

First Supplement to Memorandum 2002-54

Exemptions from Enforcement of Money Judgments: Second Decennial Review (Comments on Discussion Draft)

AUTOMATIC COLA PROPOSAL

Attached at Exhibit p. 1 is a letter from Stan Ulrich, addressing issues raised by the California Association of Collectors concerning an automatic COLA for exemptions from enforcement of a money judgment. He argues in favor of the automatic COLA approach, concluding that “there is a balance to be maintained, but it will best be maintained by a periodic, automatic COLA. And there is no reason not to coordinate it with the recently enacted alternative bankruptcy exemption COLA.” Exhibit p. 2.

EXEMPT AMOUNTS

Depending on the Commission’s action on the Discussion Draft, we should update the exempt amounts in the final recommendation to reflect the most current information concerning changes in value.

The exempt amounts in the Discussion Draft are based on cost of living information as of June 2002. More current information (for August 2002) is now available. Updating the exempt amounts would result in minor increases over those set out in the Discussion Draft:

Code Civ. Proc.	Type of Property	Existing	6/02	8/02	Rounded
§ 704.010	Motor vehicle	\$ 1,900	\$ 2,294	\$ 2,305	\$ 2,300
§ 704.030	Home repair materials	\$ 2,000	\$ 2,414	\$ 2,426	\$ 2,425
§ 704.040	Jewelry, heirlooms, art	\$ 5,000	\$ 6,036	\$ 6,065	\$ 6,075
§ 704.060(a)(1-2)	Tools of trade 1	\$ 5,000	\$ 6,036	\$ 6,065	\$ 6,075
§ 704.060(a)(3)	Tools of trade 2	\$ 10,000	\$ 12,071	\$ 12,130	\$12,150
§ 704.060(d)(1)	Commercial vehicle 1	\$ 4,000	\$ 4,829	\$ 4,852	\$ 4,850
§ 704.060(d)(2)	Commercial vehicle 2	\$ 8,000	\$ 9,657	\$ 9,704	\$ 9,700
§ 704.080(b)(1)	Social Security 1	\$ 2,000	\$ 2,414	\$ 2,426	\$ 2,425
§ 704.080(b)(2)	Social Security 2	\$ 3,000	\$ 3,621	\$ 3,639	\$ 3,650

§ 704.080(b)(1)	Public benefits 1	\$ 1,000	\$ 1,207	\$ 1,213	\$ 1,225
§ 704.080(b)(2)	Public benefits 2	\$ 1,500	\$ 1,811	\$ 1,819	\$ 1,825
§ 704.090(a)	Inmate trust funds	\$ 1,000	\$ 1,207	\$ 1,213	\$ 1,225
§ 704.090(b)	Inmate trust funds limit	\$ 300			
§ 704.100(b)	Life insurance loan value	\$ 8,000	\$ 9,657	\$ 9,704	\$ 9,700

In preparing the text of the final recommendation, the staff would use the updated figures.

Pursuant to a suggestion from Stan Ulrich, for an exemption that involves doubling, we would refer simply to the fact of doubling in the text of the statute, without setting out the actual figure. This will improve readability and avoid needless repetition in the statute. It will also eliminate some anomalies resulting from rounding to the nearest \$25. For example:

Code Civ. Proc. § 704.060 (amended). Personal property used in trade, business, or profession

SEC. 7. Section 704.060 of the Code of Civil Procedure is amended to read:

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) ~~Five thousand dollars (\$5,000)~~ *Six thousand seventy-five dollars (\$6,075)*, 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) ~~Five thousand dollars (\$5,000)~~ *Six thousand seventy-five dollars (\$6,075)*, 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) ~~Ten thousand dollars (\$10,000)~~ *Twice the amount of the exemption provided in paragraph (1)*, 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) If property described in subdivision (a) is sold at an execution sale, or if it has been lost, damaged, or destroyed, the proceeds of the execution sale or of insurance or other indemnification are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor or the judgment debtor's spouse. The amount exempt under this

subdivision is the amount specified in subdivision (a) that applies to the particular case less the aggregate equity of any other property to which the exemption provided by subdivision (a) for the particular case has been applied.

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

(d) Notwithstanding subdivisions (a) and (b):

(1) The amount of the exemption for a commercial motor vehicle under paragraph (1) or (2) of subdivision (a) is limited to ~~four thousand dollars (\$4,000)~~ *four thousand eight hundred fifty dollars (\$4,850)*.

(2) The amount of the exemption for a commercial motor vehicle under paragraph (3) of subdivision (a) is limited to ~~eight thousand dollars (\$8,000)~~ *twice the amount of the exemption provided by paragraph (1) of this subdivision*.

Comment. Section 704.060 is amended to adjust the exemption amount for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 5. Adjusted amounts were determined by applying the California Consumer Price Index (August 2002) for all urban consumers and rounding to the nearest \$25, except that the amounts in subdivisions (a)(3) and (d)(2) are determined by doubling the amounts in subdivisions (a)(1) and (d)(1), respectively.

We would also in the final recommendation incorporate a few other minor tweaks suggested by Stan (primarily relating to paragraphing), in the interest of improved readability.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

STAN ULRICH
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December 9, 2002

California Law Revision Commission
4000 Middlefield Road, Room D-1
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Re: Study D-355 — Exemptions from Enforcement of Money Judgments

Dear Commissioners:

I write in response to the letter from my friend Ron Sargis, on behalf of the California Association of Collectors (CAC), attached to Memorandum 2002-54. Ron and I have struggled with these issues numerous times over the years, and his remarks are always worth serious consideration.

It is interesting that the CAC takes no position on the proposed amendments to make cost of living adjustments to the monetary exemptions, but opposes an automatic triennial adjustment that would do exactly the same thing. While I wouldn't want to see CAC oppose the legislative adjustment in the interest of consistency, I think it is important to recognize the inherently benign nature of the proposed automatic COLA provision. Keep in mind that the alternative bankruptcy exemption COLA passed the Legislature without any opposition or negative votes.

CAC rejects any argument that analogizes enforcement exemptions to bankruptcy exemptions. I would agree that the two areas of the law are different in important respects, but it is indisputable that they overlap and interrelate, and in general, the purpose of exemptions is the same, regardless of the differing characterizations that may be found in legislative history and case law. It is also worth noting that the Uniform Exemptions Act, which in part inspired the exemption COLA in the Bankruptcy Code as well as state enforcement law, takes a fairly strict view of debtors' exemptions, rejecting the "grubstake" approach which holds that "property of a delinquent debtor should be insulated from levy up to a certain value irrespective of its nature." (Prefatory Note, Unif. Exemptions Act (1976, rev'd 1979) p. 4, pamphlet ed.) I mention this only to dislodge any notion that an automatic COLA provision is inexorably linked to overly "liberal" exemption policies. It is really just a very obvious and simple notion that exemption amounts, once properly determined, should maintain their value in real dollars.

As to automatic COLA provisions, I don't see any meaningful distinction between enforcement and bankruptcy exemptions, and CAC has not articulated a difference notwithstanding the discussion of the overall purpose of bankruptcy as compared with judgment enforcement.

The listing in the Commission proposal of other COLA provisions in California law is not meant as an argument compelling automatic adjustments of enforcement exemptions, but rather to recognize that COLA provisions are commonplace in modern law. While this feature in the Uniform Exemptions Act of 1976 might have been seen as a novel proposal a generation ago, the

times have changed, and that thinking is illustrated by the analogous changes in bankruptcy law, which has progressed from having no updating rule, through mandated periodic review, to an automatic triennial COLA.

The most intriguing argument in Ron's letter is, if I understand it, that automatic adjustment of exemptions would throw off the balance between debtors and creditors because creditors' increased costs of enforcement would not be accounted for. There are several problems with this argument. What costs are we talking about? To what extent have these costs grown in real dollars, and if they have grown, how much? In order to evaluate the argument, the Commission needs to have some figures on *unrecoverable* collection costs.

Assuming that facts and figures can be generated, the Commission would need to determine who should bear the burden of the increased collection costs and how that burden should be met. One option, if there are substantial new costs, would be to adjust the rules on collecting costs of enforcement from judgment debtors. I can't see that eroding exemptions through inflation is an appropriate or rational way to deal with the alleged increased cost problem. But it is difficult to evaluate without some concrete examples and convincing data.

Several other factors should be kept in mind in balancing the rights of debtors and creditors. Defaulting customers and the expenses of enforcement are standard costs of doing business. While tort creditors may be in a bind, commercial enterprises routinely work to minimize the risk of nonpayment and decide what level of risk they can assume. In this context, predictable exemptions are part of the equation, and an automatic COLA can be viewed as assisting in rational business planning. By adjusting triennially, the lumps and unpredictability inherent in the current state of the law would be smoothed out.

In addition, remember that judgment creditors are entitled to 10% interest on judgments (Code Civ. Proc. § 685.010) and reasonable and necessary costs are recoverable (Code Civ. Proc. § 685.040). The Enforcement of Judgments Law also protects the lien rights of creditors by freezing the exemption applicable to property at the earliest time that a creditor's lien attaches to the property.

I agree with Ron and CAC that there is a balance to be maintained, but it will best be maintained by a periodic, automatic COLA. And there is no reason not to coordinate it with the recently enacted alternative bankruptcy exemption COLA.

Thank you for your consideration of my remarks, and I wish you all a happy new year.

Sincerely,

A handwritten signature in black ink that reads "Stan". The signature is written in a cursive, slightly slanted style.

Stan Ulrich