

# CALIFORNIA LAW REVISION COMMISSION

## TENTATIVE RECOMMENDATION

### Third Decennial Review of Exemptions from Enforcement of Money Judgments

August 2012

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make 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 to it.

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN November 1, 2012.**

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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## SUMMARY OF TENTATIVE RECOMMENDATION

Code of Civil Procedure Section 703.120 requires the Law Revision Commission, every 10 years, to review the amounts that are exempt from the enforcement of money judgments.

In its first two decennial reviews, the Commission recommended adjustments to the exemption amounts, to account for inflation since the amounts had last been adjusted. Those adjustments were enacted into law.

In its second decennial review, the Commission also recommended the creation of a statutory cost of living adjustment (“COLA”) mechanism, to automatically increase the exemption amounts every three years. The recommended COLA mechanism was enacted into law.

This tentative recommendation presents the results of the Commission’s third decennial review. In this review, the Commission found that the automatic COLA mechanism has been operating as intended. Consequently, the statutory exemption amounts do not require manual adjustment at this time.

Because the COLA mechanism is properly adjusting the exemption amounts to account for inflation, the Commission sees no need for further decennial review of the exemption amounts. The Commission therefore recommends that Section 703.120 be amended to delete the decennial review requirement.

### THIRD DECENNIAL REVIEW OF EXEMPTIONS FROM ENFORCEMENT OF MONEY JUDGMENTS

1 Code of Civil Procedure Section 703.120(a) directs the Law Revision  
2 Commission to review the amounts that are exempt from the enforcement of  
3 money judgments, every 10 years:

4 Ten years following the operative date of this title and every 10 years  
5 thereafter, the California Law Revision Commission shall review the exempt  
6 amounts provided in this chapter and in other statutes and recommend to the  
7 Governor and the Legislature any changes in exempt amounts that appear proper.

8 The Commission is now conducting its third decennial review of the exemption  
9 amounts. This tentative recommendation presents the Commission's provisional  
10 findings and recommendations. **The Commission invites public comment on the**  
11 **matters discussed in this tentative recommendation.**

#### 12 GENERAL BACKGROUND ON STATUTORY EXEMPTIONS 13 FROM ENFORCEMENT OF MONEY JUDGMENTS

14 The Enforcement of Judgments Law was enacted on the Commission's  
15 recommendation.<sup>1</sup>

16 One long-standing feature of the Enforcement of Judgments Law is a set of  
17 exemptions that limit the enforcement of a money judgment. Exemptions are  
18 intended to protect an amount of property sufficient to support the judgment  
19 debtor and the judgment debtor's family and to facilitate the financial  
20 rehabilitation of the judgment debtor.<sup>2</sup>

21 The Enforcement of Judgments Law includes two main sets of exemptions: the  
22 exemptions available when enforcing a money judgment (Section 704.010 *et seq.*,  
23 hereafter the "Section 704 money judgment exemptions") and an alternative set of  
24 exemptions that are only available in bankruptcy (Section 703.140(b), hereafter  
25 the "Section 703 bankruptcy exemptions").

#### 26 **Section 704 Money Judgment Exemptions**

27 The Section 704 money judgment exemptions fall into three categories:

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1. See *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980); 1982 Cal. Stat. ch. 482.

2. *Id.* at 2075-2100. See also *1982 Creditors' Remedies Legislation*, 16 Cal. L. Revision Comm'n Reports 1001, 1079-1109 (1982).

1 (1) *Exemptions that protect personal property without regard to the monetary*  
2 *value of the property.*<sup>3</sup> Because those exemptions are not limited to a  
3 specified dollar amount, they are not subject to degradation in value as a  
4 result of inflation. Consequently, there is no need to review or adjust any  
5 “amounts” in connection with these exemptions.

6 (2) *Exemptions that protect personal property up to a specified amount of*  
7 *value.*<sup>4</sup> Because these exemptions are based on specified dollar amounts,  
8 they require periodic adjustment to maintain their intended value.

9 (3) *The “homestead exemption,” which protects part of the value of real*  
10 *property under specified circumstances.*<sup>5</sup> In its prior decennial reviews, the  
11 Commission has not made any recommendation to adjust the amount of the  
12 homestead exemption.

13 In drafting the Enforcement of Judgments Law, the Commission recommended  
14 the addition of Code of Civil Procedure Section 703.120, which requires the  
15 Commission to review the exemption amounts every ten years. This periodic  
16 review provided a mechanism for periodic adjustment of the fixed exemption  
17 amounts, in order to keep pace with inflation.<sup>6</sup>

### 18 **Bankruptcy Exemptions**

19 Federal bankruptcy law provides its own set of exemptions that are available in  
20 personal bankruptcy.<sup>7</sup> However, each state may opt out of the federal exemption  
21 set, in which case the state’s own judgment enforcement exemptions apply in the  
22 state’s bankruptcy proceedings.<sup>8</sup>

23 California has opted out of the federal bankruptcy exemption set.<sup>9</sup> This means  
24 that the Section 704 money judgment exemptions are available in bankruptcy in  
25 California, in lieu of the federal exemption set.

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3. See Code Civ. Proc. §§ 704.020 (“ordinary and reasonably necessary” household furnishings, appliances, provisions, wearing apparel, personal effects), 704.050 (“reasonably necessary” health aids, including prostheses and orthopedic appliances).

4. See Code Civ. Proc. §§ 704.010 (motor vehicle), 704.030 (residential repair materials), 704.040 (jewelry, heirlooms, and works of art), 704.060 (tools of trade), 704.080 (directly deposited Social Security and public benefit payments), 704.090 (inmate trust account), and 704.100 (life insurance policy). Some of the exemption dollar amounts are increased if the judgment debtor is married. See Code Civ. Proc. §§ 704.060 (tools of trade), 704.090 (inmate trust account), 704.100 (life insurance policy). But the general rule is that married persons are not entitled to increased or doubled exemption amounts, regardless of whether one or both of the spouses are debtors and regardless of the separate or community nature of the property. See Code Civ. Proc. § 703.110(a).

5. See Code Civ. Proc. § 704.730.

6. See *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm’n Reports 2001, 2103-04 (1980).

7. See 11 U.S.C. § 522(d).

8. See 11 U.S.C. § 522(b)(1).

9. See Code Civ. Proc. § 703.130.



1 **First Decennial Review**

2 At the time of the Commission’s first decennial review in 1994, the exemption  
3 amounts had not been updated since they became operative in 1983. Between  
4 1983 and 1994, the purchasing value of the dollar had declined by one-third or  
5 more. To account for this change in purchasing value due to inflation, the  
6 Commission recommended increases in the Section 704 money judgment  
7 exemptions. The Commission also recommended increases in the Section 703  
8 bankruptcy exemptions (to keep pace with the federal bankruptcy exemptions).<sup>14</sup>  
9 The Commission’s recommendations were enacted into law.<sup>15</sup>

10 **Second Decennial Review**

11 At the time of the Commission’s second decennial review in 2003, the  
12 exemption amounts had not been updated since the enactment of the  
13 Commission’s 1994 recommendations.

14 The Commission again recommended that the Section 704 money judgment  
15 exemptions be increased to account for inflation (with the exception of the  
16 homestead exemption and the exemption for victim restitution claims against  
17 inmate trust account funds).<sup>16</sup> The recommended adjustments were enacted into  
18 law.<sup>17</sup>

19 The Commission did not recommend any changes to the Section 703 bankruptcy  
20 exemption amounts, because the Legislature had adjusted those amounts in 2001.<sup>18</sup>  
21 In the same legislation, the Legislature had also created an automatic triennial  
22 Cost of Living Adjustment (“COLA”) for the Section 703 bankruptcy exemptions.  
23 It did so by incorporating a COLA mechanism from federal law, which  
24 automatically updates the amounts of the federal bankruptcy exemptions.<sup>19</sup> This  
25 COLA mechanism ensured that the Section 703 bankruptcy exemptions would  
26 maintain rough parity with the federal bankruptcy exemption amounts. It was  
27 therefore not necessary for the Commission to recommend any other adjustments  
28 to the Section 703 bankruptcy exemptions.

29 Instead, the Commission recommended that the automatic COLA approach be  
30 broadened, so that it would also apply to the Section 704 general exemption  
31 amounts. This would be done by replacing former Code of Civil Procedure  
32 Section 703.140(c) with Code of Civil Procedure Section 703.150, which would

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14. See generally *Debtor-Creditor Relations*, 25 Cal. L. Revision Comm’n Reports 1 (1995).

15. See 1995 Cal. Stat. ch. 196.

16. See generally *Exemptions from Enforcement of Money Judgments: Second Decennial Review*, 33 Cal. L. Revision Comm’n Reports 113 (2003).

17. See 2003 Cal. Stat. ch. 379.

18. See 2001 Cal. Stat. ch. 42, § 1.

19. See former Code Civ. Proc. § 703.140(c); 11 U.S.C. § 104(b)(1)(A).

1 govern both sets of exemptions.<sup>20</sup> The proposed COLA provision would not apply  
2 to the homestead exemption or the exemption of inmate trust accounts from victim  
3 restitution claims.

4 Under Code of Civil Procedure Section 703.150, the Judicial Council would  
5 have the responsibility of determining and publishing the triennially adjusted  
6 amounts, based on the change in the annual California Consumer Price Index for  
7 All Urban Consumers, with each adjusted amount rounded to the nearest twenty-  
8 five dollars (\$25). The \$25 rounding factor was drawn from federal law.<sup>21</sup>

9 The recommended COLA mechanism was enacted into law.<sup>22</sup>

### 10 THIRD DECENNIAL REVIEW

11 Consistent with the approach taken in prior decennial reviews, the  
12 Commission's third decennial review has focused on whether the amounts for the  
13 Section 704 money judgment exemptions and the Section 703 bankruptcy  
14 exemptions need to be adjusted to account for inflation.

15 The Commission has provisionally concluded that those exemptions do not need  
16 to be manually adjusted at this time, because they have been adjusted  
17 automatically by the statutory COLA mechanism.

18 The COLA mechanism appears to be operating properly. The Commission  
19 checked all of the calculations that were required to be made since enactment of  
20 the COLA mechanism and confirmed the accuracy of those corrections and of the  
21 final adjusted amounts.<sup>23</sup> In addition, the Commission confirmed that the adjusted  
22 exemption amounts are being published by the Judicial Council as required by law  
23 and are readily available to the public.<sup>24</sup>

24 The Commission is not aware of any problem with the operation of the COLA  
25 mechanism. The Commission found no court decision or secondary source that  
26 identified any legal or practical problem with the operation of the COLA  
27 mechanism.<sup>25</sup> Nor has any interested group expressed any concerns about the  
28 operation of the COLA mechanism.<sup>26</sup>

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20. See 2009 Cal. Stat. ch. 379, §§ 3-4.

21. See 11 U.S.C. § 104(b)(1)(B).

22. See 2003 Cal. Stat. ch. 379.

23. See Commission Staff Memorandum 2012-10, pp. 6-7 (Mar. 19, 2012).

24. In addition to being posted on the Internet, the Judicial Council's list of current exemption amounts must be served with a writ of execution. This gives the debtor actual notice of the current exemption amounts. See Code Civ. Proc. § 700.010; Commission Staff Memorandum 2012-10, p. 7 (Mar. 19, 2012).

25. *Id.* at 8.

26. The Commission solicited input on the efficacy of the COLA mechanism from the Judicial Council, the California State Sheriffs' Association, the California Association of Collectors, the California Bankers Association, the California State Bar Insolvency Committee, and the Western Center on Law and Poverty. *Id.* at 7-8.

1 One recent development suggests that the Legislature is satisfied with the  
2 operation of the COLA mechanism. In 2009, the application of the COLA  
3 mechanism was broadened. It is now used to calculate the effect of inflation on the  
4 amount of the homestead exemption.<sup>27</sup>

5 **RECOMMENDATION**

6 Current law appears to provide an adequate means for automatic adjustment of  
7 the exemption amounts over time, without the need for the Commission to  
8 periodically review those amounts and manually adjust them. In fact, the  
9 automatic adjustments appear to be superior to the Commission's decennial review  
10 process, because the adjustments take place at three-year intervals, rather than  
11 every 10 years.

12 For those reasons, the Commission recommends that Civil Code Section  
13 703.120 be amended to delete the decennial review provision.

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27. See 2009 Cal. Stat. ch. 499 (AB 1046 (Anderson)).

PROPOSED LEGISLATION

1 **Code Civ. Proc. § 703.120 (amended). Law Revision Commission review**

2 SECTION 1. Section 703.120 of the Code of Civil Procedure is amended to  
3 read:

4 ~~703.120. (a) Ten years following the operative date of this title and every 10~~  
5 ~~years thereafter, the California Law Revision Commission shall review the exempt~~  
6 ~~amounts provided in this chapter and in other statutes and recommend to the~~  
7 ~~Governor and the Legislature any changes in exempt amounts that appear proper.~~

8 ~~(b) Nothing in this section precludes the commission from making~~  
9 ~~recommendations concerning exempt amounts more frequently than required by~~  
10 ~~subdivision (a) or from making recommendations concerning any other aspect of~~  
11 ~~this title, and the commission~~ The California Law Revision Commission is  
12 authorized to maintain a continuing review of and submit recommendations  
13 concerning enforcement of judgments.

14 **Comment.** Section 703.120 is amended to delete the requirement that the Law Revision  
15 Commission conduct a decennial review of exemption amounts. The Commission's general  
16 authority to review the Enforcement of Judgments Law would be preserved.