

Memorandum 99-24

Enforcement of Judgments Under the Family Code: Draft Tentative Recommendation

The staff draft tentative recommendation attached to this memorandum revives an earlier Commission recommendation intended to resolve some technical issues involving enforcement of Family Code judgments. (This memorandum supersedes Memorandum 98-66, which was originally scheduled in August 1998, but not considered.)

In a 1994 recommendation, the Commission proposed several revisions as part of its *Debtor-Creditor Relations* recommendation (25 Cal. L. Revision Comm'n Reports 1) to clarify the general rules governing enforcement of judgments under the Family Code. These amendments were included in SB 832 (Kopp) in the 1995 legislative session, a bill mainly concerning revision of debtors' exemptions from enforcement of money judgments, but also including some technical attachment amendments. The part of the bill relating to exemptions was enacted in 1995, but the parts concerning the Family Code and attachment were removed from the bill at the suggestion of the Senate Judiciary Committee. The committee consultant raised a number of issues (which are addressed in the staff draft tentative recommendation) concerning the Family Code enforcement portion of the bill, and we decided to remove this part of the bill so as not to jeopardize the important substantive revisions of debtors' exemptions. (The attachment portion of SB 832 was reintroduced as AB 1258 (Ackerman) and enacted in 1997.)

The conflicting and confusing rules that are the subject of this study resulted from a number of bills over the last 12 years that have revised interrelated provisions on enforceability, renewal, and remedies and have added additional remedies for enforcement of child and spousal support.

The staff has reviewed the Commission's earlier recommendation and revised parts of it as needed to reflect recent legislation concerning support enforcement and, as noted, to address the issues raised in the Senate Judiciary Committee consultant's analysis of SB 832. We have also found a number of other corrections that need to be made.

The need for resolution of the issues identified in the Commission's 1994 study is illustrated in a recent case — *In re Marriage of Plescia*, 59 Cal. App. 4th 252, 69 Cal. Rptr. 2d 120 (1997) — which held that the doctrine of laches is available as a defense to spousal support enforcement, even though diligence under Family Code Section 291 is no longer applicable due to amendments eliminating the 10-year rule in Family Code Section 5101. (A summary of the history and development of the sections involved is set out in the draft tentative recommendation.) The statutes are difficult to locate and understand, particularly since they contain some dead ends resulting from obsolete references to time limits that were removed in 1993. As the Legislature continues to work on child support enforcement issues, the confusion threatens to become more critical.

The approach of the draft statute, as in the 1994 recommendation, is to preserve the existing statutory policies concerning child and spousal support enforcement, eliminating the obsolete references (some of which may not be readily apparent to the casual reader) and combining overlapping rules for easier understanding.

If the Commission approves this draft tentative recommendation, we will circulate it to interested persons for comment, with a view toward introducing a bill in the 2000 legislative session.

Respectfully submitted,

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CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Enforcement of Judgments Under the Family Code

April 1999

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN July 1, 1999.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

This recommendation proposes a number of technical revisions to coordinate the rules in the Code of Civil Procedure and Family Code relating to enforceability and renewal of judgments under the Family Code, including judgments for support and judgments for possession or sale of property. The proposed legislation is not intended to make major substantive changes, but to eliminate overlapping and confusing rules and clarify some doubtful areas.

This recommendation was prepared pursuant to Resolution Chapter 91 of the Statutes of 1998.

1 ENFORCEMENT OF JUDGMENTS UNDER THE FAMILY CODE

2 This recommendation proposes a number of technical revisions to coordinate the
3 rules in the Code of Civil Procedure and Family Code relating to enforceability
4 and renewal of judgments under the Family Code, including judgments for support
5 and judgments for possession or sale of property. The proposed legislation is not
6 intended to make major substantive changes, but to eliminate overlapping and
7 confusing rules and clarify some doubtful areas.¹

8 **General Enforcement of Judgments Scheme**

9 When the Enforcement of Judgments Law was enacted in 1982, it established a
10 10-year period of enforcement for money judgments and judgments for possession
11 or sale of property.² This 10-year period is not tolled for any reason and when it
12 expires the judgment becomes unenforceable. However, the judgment may be
13 renewed by a simple procedure for filing an application for renewal with the court
14 and giving the debtor notice and an opportunity to petition to vacate or modify the
15 renewal. In addition, the statute preserves the ancient right to bring an action on
16 the judgment, subject to the 10-year statute of limitations in Code of Civil Procedure
17 Section 337.5 and its exceptions and tolling features.

18 In the case of a money judgment payable in installments, the 10-year period of
19 enforceability and the renewal scheme treated each installment as if it were a
20 judgment entered on the date the installment fell due.³ This structure was intended
21 to provide certainty as a foundation for the various enforcement procedures. It was
22 intended to eliminate the doubt about when a judgment or part of a judgment was
23 enforceable and to regularize the process of determining how much remained
24 owing on a judgment.

25 **Family Law Exceptions**

26 The general scheme was not applied to judgments enforceable under the Family
27 Law Act.⁴ The Enforcement of Judgments Law did not affect the rule in family
28 law that the court has discretion as to the manner of enforcement of judgments.⁵

1. The Commission recommended remedial legislation in 1995, but the provisions relating to the Family Code enforcement issues were removed from the bill at its first hearing. See Senate Bill 832 (Kopp), as introduced, Feb. 23, 1995; *Debtor-Creditor Relations*, 25 Cal. L. Revision Comm'n Reports 1, 16-25, 40, 52-54 (1995).

2. See generally Sections 683.010-683.320, as enacted by 1982 Cal. Stat. ch. 1364, § 2. The Enforcement of Judgments Law was enacted on Commission recommendation. See *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980); *1982 Creditors' Remedies Legislation*, 16 Cal. L. Revision Comm'n Reports 1001, 1009 (1982).

3. Section 683.030.

4. See Section 683.310, as enacted by 1982 Cal. Stat. ch. 1364, § 2. The former Family Law Act was located at Civil Code Section 4000 *et seq.*, until replaced by the Family Code, operative January 1, 1994. See 1992 Cal. Stat. ch. 162, § 3.

5. See former Civ. Code § 4380 (see now Fam. Code § 290).

1 Nevertheless, some of the benefits of the scheme in the Enforcement of Judgments
2 Law were extended to the Family Law Act by providing that judgments for child
3 or spousal support could be enforced by a writ of execution *without* the need for a
4 court order so long as the amounts owing were not more than 10 years overdue —
5 after 10 years, overdue support payments were enforceable only in the court's dis-
6 cretion, and lack of diligence was to be considered in determining whether to per-
7 mit enforcement.⁶ The 10-year period ran as to each installment when it fell due.⁷

8 **Revisions of the Original Scheme**

9 In 1986, Section 4384.5 was added to the Civil Code providing that a judgment
10 for child or spousal support could be renewed by application under the general
11 procedures in the Enforcement of Judgments Law.⁸ This section created the situa-
12 tion whereby the Enforcement of Judgments Law provided that the ministerial
13 renewal procedure did not apply to the Family Law Act⁹ and the Family Law Act
14 provided that the procedure could be used to renew enforceability of child or
15 spousal support obligations.¹⁰ Effectively, however, the ministerial renewal would
16 only affect enforcement by execution, since other types of enforcement required
17 application for a court order.¹¹

18 In 1987, Civil Code Section 4383 was amended to permit enforcement of child
19 or family support by execution, without prior court approval, until five years after
20 the child reaches the age of majority, and thereafter for amounts not more than 10
21 years overdue.¹² The 10-year rule was retained for enforcement of spousal support
22 by a writ of execution.

23 Thus, by 1988, the Family Law Act had a hybrid system. The 10-year rule was
24 no longer related to enforceability and renewal requirements, but only served as a
25 limitation on the discretion of the court, making enforcement by writ of execution
26 a procedural right for amounts not more than 10 years overdue (or more in the case

6. See former Civ. Code §§ 4383-4384, as enacted by 1982 Cal. Stat. ch. 497, §§ 15-16.

7. See former Civ. Code § 4384 (see now Fam. Code § 5102).

8. See former Civ. Code § 4384.5, as enacted by 1986 Cal. Stat. ch. 1046, § 1:

4384.5. Any party may renew a judgment for child or spousal support by filing an application for renewal of the judgment in the manner specified in Article 2 (commencing with Section 683.110) of Title 9 of Part 2 of the Code of Civil Procedure. Notwithstanding subdivision (b) of Section 683.110 of the Code of Civil Procedure, such a judgment shall not be renewed if the application is filed within five years from the time the judgment was previously renewed.

The meaning of the second sentence is unclear since it repeats the five-year limitation on frequency of ministerial renewals provided in Section 683.110(b). The 1986 version of Section 4384.5 was repealed and replaced by a new section of the same number. See 1992 Cal. Stat. ch. 718, § 3, discussed *infra*.

9. Code Civ. Proc. § 683.310. In 1991, Section 683.310 was amended to recognize the exception provided by former Civil Code Section 4384.5. 1991 Cal. Stat. ch. 110, § 15.

10. Former Civ. Code § 4384.5.

11. Former Civ. Code § 4380.

12. See former Civ. Code § 4383, as amended by 1987 Cal. Stat. ch. 960, § 1. See also *In re Marriage of Wight*, 215 Cal. App. 3d 1590, 1594 n.4, 264 Cal. Rptr. 508 (1989).

1 of child and family support involving a child age 23 or less). Amounts more than
2 10 years overdue continued to be enforceable in the court's discretion without any
3 renewal requirement.

4 It should also be noted that the renewal scheme in the Enforcement of Judgments
5 Law, generally applicable to judgments for possession or sale, was also inappli-
6 cable to these types of judgments under the Family Law Act. In addition, there was
7 no exception for enforcement by writ as in the case of support enforcement.

8 This situation changed dramatically in 1992 when the 1986 version of Civil
9 Code Section 4384.5 was replaced by a new rule providing that judgments for
10 child or spousal support or for arrearages are completely exempt from any renewal
11 requirement and are enforceable until paid in full.¹³ In essence, although stated
12 quite differently, the 1992 amendments to the Family Law Act returned the
13 renewal and enforceability rules to their pre-1986 status. In other words, the 10-
14 year limitations on enforceability and the ministerial renewal procedure did not
15 apply to support judgments.

16 In 1993, the law was again revised to add a provision for the optional renewal of
17 support judgments that had been deleted in 1992.¹⁴ The rules concerning judg-
18 ments for possession or sale of property were not revised.

19 **Current Law**

20 In 1992 and 1993, this area of the law was also being reorganized in the course
21 of creating the new Family Code.¹⁵ As a first step, the interrelated enforcement
22 provisions were revised or carried over into the new code without substantive
23 revision.¹⁶ At the same time, confusing an already complicated situation, many of

13. See former Civ. Code § 4384.5, as enacted by 1992 Cal. Stat. ch. 718, § 3 (see now Fam. Code § 4502); Code Civ. Proc. § 683.130(c), as amended by 1992 Cal. Stat. ch. 718, § 4. The 1992 version of former Civ. Code § 4384.5 provided:

4384.5. Notwithstanding any other provision of law, a judgment for child or spousal support, including a judgment for reimbursement or other arrearages, is exempt from any requirement that judgments be renewed. A judgment for child or spousal support, including all lawful interest and penalties computed thereon, is enforceable until paid in full.

14. See Code Civ. Proc. § 683.130(c), as amended by 1993 Cal. Stat. ch. 876, § 8.

15. The Family Code was enacted on Commission recommendation. See 1992 Cal. Stat. ch. 162 (AB 2650); 1992 Cal. Stat. ch. 163 (AB 2641) (conforming revisions); *Family Code*, 22 Cal. L. Revision Comm'n Reports 1 (1992); 1993 Cal. Stat. ch. 219 (AB 1500) 1993 Cal. Stat. ch. 876 (SB 1068) (*passim*); *1994 Family Code*, 23 Cal. L. Revision Comm'n Reports 1 & 9 n.1 (1993).

The Family Code was enacted on Commission recommendation. See 1992 Cal. Stat. ch. 162; 1992 Cal. Stat. ch. 163; 1993 Cal. Stat. ch. 219; *1994 Family Code*, 23 Cal. L. Revision Comm'n Reports 1 (1993).

16. Code of Civil Procedure Section 683.310 was revised to provide as follows:

683.310. Except as otherwise provided in Section 4502 of the Family Code, this chapter does not apply to a judgment or order made or entered pursuant to the Family Code.

Family Code Section 4502, as enacted in 1992, carried forward the then-existing version of Civil Code Section 4384.5:

4502. A party may renew a judgment for child, family, or spousal support as provided in Article 2 (commencing with Section 683.110) of Chapter 3 of Title 9 of Part 2 of the Code of Civil Procedure.

1 these rules were undergoing amendment to eliminate the last vestige of the 10-year
2 rule.¹⁷ Attempts were made to coordinate the Family Code with the ongoing revi-
3 sions occurring around it in 1993, but the task was not completed and the situation
4 remains confused.¹⁸

The special writ of execution rules from former Civil Code Section 4383 were continued in Family Code Sections 5100-5102 and 5103-5104 without substantive change. See *infra* note 18.

17. See 1992 Cal. Stat. ch. 718; 1993 Cal. Stat. ch. 876. These amendments, not sponsored by the Commission, occurred in parallel bills at the same sessions during which the Family Code was created.

18. Family Code Section 4502 was amended in 1993 to pick up the 1992 amendments to Civil Code Section 4384.5. It now provides:

4502. Notwithstanding any other provision of law, a judgment for child, family, or spousal support, including a judgment for reimbursement or other arrearages, is exempt from any requirement that judgments be renewed. A judgment for child, family, or spousal support, including all lawful interest and penalties computed thereon, is enforceable until paid in full.

The writ of execution rules from former Civil Code Sections 4383 and 4384, as revised in 1993, read as follows in their Family Code setting (as amended in 1994 and 1997):

Fam. Code § 5100. Enforcement of child or family support without prior court approval

5100. Notwithstanding Section 291, a child or family support order may be enforced by a writ of execution or a notice of levy pursuant to Section 706.030 of the Code of Civil Procedure or Section 11350.7 of the Welfare and Institutions Code without prior court approval as long as the support order remains enforceable.

Fam. Code § 5101. Enforcement of spousal support without prior court approval

5101. Notwithstanding Section 291, a spousal support order may be enforced by a writ of execution or a notice of levy pursuant to Section 706.030 of the Code of Civil Procedure or Section 11350.7 of the Welfare and Institutions Code without prior court approval as long as the support order remains enforceable.

Fam. Code § 5102. Period for enforcement of installment payments

5102. If a support order provides for the payment of support in installments, the period specified pursuant to this chapter runs as to each installment from the date the installment became due.

Fam. Code § 5103. Enforcement of support against employee benefit plan

5103. (a) Notwithstanding Section 2060, an order for the payment of child, family, or spousal support may be enforced against an employee benefit plan regardless of whether the plan has been joined as a party to the proceeding in which the support order was obtained.

(b) Notwithstanding Section 697.710 of the Code of Civil Procedure, an execution lien created by a levy on the judgment debtor's right to payment of benefits from an employee benefit plan to enforce an order for the payment of child, family, or spousal support continues until the date the plan has withheld and paid over to the levying officer, as provided in Section 701.010 of the Code of Civil Procedure, the full amount specified in the notice of levy, unless the plan is directed to stop withholding and paying over before that time by court order or by the levying officer.

(c) A writ of execution pursuant to which a levy is made on the judgment debtor's right to payment of benefits from an employee benefit plan under an order for the payment of child, family, or spousal support shall be returned not later than one year after the date the execution lien expires under subdivision (b).

Fam. Code § 5104. Application for writ

5104. (a) The application for a writ of execution shall be accompanied by an affidavit stating the total amount due and unpaid that is authorized to be enforced pursuant to Sections 5100 to 5103, inclusive, on the date of the application.

(b) If interest on the overdue installments is sought, the affidavit shall state the total amount of the interest and the amount of each due and unpaid installment and the date it became due.

(c) The affidavit shall be filed in the action and a copy shall be attached to the writ of execution delivered to the levying officer. The levying officer shall serve the copy of the affidavit on the judgment debtor when the writ of execution is first served on the judgment debtor pursuant to a levy under the writ.

1 Further legislative efforts in 1997 to improve collection of child support have
2 resulted in additional amendments to some of the Family Code enforcement provi-
3 sions without resolving the underlying inconsistencies.¹⁹

4 **Commission Recommendations**

5 The Commission proposes to reconcile the relationship between the Enforce-
6 ment of Judgments Law and the Family Code. Existing law is confusing and
7 potentially misleading.²⁰ Accordingly, the vestiges of the 10-year renewal rule as
8 applicable to support judgments should be deleted from the Family Code and the
9 renewal procedure should be made clearly optional. Specifically:

- 10 • The optional support order renewal rules in Code of Civil Procedure Section
11 683.130 should be moved to Family Code Section 4502 which makes clear
12 that renewal is not required. This will unify some related rules and avoid the
13 duplication between these two sections.
- 14 • Code of Civil Procedure Section 683.310 should be amended to eliminate the
15 cross-reference to Family Code Section 4502, since that section no longer
16 provides an exception to the general judgment renewal procedure.
- 17 • Family Code Sections 291 (diligence) and 5102 (running of time on install-
18 ments) should be repealed since there is no longer a limited period of
19 enforceability.

20 The Commission also recommends making clear that judgments for possession
21 or sale of property²¹ under the Family Code are subject to the general rules govern-
22 ing the period of enforceability and renewal on a mandatory basis, not on an
23 optional basis as in the case of support judgments. The general renewal scheme in
24 the Enforcement of Judgments Law applies to judgments for possession or sale of

The 1994 amendments of Family Code Sections 5100 and 5101 changed the “notwithstanding” clause to refer to Section 291 instead of Section 290. This change is puzzling. The purpose of the notwithstanding clause was to make clear that enforcement by writ of execution was available *without prior court approval*, which is the subject of Section 290. Section 291 provides a diligence factor to be considered by the court when court approval is sought for enforcement *after* the automatic writ enforcement period. Hence, the scope of Section 291 and Sections 5100-5101 are mutually exclusive and the notwithstanding clause is meaningless. Furthermore, as discussed *infra*, the period referred to in Section 291 by incorporation of Section 5100 *et seq.* is nonexistent, since those sections were amended to eliminate the period formerly incorporated.

19. See 1997 Cal. Stat. ch. 599, §§ 19-20 (amending Fam. Code §§ 5100-5101).

20. The contradiction between sections assuming there is a period of enforceability and sections providing that support judgments are enforceable until paid was noted in a recent case. *In re Marriage of Plescia*, 59 Cal. App. 4th 252, 259-62, 69 Cal. Rptr. 2d 120, 124-26 (1997) (doctrine of laches available, even though diligence under Section 291 no longer applicable to spousal support enforcement following elimination of 10-year rule in Section 5101). The proposed revisions are not intended to alter the equitable powers of the court.

For another case with an admirable summary of the changes in the law governing enforcement of support judgments, considered in the context of enforcing a 30-year old spousal support order, see *In re Marriage of Garcia*, ___ Cal. App. 4th ___, 79 Cal. Rptr. 2d 242 (1998).

21. The Family Code should also be amended to make clear that “property” includes both real and personal property, consistent with Code of Civil Procedure Section 680.310 in the Enforcement of Judgments Law. See proposed Fam. Code § 113 *infra*.

1 property.²² In recent years, the revisions of the law concerning enforcement and
2 renewal of judgments under the Family Law Act, and now the Family Code, have
3 focused on support enforcement, particularly child support. The policies support-
4 ing that legislation do not apply to enforcement of judgments for possession or
5 sale of property. Thus, it is appropriate to clarify the law by applying the orderly
6 general renewal procedure to these judgments.²³

22. See Sections 683.020 (10-year period for enforcement of judgments), 683.110 (renewal of judgments).

23. In 1994, the Commission was informed that at least one judge has refused to exercise discretion under former Civil Code Section 4380 (now Family Code Section 290) on the grounds that the 10-year period of enforceability had expired, notwithstanding that Code of Civil Procedure Section 683.310 makes the general rules inapplicable to such judgments. A party who believes that Section 683.310 excuses compliance with renewal of judgments for sale or possession would not have thought to use the renewal procedure, and may even have concluded that that procedure was not available, since Section 683.130(c) permitting renewal of Family Code judgments refers only to support.

PROPOSED LEGISLATION

Code Civ. Proc. § 683.130 (amended). Time for filing application for renewal of judgment

SECTION 1. Section 683.130 of the Code of Civil Procedure is amended to read:

683.130. (a) In the case of a lump-sum money judgment or a judgment for possession or sale of property, the application for renewal of the judgment may be filed at any time before the expiration of the 10-year period of enforceability provided by Section 683.020 or, if the judgment is a renewed judgment, at any time before the expiration of the 10-year period of enforceability of the renewed judgment provided by Section 683.120.

(b) Except as otherwise specified in subdivision (c) , in the case of a money judgment payable in installments, the application for renewal of the judgment may be filed:

(1) If the judgment has not previously been renewed, at any time as to past due amounts that at the time of filing are not barred by the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

(2) If the judgment has previously been renewed, within the time specified by subdivision (a) as to the amount of the judgment as previously renewed and, as to any past due amounts that became due and payable after the previous renewal, at any time before the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

~~(c)(1) Notwithstanding any other provision of law, a judgment for child support, spousal support, or family support, or a judgment for reimbursement that includes, but is not limited to, reimbursement arising under Section 11350 of the Welfare and Institutions Code or other arrearages, and including all lawful interest and penalties computed thereon, is exempt from any requirement that judgments be renewed. A judgment for child, spousal, or family support, or a judgment for reimbursement or other arrearages, and including all lawful interest and penalties computed thereon, is enforceable until paid in full.~~

~~(2) In the case of a money judgment whether payable in installments or not, for the payment of child support, spousal support, or family support, or for reimbursement or arrearages, and including all lawful interest computed thereon, an application for renewal of the judgment may be filed:~~

~~(A) If the judgment has not previously been renewed as to past due amounts, at any time.~~

~~(B) If the judgment has previously been renewed, the amount of the judgment as previously renewed and any past due amount that became due and payable after the previous renewal may be renewed at any time after five years has elapsed from the time the judgment was previously renewed.~~

Comment. Subdivision (c) of Section 683.130 is deleted as unnecessary because it duplicates rules in the Family Code. See Fam. Code § 4502. This is not a substantive change. The exemption

from renewal requirements for support orders in subdivision (c)(1) is unnecessary because Section 683.310 makes clear that this chapter does not apply to judgments or orders made or entered under the Family Code. Reimbursement for child support under Welfare and Institutions Code Section 11350 is treated in the same fashion, as provided in Family Code Section 4502(a). The second sentence of subdivision (c)(1) is misplaced in this section pertaining to the time for filing an application for renewal. The period of enforceability of support orders is governed by Family Code Section 4502(a). The optional renewal procedure in Family Code Section 4502(b) continues the substance of subdivision (c)(2) of this section. See also Fam. Code § 290 (methods of enforcement).

☞ **Staff Note.** An alternative approach would be to leave subdivision (c)(2) in Section 683.130, but the logic of the suggested reorganization is to move special Family Code rules out of this chapter of the Enforcement of Judgments Law, consistent with its original structure which is reflected in Section 683.310. It is hoped this will eliminate one source of confusion. A complete severance of the Enforcement of Judgments Law and the Family Code is neither possible nor desirable. There are many special support enforcement provisions in the Enforcement of Judgments Law. See, e.g., Code Civ. Proc. §§ 695.211 (notice of interest on child support arrearages) [probably misplaced], 695.221 (crediting satisfaction of support payments), 697.320 (judgment lien based on installment support judgment), 697.360 (judgment lien under modified support judgment), 706.030 (earnings withholding orders for support), 706.031 (earnings assignment orders for support).

Code Civ. Proc. § 683.310 (amended). Time for filing renewal application

SEC. 2. Section 683.310 of the Code of Civil Procedure is amended to read:

683.310. Except as otherwise provided in ~~Section 4502~~ of the Family Code, this chapter does not apply to a judgment or order made or entered pursuant to the Family Code.

Comment. Section 683.310 is amended to accommodate other exceptions in the Family Code and the possibility of future revisions in the Family Code. This is a technical, nonsubstantive change. Family Code Section 4502 provides an important exception, making the ministerial renewal scheme available as an option for support judgments. Moreover, Family Code Section 291 makes this chapter applicable to enforceability and renewal of judgments for possession or sale entered under the Family Code.

Code Civ. Proc. § 699.510 (amended). Issuance of writ of execution

SEC. 3. Section 699.510 of the Code of Civil Procedure is amended to read:

699.510. (a) Subject to subdivision (b), after entry of a money judgment, a writ of execution shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the levy is to be made and to any registered process server. A separate writ shall be issued for each county where a levy is to be made. Writs may be issued successively until the money judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 180 days after the issuance of a prior writ for that county unless the prior writ is first returned.

(b) If the judgment creditor seeks a writ of execution to enforce a judgment made, entered, or enforceable pursuant to the Family Code, in addition to the requirements of this article, the judgment creditor shall satisfy the requirements of any applicable provisions of ~~Chapter 7 (commencing with Section 5100) of Part 5~~

of Division 9 of the Family Code and Sections 290, 291, 2026, and 3556 of the Family Code.

Comment. The references to specific Family Code sections in subdivision (b) of Section 699.510 are deleted as unnecessary. If the court has made an order under Family Code Section 290 that affects the right to enforce support obligations by writ of execution, the order would have to be complied with. The reference to former Section 291 is obsolete; a new Section 291 does not apply to money judgments, and so is outside the scope of this section. References to Family Code Sections 2026 (reconciliation as amelioration of contempt) and 3556 (duty of support unaffected by failure or refusal of custody or visitation) are not relevant to issuance of a writ of execution under this section. The reference to Family Code Section 5100 *et seq.* is no longer relevant because the time limits on enforceability by writ have been removed from those sections. See Fam. Code §§ 5100-5101, as amended by 1993 Cal. Stat. ch. 876, §§ 21-22. The general reference to compliance with any additional rules in the Family Code is retained to draw attention to the possibility that special rules may exist or may be enacted in the future.

☞ **Staff Note.** The references to Family Code Sections 2026 (reconciliation of parties to be considered as ameliorating factor in considering contempt of existing order) and 3556 (duty of support not affected by failure or refusal of custodial parent to implement custody or visitation rights of noncustodial parent) seem irrelevant to this section. Issuance of a writ of execution to enforce a money judgment does not seem to have anything to do with enforcement by contempt. If the court is using the contempt power to force payment of support, that is separate from enforcement by a writ of execution. Reference to Section 3556 seems particularly irrelevant since that section provides that there is no excuse. The original intent of subdivision (b) was to pull in the court's authority to control enforcement by writ for amounts that were more than 10 years overdue, including the diligence rule in what became Family Code Section 291.

While the general authority of the court under Family Code Section 290 still exists, there are no limitations on writ issuance stated in the listed sections. Family Code Sections 5100 and 5101 provide that a writ may be used without prior court approval as long as the judgment is enforceable (i.e., forever).

Fam. Code § 113 (added). Property

SEC. 4. Section 113 is added to the Family Code, to read:

113. "Property" includes real and personal property and any interest therein.

Comment. Section 113 is a new provision added for drafting convenience. It is the same as Code of Civil Procedure Section 680.310. The context of a particular section may require that a word or phrase in that section be given a meaning different from the definition in this section. See Section 50. Special definitions used for a particular portion of this code would override the general definition in this section. *Id.*

☞ **Staff Note.** This definition is proposed in response to the Senate Judiciary Committee consultant's analysis of SB 832 in 1995 ("Should not the term 'property' be defined?")

Fam. Code § 290 (amended). Methods and time of enforcement

SEC. 5. Section 290 of the Family Code is amended to read:

290. A Subject to Section 291, a judgment or order made or entered pursuant to this code may be enforced by the court by execution, the appointment of a receiver, or contempt, or by such any other order as the court in its discretion determines from time to time to be necessary.

Comment. Section 290 is amended to apply the general rules concerning the period of enforceability and renewal of judgments in the Enforcement of Judgments Law to judgments for the possession or sale of property under the Family Code. Thus, for example, a judgment for sale

would be unenforceable if it is not renewed within the 10-year period of Code of Civil Procedure Section 683.020. However, an action on the judgment may still be possible subject to the statute of limitations in Code of Civil Procedure Section 337.5. See Code Civ. Proc. § 683.020 & Comment. This amendment does not affect the rules concerning enforcement of child, family, or spousal support. See, e.g., Sections 4502, 5100-5104.

Fam. Code § 291 (repealed). Effect of lack of diligence in seeking enforcement

SEC. 6. Section 291 of the Family Code is repealed.

~~291. The lack of diligence for more than the period specified in Chapter 7 (commencing with Section 5100) of Part 5 of Division 9 in seeking enforcement of a judgment or order made, entered, or enforceable pursuant to this code that requires the payment of money shall be considered by the court in determining whether to permit enforcement of the judgment or order under Section 290.~~

Comment. Section 291 is repealed because it is surplus. There is no longer any limitation on the period of enforceability of support. See Section 4502(a) (exception to general renewal requirement). The incorporated time limitations formerly in Section 5100 *et seq.* were removed in 1993. See 1993 Cal. Stat. ch. 876, §§ 21-22. The repeal of this section is not intended to affect the court's authority to make appropriate orders in the exercise of its discretion under Section 290 (methods of enforcement) nor to affect any other equitable powers the court may have. See, e.g., *In re Marriage of Plescia*, 59 Cal. App. 4th 252, 259-62, 69 Cal. Rptr. 2d 120, 124-26 (1997) (doctrine of laches available, even though diligence under Section 291 no longer applicable to spousal support enforcement following elimination of 10-year rule in Section 5101).


Fam. Code § 291 (added). Time of enforcement of judgment for possession or sale

SEC. 7. Section 291 is added to the Family Code, to read:

291. A judgment or order for possession or sale of property made or entered pursuant to this code is subject to the period of enforceability and the procedure for renewal provided by Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure.

Comment. Section 291 applies the general rules concerning the period of enforceability and renewal of judgments in the Enforcement of Judgments Law to judgments for the possession or sale of property under the Family Code. This provision does not affect the rules concerning enforcement of child, family, or spousal support. See, e.g., Sections 4502 (period of support enforceability not limited; optional renewal of support judgments), 5100-5102 (enforcement of support by execution without prior court approval).

See also Section 113 ("property" includes real and personal property).

 **Staff Note.** The 1994 recommendation added a Section 292, but another section with that number was added to the Family Code in 1995. See 1995 Cal. Stat. ch. 904.

Fam. Code § 4502 (amended). Enforceability of support, optional renewal

SEC. 8. Section 4502 of the Family Code is amended to read:

4502. (a) Notwithstanding any other provision of law, a judgment for child, family, or spousal support, including a judgment for reimbursement that includes, but is not limited to, reimbursement arising under Section 11350 of the Welfare and Institutions Code or other arrearages, including all lawful interest and penalties computed thereon, is enforceable until paid in full and is exempt from any requirement that judgments be renewed. ~~A judgment for child, family, or~~

1 ~~spousal support, including all lawful interest and penalties computed thereon, is~~
2 ~~enforceable until paid in full.~~

3 (b) Although not required, a judgment described in subdivision (a) optionally
4 may be renewed pursuant to the procedure applicable to money judgments
5 generally under Article 2 (commencing with Section 683.110) of Chapter 3 of
6 Division 1 of Title 9 of Part 2 of the Code of Civil Procedure. An application for
7 renewal of a judgment described in subdivision (a), whether or not payable in
8 installments, may be filed:

9 (1) If the judgment has not previously been renewed as to past due amounts, at
10 any time.

11 (2) If the judgment has previously been renewed, the amount of the judgment as
12 previously renewed and any past due amount that became due and payable after
13 the previous renewal may be renewed at any time after a period of at least five
14 years has elapsed from the time the judgment was previously renewed.

15 **Comment.** Subdivision (a) of Section 4502 is amended to add clarifying language concerning
16 the scope of the enforceability rule from former subdivision (c)(1) of Code of Civil Procedure
17 Section 683.130. The substance of the second sentence is combined with the first sentence for
18 clarity and to avoid needing to repeat the scope of the rule.

19 Subdivision (b) is added to Section 4502 to continue the substance of the optional renewal
20 procedure formerly in Code of Civil Procedure Section 683.130(c)(2). As the introductory clause
21 of subdivision (b) makes clear, the ministerial renewal procedure is optional. The availability of
22 renewal is intended to provide a simple and orderly manner for obtaining a currently accurate
23 statement of the amount owing, taking into account past payments, unpaid accruals, and costs and
24 interest added to the judgment. The option of renewing pursuant to the general procedure in the
25 Code of Civil Procedure has no effect on the enforceability of the amount due, as is clear from
26 subdivision (a). The limitation on the frequency of optional renewals in subdivision (b)(2) is
27 consistent with the policy of Code of Civil Procedure Section 683.110(b) and is intended to limit
28 the opportunity to compound interest on the principal amount owing. See Code Civ. Proc. §
29 683.110(b) Comment.

30 See also Code Civ. Proc. § 683.310 (except as provided in Family Code, Code of Civil
31 Procedure provisions on enforceability and renewal of judgments are inapplicable to judgment
32 made or entered under Family Code); Fam. Code § 291 (enforceability and renewal of judgments
33 for possession or sale).

34 **Fam. Code § 5100 (amended). Enforcement of child or family support without prior court**
35 **approval**

36 SEC. 9. Section 5100 of the Family Code is amended to read:

37 5100. Notwithstanding Section 294 ~~290~~, a child or family support order may be
38 enforced by a writ of execution or a notice of levy pursuant to Section 706.030 of
39 the Code of Civil Procedure or Section 11350.7 of the Welfare and Institutions
40 Code without prior court approval as long as the support order remains
41 enforceable.

42 **Comment.** Section 5101 is amended to change the notwithstanding clause to refer to Section
43 290 instead of Section 291. Section 290 provides the general rule concerning judicial discretion in
44 enforcing judgments under the Family Code to which this section is an exception. Additionally,
45 former Section 291 has been repealed and replaced by a new Section 291 that is not relevant to
46 this section.

1 **Fam. Code § 5101 (amended). Enforcement of spousal support without prior court approval**

2 SEC. 10. Section 5101 of the Family Code is amended to read:

3 5101. Notwithstanding Section ~~291~~ 290, a spousal support order may be
4 enforced by a writ of execution or a notice of levy pursuant to Section 706.030 of
5 the Code of Civil Procedure or Section 11350.7 of the Welfare and Institutions
6 Code without prior court approval as long as the support order remains
7 enforceable.

8 **Comment.** Section 5101 is amended to change the notwithstanding clause to refer to Section
9 290 instead of Section 291. Section 290 provides the general rule concerning judicial discretion in
10 enforcing judgments under the Family Code to which this section is an exception. Additionally,
11 former Section 291 has been repealed and replaced by a new Section 291 that is not relevant to
12 this section.

13 **Fam. Code § 5102 (repealed). Period for enforcement of installment payments**

14 SEC. 11. Section 5102 of the Family Code is repealed.

15 ~~5102. If a support order provides for the payment of support in installments, the~~
16 ~~period specified pursuant to this chapter runs as to each installment from the date~~
17 ~~the installment became due.~~

18 **Comment.** Section 5102 is repealed because it is surplus. There is no longer any limitation on
19 the period of enforceability of support. See Section 4502(a).
