

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

APRIL 6 AND 7, 1978

Los Angeles

A meeting of the California Law Revision Commission was held in Los Angeles on April 6 and 7, 1978.

Present: Howard R. Williams, Chairman
Beatrice P. Lawson, Vice Chairman
Judith Ashmann
John D. Miller
Thomas E. Stanton, Jr.
Laurence N. Walker

Absent: George Deukmejian, Member of Senate
Alistair McAlister, Member of Assembly
Jean C. Love
Bion M. Gregory, Ex Officio

Members of Staff Present:

John H. DeMouilly
Stan G. Ulrich

Nathaniel Sterling

Minutes
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ADMINISTRATIVE MATTERS

Minutes of February and March Meetings

The Minutes of the February 2 and 3, 1978, and March 2 and 3, 1978, meetings were approved as submitted by the staff.

Research Contract

The Executive Secretary reported that the Pacific Law Journal had determined not to publish the student article on the retroactive application of exemptions from execution. He suggested that the Commission consider obtaining a law professor to prepare a background study on the extent to which the legislation the Commission is drafting on exemptions and exemption procedure can be made retroactive and related matters. After some discussion, the Commission determined not to retain a research consultant on this matter since the Commission did not consider that the need and usefulness of such a background study would justify the estimated cost (\$3,500) of the study.

Schedule for Future Meetings

The Commission adopted the following schedule for future meetings:

May

May 4 - 7:00 p.m. - 10:00 p.m. San Francisco
May 5 - 9:00 a.m. - 5:00 p.m.

June

June 8 - 7:00 p.m. - 10:00 p.m. Los Angeles
June 9 - 9:00 a.m. - 5:00 p.m.

July

July 6 - 7:00 p.m. - 10:00 p.m. San Francisco
July 7 - 9:00 a.m. - 5:00 p.m.
July 8 - 9:00 a.m. - 4:00 p.m.

August

No meeting

September

September 7 - 7:00 p.m. - 10:00 p.m. San Francisco
September 8 - 9:00 a.m. - 5:00 p.m.

October

October 5 - 7:00 p.m. - 10:00 p.m. Los Angeles
October 6 - 9:00 a.m. - 5:00 p.m.

November

November 2 - 7:00 p.m. - 10:00 p.m. San Francisco
November 3 - 9:00 a.m. - 5:00 p.m.

December

December 7 - 7:00 p.m. - 10:00 p.m. Los Angeles
December 8 - 9:00 a.m. - 4:00 p.m.

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STUDY D-39.200 - ENFORCEMENT OF JUDGMENTS (COMPREHENSIVE
STATUTE--THIRD-PARTY CLAIMS, EXEMPTIONS)

The Commission considered Memorandum 77-74 and the draft of Chapter 6 relating to third-party claims and Memorandum 78-20 and the draft of Chapter 7 relating to exemptions from enforcement of money judgments. The Commission made the following decisions:

Chapter 6. Third-Party Claims

The Commission directed the staff to redraft Chapter 6 to continue the substance of existing law with several modifications and provide some more background on the operation of existing law. Only superior interests should be entitled to make third-party claims. The provisions of Section 639b should be applicable to claims of all secured parties, not only to claims by conditional sellers and chattel mortgagees. Where a secured party makes a third-party claim, the judgment creditor should have the burden of proof if a hearing is held, because a security interest, being a matter of public record, should be entitled to a presumption of validity. The judgment creditor's verified statement that the security interest is invalid, which must be filed with the levying officer as a condition to giving an undertaking, should be filed by the levying officer with the court and serve as the pleading of the judgment creditor.

The Commission made the following decisions concerning the draft as submitted:

Preliminary Text

The portion of the preliminary text on page 6, relating to sending notice by first-class rather than registered or certified mail, should state that a notice sent by first-class mail is more likely to be expeditiously received.

§ 706.120. Third-party claim in proceeding to collect state tax

The references to specific sections in the Revenue and Taxation Code and the Unemployment Insurance Code should be deleted. The staff will examine these codes to make sure that elimination of section references will not cause any problems.

§ 706.130. Liability of levying officer

This section should be revised as follows:

706.130. The levying officer is not liable for damages ~~to a third person~~ for the levy upon, or the holding, release, or other disposition of the property ~~claimed by the third person~~ in accordance with this chapter.

§ 706.210. Manner of making third-party claim

The initial clause of subdivision (b) should be revised as follows: "Where the third person ~~is a secured party claiming~~ claims a security interest in the property" The initial clause of subdivision (c) should be revised as follows: "Where the third person ~~is not a secured party claims title, the right to possession, or any other interest that is not a security interest~~" The reference to "prepayment penalties" should be changed to "prepayment charges" in subdivision (b)(4) and wherever else it appears.

§ 706.220. Demand for undertaking or deposit

The staff should further consider the significance of the phrase "demand and exact" which appears in existing law and determine whether "exact" has any special meaning in this context. The staff should also consider making it mandatory that the levying officer demand the undertaking or deposit notwithstanding any defect, informality, or insufficiency of the claim.

§ 706.350. Determination of interests

The reference to an "order" determining interests should be changed to "judgment," consistent with existing law.

§§ 706.510-706.530. Request for statement of secured indebtedness

Article 5 (commencing with Section 706.510) was disapproved.

§§ 706.710-706.780. Third-party claims procedure in absence of levy by levying officer

Article 7 (commencing with Section 706.710) was disapproved subject to later consideration if it is shown that existing procedures for determining third-party interests outside of Sections 639 and 639b are inadequate or in need of codification.

Chapter 7. Property Subject to Enforcement of Money
Judgments and Exemptions

Preliminary Text

The sentence at note 3 referring to special interest groups should be omitted. The sentence at note 10 should refer to the difficulty of administering exemptions provisions which are phrased in terms of general categories rather than to their higher administrative costs. The fourth sentence in the first full paragraph on page 3 pertaining to Section 690 should be clarified. The last complete sentence on page 4 which refers to a shotgun and radio should be generalized.

§ 707.140. Applicability of exemptions

Subdivision (c), which provides that exemptions are waived if not claimed within the time provided, should be subject to an exception in the case of excusable neglect to take timely action.

§ 707.150. Exemptions cumulative

This section was disapproved. The problem of cumulation of exemptions should be left to the courts.

§ 707.160. Exemption rights of married persons

The proposed section set forth in the draft should be revised to equalize the treatment of married persons and unmarried joint debtors under the exemption laws. Each spouse should be entitled to exempt a motor vehicle not exceeding \$1,000 in value over all superior liens and encumbrances. The staff should examine other exemptions of items and specific amounts and recommend whether they should be doubled where the debtor is married.

§ 707.180. Tracing exempt amounts

Subdivision (b) which provides for the manner of tracing was deleted. The manner of tracing should be left to the determination of the courts.

§ 707.200. Liability for interference with exemption rights

This provision was disapproved. The remedy of abuse of process should be adequate to deal with situations where a significant invasion of the debtor's rights has occurred.

§ 707.220. Exemptions from tax liability

The list of sections in the Revenue and Taxation Code and the Unemployment Insurance Code should be moved to the Comment.

§ 707.430. Motor vehicle

The amount of this exemption was reduced from \$1,500, to \$1,000.

§ 707.440. Household furnishings, wearing apparel, personal effects

The amount of this exemption was increased from \$300 per item to \$500 per item.

§ 707.500. Life insurance, endowment, annuity policies

The Commission requested the staff to determine the manner in which the loan value of an unmatured life insurance policy may be reached under existing law. Subdivision (d), providing an exemption for damages in wrongful death actions, should be a separate section. The conflict between the language of subdivision (e), providing an additional loan value exemption of \$10,000 where no homestead exemption is claimed, should be reconciled with the language in the Comment.

§ 707.510. Retirement benefits

Several bills to amend Section 590.18 which are currently before the Legislature should be considered before removing the references to specific federal acts in subdivision (a). Subdivision (b) should be revised to make retirement benefits completely exempt.

§ 707.520. Unemployment benefits and contributions

An exemption for payments out of union strike funds should be added to this section. Subdivision (c) should be revised to make unemployment benefits and strike benefits completely exempt.

§ 707.530. Disability and health benefits

Subdivision (a) should be revised to make disability and health benefits completely exempt.