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**Memorandum 94-31****Exemptions from Enforcement of Money Judgments:  
Decennial Review (Draft Tentative Recommendation)**

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Attached to this memorandum is a staff draft of a tentative recommendation providing a \$5000 wild-card exemption. This implements a Commission decision made at the May meeting. If a draft can be approved, the tentative recommendation will be distributed for comment in August. In addition to substantive review, Commissioners should review the draft tentative recommendation and suggest any editorial revisions at the meeting.

At the May meeting, the Commission decided only the amount of the exemption (\$5000) and that it should not be doubled. Several additional issues remain to be considered:

Should the exemption be available to debtors who have a homestead? The wildcard exemption is offered as a way of updating the set of monetary exemptions to take account of inflation since 1983. But the homestead exemption, unlike the others, has been increased at a rate approximating inflationary effects. In a number of other states, a wildcard exemption is offered as a homestead substitute, presumably to provide some degree of balance for debtors who do not own homes. On the other hand, the personal property exemptions declined in the face of inflation independent of whether the debtor qualifies for a homestead exemption.

If the wildcard exemption is drafted as a homestead substitute, what procedures are necessary to implement the restriction? If all exemptions were on the table at the same time, it would be simple, but that is not necessarily how exemptions work in enforcement of judgments. The personal property exemption procedure is separate from the homestead exemption procedure. The attached draft attempts to deal with the issues in a summary fashion and the staff hopes that it will not be necessary to draft a new clockworks just to deal with this issue.

Legislation is pending in Congress to double the amount of the federal bankruptcy exemptions. The Commission has taken a restrictive approach in this project, focusing on the monetary exemptions from enforcement of money judgments. While these exemptions may be used in bankruptcy, the separate set

of alternative bankruptcy exemptions in Code of Civil Procedure Section 703.140 cannot be used in debt collection proceedings. Obviously, the level of exemptions, the nature of exemptions in relation to the debtor's estate, and the disparity between the two sets of exemptions can play a major role in determining whether to declare bankruptcy. Thus far, the Commission has not considered the larger policy issues involved in the interplay of state exemptions and federal exemptions. However, the Commission should keep in mind that the Legal Services Section has urged that the alternative bankruptcy exemptions be doubled in California in anticipation of doubling on the federal level. The staff thinks that would be premature, and it does not necessarily follow that the alternative bankruptcy exemptions on the state level should be doubled simply because the federal Bankruptcy Code exemptions are doubled, or that the Commission need be involved in that recommendation. Still, it is a troublesome issue that overlays this project.

Respectfully submitted,

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## 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<sup>1</sup> every 10 years and recommending any changes in amounts "that appear proper."<sup>2</sup>

Existing law provides seven personal property exemptions that are subject to dollar limitations:

CCP	Type of Property	Amount	Notes
§ 704.010	Motor vehicle	\$1200	Not doubled (§ 703.110)
§ 704.030	Residential repair materials	\$1000	Not doubled (§ 703.110)
§ 704.040	Jewelry, heirlooms, art	\$2500	Not doubled (§ 703.110)
§ 704.060	Tools of trade, business, or profession	\$2500	\$5000 if spouse also engaged in trade, business, or profession
§ 704.080	Social Security direct deposits	\$500	\$750 if more than one depositor
§ 704.090	Inmate trust funds	\$1000	Not doubled (§ 703.110)
§ 704.100	Life insurance loan value	\$4000	May be doubled

These exemptions have not been changed in amount since they became operative in 1983.

Exemptions based on need or on the type of property are immune from inflation and price changes.<sup>3</sup> Exemptions in a fixed dollar amount are subject to degradation as the purchasing power of a dollar shrinks. It is difficult to determine a dollar amount that is appropriate in all circumstances. But once a dollar amount has been set by the Legislature, it follows that exempt amounts should be revised to take account of inflation. Otherwise, the protection enacted at one point in time will erode significantly over the years.

Depending on the index used, it appears that the purchasing value of the dollar since 1983 has declined by one-third or more. In other words, a dollar amount set

1. Code Civ. Proc. § 680.010 *et seq.* 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).

2. 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.

3. See, e.g., Code Civ. Proc. §§ 704.020 (necessary household furnishings, appliances, provisions, wearing apparel, and other personal effects), 704.050 (necessary health aids and prosthetic and orthopedic appliances).

1 in 1983 would need to be multiplied by a factor of from 1.5 to 1.67 to adjust for  
2 changes in the consumer price index.<sup>4</sup>

3 The homestead exemption has been increased and supplemented several times  
4 since 1983. Originally, the basic homestead exemption in Code of Civil Procedure  
5 Section 704.730 was \$30,000, for a single resident or where all residents were  
6 debtors, with a special exemption of \$45,000 for family units and persons over 65.  
7 In 1986, a \$60,000 exemption was added where a resident was over 65 or disabled.  
8 In 1988, the third tier exemption was increased from \$60,000 to \$75,000. In 1990,  
9 all three tiers were increased, to \$50,000, \$75,000, and \$100,000, respectively.  
10 The basic homestead exemption has been increased so that it is approximately the  
11 same as it was in 1982, as measured by the home ownership component of the  
12 Consumer Price Index for western states.<sup>5</sup>

13 The exemptions under the Federal Bankruptcy Code are currently the subject of  
14 reform efforts in Congress.<sup>6</sup> Although California has opted out of the federal  
15 exemption scheme,<sup>7</sup> the California alternative bankruptcy exemptions parallel the  
16 federal amounts.<sup>8</sup> At this point, it is premature to consider increasing the  
17 alternative bankruptcy exemptions, because final action on the federal level has  
18 not taken place and an increase of the federal bankruptcy exemptions is not  
19 directly relevant since California has opted out.

20 The Commission has reviewed the dollar amount of exemptions under California  
21 law and concludes that the best approach is to provide a "wildcard" exemption that  
22 a judgment debtor may apply to any property.<sup>9</sup> This new exemption would achieve  
23 the goal of compensating for inflation. The wildcard exemption approach would  
24 also provide additional flexibility in the exemption statutes, relieving somewhat  
25 the rigid categories of the existing monetary exemptions.

26 The Commission recommends that the wildcard exemption be set at \$5000. This  
27 amount is approximately equal to the total amount by which the existing  
28 exemptions for a (1) motor vehicle, (2) tools of a trade, business, or profession, (3)

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4. Using a base of 1982-84 as 100, in 1993 the California average CPI factor is approximately 150. See Department of Finance, California Economic Indicators November/December 1993.

5. See U.S. Department of Labor, CPI Detailed Report Data for November 1993, Table 11. Using a factor of 100/166, the basic \$30,000 exemption should be \$49,800 and the second tier \$45,000 exemption should be \$74,700. The third tier, which was set at \$60,000 in 1986, if subject to the same factor, would be \$99,600.

6. See, e.g., H.R. 1998.

7. Code Civ. Proc. § 703.130.

8. See Code Civ. Proc. § 703.140.

9. Many states and the federal Bankruptcy Code provide wildcard exemptions. See, e.g., [Alabama, Arizona, Illinois, Indiana, Kentucky, Maine, Maryland, Michigan, Nebraska, New Mexico, North Dakota, Virginia, Washington]; 11 U.S.C. § 522. The California bankruptcy alternative exemptions also provide a wildcard exemption. Code Civ. Proc. § 703.140(b)(5).

1 jewelry, heirlooms, and works of art, and (4) life insurance would need to be  
2 increased to compensate for inflation since the amounts were set in 1982.<sup>10</sup>

3 The wildcard exemption is not doubled for married debtors. This is consistent  
4 with the general policy of the exemption statutes.<sup>11</sup>

5 [The new wildcard exemption would not be available to debtors who have a  
6 homestead exemption, in view of the substantial amount of the homestead  
7 exemption and in recognition of the increases in the homestead exemption that  
8 have kept it in pace with inflation.]

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10. The total amount of these exemptions is \$10,000. If the inflation factor is 1.5, the required increase is \$5000.

11. In relevant part, Code of Civil Procedure Section 704.220(a) provides:

Where the property exempt under a particular exemption is limited to a specified maximum dollar amount, unless the exemption provision specifically provides otherwise, the two spouses together are entitled to one exemption limited to the specified maximum dollar amount, whether one or both of the spouses are judgment debtors under the judgment and whether the property sought to be applied to the satisfaction of the judgment is separate or community.

1 RECOMMENDED LEGISLATION

2 **Code Civ. Proc. § 704.220 (added). Wildcard exemption**

3 SECTION. 1. Section 704.220 is added to the Code of Civil Procedure, to read:  
4 704.220. [(a) Except as provided in subdivision (b),] the aggregate equity in real  
5 or personal property, in addition to other property exempt under this article, is  
6 exempt in the amount of five thousand dollars (\$5,000).

7 [(b) The exemption provided in subdivision (a) is an alternative to the homestead  
8 exemption. If a homestead exemption has been claimed, the exemption provided  
9 by subdivision (a) may not be claimed. If the exemption provided in subdivision  
10 (a) has been claimed, a homestead exemption may not be claimed unless the  
11 exemption provided in subdivision (a) is relinquished.]

12 **Comment.** Section 704.220 is new. This section provides a wildcard exemption for judgment  
13 debtors who do not claim a homestead exemption. In addition, the exemption is not doubled in  
14 the case of married debtors. See Section 703.110 (application of exemptions to marital property).

15 **Staff Note.** The bracketed material inserts the homestead alternative feature. The Commission  
16 needs to decide whether the wildcard exemption should be restricted to debtors who do not claim  
17 a homestead exemption. Subdivision (b) illustrates potential procedural complications that may  
18 arise in attempting to implement a homestead alternative feature.