

## Memorandum 2005-21

**Enforcement of Money Judgment Under Family Code  
(Draft of Tentative Recommendation)**

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This memorandum presents a draft tentative recommendation on the enforcement of a judgment arising under the Family Code. The Commission should decide whether to circulate the draft as a tentative recommendation, with or without changes.

As a general rule, there is a ten-year period for the enforcement of a money judgment or a judgment for possession or sale of property. Code Civ. Proc. § 683.020. That period can be renewed in additional ten-year increments. See Code Civ. Proc. §§ 683.110-683.220.

The enforcement period and renewal provisions do not apply to a judgment arising under the Family Code, except where the Family Code specifically incorporates them. Code Civ. Proc. § 683.310. The Family Code applies the general enforcement period and renewal rules to only one type of judgment, a judgment for possession or sale of property. Fam. Code § 291.

Other judgments under the Family Code are subject to different rules. A judgment for support is enforceable until paid in full. Furthermore, it is exempt from the equitable doctrine of laches, except with respect to any part of the judgment that is owed to the state. A support judgment can be renewed, in order to update the amount owing on the judgment (to reflect accrued interest and installments that have come due). Renewal has no effect on the enforceability of the judgment. See Fam. Code § 4502.

All other Family Code judgments are enforceable at the discretion of the court, with no fixed time period for enforcement. Fam. Code § 290.

The multiplicity of rules for the enforcement of a judgment under the Family Code is potentially confusing and can produce unfair results. For example, in a marital dissolution the court might (1) award the family home to the husband and (2) order a cash payment to the wife, to offset her community property share in the value of the home. The award of the home (a judgment for possession or sale of property) would be enforceable for up to ten years, subject to renewal of the judgment. The equalizing cash payment (a money judgment) would be

enforceable at the discretion of the court. See, e.g., *Wilcox v. Wilcox*, 21 Cal. Rptr. 3d 315 (2004).

The Commission instructed the staff to prepare a draft tentative recommendation that would establish a single rule for enforcement of any judgment arising under the Family Code. All such judgments would be enforceable until paid. The draft is attached for the Commission's review.

The draft also raises a technical question relating to the enforcement of a Family Code judgment in a limited civil case. That issue arose in connection with the Commission's broader study of equitable relief in a limited civil case. The staff draft provides a convenient vehicle for soliciting comment on the matter from family law practitioners.

Respectfully submitted,

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Assistant Executive Secretary

1                    ENFORCEMENT OF JUDGMENTS UNDER THE  
2                    FAMILY CODE

3           Under the Enforcement of Judgments Law, a money judgment or judgment for  
4 possession or sale of property is enforceable for a period of ten years.<sup>1</sup> That period  
5 can be extended through renewal of the judgment.<sup>2</sup>

6           The ten-year enforcement period and judgment renewal provisions do not apply  
7 to a judgment arising under the Family Code, unless the Family Code specifically  
8 provides otherwise.<sup>3</sup>

9           There are currently three rules governing the period for enforcement of a  
10 judgment under the Family Code:

- 11           (1) A judgment for support is enforceable until paid in full.<sup>4</sup>  
12           (2) A judgment for possession or sale of property is subject to the ten-year  
13 enforcement period and renewal procedure provided by general enforcement  
14 of judgments law.<sup>5</sup>  
15           (3) All other judgments are enforceable at any time, subject to the discretion of  
16 the court.<sup>6</sup>

17           This multiplicity of rules is potentially confusing and can lead to inequitable  
18 results. A recent appellate decision illustrates the problem. In *Wilcox v. Wilcox*,<sup>7</sup> a  
19 judgment in a marital dissolution awarded the family home to the former husband,  
20 but required that he make an equalizing cash payment to the former wife. The  
21 award of the house was a judgment for possession of property and was therefore  
22 subject to the ten-year enforcement period. The order to make an equalizing cash  
23 payment was a money judgment and was therefore not subject to the ten-year  
24 enforcement period. This is unfair. Orders made in the course of a marital  
25 dissolution proceeding should be subject to the same period for enforcement,  
26 regardless of whether they involve the possession of property or the payment of  
27 money.

28           The Law Revision Commission recommends that the rule governing  
29 enforcement of a support judgment be generalized to apply to all judgments arising  
30 under the Family Code. This simple rule would avoid confusion and would be  
31 consistent with the general legislative policy favoring the enforcement of Family  
32 Code judgments.

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1. Code Civ. Proc. § 683.020.

2. Code Civ. Proc. §§ 683.110-683.220.

3. Code Civ. Proc. § 683.310.

4. Fam. Code § 4502.

5. Fam. Code § 291.

6. Fam. Code § 290.

7. 124, Cal. App. 4th 492, 21 Cal. Rptr. 3d 315 (2004).

1 DISCUSSION

2 There are a number of factors that weigh in favor of a single simplified rule for  
3 enforcement of judgments under the Family Code: (1) family law proceedings can  
4 have a profound effect on the economic stability and welfare of former spouses  
5 and their dependent children, (2) special pressures in family law cases may delay  
6 the enforcement of judgments, and (3) the prevalence of self-represented litigants  
7 in family law cases argues in favor of simplicity in the law. These factors are  
8 discussed below.

9 **Economic Effect of Family Code Judgments**

10 Dissolution or annulment of marriage can have a significant effect on the  
11 economic independence of former spouses and the welfare of their dependent  
12 children:

13 In every case, when one household breaks into two, there are losses of  
14 economies of scale and a concomitant loss of well-being for all household  
15 members. However, this loss is often not equally distributed between the parties.  
16 An examination of child poverty statistics shows that children and their custodial  
17 parents experience a greater financial loss than noncustodial parents. Child  
18 poverty is far more prevalent in single-parent homes. Nearly one in every two  
19 children living in single-parent homes lives in poverty compared to nearly one in  
20 twelve in two-parent homes.

21 According to data developed by the Center for Law and Social Policy (CLASP),  
22 in California in 1993, 38% of mother-only families and 20% of father-only  
23 families were poor. Fully 85% of mother-only families and 39% of father-only  
24 families have income less than twice the poverty line.<sup>8</sup>

25 Concern about the heightened risk of poverty following dissolution of marriage  
26 underlies the existing policy in favor of simplified enforcement of support  
27 judgments.<sup>9</sup> Enforcement of support judgments helps former spouses to find their  
28 feet economically and reduces dependence on public assistance programs.

29 Other types of Family Code judgments also serve those purposes. An award of  
30 marital property can provide resources essential to the transition from married to  
31 single life, including funds to pay for vocational training, childcare, insurance  
32 coverage, and the procurement of new housing. Other Family Code judgments

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8. Letter from Assembly Member Sheila J. Kuehl to Assembly Committee on the Judiciary (November 7, 1995).

9. In addition to the exemption from the general ten-year enforcement period, there have been numerous legislative reforms aimed at facilitating the enforcement of a support judgment. See, e.g., Fam. Code §§ 4002 (county may proceed on behalf of child support obligee), 4003 (case involving child support has scheduling priority over all cases that are not also given statutory scheduling priority), 4011 (child support obligation has priority over other debts), 5100 (support obligation enforceable by writ of execution or notice of levy without prior court approval), 4720-4733 (civil penalty for child support delinquency), 17520 (suspension of driver's license or business license for child support delinquency).

1 provide for recovery of costs relating to maternity,<sup>10</sup> domestic violence,<sup>11</sup> or  
2 breach of a child custody obligation.<sup>12</sup>

3 If concern about the economic independence and welfare of former spouses and  
4 their children justifies a more lenient approach to enforcement of a support order,  
5 then it also weighs in favor of the same approach for other types of Family Code  
6 judgments.

7 **Special Reasons for Delay in Enforcement**

8 Many civil cases involve an arms-length commercial transaction or a conflict  
9 between strangers. Family law cases are different. The parties have a history  
10 together that can involve deep bonds of affection, a sense of mutual obligation,  
11 and concern for the welfare of children. Family law cases can also involve  
12 personal betrayal, enmity, and abuse. This tangle of emotions and connections may  
13 persist long after dissolution or annulment of marriage, especially if there is an  
14 ongoing obligation of support or shared custody of children.

15 Unlike the typical lawsuit, where there is likely to be no reason for delay in  
16 enforcing a judgment, a family law case may involve justifiable reasons for delay.  
17 For example:

- 18 • A party awarded ownership of the family home may allow a former spouse  
19 to continue living in the home out of a sense of obligation for the former  
20 spouse's welfare.
- 21 • A party may delay enforcement of a judgment in order to avoid conflicts  
22 that could undermine the welfare of minor children.
- 23 • A party may feel physically or psychologically intimidated by a former  
24 spouse and forego enforcement of a judgment in order to avoid harm. For  
25 example, in one case a judgment creditor deferred enforcement of a support  
26 order for nearly thirty years, out of fear of a physically abusive former  
27 spouse. The court found this delay to be reasonable under the  
28 circumstances.<sup>13</sup> Concern about intimidation of judgment creditors may also  
29 underlie the rule providing that the ten-year enforcement period does not  
30 apply to a crime victim restitution award.<sup>14</sup>

31 Family law cases present special considerations, absent in most other cases, that  
32 can lead to significant delay in the enforcement of a judgment. These  
33 considerations are not limited to cases involving enforcement of a support  
34 obligation; they can arise in any type of family dispute. To the extent that these  
35 causes for delay justify a more lenient approach to enforcement of a support  
36 obligation, they also justify a similar approach for other Family Code judgments.

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10. Fam. Code § 7637.

11. Fam. Code § 6342.

12. Fam. Code § 3028.

13. *In re Marriage of Dancy*, 82 Cal. App. 4th 1142, 98 Cal. Rptr. 2d 775 (2000).

14. See Penal Code § 1214(d).

1 **Uniformity and Simplicity**

2 A very high percentage of the parties in family law cases are unrepresented by  
3 counsel. One recent study indicated that 67% of marital dissolution cases involve  
4 unrepresented parties. By contrast, the rate of self-representation in general civil  
5 litigation is 16%.<sup>15</sup> The unusually high rate of self-representation in family law  
6 cases argues in favor of uniformity and simplicity in family law procedures, in  
7 order to avoid pitfalls for nonlawyers.

8 The current system of three different rules for enforcement of different types of  
9 judgments is potentially confusing. That confusion could be avoided by the  
10 creation of a single simplified rule that would apply to all judgments entered under  
11 the Family Code.

12 **DEATH OF JUDGMENT DEBTOR OR CREDITOR**

13 The proposed law would make a judgment under the Family Code enforceable  
14 until satisfied. However, this would not supersede general law governing the  
15 enforcement of a judgment after the death of a judgment debtor or creditor. This is  
16 consistent with a recent appellate decision that stated, in dicta, that Family Code  
17 Section 4502 “does not address the procedural requirements for reaching the assets  
18 of a judgment debtor after that debtor’s death.”<sup>16</sup>

19 The proposed law preserves the careful balance struck in the Probate Code  
20 between the interests of a debtor’s creditors and heirs.

21 **RENEWAL OF JUDGMENT**

22 Under existing law, a judgment for support may be renewed. Renewal has no  
23 effect on the enforceability of the judgment. It merely provides a mechanism for  
24 updating the amount owed on the judgment (to reflect accrued interest and  
25 installments that have come due).<sup>17</sup> Renewal for that limited purpose should be  
26 available for all judgments entered under the Family Code, regardless of whether a  
27 judgment is subject to the ten-year enforcement period.

28 **ALTERNATIVES**

29 An alternative to the proposed law would be to address only the problem raised  
30 in *Wilcox v. Wilcox* — the inconsistent treatment of judgments arising from a  
31 marital property division. There are two ways in which this could be done: (1)  
32 repeal Family Code Section 291 (in which case all marital property judgments  
33 would be exempt from the ten-year enforcement period and would instead be  
34 enforceable at the discretion of the court), or (2) revise Section 291 to provide that

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15. Judicial Council, Statewide Action Plan for Serving Self-Represented Litigants 5 (2004).

16. *Embree v. Embree*, 125 Cal. App. 4th 487, 495, 22 Cal. Rptr. 3d 782 (2004).

17. Fam. Code § 4502.

1 the ten-year enforcement period would apply to any judgment entered in a  
2 proceeding to divide marital or quasi-marital property.

3 The Commission requests comment on these alternative approaches.

4 RELATED TECHNICAL MATTER

5 Code of Civil Procedure Section 580 was amended in connection with the  
6 unification of the trial courts, to specifically provide that a Family Code order  
7 cannot be enforced as part of a limited civil case.

8 That limitation appears to be unnecessary. A family law proceeding is not a  
9 limited civil case. It is a special proceeding that is governed by Court Rules.<sup>18</sup>  
10 Thus, it appears that enforcement of a Family Code order would never arise in the  
11 context of a limited civil case.

12 The proposed law would delete the Family Code provision from Section 580.  
13 The Commission specifically requests comment on whether that change would  
14 have any substantive effect.

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18. “Notwithstanding any other provision of law, the Judicial Council may provide by rule for the practice and procedure in proceedings under this code.” Fam. Code § 211. See also Cal. R. Ct. 5.10 *et seq.*

## CONTENTS

1	PROPOSED LEGISLATION	
2	Fam. Code § 291 (added). Enforcement of judgment . . . . .	7
3	CONFORMING AND TECHNICAL AMENDMENTS AND REPEALS	
4	Code Civ. Proc. § 580 (technical amendment). Relief granted in limited civil case . . . . .	8
5	Fam. Code § 290 (amended). Enforcement of judgment . . . . .	8
6	Fam. Code § 291 (repealed). Enforcement of judgment for possession or sale of property . . . . .	8
7	Fam. Code § 4502 (repealed). Enforcement of support judgment . . . . .	9

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## PROPOSED LEGISLATION

1 **Fam. Code § 291 (added). Enforcement of judgment**

2 SEC. \_\_\_\_\_. Section 291 is added to the Family Code, to read:

3 291. (a) A judgment or order made or entered pursuant to this code, including a  
4 judgment for child, family, or spousal support, is enforceable until paid in full or  
5 otherwise satisfied and is exempt from any requirement that judgments be  
6 renewed.

7 (b) Although not required, a judgment described in subdivision (a) may be  
8 renewed pursuant to Article 2 (commencing with Section 683.110) of Chapter 3 of  
9 Division 1 of Title 9 of Part 2 of the Code of Civil Procedure. The option of  
10 renewing the judgment has no effect on the enforceability of the judgment or  
11 order.

12 (c) An application for renewal of a judgment described in subdivision (a),  
13 whether or not payable in installments, may be filed:

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

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

20 (d) In an action to enforce a judgment or order made or entered pursuant to this  
21 code, the defendant may raise, and the court may consider, the defense of laches  
22 only with respect to any portion of the judgment that is owed to the state.

23 (e) Nothing in this section supersedes the law governing enforcement of a  
24 judgment after the death of the judgment creditor or judgment debtor.

25 **Comment.** Subdivisions (a)-(d) of Section 291 generalize the enforcement rules provided in  
26 former Section 4502 so that they apply to any judgment or order made or entered under this code.  
27 The reference in former Section 4502(a) to an order for reimbursement under Section 17402 is  
28 redundant and is not continued. Section 291 applies to all judgments entered under this code.

29 Subdivision (e) is new. It is consistent with a recent appellate decision that stated, in dicta, that  
30 Family Code Section 4502 “does not address the procedural requirements for reaching the assets  
31 of a judgment debtor after that debtor’s death.” See Civ. Code §§ 686.010 (after death of  
32 judgment creditor, judgment enforceable by judgment creditor’s executor, administrator, or  
33 successor in interest), 686.020 (after death of judgment debtor, enforcement of judgment  
34 governed by Probate Code); Prob. Code § 9300 (judgment against decedent must be filed in the  
35 same manner as other claims).

36 ☞ **Note.** The Commission requests comment on whether the limitation provided in subdivision  
37 (c) can be stated in simpler terms without creating a problem, thus: “(c) An application for  
38 renewal of a judgment described in subdivision (a) may not be filed if the judgment was renewed  
39 at any time in the preceding five years.”

## CONFORMING AND TECHNICAL AMENDMENTS AND REPEALS

### 1 **Code Civ. Proc. § 580 (technical amendment). Relief granted in limited civil case**

2 SEC \_\_\_\_\_. Section 580 of the Code of Civil Procedure is amended to read:

3 580. (a) The relief granted to the plaintiff, if there is no answer, cannot exceed  
4 that which he or she shall have demanded in his or her complaint, in the statement  
5 required by Section 425.11, or in the statement provided for by Section 425.115;  
6 but in any other case, the court may grant the plaintiff any relief consistent with  
7 the case made by the complaint and embraced within the issue. The court may  
8 impose liability, regardless of whether the theory upon which liability is sought to  
9 be imposed involves legal or equitable principles.

10 (b) Notwithstanding subdivision (a), the following types of relief may not be  
11 granted in a limited civil case:

12 (1) Relief exceeding the maximum amount in controversy for a limited civil case  
13 as provided in Section 85, exclusive of attorney's fees, interest, and costs.

14 (2) A permanent injunction.

15 (3) A determination of title to real property.

16 (4) Enforcement of an order under the Family Code.

17 (5) Declaratory relief, except as authorized by Section 86.

18 **Comment.** Section 580 is amended to delete an unnecessary reference to enforcement of an  
19 order under the Family Code. This is a nonsubstantive change. A proceeding under the Family  
20 Code is not a limited civil case. It is a special proceedings that is governed by court rules of  
21 procedure. See Fam. Code § 211; Cal. R. Ct. 5.10 *et seq.*

22 ☞ **Staff Note.** The Commission particularly solicits comment on whether the proposed change to  
23 Section 580 would have any substantive effect. Is it correct that, even without Section 580(b)(4),  
24 enforcement of a Family Code order could never arise in the course of a limited civil case?

### 25 **Fam. Code § 290 (amended). Enforcement of judgment**

26 SEC. \_\_\_\_\_. Section 290 of the Family Code is amended to read:

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

31 **Comment.** Section 290 is amended to reflect the fact that new Section 291 does not limit the  
32 enforcement of a judgment or order made or entered pursuant to this code.

### 33 **Fam. Code § 291 (repealed). Enforcement of judgment for possession or sale of property**

34 SEC. \_\_\_\_\_. Section 291 of the Family Code is repealed:

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

39 **Comment.** Section 291 is repealed. New Section 291 provides a general rule for enforcement  
40 of a judgment under this code.

1 **Fam. Code § 4502 (repealed). Enforcement of support judgment**

2 SEC \_\_\_\_\_. Section 4502 of the Family Code is repealed.

3 ~~4502. (a) Notwithstanding any other provision of law, a judgment for child,~~  
4 ~~family, or spousal support, including a judgment for reimbursement that includes,~~  
5 ~~but is not limited to, reimbursement arising under Section 17402 or other~~  
6 ~~arrearages, including all lawful interest and penalties computed thereon, is~~  
7 ~~enforceable until paid in full and is exempt from any requirement that judgments~~  
8 ~~be renewed.~~

9 ~~(b) Although not required, a judgment described in subdivision (a) may be~~  
10 ~~renewed pursuant to the procedure applicable to money judgments generally under~~  
11 ~~Article 2 (commencing with Section 683.110) of Chapter 3 of Division 1 of Title 9~~  
12 ~~of Part 2 of the Code of Civil Procedure. As provided in subdivision (a), the option~~  
13 ~~of renewing the judgment has no effect on the enforceability of the amount due.~~  
14 ~~An application for renewal of a judgment described in subdivision (a), whether or~~  
15 ~~not payable in installments, may be filed:~~

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

18 ~~(2) If the judgment has previously been renewed the amount of the judgment as~~  
19 ~~previously renewed and any past due amount that became due and payable after~~  
20 ~~the previous renewal may be renewed at any time after a period of at least five~~  
21 ~~years has elapsed from the time the judgment was previously renewed.~~

22 ~~(c) In an action to enforce a judgment for child, family, or spousal support, the~~  
23 ~~defendant may raise, and the court may consider, the defense of laches only with~~  
24 ~~respect to any portion of the judgment owed to the state.~~

25 **Comment.** Section 4502 is repealed. The substance of the former section is generalized in new  
26 Section 291.