtors' exemptions from enforcement of money judgments, our comments include the revision of the dollar amount of debtors' exemptions both from enforcement of money judgments and from liquidation of assets in bankruptcy. Our comments also include two specific concerns we have about the homestead exemption, not having to do with the amounts of that exemption.

If you have any questions or comments regarding the enclosed proposals, please call Robin Leonard of the Section's Standing Committee on Consumer Advocacy at 510-704-2255.

Thank you for your consideration of these matters.

Pl. Leonard

Robin Leonard, for

**The State Bar of California
Legal Services Section
Standing Committee on Consumer Advocacy**

Proposal 1: Double all exemptions in Code of Civil Procedure §703.140. These exemptions (available only in bankruptcy) are virtually identical to the federal bankruptcy exemptions. H.R. 1998, introduced by California Representative Don Edwards, would double all of the federal bankruptcy exemptions. Although the House has not yet taken action on H.R. 1998 (and won't unless and until the Senate passes a comprehensive bankruptcy reform bill), it is quite likely that some time either this year or in the next year or two the federal bankruptcy exemptions will be doubled. Doubling California's bankruptcy exemption laws now would merely be anticipating the changes in the federal legislation on which the California exemptions are based.

We recommend that Code of Civil Procedure §703.140 be amended to read as follows:

§703.140.

(a) Subdivision (a) remains unchanged.

(b) The following exemptions may be elected as provided in subdivision (a):

(1) The debtor's aggregate interest, not to exceed ~~seven thousand five hundred dollars (\$7,500)~~ fifteen thousand dollars (\$15,000) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed ~~one thousand two hundred dollars (\$1,200)~~ two thousand four hundred dollars (\$2,400) in value, on one motor vehicle.

(3) The debtor's interest, not to exceed ~~two hundred dollars (\$200)~~ four hundred dollars (\$400) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed ~~five hundred dollars (\$500)~~ one thousand dollars (\$1,000) in value, in jewelry held primarily for the personal, family or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed ~~four hundred dollars (\$400)~~ eight hundred dollars (\$800) plus any unused amount of the exemption provided under paragraph (1), in any property.

(6) The debtor's aggregate interest, not to exceed ~~seven hundred fifty dollars (\$750)~~ one thousand five hundred dollars (\$1,500) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed ~~four thousand dollars (\$4,000)~~ eight thousand dollars (\$8,000) in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is dependent.

(9) Professional prescribed health aids for the debtor or a dependent of the debtor.

- (10) The debtor's right to receive any of the following:
- (A) A social security benefit, unemployment compensation, or local public assistance benefit.
 - (B) A veterans' benefit.
 - (C) A disability, illness, or unemployment benefit.
 - (D) Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
 - (E) A payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:
 - (i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.
 - (ii) The payment is on account of age or length of service.
 - (iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954.
- (11) The debtor's right to receive, or property that is traceable to, any of the following:
- (A) An award under a crime victim's reparation law.
 - (B) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
 - (C) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
 - (D) A payment, not to exceed seven thousand five hundred dollars (\$7,500) fifteen thousand dollars (\$15,000), on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.
 - (E) A payment in compensation of loss future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

Proposal 2: Adjust the specified exemption amounts in Article 3 (Code of Civil Procedure §§704.010 et seq.) to keep pace with inflation. According to the California Statistical Abstract, the cost of living rose 54% from 1981 to 1991, the latest date available. We propose adjusting the specific exemption amounts in Article 3 to keep pace with inflation, rounded to the nearest \$50.

We recommend that Article 3 of the Code of Civil Procedure be amended to read as follows:

§704.010.

(a) Any combination of the following is exempt in the amount of ~~one thousand two hundred dollars (\$1,200)~~ one thousand eight hundred fifty dollars (\$1,850):

- (1) The aggregate equity in motor vehicles.
- (2) The proceeds of an execution sale of a motor vehicle.
- (3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

(b) Subdivision (b) remains unchanged.

(c) Subdivision (c) remains unchanged.

(d) If the judgment debtor has only one motor vehicle and it is sold at an execution sale, the proceeds of the execution sale are exempt in the amount of ~~one thousand two hundred dollars (\$1,200)~~ one thousand eight hundred fifty dollars (\$1,850) without making a claim. The levying officer shall consult and may rely upon the records of the Department of Motor Vehicles in determining whether the judgment debtor has only one motor vehicle. In the case covered by this subdivision, the exemption provided by subdivision (a) is not available.

§704.030. Material that in good faith is about to be applied to the repair or improvement of a residence is exempt if the equity in the material does not exceed ~~one thousand dollars (\$1,000)~~ one thousand five hundred fifty dollars (\$1,550) in the following cases:

- (a) Subdivision (a) remains unchanged.
- (b) Subdivision (b) remains unchanged.

§704.040. Jewelry, heirlooms, and works of art are exempt to the extent that the aggregate equity therein does not exceed ~~two thousand five hundred dollars (\$2,500)~~ three thousand eight hundred fifty dollars (\$3,850).

§704.060.

(a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:

(1) ~~Two thousand five hundred dollars (\$2,500)~~ Three thousand eight hundred fifty dollars (\$3,850), if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.

(2) ~~Two thousand five hundred dollars (\$2,500)~~ Three thousand eight hundred fifty dollars (\$3,850), if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.

(3) ~~Five thousand dollars (\$5,000)~~ Seven thousand seven hundred dollars (\$7,700), if reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exemptions provided in paragraphs (1) and (2) are not available.

(b) Subdivision (b) remains unchanged.

(c) Subdivision (c) remains unchanged.

§704.080.

(a) Subdivision (a) remains unchanged.

(b) A deposit account is exempt without making a claim in the following amount:

(1) ~~Five hundred dollars (\$500)~~ Seven hundred seventy dollars (\$770) where one depositor is the designated payee of the directly deposited payments.

(2) ~~Seven hundred fifty dollars (\$750)~~ One thousand one hundred fifty dollars (\$1,150) where two or more depositors are the designated payees of the directly deposited payments, unless such depositors are joint payees of directly deposited payments which represent a benefit to only one of the depositors, in which case the exempt amount is ~~five hundred dollars (\$500)~~ seven hundred seventy dollars (\$770).

(c) Subdivision (c) remains unchanged.

(d) Subdivision (d) remains unchanged.

(e) Subdivision (e) remains unchanged.

(f) Subdivision (f) remains unchanged.

§704.090. The funds of a judgment debtor confined in a prison or facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for or to the credit of the judgment debtor, in an inmate's trust account or similar account by the state, county, or city, or any agency thereof, are exempt without making a claim in the amount of ~~one thousand dollars (\$1,000)~~ one thousand five hundred fifty dollars (\$1,550). If the judgment debtor is married, each spouse is entitled to a separate exemption under this section or the spouses may combine their exemptions.

§704.100.

(a) Subdivision (a) remains unchanged.

(b) The aggregate loan value of unmaturing life insurance policies (including endowment and annuity policies) is subject to the enforcement of a money judgment but is exempt in the amount of ~~four thousand dollars (\$4,000)~~ six thousand one hundred fifty dollars (\$6,150). If the judgment debtor is married, each spouse is entitled to a separate exemption under this subdivision, and the exemptions of the spouses may combine, regardless of whether the policies belong to either or both spouses and regardless of whether the spouse of the judgment debtor is also a judgment debtor under the judgment. The exemption provided by this subdivision shall be first applied to policies other than the policy before the court and then, if the exemption is not exhausted, to the policy before the court.

(c) Subdivision (c) remains unchanged.

Proposal 3: Amend the homestead exemption to eliminate the distinction between the automatic homestead protection and the declared homestead. The distinction serves little purpose. Implicit in the creation of the automatic exemption was the recognition that a homeowner should not have to file a piece of paper to safeguard a homestead from a forced sale. There is no reason to restrict the benefit of a declared homestead (an exemption on the proceeds of a voluntary sale and no judgment lien on the house) to those who file a piece of paper.

Clearly, borrowers/homeowners can obtain the additional protection by filing a homestead declaration, but many (perhaps most) borrowers/homeowners are not sophisticated and/or do not know about the additional protection that comes from filing a homestead declaration. Because few borrowers/homeowners gain any benefit from declared homesteads, there is no legal or logical justification for preserving them.

Proposal 4: Amend Code of Civil Procedure §704.780 in light of the recent decision *Abbett Electric Corp. v. Storek* (1994) 22 Cal.App.4th 1460, 27 Cal.Rptr.2d 845. The case requires a court to order a sale of a home even if the court's fair market value determination at the initial hearing indicates that the amount of liens plus the homestead exemption exceeds the estimated fair market value. This is a departure from the practice of most courts. The real risk is that creditors may harass or intimidate a debtor, particularly one who is unsophisticated, with the threatened loss of the debtor's home in order to extract some payment even when the creditor has reason to believe that the property will not actually be sold at auction because no bid will exceed the amount of liens plus the exemption.

The problem is with the language of Code of Civil Procedure §704.780. Given the language of the statute, *Abbett Electric* is not irrational. Given the *intent* of the statute, however, it is. *Abbett Electric* upsets the practice of many courts in denying a motion for an auction sale if the fair market value determination required at the hearing does not reasonably support the likelihood that a sale can be confirmed under the tests in §§704.800 (a) and (b).

BUSINESS LAW SECTION
THE STATE BAR OF CALIFORNIA

COPY



555 FRANKLIN STREET
SAN FRANCISCO, CA 94102
(415) 581-8870

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ROBERT A. ZADEK, San Francisco

Mr. David C. Long, Director
Office of Research
The State Bar of California
555 Franklin Street
San Francisco, CA 94102

REPLY TO: Ignacio J. Lazo, Esq.
Mitchell, Silberberg & Knupp
11377 West Olympic Boulevard
Los Angeles, California 90064-1883
(310) 312-2000
FAX: (310) 312-3100

Re: California Law Revision Commission Request
for Comments Regarding Exemption Amounts

Dear Mr. Long:

The California Law Revision Commission (the "CLRC") is charged with responsibility for reviewing the dollar amounts of debtor's exemptions under the Enforcement of Judgments Act every ten years. The CLRC and the State Bar have solicited input on this issue from the Debtor/Creditor Relations and Bankruptcy Committee of the Business Law Section (the "Committee"). Accordingly, the issue of the dollar amounts of debtor's exemptions was raised and debated at the Committee's March meeting. At the behest of the Committee, I am writing to outline the members' thoughts on this matter.

Although the reasons for their conclusions varied widely, the unanimous sense of the Committee was that the existing dollar amounts are too low. Some members simply felt that the limitations were not sufficiently generous as a matter of public policy. Others expressed concern that, because the dollar amounts were realistically low, debtors would be strongly tempted to understate the value of the property that they urgently needed to retain to provide a livelihood for themselves and their families. They would do so, however, at the risk of jeopardizing their "fresh start" via a bankruptcy discharge. Yet another group of members of the Committee felt that historic inflation, in and of itself, justified an increase in the dollar amount of exemption claims.

With respect to certain particular exemption claims, while all members of the Committee felt that the present \$1,200

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exemption for motor vehicles (pursuant to California Code of Civil Procedure Section 704.010) was inadequate to cover the value of a minimally serviceable vehicle, there was no consensus on precisely how much should be allowed.

There was also strong sentiment that the \$500/\$750 exemption for accounts containing SSI direct deposits (pursuant to California Code of Civil Procedure Section 704.080) should be pegged at a level at least equal to the \$1,000 exemption allowed for inmate trust funds (pursuant to California Code of Civil Procedure Section 704.090).

The Committee further concluded that the impending deadline for response to the CLRC and the timetable for its next meeting did not allow sufficient time for adequate analysis and debate of the homestead exemption amounts. Therefore, no opinions concerning those dollar amounts were expressed.

I trust that these comments will provide some assistance to the CLRC in its deliberations.

Very truly yours,

Ignacio J. Lazo, Esq.

EJL:EAH

cc: R. Brandel
J. Chu
H. Lesser
W. Weintraub
S. Weise