

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
NOVEMBER 20, 1981
LOS ANGELES

A meeting of the California Law Revision Commission was held in Los Angeles on November 20, 1981.

Law Revision Commission

Present: Beatrice P. Lawson, Chairperson
Jean C. Love, Vice Chairperson
Robert J. Berton
Thomas S. Loo
David Rosenberg
Bion M. Gregory, Ex Officio

Absent: Omer L. Rains, Senate Member
Alister McAlister, Assembly Member

Staff Members Present

John H. DeMouilly
Nathaniel Sterling
Robert J. Murphy III
Stan G. Ulrich

Other Persons Present

Ronald P. Denitz, Tishman West Management Corp., Los Angeles
Gary Neustadter, Debtor-Creditor Subcommittee, Business Law Section,
State Bar, San Jose
Alan Pedlar, Executive Committee, Business Law Section, State Bar,
Los Angeles
Rich Peters, Debtor-Creditor/Bankruptcy Subcommittee, State Bar
Business Law Section, Los Angeles
Don Raphael, Creditor Managers Association of Southern California,
Los Angeles
Lucinda Surber, Menlo Park

ADMINISTRATIVE MATTERS

MINUTES OF SEPTEMBER MEETING

The Minutes of the September 11, 1981, meeting of the Law Revision Commission were approved as submitted by the staff. The staff reported that the amendments to AB 707 set out in the Minutes of the September 11, 1981, meeting would require some technical revisions.

DETAILED MINUTES OF MAY 14-16, MEETING RELATING TO COMMUNITY PROPERTY

Detailed minutes of the Commission's consideration at the May 14-16, 1981, Meeting of Memorandum 81-18, Memorandum 80-90, and the Background Study attached to Memorandum 80-90, relating to community property, are attached as an Exhibit at the end of these minutes to be approved or approved as revised. See Minutes, May 14-16, 1981.

FUTURE MEETING SCHEDULE

The Commission considered Memorandum 81-77 relating to the dates for future meetings.

December 1982 meeting. The December meeting was scheduled to be held on December 4 (10:00 a.m. - 5:00 p.m.) at the San Francisco Airport.

January 1982 meeting. The Commission determined that the January meeting should be held in San Diego on a Thursday evening, Friday (all day), and Saturday morning. The meeting should be held on January 21, 22, and 23 if possible. However, in the event the members of the Commission find they cannot attend the meeting on that date, the meeting should be held on January 14, 15, and 16.

The January meeting will be devoted primarily to:

- (1) A consideration of the tentative recommendation relating to creditors' rights with respect to community and separate property.
- (2) A Commission review of the various problems identified in the community property studies with the objective of determining the specific problems to be given priority for study. The Commission decisions at the January meeting will relate only to the priority of various problems for future Commission consideration; decisions will not be made at the January meeting with respect to how such problems should be resolved. The problems that the Commission determines are to be given priority will be scheduled for extensive discussion at future meetings with a view to developing the appropriate solution to the particular problems.

RESEARCH CONTRACT

The Commission considered Memorandum 81-69 containing the staff's recommendation for a consultant on the new topic--statutes of limitations on felonies.

The Commission approved, and directed the Executive Secretary to execute on behalf of the Commission, a contract with Professor John B. Mitchell to prepare a background study relating to the statutes of limitations on felonies in California. The contract is to follow the usual form of Law Revision Commission contracts for background studies and is to include the following significant provisions:

- (1) The compensation for the background study is to be \$4,000.

(2) The additional amount for travel in attending Commission meetings and legislative hearings, when requested by the Commission, is not to exceed \$1,000.

(3) The background study is to be completed and delivered to the Commission by January 1, 1983.

(4) The contract is to become effective on January 1, 1982, and is to terminate on June 30, 1984.

1981 LEGISLATIVE PROGRAM

The Commission considered Memorandum 81-65 relating to the 1981 legislative program. The Executive Secretary reported that some uncertainty exists whether the new durable power of attorney statute (enacted upon recommendation of the Commission) authorizes the use of a durable power of attorney to give authorization to consent or withhold consent for health care. The Executive Secretary stated that he plans to bring a draft of a Uniform Act on consent for health care to the Commission's attention early in 1982 for Commission consideration.

ANNUAL REPORT

The draft of the Annual Report submitted as an attachment to Memorandum 81-67 was approved for printing. Before it is printed, the draft is to be revised to reflect Commission decisions as to recommendations to be submitted to the 1982 session. The staff is to recheck the dates when the terms of Commissioners' expire and to revise the report if necessary.

NEW TOPICS

The Commission considered Memorandum 81-68 and the First Supplement to Memorandum 81-68, relating to new topics.

Disposition of psychotherapist's notes relating to patients when psychotherapist dies. It was agreed that the Executive Secretary would advise the person who suggested a study of this problem that the Commission has a number of priority topics and does not have the resources to study this topic but will suggest the topic to a law review as a possible topic for a student article.

Partition procedure. The Commission decided no action is needed to be taken with reference to the partition statute.

Extend the right of publicity to survivors. Some Commissioners took the view that the California Supreme Court decision was not correctly decided, but the Commission decided not to request authority to study this matter in view of the other major projects now under study.

Add provision to Civil Code and Code of Civil Procedure that division, chapter, article, and section headings do not affect the substance of the statute. The Commission determined that this was not an appropriate matter for Commission study but should await a comprehensive revision of the basic codes.

Uniform Condominium Act. The Commission declined to request authority to study this Uniform Act because of the other major topics already on its agenda.

Escheat. The Commission agreed that Assemblyman McAlister should be provided with the bill relating to escheat (attached to the First Supplement to Memorandum 81-68) which clarifies the relationship between Section 1521 of the Code of Civil Procedure and Section 231 of the Probate Code. It was not considered necessary that the Commission prepare a recommendation explaining the bill.

PRIORITIES FOR CONSIDERATION OF TOPICS

The Commission considered Memorandum 81-75 relating to the priority to be given various topics. The Commission determined that the probate law study should have top priority and that the community property study should have the next priority. The Commission declined to set a fixed portion of time to be divided between the two studies for the time of the Assistant Executive Secretary. Although the Assistant Executive Secretary should devote a substantial amount of time to the probate law study, he also should devote a substantial amount of time to the community property study. The Commission concluded that this allocation of the time of the Assistant Executive Secretary will permit progress to be made on the priority aspects of the community property study without unduly delaying the probate study. Work on the dismissal for lack of prosecution study should be deferred until the California Supreme Court decides the case now before the court. Work should not be commenced on the adoption study in 1982. The real property study should not receive

any priority during 1982. Work on the study of the statutes of limitations on felonies will be commenced when the consultant delivers the background study to the Commission.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS

The Commission considered Memorandum 81-71 and the First, Second, Third, and Fourth Supplements thereto concerning comments made on Assembly Bills 707 and 798 and the suggestions of persons who attended the meeting. The Commission also considered Memorandum 81-41 concerning a procedure for releasing judgment liens on dwellings and approved it subject to technical revisions by the staff. The Commission approved the amendment of AB 707 and AB 798 to incorporate the substance of the amendments to those bills which are attached to these Minutes.

The Commission also took the following actions:

§ 704.020. Household furnishings exemption

Section 704.020 which provides an exemption for certain household furnishings and other personal effects that are ordinarily and reasonably necessary for an average household should be revised to eliminate the reference to an "average household." The staff will present a revised draft at the December meeting.

§ 704.115. Private retirement plan exemption

Section 704.115 which provides an exemption for private retirement plans should be revised to take account of the new federal law. It was suggested that this might be accomplished by referring to "self-employed retirement plans and individual retirement annuities or accounts provided for in the Internal Revenue Code of 1954 as amended" without citing specific amendments as do existing Code of Civil Procedure Sections 690.18 and proposed Section 704.115.

Redemption from Foreclosure Sales

A limited redemption procedure should be provided for foreclosure cases where a deficiency judgment is available. The proposed delay of sale (see Section 701.545 in AB 707) should not apply if the property is sold subject to the right of redemption. It was suggested that the

right of redemption should be limited to the judgment debtor and his or her successors in interest. The staff will present a draft statute for consideration at the December meeting.

Notice to Debtors of Exemption Statutes

The Judicial Council should be directed by statute to compile a list of state and federal exemptions which cites to the relevant statutes. This list should be served on individual judgment debtors when notice of levy is served. The list will inform debtors of available exemptions and also enable debtors to comply with the requirement of Section 703.520 in AB 707 that an exemption claim cite the statute upon which the claim is based.

STUDY D-325 - STATUTORY BONDS AND UNDERTAKINGS

The Commission considered Memorandum 81-72 and the attached draft of the tentative recommendation, along with a letter from the Surety Producers Association (a copy of which is attached to these minutes as an exhibit), relating to statutory bonds and undertakings. The Commission approved the recommendation with the changes outlined in the memorandum and letter, subject to the following matters:

Jury trial. The Comment to the motion procedure for enforcing the liability on a bond or undertaking should state that the statute should not be construed to deny a right to jury trial on a bond or undertaking given before the operative date of the new statute to the extent a jury trial would have been constitutionally required.

Voluntary payment by surety where liability established. The Comment to the provision for recovery of a reasonable attorney's fee where the beneficiary is required to sue the surety after the liability of the principal is established should note that the provision is necessary because of experience with the reluctance of sureties to pay and that the reasonableness of the fee is to be determined in relationship to the amount of the bond or undertaking.

"Freeholder." The reference to the qualifications of personal sureties as "freeholders" should be modernized and clarified.

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"Bond and undertaking." The statute should eliminate references to undertakings, and the conforming change bill should convert all existing undertakings to bonds. One provision should be left in the statute converting any undertaking to a bond in case the conforming change bill misses a statute that provides for an undertaking.

ROBERT SPENCER DOUGLASS

ATTORNEY AT LAW

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November 12, 1981

Mr. Nathaniel Sterling
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Re: CLRC Tentative Recommendation Relating to Statutory Bonds and
Undertakings - Comments and Further Objections Regarding CLRC
Memorandum 81-72 - Surety Producers Association of California (SPAC)

Dear Mr. Sterling:

The legislative committee of SPAC has reviewed CLRC memorandum 81-72 (Comments on Tentative Recommendation Relating to Statutory Bonds and Undertakings). We were pleased to note that our original objections were both seriously noted and acted upon. However, we believe the Commission should consider further arguments relating to the proposal.

We have the following additional comments relating to certain proposed provisions:

1. 995.030 Manner of Service

SPAC believes this section needs language specifically excluding the types of notices contemplated in section 996.320.

It is conceivable that an attorney representing a claimant under a statutory bond could argue that a prior notice of cancellation sent by regular mail was defective as it did not conform to the provisions of 995.030.

SPAC does not disagree with the language of 995.030 as it relates to bonds in court proceedings and probate matters. The advantages of service of process for those types of surety bonds is acknowledged. However, SPAC believes that 995.030 must be clarified so as to exclude notices of cancellation, reinstatement, substitution riders and other types of documents clearly not intended to fall within the provisions of 995.030.

The potential confusion can be avoided by adding language to section 995.030 to the effect that, "with regard to notices required under section 996.320 that service can be accomplished by regular mail."

2. 996.250(b) Effect of Additional Bond or Undertaking

SPAC believes that this subsection may create, in the minds of some litigators, a question as to whether a claimant (beneficiary) could recover the full amount of his claim against more than one bond, despite the fact that one bond's penal liability might be sufficient to cover the full amount of the claim.

The language of subsection (b) could be interpreted to allow double recovery. Surely the CLRC is not intending to allow unjust enrichment through double recovery. SPAC believes this subsection language needs to be clarified.

3. 996.450 Statute of Limitations

SPAC made certain comments relating to this section in our memorandum of September 30, 1981. In response, the CLRC staff has proposed language as follows:

"This section does not apply to a provision in a bond or undertaking that is agreed to by the principal, beneficiary, and surety."

SPAC believes that a clearer and more appropriate wording for this section should read:

"This section does not apply to a provision in a bond or undertaking where a shorter limitation period is accepted by the principal, the obligee, and surety."

We propose this new language for two reasons:

- 1] The word agreed, as suggested by the staff, has significantly less meaning in law than the word acceptance.
- 2] The word beneficiary should be replaced by the word obligee because all obligees are beneficiaries, but not all beneficiaries are obligees.

It should be noted with regard to the word obligee that this term has been completely eliminated from the CLRC revision, despite the fact that the definition of principal is clearly linked with the definition of obligor in section 995.170(b).

However, no such linkage is made between beneficiary and obligee. If the CLRC proposal mentions obligor in relation to principals, some mention of obligee seems mandated. SPAC believes this a serious omission as the term obligee is widely used and understood in surety law where the term beneficiary is not. Moreover, all obligees are in a position to accept and agree with sureties and principals, whereas all beneficiaries are not necessarily known to sureties.

More importantly, as it specifically relates to this section, the wording obligee is much more appropriate and definitive.

Please note that Black's Law Dictionary clearly notes the following difference between beneficiary and obligees:

Beneficiary is "one receiving benefit or advantage, or one who is in receipt of benefits, profits, or advantage", whereas obligee is "the person in favor of whom some obligation is contracted, whether such obligation be to pay money or to do or not to do something. Obligees are either several or joint. An obligee is several when the obligation is made to him alone; obligees are joint when the obligation is made to two or more; and in that event each is not a creditor for his separate share, unless the nature of the subject or the particularity of the expression in the instrument lead to a different conclusion."

SPAC believes this differentiation is important and should be incorporated into the proposal as a clarifying feature.

4. 996.480(2) Voluntary Payment by Surety

This section as originally drafted reads as follows: "If the beneficiary makes a claim for payment on a bond or undertaking and the surety fails to make payment, the surety is liable for costs incurred in obtaining a judgment, including a reasonable attorney's fee, and interest on the judgment from the date of the claim, notwithstanding Section 996.470.

SPAC noted in its original objection that: "The clear impact (of section) is to discourage good faith investigation and denial of claims. Causing sureties to be liable for attorneys fees and interest to the date of the claim discriminates against sureties by causing them to pay rather than to defend a legitimate denial."

In response to SPAC's position the staff proposed language clarifying what "establishment" of liability entails for the purpose of penalizing the surety by attorneys fees and interest. The proposed change to the introductory portion of 996.480(a) reads: "If the nature and extent of the liability of the principal is established by final judgment of a court and the time for appeal has expired, or if an appeal is taken, the appeal is finally determined and the judgment is affirmed."

SPAC believes this proposed introductory language does nothing to obviate the problems existant in 996.480(b).

Clearly stated our objections are:

- 1] Section 996.480(b) conflicts with existing California law and would raise significant due process problems if enacted.

In general, a judgment against a principal sued alone is neither prima facie nor conclusively binding on the surety, even though the surety had notice of the action. Mahana v Alexander (1927) 88 CA 111, 263 P 260. The basis of the rule is the injustice of binding a person to the consequences of a proceeding in which he had no opportunity to present evidence, cross-examine, or appeal. Easton v Boston Inv. Co. (1921) 51 CA 246, 196 P 796.

The liability of a principal, established by a final judgment in a court, does not necessarily impose liability against a surety and in fact such liability may not attach to sureties in the majority of cases.

For example, a California contractor, with a statutory license bond, may get into a breach of contract dispute and lose. The winner may feel he has "established" his case pursuant to 996.480(2). Unfortunately, breach of contract may or may not fall within the covered areas of the bond depending upon whether certain Business and Professions Code Sections were violated.

Without the surety as a named defendant of an action wherein it might be called upon to pay, there is clearly an issue of the denial of due process to the surety.

Under 996.480(2) the surety is being penalized by adding attorneys fees and interest because it fails to pay. Such a section clearly raises due process problems where the surety had no opportunity to represent its interests in the underlying action that supposedly "established" the surety's liability, had no opportunity to be represented by counsel and had no opportunity to cross-examine witnesses. In effect, the surety is being penalized if it objects to paying judgments against principals where the surety decides to assert legal objections that may not have been raised or even where the law is unclear. Should the surety raise these objections and they are not sustained, the surety is then penalized. Such a result is clearly wrong and contrary to elemental concepts of fairness.

Further, 996.480(2) conflicts with Section 2855 of the California Civil Code which reads as follows:

"[Arbitration award against principal not award against surety.]" "An arbitration award rendered against a principal alone shall not be deemed to be, or be utilized as, an award against his surety."

The intent of this legislation is to apply existing law to arbitration awards. [1970 ch 345 §1.]

- 2] If the purpose of 996.480(2) is to penalize the surety, SPAC suggests that this subject is adequately covered by Insurance Code Section 790, sometimes referred to as the "Unfair Methods of Competition or Practices In Insurance Act".

This act is quite comprehensive and clearly indicates the responsibilities of sureties to adjust and pay claims on a fair basis.

In short SPAC believes section 996.480(2) is totally unnecessary, creates a denial of due process to sureties, conflicts with existing California law and as stated in our earlier objections, "works to extort money from the sureties".

SPAC appreciates the opportunity that you have afforded us to respond to the CLRC proposal. We stand ready to answer any questions you may have concerning our objections.

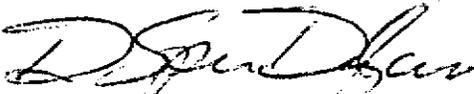
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SPAC appreciates your efforts to unify and recodify surety law. However, SPAC does not feel that sections should be enacted into law that are ambiguous, vague, unconstitutional or in conflict with existing law. To that end, I hope our objections have been helpful.

SPAC will watch this proposed legislation with much interest and, after a review of the final form of the proposal, issue our formal position paper.

Again, thank you for your courtesy in permitting SPAC's input into the proposal.

Very truly yours,



R. SPENCER DOUGLASS
Legislative Chairman
Surety Producers Association of California

cc: Del Zimmerman, President, SPAC
Jerry Desmond, Legislative Advocate, SPAC

RSD:tls

STUDY D-801 - TRANSFER BETWEEN MEMBERS OF HOUSEHOLD AS
FRAUDULENT CONVEYANCE

The Commission considered Memorandum 81-46 and the attached recommendation relating to transfers between members of a household as fraudulent conveyances. The Commission concluded that this matter is related to the broader subject of marital property agreements and property transmutations, and should be considered in that context. The Commission determined not to submit the recommendation to the Legislature but to work on marital property agreements and to give the work some priority.

STUDY F-620 - FEDERAL MILITARY AND OTHER FEDERAL PENSIONS

The Commission considered Memorandum 81-66 and the attached draft of a recommendation proposing adoption by the California Legislature of a joint resolution requesting that federal law be revised to make federal pensions and other federal benefits subject to division on marriage dissolution to the same extent as similar nonfederal pensions and benefits.

The Commission approved the recommendation for submission to the 1982 session with the following changes:

(1) The word "requests" was substituted for "memorializes" in the preliminary portion of the recommendation and in the resolve clause of the resolution.

(2) An example of the injustice created by the existing federal law as declared by the United States Supreme Court should be added to the preliminary portion of the recommendation and to the resolution.

(3) "Marital property" should be substituted for "community property" where appropriate so that the resolution will have general application to all states rather than just community property states.

STUDY H-400 - MARKETABLE TITLE

The Commission considered Memorandum 81-74 and the attached draft of a consolidated recommendation relating to marketable record title to real property. The Commission discussed the possibility of investigating a tract indexing system. There was some inclination to take this up in the future, perhaps commissioning a study on the feasibility of adopting a tract indexing system. The marketable record title recommendation was approved with the revisions suggested in Memorandum 81-74, subject to the following changes:

Dormant mineral rights. The chapter on dormant mineral rights was deleted from the recommendation. The staff will do more work on this topic and will explore alternative approaches to dormant mineral rights.

Powers of termination. The cases applying the doctrine of changed circumstances to enforcement of a right of entry should be examined so that more precise language is used for codification of the doctrine.

Unperformed real property sales contracts. The recommendation should deal only with "deposit receipt" type contracts of sale, that is, contracts to be performed within one year. "Installment land contracts" should be studied separately, and the possibility of making available a power of sale under such contracts should be considered as a part of that separate study.

Interest of person in possession. The staff will examine several comparable statutes to determine whether "possession" or "use or occupancy" should be the test for whether a person's interest in property is excepted from operation of the statute.

Interest of public entity. The interest of a public entity in property should be excepted from operation of the statute on the theory that the interest is stable (not subject to descent and fragmentation) and the public entity can always be found so that a release can be obtained.

Notice of intent to preserve interest. If a person records a notice of intent to preserve an interest on behalf of another person, the person who records the notice should include in the notice a statement of the authority of the person to so act, under penalty of perjury.

Indexing of notice. The claimant of an interest under a notice of intent to preserve should be required to give in the notice a statement of the claimant's record interest and a reference to the documents of record that evidence the interest. This will enable a title searcher to trace the interest from its original creation to the current holder.

STUDY J-600 - DISMISSAL FOR LACK OF PROSECUTION

The Commission deferred discussion of Memorandum 81-73 and the attached Tentative Recommendation relating to Dismissal for Lack of Prosecution until it has available for consideration the Supreme Court opinion in Hartman v. Santamarina. Commissioner Berton suggested that one possible way to reduce litigation over the dismissal statutes might be to eliminate discretionary dismissal and rely on the mandatory dismissal provisions.

STUDY L-603 - PROBATE CODE (HOLOGRAPHIC AND NUNCUPATIVE WILLS)

The Commission considered Memorandum 81-70 and the First Supplement to Memorandum 81-70 relating to holographic and nuncupative wills.

The recommendation was approved for printing. The Commission plans to consider the following situations at a future time:

- (1) The situation where the testator types a will rather than handwriting it, and signs it.
- (2) The situation where the testator dictates a will on a dictabelt or other recording device.

APPROVED AS SUBMITTED _____

APPROVED AS CORRECTED _____ (for corrections, see Minutes of next meeting)

Date

Chairperson

Executive Secretary

EXHIBIT

Detailed Minutes of May 14-16, 1981, Meeting
Relating to Community Property

The Commission considered Memorandum 81-18, Memorandum 80-90, and the Background Study attached to Memorandum 80-90, relating to community property. The Commission made the following decisions concerning the matters considered.

Duty of good faith. The Commission discussed the relation of the duty of good faith in the management of community property to case law statements of a fiduciary duty imposed at a time when the husband had the management and control of the community property. The Commission adopted language defining the duty of good faith based on a draft of the Uniform Marital Property Act: the duty of good faith includes "the obligation to act in a manner which a spouse reasonably believes to be in or not opposed to the best interests of the family." The Comment should not make reference to the case law statements of a fiduciary duty but should note that the good faith requirement is not a fiduciary duty as used in an investment context but is a duty that arises out of the confidential relationship of the spouses.

Duty to inform. The Commission adopted the language of Section 2 of the draft Uniform Marital Property Act that a spouse has the obligation of making full and timely disclosure of property and debts. This obligation may be enforced by a petition for an accounting. The court has flexibility in fashioning an accounting to the extent the court determines is appropriate under the circumstances of the particular case. The Comment should note that one of the means available to the court is to require a spouse to make available to the other spouse sufficient information to enable the other spouse to determine the nature and extent of the property and debts.

Gifts of community property. The rule on the extent to which a spouse can make a gift of community property, set out in Section 5125.120, should be subject to the general duty of good faith as well.

Sale or encumbrance of household goods. The Commission decided to eliminate the requirement of consent, whether written or express or implied, for the sale of household goods by one spouse. However, both

spouses must join in "the creation of any security interest other than a purchase money security interest" in household goods.

Disposition of community property business. The Commission decided not to impose a joinder or consent requirement for disposition of a community property business. The staff should check to see why the Uniform Marital Property draft imposes a joinder requirement only where both spouses are involved in the business.

Disposition of community real property. The Commission discussed the problem that arises under the requirement that both spouses join in a disposition of community real property in the case of property that stands in the name of only one spouse. Among the suggested solutions were (1) keeping existing law that disposition by the one spouse is voidable for a period of one year, (2) allowing the non-joining spouse to void the disposition as to a one-half interest, (3) applying the joinder rule only to the family residence as opposed to business property, and (4) allowing the non-joining spouse to have the spouse's name added to title and protecting a bona fide purchaser if the non-joining spouse fails to do so. The Commission deferred decision on this matter for later discussion in connection with partition and other remedies available between the spouses; problems with the definition of community real property and the case of Mitchell v. American Reserve Ins. Co. should also be raised at that time. In connection with the later discussion the staff should analyze the approach of the Uniform Marital Property Act and should compare the remedies available where one spouse makes a transfer of a substantial community property business asset without the joinder or consent of the other spouse.

Tenancy in common property. Where community property that is not divided at dissolution becomes tenancy in common property by operation of law, the Commission felt that no special duty or standard of care other than the duty or standard applicable to tenants in common generally should apply. The question whether the court should retain jurisdiction to later divide the omitted assets is to be examined in connection with the Commission's consideration of the jurisdiction of the court in dissolution cases.

Joinder for exercise of options under pension or annuity plans. The Commission discussed the extent to which it would be desirable or feasible to require joinder of both spouses for exercise of options under pension plans. There was a consensus on the Commission that if an

option is elected at the time of retirement, both spouses should join. Whether there should be a statutorily prescribed option in case of failure of joinder was discussed. The Commission felt that it needed more information about the extent to which it would be feasible to regulate pension plans so as to protect the rights of spouses, and requested that expert opinion by actuaries (Mr. Gabrielson volunteered to bring an actuary to the meeting) and representatives of public retirement funds be presented to it.

Joinder requirement for life insurance beneficiary designations. The Commission decided that in the case of a community property life insurance policy (as opposed to a business or key person policy), if a spouse selects a beneficiary other than the other spouse both spouses must join in the beneficiary designation, except that one spouse alone can specify a beneficiary for one-half of the proceeds. In drafting implementing language for this concept care should be taken to protect insurance companies that have relied upon apparently valid beneficiary designations, for example by certification that the insured is not married or that the policy was purchased with separate property. Existing provisions protecting insurance companies in reliance on the beneficiary designation should be examined.

Joinder for contracts of surety, guaranty, or indemnity. A limitation on the ability of one spouse to obligate the community for surety contracts should be drafted in the form of a reimbursement right (on a gift theory) rather in the form of a joinder or consent requirement.

Post-separation earnings as separate or community property. A discussion of this matter was deferred until the second portion of Professor Bruch's study dealing with the definition of community property is available.

Liability of property of second marriage for support of children or spouse of first marriage. Civil Code Sections 199, 5127.5, and 5127.6, relating to a stepparent's support obligation should be repealed and be replaced by a clear statement of the law. The law should be that both a child who a person is obligated to support and a former spouse who a person is obligated to support can reach the separate property of the person and all the community property of a subsequent marriage except the earnings of the person's spouse. The Comment should note that this scheme is not intended to affect any consideration of the earnings of the person's spouse under AFDC regulations. In this connection it

should be made clear that Civil Code Section 4807 applies only to a current marriage. The Commission noted that this scheme imposes essentially the same liability as for a prenuptial creditor of the person. The State Bar has suggested that a prenuptial creditor should be able to reach only one-half the community property. If the Commission decides to change the rule as to prenuptial creditors it will at that time re-examine the rule as to liability to stepchildren and former spouses for support.

Interspousal torts. Rather than an order for priority of payment of interspousal torts (first separate property of the tortfeasor, then community property) as provided in Civil Code Section 5113, the statute or Comment should make clear that if payment is made out of community property, one dollar of community property satisfies only fifty cents of the debt, whereas one dollar of separate property satisfies one dollar of the debt.

Transmutation of personal property. In the case of oral transmutations of personal property or gifts between spouses the following rules should apply. There should be a presumption that, regardless of the oral transmutation or gift, a household type item is community property and a personal type item is separate property. Overriding these presumptions should be a presumption that large or substantial items in value, given the circumstances of the particular marriage, are community property. These presumptions affect the burden of proof and should apply regardless whether the source of the funds by which the items were acquired was separate or community property.

Gift presumption in acquisition of real property. Gift presumptions in the acquisition of real property should be abolished. The character of real property acquired with community property or separate property or both should be presumed to be community or separate or both in proportion to the source of the funds contributed for acquisition. This presumption affects the burden of proof and is rebuttable by evidence of a contrary intent, but the manner of taking title is not evidence of intent. These rules do not apply to subsequent changes in title nor do they apply to subsequent contributions to the property whether in the form of mortgage or tax payments, improvements, etc. These matters, and the question of the proportion of the property available to creditors and to each of the parties at dissolution of marriage and at death will

be dealt with separately. One suggestion discussed extensively in this regard, but on which no decision was made, was that all appreciation of the property be community, regardless of the source of funds for mortgage payments, or other payments that affect the property.

Oral transmutation where there is antenuptial agreement. The staff should examine the rule of Civil Code Section 1698(b) that a written agreement may be modified by oral agreement to the extent the oral agreement is executed, in light of its application to oral transmutations of community property. Two possible approaches where there is an antenuptial agreement are (1) require that "execution" be accomplished by a deed or (2) require written modification where the antenuptial agreement states that it may be modified only in writing.

Repeal of Civil Code Sections 5114-5115 and 5133-5135. The Civil Code provisions relating to written and recorded statements of separate or community property and marriage settlements should be repealed, subject to staff research on possible protections for creditors' rights intended to be effectuated by these provisions.

Commingled property. In cases where community and separate funds are commingled so that the character of property acquired is mixed, there should be a presumption that the property is community. This affects the burden of proof and the presumption can be rebutted by evidence of contemporaneous documentation as to the character of the property. If commingled property is invested in a number of assets and the proportions of community and separate funds that were commingled is determined, at dissolution the community should have first pick as to which investments were made with the community funds and which were made with separate funds. If commingled property is used for living expenses, or if community property is used for living expenses, the Commission discussed a number of approaches to making a fair allocation so that the community is not impoverished to the benefit of separate property, including proportionate interests in property and lump-sum support and family allowance awards out of separate property. The Commission deferred decisions in this area until the final portion of Professor Bruch's study is available dealing with characterizing income of separate property as community.

Interspousal support obligations. Discussion of this matter was deferred for later discussion in connection with the characterization of post-separation earnings.

Personal injury damages awarded to tort victim. Unless the court at the time of making an award of damages specifies the amount that is for pain and suffering (separate property) and the amount that is for lost earnings (community property): (1) During marriage the damages are presumed to be separate and are subject to management by the injured party; the proportion of separate and community interests in the award would be determined only if necessary to ascertain the rights of creditors, and would be subject to the presumption of separate property. (2) At dissolution the property would be awarded to the injured spouse except that the court can make an equitable division taking into account the factors prescribed in Civil Code Section 4800(c).

AMENDMENTS TO ASSEMBLY BILL NO. 707

Amendment 1

On page 6, line 23, of the printed bill, as amended in Assembly August 25, 1981, strike out the first comma

Amendment 2

On page 6, line 26, after "intangibles" insert a comma

Amendment 3

On page 6, line 27, after "Code" insert:
, consisting of rights to payment

Amendment 4

On page 8, between lines 34 and 35, insert:

(c) The Judicial Council shall prepare a form containing both of the following:

(1) A list of each of the federal and state exemptions from enforcement of a money judgment.

(2) A citation to the relevant statute of the United States or this state which creates each of the exemptions.

Amendment 5

On page 8, after line 38, insert:

681.050. If any provision or clause of this title or application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

Amendment 6

On page 12, line 20, strike out "(d)" and insert:

(e)

Amendment 7

On page 14, line 34, strike out "or entered" and insert:
, entered, or enforceable

Amendment 8

On page 17, strike out lines 31 to 36, inclusive, and insert:
(b) Service by mail is complete at the time of deposit; but, unless the court prescribes a shorter period of time, any prescribed period of notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after a paper is served by mail is extended:

Amendment 9

On page 18, line 3, strike out "(d)" and insert:
(c)

Amendment 10

On page 18, strike out lines 8 to 23, inclusive

Amendment 11

On page 19, strike out line 8 and insert:
server provided in this title.

Amendment 12

On page 20, line 40, after "judgment" insert:
:
(1) If the proceeds of collection are paid in a lump sum, on the date of levy.
(2) In any other case,

Amendment 14

On page 30, between lines 10 and 11, insert:

688.050. For the purpose of applying Section 694.080, 703.050, or 703.100, the date of creation of a tax lien is the earliest of the following times:

(a) The time when a notice of state tax lien is filed pursuant to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) The time when the property is levied upon pursuant to a warrant or notice of levy issued by the state or by a department or agency of the state.

(c) The time when any other act is performed that creates or perfects a lien on specific property as distinguished from a lien on the debtor's property generally.

Amendment 15

Strike out pages A-15 to A-27, inclusive, of the printed bill as amended in Assembly August 25, 1981, and insert:

ATTORNEY OR PARTY WITHOUT ATTORNEY (name and address): <input type="checkbox"/> Recording requested by and return to: ATTORNEY FOR (Name): NAME OF COURT AND BRANCH, IF ANY: STREET ADDRESS: MAILING ADDRESS: CITY, ZIP CODE: PLAINTIFF: DEFENDANT:	TELEPHONE NO.:	FOR RECORDER'S USE ONLY CASE NUMBER: FOR COURT USE ONLY
WRIT OF: <input type="checkbox"/> EXECUTION (MONEY JUDGMENT) <input type="checkbox"/> JOINT DEBTOR <input type="checkbox"/> POSSESSION OF: <input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> REAL PROPERTY <input type="checkbox"/> SALE		

1. To the Sheriff or any Marshal or Constable of the County of:

You are directed to enforce the judgment described below with interest and costs and your costs as provided by law.

2. To any registered process server: You are authorized to serve this writ only in accord with CCP 699.080 or 715.040.

3. Judgment creditor Assignee of record (name and address):

--	--

4. Judgment debtor (name and address):

--	--

5. Judgment entered on (date):

6. Judgment entered in
 a. Judgment book Minute book Docket
 b. Volume no.: Page no.:

7. Judgment has been renewed.
 a. Judgment renewed on (dates):
 b. Renewal entered in
 (1) Judgment book Minute book Docket
 (2) Volume no.: Page no.:

8. Notice of sale under this writ

has not been requested
 has been requested as set forth on the reverse

9. Joint debtor information set forth on the reverse.

10. Real or personal property to be delivered under a writ of possession or sold under a writ of sale described on reverse.

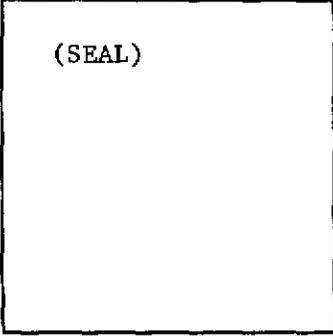
11. If judgment not renewed, total judgment entered (including principal, attorney's fees, interest, and costs): \$

12. If judgment renewed, total amount of judgment as last renewed (including principal, interest, and costs): \$

13. Principal amount of judgment on date of writ
 a. Costs (per filed order or memo—CCP 685.090) added after entry or renewal: \$
 b. Total (add 11 or 12 to 13a and subtract partial satisfactions of principal amount): \$

14. Amount required to satisfy judgment on date of writ
 a. Accrued interest due on date of writ (per filed affidavit—CCP 685.050) as adjusted for partial satisfactions: \$
 b. Fee for issuance of writ: \$
 c. Total (add 13b, 14a, b): \$

15. Levying officer: Add the following daily interest from date of writ (at legal rate on 13b) \$



Dated: _____ Clerk, By _____, Deputy

NOTICE TO PERSON SERVED: SEE REVERSE FOR IMPORTANT INFORMATION

Continued items:

4. Additional judgment debtor (name and address):

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

8. Notice of sale has been requested by (name and address):

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9. Joint debtor was declared bound by the judgment (CCP 989-994)

a. On (date):

a. On (date):

b. Name and address of joint debtor:

b. Name and address of joint debtor:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

c. Additional costs against certain joint debtors (itemize):

10. Judgment was entered for the following:

- a. Possession of personal property. If delivery cannot be had, then for the value (itemize in 10e) specified in the judgment or supplemental order.
- b. Possession of real property.
- c. Sale of personal property.
- d. Sale of real property.
- e. Description:

NOTICE TO PERSON SERVED

Writ of execution or sale. Your rights and duties are indicated on the accompanying Notice of Levy.

Writ of possession of personal property. If the levying officer is not able to take custody of the property, the levying officer will make a demand upon you for the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

Writ of possession of real property. If the premises are not vacated within five days after the date of service on an occupant or, if service is by posting, within five days after service on you, the levying officer will place the judgment creditor in possession of the property. Personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

693.020. Until superseded by a form prescribed by the Judicial Council, the notice of levy shall be in substantially the following form:

ATTORNEY OR PARTY WITHOUT ATTORNEY (name and address): <input type="checkbox"/> Recording requested by and return to:	TELEPHONE NO.:	FOR RECORDER'S USE ONLY
ATTORNEY FOR (Name): NAME OF COURT AND BRANCH, IF ANY: STREET ADDRESS: MAILING ADDRESS: CITY, ZIP CODE:		
PLAINTIFF: DEFENDANT:		
NOTICE OF LEVY under: WRIT OF: <input type="checkbox"/> EXECUTION (MONEY JUDGMENT) <input type="checkbox"/> JOINT DEBTOR <input type="checkbox"/> SALE		CASE NUMBER:
		FOR COURT USE ONLY

NOTICE TO PERSON SERVED (name):

The judgment creditor (name) _____ seeks to levy upon property in which the judgment debtor (name) _____ has an interest and apply it to the satisfaction of a judgment. The property to be levied upon is described:

- In the accompanying writ of possession or writ of sale.
- As follows:

1. You are served as a judgment debtor. See item 3.
2. You are served as a person other than the judgment debtor. See items 4, 5, 6, 7, and 8.
3. Notice to judgment debtor:
 - a. The levying officer is required to take custody of property in your possession that is to be levied upon.

- b. You may claim any available exemption for your property. A list of exemptions is attached. If you wish to claim an exemption, you must do so within 10 days after this notice was delivered to you or 15 days after this notice was mailed to you by filing a claim of exemption with the levying officer, together with a copy thereof, as provided in Section 703.520 of the Code of Civil Procedure. If you wish to seek the advice of an attorney in this matter, you should do so immediately so that a claim of exemption may be filed on time.
- c. You are not entitled to claim an exemption for property that is levied upon under a judgment for sale of property. This property is described in the accompanying writ of sale. You may, however, claim available exemptions for property levied upon to satisfy damages or costs awarded in such a judgment.
- d. You may obtain the release of your property by paying the amount of a money judgment remaining unpaid and any interest and costs remaining unpaid.
- e. If your property is levied upon under a writ of execution or to satisfy damages and costs under a writ of possession or sale, the property may be sold at an execution sale, perhaps at a price substantially below its value. Notice of sale will be given to you. Notice of sale of real property (other than a leasehold estate with an unexpired term of less than two years) may not be given until at least 120 days after this notice is served on you. This grace period is intended to give you an opportunity to settle with the judgment creditor, obtain a satisfactory buyer for the property, or encourage other potential buyers to attend the execution sale.
- f. All sales at an execution sale are final; there is no right of redemption.

4. Notice to person other than the judgment debtor. You are served as:

- a. Person in possession of:
 - Tangible personal property in general
 - Money
 - Negotiable document
 - Instrument
 - Chattel paper
- b. Bailee of goods not covered by negotiable document.
- c. Financial institution. Your rights and duties are set forth in CCP 700.140-700.160.
- d. As to a security:
 - Person in possession
 - Holder in escrow
 - Issuer
- e. Person obligated on instrument. If the levying officer has custody of the instrument, you must make payments to the levying officer as they come due.

7. If you claim ownership or the right to possession of real or personal property levied upon or if you claim a security interest in or lien on personal property levied upon you may make a third-party claim and obtain the release of the property pursuant to CCP 720.010-720.800.
8. The amount necessary to satisfy the judgment creditor's judgment as of the date of issuance of this notice is \$_____, plus additional interest in the amount of \$_____ per day from _____ until paid.
(date)

(name of levying officer)

(address of levying officer)

- Date mailed:
 Date delivered:
 Date posted:
 Date filed:
 Date recorded:

Signed by:

- Levying officer:
 Registered process server:

693.030. Until superseded by a form prescribed by the Judicial Council, the garnishee's memorandum shall be in substantially the following form:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):		TELEPHONE NO.:	LEVYING OFFICER (Name and Address):
ATTORNEY FOR (Name):			
Name of court, judicial district or branch court, if any:			
PLAINTIFF:			
DEFENDANT:			
MEMORANDUM OF GARNISHEE		LEVYING OFFICER FILE NUMBER	COURT CASE NUMBER

Notice to person served with writ and notice of levy: This memorandum must be completed and mailed or delivered to the levying officer within 10 days after service on you of the writ and notice of levy unless you have fully complied with the levy. Failure to complete and return this memorandum may render you liable for the costs and attorney's fees incurred in obtaining the required information.

This memorandum does not apply to garnishment of earnings.

1. If you will not deliver to the levying officer any property levied upon, describe the property and the reason for not delivering it:

2. Describe any property of the judgment debtor not levied upon that is in your possession or under your control:

3. If you owe money to the judgment debtor which you will not pay to the levying officer, describe the amount and terms of the obligation and the reason for not paying it to the levying officer:

4. Describe the amount and terms of any obligation owed to the judgment debtor that is levied upon but is not yet due and payable:

5. Describe the amount and terms of any obligation owed to the judgment debtor that is not levied upon:

6. Describe any claims and rights of other persons to the property or obligation levied upon that are known to you and the names and addresses of the other persons:

DECLARATION

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

(Date)

(Signature)

(Type or print name)

If you need more space to provide the information required by this memorandum, you may attach additional pages. Total number of pages attached: _____.

693.040. Until superseded by a form prescribed by the Judicial Council, the notice of renewal of judgment required by Section 683.160 shall be in substantially the following form:

ATTORNEY OR PARTY WITHOUT ATTORNEY (name and address): <input type="checkbox"/> Recording requested by and return to:	TELEPHONE NO.: FOR RECORDER'S USE ONLY
ATTORNEY FOR (Name): NAME OF COURT AND BRANCH, IF ANY: STREET ADDRESS: MAILING ADDRESS: CITY, ZIP CODE:	
PLAINTIFF: DEFENDANT:	
NOTICE OF RENEWAL OF JUDGMENT	CASE NUMBER:
	FOR COURT USE ONLY

TO JUDGMENT DEBTOR (name and last known address):

1. Upon application of the judgment creditor, the following judgment against you has been renewed.
 - a. Judgment creditor (name and address):
 - b. Judgment originally entered on (date):
 - c. Judgment originally entered in
 - (1) Judgment book Minute book Docket
 - (2) Volume no.: Page no.:
 - d. Judgment has previously been renewed.
 - (1) Judgment renewed on (dates):
 - (2) Renewal entered in
 - (a) Judgment book Minute book Docket
 - (b) Volume no.: Page no.:
2. Application for this renewal filed (date):
3. This renewal is entered in
 - a. Judgment book Minute book Docket
 - b. Volume no.: Page no.:

4. Renewal of money judgment.
- a. If judgment not previously renewed, total judgment as entered (including principal, attorney's fees, interest, and costs): \$
 - b. If judgment previously renewed, total amount of judgment as last renewed: \$
 - c. Principal amount of judgment on date of renewal
 - (1) Costs (per filed order or memo--CCP 685.090) added after entry or renewal: \$ _____
 - (2) Total (add 4a or 4b to 4c(1) and subtract partial satisfactions of principal amount): \$
 - d. Accrued interest from date of entry or prior renewal to date of renewal as adjusted for partial satisfactions: \$ _____
 - e. AMOUNT OF RENEWED JUDGMENT (total amount required to satisfy judgment on date of renewal) (add 4c(2), 4d): \$ _____

5. Renewal of judgment for possession.
 sale.
- a. If judgment not previously renewed, terms of judgment as entered:
 - b. If judgment previously renewed, terms of judgment as last renewed:
 - c. Terms of judgment remaining unsatisfied:

6. THIS RENEWAL EXTENDS THE PERIOD OF ENFORCEABILITY OF THE JUDGMENT UNTIL 10 YEARS FROM THE DATE THE APPLICATION FOR RENEWAL WAS FILED. IF YOU OBJECT TO THIS RENEWAL, YOU MAY MAKE A MOTION TO VACATE OR MODIFY THE RENEWAL WITH THIS COURT. YOU MUST MAKE THIS MOTION WITHIN 30 DAYS AFTER SERVICE OF THIS NOTICE ON YOU.

Date: _____ Clerk, By _____ Deputy

(SEAL)

7. NOTICE TO THE PERSON SERVED: You are served
- a. As an individual judgment debtor.
 - b. Under the fictitious name of:
 - c. On behalf of:
- Under CCP 416.10 (Corporation) CCP 416.60 (Minor)
- CCP 416.20 (Defunct Corporation) CCP 416.70 (Ward)
- CCP 416.40 (Association or Partnership) CCP 416.90 (Individual)
- Other:

693.050. Until superseded by a form prepared by the Judicial Council, the notice of the hearing required by Section 704.770 shall be in both English and Spanish, in at least 10-point bold type, and in substantially the following form:

IMPORTANT LEGAL NOTICE TO HOMEOWNER AND RESIDENT

1. Your house will be offered for sale to satisfy a judgment obtained in court. You may be able to exempt the proceeds of sale of the house and real property described in the accompanying application if you or your family now actually reside on the property. **YOU OR YOUR SPOUSE SHOULD COME TO THE HEARING TO SHOW THIS FACT.**

2. If you or your spouse want to exempt the proceeds of sale of this property, you or your spouse should appear at

_____ on _____
(Location set forth in OSC) (Date and time)

and be prepared to answer questions concerning the statements made in the attached application. **THE ONLY PURPOSE OF THE HEARING WILL BE TO DETERMINE WHETHER THE PROCEEDS OF SALE ARE EXEMPT, NOT WHETHER YOU OWE THE MONEY.**

3. **FOR YOUR OWN PROTECTION, YOU SHOULD PROMPTLY SEEK THE ADVICE OF AN ATTORNEY IN THIS MATTER. IF YOU ARE A RESIDENT OF THIS PROPERTY AND ARE NOT THE DEBTOR, THIS NOTICE DOES NOT AFFECT YOU. PLEASE GIVE IT TO YOUR LANDLORD.**

**IMPORTANTE AVISO LEGAL AL PROPIETARIO DE CASA Y
RESIDENTE**

1. Su casa será puesta en venta para cumplir con una orden judicial obtenida en la corte. Usted podría exentar las ganancias de la venta de la casa y los bienes raíces descritos en la solicitud adjunta si usted o su familia actualmente residen en la propiedad. **USTED O SU ESPOSO(A) DEBEN VENIR A LA AUDIENCIA PARA DEMOSTRAR ESTE PUNTO.**

2. Si usted o su esposo(a) quieren exentar las ganancias de la venta de esta propiedad, usted o su esposo(a) deben presentarse a

_____ el _____
(Location set forth in O.S.C.) (Date and time)

y estar preparados para contestar las preguntas acerca de las declaraciones puestas en la solicitud adjunta. **EL ÚNICO PROPÓSITO DE ESTA AUDIENCIA SERÁ EL DE DETERMINAR SI LAS GANANCIAS DE LA VENTA SON EXENTAS, Y NO SI USTED DEBE DINERO.**

3. PARA SU PROPIA PROTECCIÓN, USTED DEBERÍA PRONTAMENTE PROCURAR EL CONSEJO DE UN ABOGADO EN ESTE ASUNTO. SI USTED ES UN RESIDENTE EN ESTA PROPIEDAD Y NO ES EL DEUDOR(A), ESTE AVISO NO LE AFECTA A USTED. POR FAVOR DESELO A SU ARRENDADOR.

693.060. (a) Until superseded by a form prepared by the Judicial Council, the notice of order for sale required by Section 704.790 shall be in both English and Spanish, in at least 10-point bold type, and in substantially the following form:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):		TELEPHONE NO.:	LEVYING OFFICER (Name and Address):	
ATTORNEY FOR (Name):				
Name of court, judicial district or branch court, if any:				
PLAINTIFF:				
DEFENDANT:				
DECLARATION FOR REHEARING ON HOMESTEAD EXEMPTION		LEVYING OFFICER FILE NUMBER	COURT CASE NUMBER	

IMPORTANT LEGAL NOTICE TO HOMEOWNER AND RESIDENT

1. You were recently served with a court order requiring your presence at a hearing to determine why the court should not issue an order for the forced sale of your home in accordance with the application of the creditor. YOU AND YOUR SPOUSE FAILED TO APPEAR AT THE HEARING AND THE COURT HAS ORDERED THAT YOUR HOME BE SOLD TO SATISFY A JUDGMENT AGAINST YOU.

2. Your absence at the hearing has contributed to the issuance of the accompanying order for sale in accordance with the application of the creditor. If the absence of you or your attorney at the hearing was legally excusable and you believe in good faith that the proceeds of sale of your home may be entitled to an exemption, you should complete the form below and date, sign, and return the form below no later than _____. (Insert date no later than 10 days after date of service or 15 days if service is by mail in this state.)

3. FOR YOUR OWN PROTECTION, YOU SHOULD IMMEDIATELY SEEK THE ADVICE OF AN ATTORNEY. IF YOU ARE A RESIDENT OF THIS PROPERTY AND ARE NOT THE DEBTOR, THIS NOTICE DOES NOT AFFECT YOU. PLEASE GIVE IT TO YOUR LANDLORD.

Return This Form to:

(Name and title of levying officer)

(Street address and city)

(Area code and telephone number of levying officer)

I declare that my absence from the previous hearing on whether this property should be sold in accordance with the application of the creditor was legally excusable. I, or my spouse, currently reside in this property and I wish a further hearing so that I may claim my exemption of the proceeds of the sale of my home. I understand that I will be notified of the date and place for this hearing if I return this form immediately and that I must attend this hearing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date _____

(Signature of debtor or debtor's spouse)

(Type or print name)

IMPORTANTE AVISO LEGAL AL PROPIETARIO DE CASA Y RESIDENTE

1. Recientemente se le entregó una orden de la corte exigiendo su presencia en una audiencia para determinar el porqué la corte no debería extenderle una orden para la venta forzosa de su casa de acuerdo con la solicitud del acreedor. USTED Y SU ESPOSO(A) NO VINIERON A LA AUDIENCIA Y LA CORTE HA ORDENADO QUE SU CASA SEA VENDIDA PARA SATISFACER EL JUDICIO EN CONTRA USTEDES.

2. Su ausencia en la audiencia ha contribuido para la emisión de la orden de venta adjunta de acuerdo con la solicitud del acreedor. Si la ausencia de ustedes o de su abogado en la audiencia es excusable legalmente y creen de buena fe que las ganancias de la venta de su casa pueden tener derecho a una exención, debería completar el formato que esta debajo, fecharlo, firmarlo, y devolverlo a no mas tardar del _____. (Insert date no later than 10 days after date service or 15 days if service is by mail in this state.)

3. PARA SU PROPIA PROTECCIÓN, USTED DEBERÍA INMEDIATAMENTE PROCURAR EL CONSEJO DE UN ABOGADO. SI USTED ES UN RESIDENTE EN ESTA PROPIEDAD Y NO ES EL DEUDOR(A), ESTE AVISO NO LE AFECTA A USTED. POR FAVOR DESELO A SU ARRENDADOR.

Devuelva Este Formato a:

(Name and title of levying officer)

(Street address and city)

(Area code and telephone number of levying officer)

Declaro que mi ausencia en la pasada audiencia sobre si esta propiedad debería ser vendida de acuerdo con la solicitud del acreedor fue legalmente excusable. Yo, o mi esposo(a), acutalmente residimos en esta propiedad y deseo una audiencia adicional para reclamar mi exención de las ganancias de la venta de mi casa. Entiendo que seré notificado de la fecha y del lugar de esta audiencia si devuelvo este formato inmediatamente y que debo asistir a esta audiencia.

Declaro bajo pena de perjurio bajo las leyes del Estado de California que lo anterior es verdadero y está correcto.

Fecha _____

(Firma del Deudor(a) o de la Esposa(o) del Deudor(a))

(Nombre escrito a máquina o en letra de molde)

(b) Timely completion and return of the Spanish language form has the same force and effect as timely completion and return of the English language form.

Amendment 16

On page 32, line 8, strike out "and delivery" and insert:
or delivery of possession

Amendment 17

On page 35, line 4, strike out "what" and insert:
that

Amendment 18

On page 36, line 6, after the second "the" insert:
money

Amendment 19

On page 36, strike out lines 15 to 19, inclusive, and insert:
or renewed with the following additions and subtractions:

(a) The addition of costs added to the judgment pursuant to
Section 685.090.

(b) The addition of interest added to the judgment as it
accrues pursuant to Sections 685.010 to 685.030, inclusive.

(c) The subtraction of the amount of any partial satisfactions
of the judgment

(d) The subtraction of the amount of any portion of the judgment
that is no longer enforceable.

Amendment 20

On page 37, line 2, after the second "the" insert:
money

Amendment 21

On page 40, line 27, after "the" insert:
money

Amendment 22

On page 45, line 37, after the period, insert:
A judgment lien may be created under this article only if the judgment is a money judgment that was first entered in this state after June 30, 1983.

Amendment 23

On page 47, line 28, after the "the" insert:
money

Amendment 24

On page 49, line 2, after "notice" insert:
and any notice affecting any such notice of judgment lien

Amendment 25

On page 49, between lines 30 and 31, insert:
(c) If a perfected purchase money security interest in inventory has priority over a judgment lien on after-acquired inventory pursuant to subdivision (b) and a conflicting security interest has priority over the purchase money security interest in the same inventory pursuant to subdivision (3) of Section 9312 of the Commercial Code, the conflicting security interest also has priority over the judgment lien on after-acquired inventory notwithstanding that the conflicting security interest would not otherwise have priority over the judgment lien.

Amendment 26

On page 50, strike out lines 35 to 40, inclusive

Amendment 27

On page 51, strike out lines 1 to 40, inclusive

Amendment 28

On page 52, strike out line 1 and insert:

697.640. (a) The judgment creditor, judgment debtor, owner of property subject to a judgment lien on personal property created under the judgment, or a person having a security interest in or a lien on the property subject to the judgment lien, may file in the office of the Secretary of State an acknowledgment of satisfaction of judgment executed as provided in Section 724.060 or a court clerk's certificate of satisfaction of judgment issued pursuant to Section 724.100. Upon such filing, the judgment lien created under the judgment that has been satisfied is extinguished as a matter of record. The fee for filing the acknowledgment or certificate is the same as the fee for filing a termination statement under Section 9404 of the Commercial Code.

(b) The filing officer shall treat an acknowledgment of satisfaction of judgment,

Amendment 29

On page 52, strike out lines 6 to 11, inclusive

Amendment 30

On page 52, line 20, strike out the comma and insert:

and

Amendment 31

On page 52, line 37, after "owner" insert:
or a person having a security interest in or a lien on the property

Amendment 32

On page 53, lines 6 and 7, strike out "property owner's"

Amendment 33

On page 53, line 15, strike out "property owner" and insert:
person who made the demand

Amendment 34

On page 53, line 17, strike out "the property owner" and
insert:
such person

Amendment 35

On page 53, line 19 and 20, strike out "property owner" and insert:
person who made the demand

Amendment 36

On page 53, line 32, strike out "by the property owner" and insert:
under subdivision (a)

Amendment 37

On page 54, line 4, strike out ", the termination statement,"

Amendment 38

On page 56, lines 9 and 10, strike out "person receiving the property is" and insert:
transfer or encumbrance is made to

Amendment 39

On page 58, strike out lines 9 to 20, inclusive

Amendment 40

On page 60, between lines 36 and 37, insert:
(3) Personal property in the custody of a levying officer,
pursuant to Section 700.050.

Amendment 41

On page 60, line 37, strike out "(3)" and insert:
(4)

Amendment 42

On page 60, line 39, strike out "(4)" and insert:
(5)

Amendment 43

On page 60, after line 40, insert:

(6) Property in a safe deposit box, pursuant to Section 700.150 or 700.160.

Amendment 44

On page 61, line 1, strike out "(5)" and insert:

(7)

Amendment 45

On page 61, line 3, strike out "(6)" and insert:

(8)

Amendment 46

On page 61, between lines 4 and 5, insert:

(9) Interest of an heir, devisee, or legatee in personal property in the estate of a decedent, pursuant to Section 700.200.

Amendment 47

On page 61, strike out line 16

Amendment 48

On page 61, line 17, strike out "thereafter" and insert:

(c) Within five days after levy under this section

Amendment 49

On page 61, strike out lines 32 to 34, inclusive, and insert:

(e) The fee for services of a registered process server under this section may, in the court's discretion, be allowed as a recoverable cost upon a motion pursuant to Section 685.080. If allowed, the amount of the fee to be allowed is governed by Section 1032b.

Amendment 50

On page 62, line 23, strike out "or entered" and insert:
, entered, or enforceable

Amendment 51

On page 63, line 10, after "the" insert:
money

Amendment 52

On page 65, line 25, after "700.010." insert:
(a)

Amendment 53

On page 65, strike out lines 27 to 29, inclusive, and
insert:

of the following on the judgment debtor:

(1) The writ of execution.

(2) A notice of levy.

(3) If the judgment debtor is a natural person, a copy
of the form listing exemptions prepared by the Judicial Council
pursuant to subdivision (c) of Section 681.030.

(b) Service under this section shall be made personally
or by mail.

Amendment 54

On page 79, line 17, after "amount" insert:
of the obligation levied upon

Amendment 55

On page 79, line 20, after "debtor" insert:
on the obligation levied upon

Amendment 56

On page 81, line 14, strike out "subdivision (e)" and insert:
subdivisions (e) and (f)

Amendment 57

On page 81, line 34, strike out "party" and insert:
person

Amendment 58

On page 81, line 36, strike out "party" and insert:
person

Amendment 59

On page 82, line 17, after "levy" insert:
, as provided in Section 9504 of the Commercial Code,

Amendment 60

On page 83, line 28, strike out "or its equivalent"

Amendment 61

On page 83, line 28, after "sold" insert:
unless it has a value exceeding its face value

Amendment 62

On page 89, line 18, strike out "necessary to satisfy the" and
insert:
required to satisfy the money

Amendment 63

On page 89, line 22, strike out "necessary to satisfy the" and
insert:
required to satisfy the money

Amendment 64

On page 90, line 7, strike out "item, group, or lot of" and
insert:
interest in real

Amendment 65

On page 90, line 17, strike out "A person who" and insert:

(d) If the highest bid for an item, group, or lot of personal property sold exceeds two thousand five hundred dollars (\$2,500), the highest bidder may elect to treat the sale as a credit transaction. A person who makes the election shall deposit at least two thousand five hundred dollars (\$2,500) or 10 percent of the amount bid, whichever is greater, and within 10 days after the date of the sale shall pay the balance due plus costs accruing with regard to the property sold and interest accruing at the rate on money judgments on the balance of the amount bid from the date of sale until the date of payment.

(e) A person who

Amendment 66

On page 90, line 18, after "election" insert:
under subdivision (c) or (d)

Amendment 67

On page 91, line 6, after the second "the" insert:
money

Amendment 68

On page 91, between lines 37 and 38, insert:
(2) The amount of any state tax lien (as defined in Section 7162 of the Government Code) that is superior to the judgment creditor's lien.

Amendment 69

On page 91, line 38, strike out "(2)" and insert:
(3)

Amendment 70

On page 92, line 12, strike out "and" and insert a comma

Amendment 71

On page 92, line 13, after "thereto" insert:
, and any state tax lien (as defined in Section 7162 of the Government Code) on the property sold

Amendment 72

On page 93, line 30, strike out "relfect" and insert:
reflect

Amendment 73

On page 94, between lines 14 and 15, insert:
(b) The amount of any state tax lien (as defined in Section 7162 of the Government Code) that is superior to the judgment creditor's lien.

Amendment 74

On page 94, line 15, strike out "(b)" and insert:
(c)

Amendment 75

On page 94, line 22, strike out "(c)" and insert:
(d)

Amendment 76

On page 94, strike out lines 26 to 29, inclusive, and insert:
used to satisfy all of the following in the order of their respective priorities:

(1) Any consensual liens and encumbrances, and any liens for labor or materials, that are subordinate to the judgment creditor's lien.

(2) Subject to Sections 688.030 and subdivision (d) of Section 704.720, any state tax lien (as defined in Section 7162 of the Government Code) on the property sold.

Amendment 77

On page 94, line 31, strike out "(d)" and insert:
(e)

Amendment 78

On page 94, line 35, strike out "(e)" and insert:
(f)

Amendment 79

On page 95, line 2, strike out "(f)" and insert:
(g)

Amendment 80

On page 95, line 14, strike out "(g)" and insert:
(h)

Amendment 81

On page 103, between lines 34 and 35, insert:

703.130. (a) Pursuant to the authority of paragraph (1) of subsection (b) of Section 522 of Title 11 of the United States Code, the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code (Bankruptcy) are not authorized in this state.

(b) Notwithstanding subdivision (a), if a husband and wife are joined in a petition filed under Title 11 of the United States Code (Bankruptcy), they jointly may elect to utilize the applicable exemption provisions under this chapter or to utilize the applicable exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code, but not both.

(c) Notwithstanding subdivision (a), if a petition under Title 11 of the United States Code (Bankruptcy) is filed individually, and not jointly, for a husband or a wife, the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code are authorized in this state if the husband and wife each effectively waive in writing the right to claim, during the period the case commenced by filing such

petition is pending, the exemptions provided by the applicable exemption provisions of this chapter in any case commenced by filing a petition for either of them under Title 11 of the United States Code.

(d) Notwithstanding subdivision (a), if a petition is filed under Title 11 of the United States Code (Bankruptcy) for an unmarried person, the unmarried person may elect to utilize the applicable exemption provisions under this chapter or to utilize the applicable exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code, but not both.

Amendment 82

On page 104, lines 26 and 27, strike out "state which of the described property" and insert:
identify the property, whether or not levied upon,

Amendment 83

On page 109, line 29, after "704.020." insert:
(a)

Amendment 84

On page 109, line 30, strike out the third comma

Amendment 84.1

On page 109, strike out line 31

Amendment 84.2

On page 109, line 32, strike out "household,"

Amendment 84.3

On page 109, line 33, strike out "(a) If" and insert:
(1) If ordinarily and reasonably necessary to, and

Amendment 84.4

On page 109, line 33, after "by" insert a comma

Amendment 84.5

On page 109, line 37, strike out "(b)" and insert:
(2)

Amendment 85

On page 109, line 38, after "if" insert:
ordinarily and reasonably necessary to, and

Amendment 86

On page 109, line 39, after "by" insert a comma

Amendment 87

On page 110, between lines 1 and 2, insert:

(b) In determining whether an item of property is "ordinarily and reasonably necessary" under subdivision (a), the court shall take into account both of the following:

(1) The extent to which the particular type of item is ordinarily found in a household.

(2) Whether the particular item has extraordinary value as compared to the value of items of the same type found in other households.

Amendment 88

On page 119, line 20, strike out "by the"

Amendment 89

On page 119, strike out lines 21 to 23, inclusive, and insert:
, to the extent the

Amendment 90

On page 119, line 26, strike out "these acts" and insert:
that code

Amendment 91

On page 120, line 8, strike out "assignemnt" and insert:
assignment

Amendment 92

On page 125, between lines 14 and 15, insert:

(d) The exemptions provided by this article do not apply to the amount of unpaid tax that is a lien under Article 2 (commencing with Section 7170) of Chapter 14 of Division 7 of Title 1 of the Government Code in either of the following cases:

- (1) Where the property subject to the lien is voluntarily sold.
- (2) Where the property subject to the lien is sold pursuant to levy of execution by another creditor.

Amendment 93

On page 130, between lines 27 and 28, insert:

Article 5. Release of Judgment Liens on Homestead

704.910. The judgment debtor may seek the release of any judgment liens on real property that constitutes a homestead (as defined in subdivision (c) of Section 704.710) as provided in this article.

704.920. (a) The judgment debtor shall personally serve on each judgment creditor having a judgment lien on the property a request for conditional release of the judgment lien.

(b) The request for conditional release shall be executed under oath and shall include all of the following:

(1) The title of the court where the judgment is entered and the cause and number of the action.

(2) The name and last known address of the original judgment creditor and the assignee of record, if any.

(3) The date of entry of the judgment and of any renewals of the judgment and where entered in the records of the court.

(4) The name and address of the judgment debtor.

(5) A description of the property that is subject to the judgment lien.

(6) A claim that the property is a homestead and the amount of the homestead exemption and a statement of facts supporting the claim.

(7) Information as to all other judgment liens on the property that satisfies the requirements of paragraphs (1) to (3), inclusive, and the amount of each judgment lien.

(8) The names and addresses of all other persons having liens on the property, the amount of each lien, and when it attached to the property.

(9) A request that within 60 days the judgment creditor give the judgment debtor a conditional release of the judgment lien in compliance with Section 704.940 or otherwise comply with Section 704.930.

(10) A statement that if the judgment creditor does not comply with the request the judgment debtor may obtain a court order conditionally releasing the judgment creditor's judgment lien and the judgment creditor may be liable for costs and reasonable attorney's fees of obtaining the court order.

704.930. (a) Within 60 days after service of the request for conditional release pursuant to Section 704.920, the judgment creditor served shall do one of the following:

(1) Give the judgment debtor a conditional release of the judgment lien on the homestead as provided in Section 704.940.

(2) Cause the property to be levied upon under a writ of execution.

(3) File and serve a notice of opposition to the homestead exemption claim as provided in Section 704.950.

(b) If the judgment creditor does not comply with subdivision (a) within the time allowed, the judgment debtor may apply pursuant to Section 704.960 for a court order conditionally releasing the judgment creditor's judgment lien.

704.940. (a) If the judgment creditor elects pursuant to Section 704.930 to give the judgment debtor a conditional release, the judgment creditor shall serve the conditional release on the judgment debtor within the time provided in Section 704.930. Service shall be made personally or by mail.

(b) The release shall satisfy the requirements of Section 697.370 and shall be conditioned upon the sale of the homestead at a private sale as provided in Section 704.970. The conditional release may provide that it expires if the property is not sold as provided in this subdivision within a time specified in the release, but not less than one year from the date the conditional release is executed.

(c) A conditional release given pursuant to this section is ineffective if the court determines that the judgment debtor's property described in the release is not a homestead.

704.950. (a) If the judgment creditor opposes the judgment debtor's claim that the property is a homestead, the judgment creditor shall, within the time provided in Section 704.930, apply to the court for an order determining the homestead exemption.

(b) If the property is located in a county other than the county where the judgment was entered, the judgment creditor shall comply with subdivision (b) of Section 704.750.

(c) The judgment creditor's application shall satisfy the requirements of Section 704.760.

(d) Upon the filing of the application by the judgment creditor, the court shall set a time and place for the hearing. The time set for hearing shall be not later than 45 days after the application is filed or such later time as the court orders upon a showing of good cause.

(e) Not later than 30 days before the time set for hearing, the judgment creditor shall serve on the judgment debtor a copy of the application of the judgment creditor and a copy of the notice of hearing. Service shall be made personally or by mail.

(f) The burden of proof at the hearing is determined as provided in Section 704.780.

(g) The court shall determine whether the property is exempt and, if so, the amount of the homestead exemption. If the property is exempt, the court shall order the release of the judgment creditor's judgment lien on the conditions provided in Section 704.940, and the judgment creditor is liable for the costs of the hearing under this section.

704.960. (a) If all the persons having judgment liens on the judgment debtor's homestead have not given their conditional releases within the time provided in Section 704.930, the judgment debtor may apply to the court on noticed motion for an order releasing any unreleased liens. The judgment debtor may not apply for an order under this section if the property has been levied upon under a writ of execution.

(b) If the property is located in a county other than the county where the judgment was entered under which the unreleased judgment lien was created:

(1) The judgment debtor shall apply to a court of similar jurisdiction in the county where the property is located or, if there is not a court of similar jurisdiction, to a court of higher jurisdiction in that county.

(2) The judgment debtor shall pay a filing fee of twelve dollars (\$12). No law library fee shall be charged.

(c) If the court determines that a judgment creditor having a judgment lien has not complied with the request for a conditional release, the court shall order the release of the judgment creditor's judgment lien on the conditions provided in Section 704.940.

(d) If the court orders the release of a judgment creditor's judgment lien, the judgment creditor is liable for the costs and reasonable attorney's fees of the hearing under this section.

(e) A hearing under this section may be consolidated with a hearing under Section 704.950. The issue of the qualification of the judgment debtor's property as a homestead may be raised only in a proceeding under Section 704.950.

704.970. A conditional release of a judgment lien on the judgment debtor's homestead under this article is not effective unless the following conditions are satisfied:

(a) The homestead is sold through an escrow licensed or excepted from license pursuant to the Escrow Law, Division 6 (commencing with Section 17000) of the Financial Code.

(b) The amount of the sale price in excess of the amount of the homestead exemption and the amount of superior liens to be satisfied by the sale is paid in cash.

(c) Title to the homestead is transferred not later than one year after the execution of the conditional release, or within such longer period as is specified in the conditional release.

704.980. (a) When a judgment lien on a homestead is released pursuant to a conditional release under this article, the lien attaches to the proceeds of the sale in escrow exceeding the total of the amount of the homestead exemption and the amount of any superior liens to be satisfied from the proceeds. The liens on proceeds attach in their respective order of priority.

(b) The escrow holder shall distribute the proceeds of sale in the manner prescribed in Section 701.810. If there are conflicting claims to the proceeds in escrow, the escrow holder may deposit with the court the proceeds that are the subject of the conflicting claims in the manner prescribed in Section 701.830 and Section 701.830 governs the disposition of the proceeds. For the purpose of this subdivision, the "court" is a court where judgment debtor could apply for an order pursuant to Section 704.960.

704.990. Unless the court determines that the property is not a homestead:

(a) If the judgment creditor gives a conditional release of the judgment lien on a homestead pursuant to Section 704.940, the judgment creditor may not thereafter cause the homestead to be levied upon under a writ of execution until the expiration or ineffectiveness of the conditional release.

(b) If the judgment creditor files and serves a notice of opposition to the homestead exemption claim pursuant to Section 704.950, the judgment creditor may not thereafter cause the homestead to be levied upon under a writ of execution until the expiration of any conditional release ordered by the court.

(c) If the judgment creditor does not comply with the request of the judgment debtor for a conditional release and the judgment debtor applies for a court order conditionally releasing the lien, the judgment creditor may not thereafter cause the homestead to be levied upon under a writ of execution until the expiration of any conditional release ordered by the court.

704.995. Nothing in this article limits the right of a judgment creditor to resort to a remedy available under the Uniform Fraudulent Conveyance Act, Title 2 (commencing with Section 3439.01) of Part 2 of Division 4 of the Civil Code.

Amendment 93.5

On page 137, line 6, strike out "State" and insert:

States

Amendment 93.7

On page 138, line 11, strike out "January" and insert:
July

Amendment 94

On page 143, line 40, after the period, insert:
In the case of a state employee, the office from which the employee is paid does not include the State Controller's Office unless the employee works directly for the State Controller's Office.

Amendment 94.5

On page 152, strike out lines 11 to 15, inclusive

Amendment 95

On page 160, line 35, strike out "third party's" and insert:
third-party

Amendment 96

On page 167, strike out lines 38 to 40, inclusive

Amendment 97

On page 168, strike out lines 1 and 2

Amendment 98

On page 168, line 3, strike out "(b)" and insert:
708.290.

Amendment 99

On page 168, line 15, strike out "15522" and insert:
15573

Amendment 100

On page 169, line 21, strike out "court, cause," and insert:
the court and the cause

Amendment 101

On page 171, line 10, strike out "The" and insert:
Upon application by the judgment debtor, the

Amendment 102

On page 171, line 15, strike out "judgment debtor may apply" and insert:
application

Amendment 103

On page 171, line 16, after "subdivision" insert:
shall be made

Amendment 104

On page 173, line 22, strike out "execution" and insert:
withholding under an earnings withholding order

Amendment 105

On page 176, line 27, after "that" insert:
the amount of delinquent taxes described in Section 24049 of the Business and Professions Code and

Amendment 106

On page 189, between lines 35 and 36, insert:
715.040. (a) A registered process server may execute the writ of possession of real property as provided in subdivisions (a) and (b) of Section 715.020.

(b) Within five days after executing the writ under this section, all of the following shall be filed with the levying officer:

(1) The writ of possession of real property.
(2) An affidavit of the registered process server stating the manner in which the writ was executed.

(3) Proof of service of the writ.

(4) Instructions in writing, as required by the provisions of Section 687.010.

(c) Upon receipt of the fee provided by Section 26733 of the Government Code, the levying officer shall perform all other duties under the writ and shall return the writ to the court.

(d) The fee for services of a registered process server under this section may, in the court's discretion, be allowed as a recoverable cost upon a motion pursuant to Section 685.080. If allowed, the amount of the fee to be allowed is governed by Section 1032b.

Amendment 107

On page 192, line 10, after "720.130." insert:

(a)

Amendment 108

On page 192, line 12, strike out "(a)" and insert:

(1)

Amendment 109

On page 192, line 15, strike out "(b)" and insert:

(2)

Amendment 110

On page 192, line 17, strike out "(c)" and insert:

(3)

Amendment 111

On page 192, line 19, strike out "(d)" and insert:

(4)

Amendment 112

On page 192, between lines 20 and 21, insert:

(b) A copy of any writing upon which the claim is based shall be attached to the third-party claim. At a hearing on the third-party claim, the court in its discretion may exclude from evidence any writing a copy of which was not attached to the third-party claim.

Amendment 113

On page 192, strike out lines 39 and 40, and insert:

(b) The time allowed the

Amendment 114

On page 195, line 17, after "720.210." insert:

(a)

Amendment 115

On page 195, between lines 23 and 24, insert:

(b) A secured party claiming a security interest in fixtures may make a third-party claim pursuant to this chapter if the security interest claimed is superior to the creditor's lien on the property. For this purpose, references in this division to "personal property" shall be deemed references to fixtures.

Amendment 116

On page 195, line 32, after "720.230." insert:

(a)

Amendment 117

On page 195, line 34, strike out "(a)" and insert:

(1)

Amendment 118

On page 195, line 37, strike out "(b)" and insert:

(2)

Amendment 119

On page 195, line 39, strike out "(c)" and insert:

(3)

Amendment 120

On page 196, strike out lines 1 to 3, inclusive, and insert:
which it is based.

Amendment 121

On page 196, line 4, strike out "(d)" and insert:

(4)

Amendment 122

On page 196, between lines 6 and 7, insert:

(b) In the case of a security interest, a copy of the security agreement and any financing statement shall be attached to the third-party claim. In the case of a lien, a copy of any writing upon which the claim is based shall be attached to the third-party claim. At a hearing on the third-party claim, the court in its discretion may exclude from evidence any writing a copy of which was not attached to the third-party claim.

Amendment 123

On page 196, strike out lines 30 and 31, and insert:

(b) The time allowed the

Amendment 124

On page 197, strike out lines 37 to 40, inclusive

Amendment 125

On page 198, strike out lines 1 and 2, and insert:

(1) If the action is pending or the judgment was entered in the superior court, seven thousand five hundred dollars (\$7,500), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(2) If the action is pending or the judgment was entered in a municipal or justice court, two thousand five hundred dollars (\$2,500), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

Amendment 126

On page 199, line 6, strike out "both" and insert:

all

Amendment 127

On page 199, between lines 15 and 16, insert:

(c) Serve a copy of the statement on the debtor. Service shall be made personally or by mail.

Amendment 128

On page 200, between lines 31 and 32, insert:

(d) Any undertaking to release filed by a third person pursuant to Chapter 6 (commencing with Section 720.610).

(e) Any notice filed by a public entity pursuant to Section 720.160 or 720.260.

Amendment 129

On page 201, line 24, after the period, insert:

If the petition for a hearing was made by the creditor, neither the petition nor the proceedings pursuant thereto may be dismissed without the consent of the third person.

Amendment 130

On page 202, line 23, strike out "or 720.270," and insert:
, 720.270, or 720.660,

Amendment 131

On page 210, line 9, strike out the first "or" and insert
a comma

Amendment 132

On page 210, line 11, after "judgment" insert:
, or a person having a security interest in or a lien on personal property subject to a judgment lien created under the judgment

Amendment 133

On page 210, line 36, strike out "judgment debtor or"

Amendment 134

On page 210, strike out lines 37 and 38 and insert:
person making the demand may apply to

Amendment 135

On page 216, line 11, strike out "judgement" and insert:
judgment

AMENDMENTS TO ASSEMBLY BILL NO. 798

Amendment 1

In lines 8 and 9 of the title of the printed bill, as amended in Assembly August 25, 1981, strike out "482.100, 484.530, 485.610, 487.020, 488.020, 488.090, 488.530, 490.010, 490.020,"

Amendment 2

In line 14, after "673," insert:
729.010, 729.020, 729.030, 729.040, 729.050, 729.060, 729.080, 729.090,

Amendment 3

In line 18 of the title, strike out "490.050,"

Amendment 4

In line 20 of the title, strike out "and 9409" and insert:
, 9304, 9306, 9409, and 9504

Amendment 5

On page 2, in line 9 of the title, after "Sections" insert:
205, 660, 663, 704.2, 704.4,

Amendment 6

On page 32, strike out lines 12 to 40, inclusive

Amendment 7

On page 33, strike out lines 1 to 40, inclusive

Amendment 8

On page 34, strike out lines 1 to 40, inclusive

Amendment 9

On page 35, strike out lines 1 to 40, inclusive

Amendment 10

On page 36, strike out lines 1 to 40, inclusive

Amendment 11

On page 37, strike out lines 1 to 27, inclusive

Amendment 12

On page 44, between lines 22 and 23, insert:

(e) If a deficiency judgment is waived or prohibited, the property shall be sold as provided in Section 716.020. If a deficiency judgment is not waived nor prohibited, the property shall be sold subject to redemption as provided in Sections 729.010 to 729.090, inclusive.

Amendment 13

On page 44, between lines 24 and 25, insert:

SEC. 56.1. Section 729.010 is added to the Code of Civil Procedure, to read:

729.010. (a) If the decree of foreclosure of a mortgage or deed of trust on real property pursuant to Section 726 determines that a deficiency judgment may be ordered against the defendant, the real property (other than a leasehold estate with an unexpired term of less than two years at the time of levy) shall be sold subject to the right of redemption.

(b) If the property is to be sold subject to the right of redemption, the sale is governed by Section 716.020, except that:

(1) The notice of sale of the property shall state that the property will be sold subject to the right of redemption and shall state the amount of the secured indebtedness with interest and costs.

(2) Notice of sale may be given upon entry of the judgment for sale of the property and the provision of Section 701.545 delaying notice of sale does not apply.

(3) Notice of sale may be given pursuant to persons having liens on the property upon entry of the judgment for sale of the property and the provision of subdivision (h) of Section 701.540 delaying such notice does not apply.

SEC. 56.2. Section 729.020 is added to the Code of Civil Procedure, to read:

729.020. Property sold subject to the right of redemption may be redeemed only by the judgment debtor or the judgment debtor's successor in interest. For the purpose of this article, the purchaser of the property at the foreclosure sale is not a successor in interest.

SEC. 56.3. Section 729.030 is added to the Code of Civil Procedure, to read:

729.030. The redemption period during which property may be redeemed from a foreclosure sale under this chapter ends:

(a) Three months after the date of sale if the proceeds of the sale are sufficient to satisfy the secured indebtedness with interest and costs of action and of sale.

(b) One year after the date of sale if the proceeds of the sale are not sufficient to satisfy the secured indebtedness with interest and costs of action and of sale.

SEC. 56.4. Section 729.040 is added to the Code of Civil Procedure, to read:

729.040. (a) Notwithstanding Section 701.660, when the purchaser of an interest in real property sold subject to the right of redemption pays the amount due, the levying officer conducting the sale shall execute and deliver a certificate of sale to the purchaser and record a duplicate of the certificate of sale in the office of the county recorder.

(b) The certificate of sale shall contain the information required by Section 701.670 and shall also contain the following:

(1) The price paid for each distinct lot or parcel of real property sold subject to the right of redemption.

(2) The total price paid.

(3) A statement that the property is subject to the right of redemption, indicating the applicable redemption period.

SEC. 56.5. Section 729.050 is added to the Code of Civil Procedure, to read:

729.050. If property is sold subject to the right of redemption, promptly after the sale the levying officer who conducted the sale shall serve notice of the right of redemption on the judgment debtor. Service

shall be made personally or by mail. The notice of the right of redemption shall indicate the applicable redemption period.

SEC. 56.6. Section 729.060 is added to the Code of Civil Procedure, to read:

729.060. (a) A person who seeks to redeem the property shall deposit the redemption price with the levying officer who conducted the sale before the expiration of the redemption period. If a successor in interest to the judgment debtor seeks to redeem the property, the successor in interest shall, at the time the redemption price is deposited, file with the levying officer either (1) a certified copy of a recorded conveyance or (2) a copy of an assignment or any other evidence of the interest verified by an affidavit of the successor in interest or of a subscribing witness thereto.

(b) The redemption price is the total of the following amounts, less any offset allowed under subdivision (c).

(1) The purchase price at the sale.

(2) The amount of any assessments or taxes and reasonable amounts for fire insurance, maintenance, upkeep, and repair of improvements on the property.

(3) Any amount paid by the purchaser on a prior obligation secured by the property to the extent that the payment was necessary for the protection of the purchaser's interest.

(4) Interest on the amounts described in paragraphs (1), (2), and (3) at the rate of interest on money judgments from the time such amount was paid until the date the deposit is made.

(c) Rents and profits from the property paid to the purchaser or the value of the use and occupation of the property to the purchaser may be offset against the amounts described in subdivision (b).

SEC. 56.7. Section 729.070 is added to the Code of Civil Procedure, to read:

729.070. (a) If the purchaser and the person seeking to redeem the property disagree on the redemption price or as to whether the person is entitled to redeem the property, or if the purchaser refuses the tender of the redemption price pursuant to Section 729.080, the person seeking to redeem may file a petition with the court for an order determining the redemption price or whether the person is entitled to redeem the property. The petition shall be filed before the expiration

of the redemption period. At the time the petition is filed, the petitioner shall deposit the undisputed amount of the redemption price with the levying officer, if deposit has not previously been made, and give written notice to the levying officer of the filing of the petition.

(b) The petition shall be in writing and shall include the following statements:

(1) The amounts demanded to which the person seeking to redeem objects and the reasons for the objection.

(2) Any amounts offset to which the purchaser objects and the justification for such offset.

(3) The status of the petitioner that qualifies the petitioner to redeem the property. A copy of the papers required by subdivision (a) of Section 729.060 shall be filed with the petition.

(c) The hearing on the petition shall be held not later than 20 days after the date the petition was filed unless continued by the court for good cause.

(d) Not less than 10 days before the hearing, the person seeking to redeem the property shall personally serve on the purchaser a copy of the petition together with a notice of the time and place of the hearing.

(e) At the hearing on the petition, the person seeking to redeem the property has the burden of proof.

(f) At the conclusion of the hearing, the court shall determine by order the amount required to redeem the property. The determination shall be made upon affidavit or evidence satisfactory to the court.

(g) If an amount in addition to that deposited with the levying officer is required to redeem the property, the person seeking to redeem shall, within 10 days after the issuance of the order, pay such additional amount to the levying officer.

SEC. 56.8. Section 729.080 is added to the Code of Civil Procedure, to read:

729.080. (a) If the redemption price is not deposited pursuant to Section 729.060 before the expiration of the redemption period, or if no additional deposit is made pursuant to subdivision (g) of Section 729.070 before the expiration of the time therein provided, the levying

officer who conducted the sale shall promptly execute and deliver to the purchaser a deed of sale that complies with the requirements of Section 701.670.

(b) If the person seeking to redeem the property deposits the redemption price pursuant to Section 729.060 or 729.070 during the redemption period, the levying officer shall tender the deposit to the purchaser. If the purchaser accepts the tender or if the redemption price determined by court order is tendered, the levying officer shall promptly execute and deliver a certificate of redemption to the person seeking to redeem and shall immediately thereafter record a duplicate of the certificate in the office of the recorder of the county where the property is located.

(c) Tender of the redemption price determined by court order or agreed upon by the purchaser and the person seeking to redeem the property is equivalent to payment. If the tender is refused, the levying officer shall deposit the amount tendered with the county treasurer of the county where the property is located, payable to the order of the purchaser. If the amount deposited is not claimed by the purchaser, or the legal representative of the purchaser, within five years after the deposit is made, by making application to the treasurer or other official designated by the county, it shall be paid into the general fund of the county.

(d) Except as provided in subdivision (e), upon redemption the effect of the sale is terminated and the person who redeemed the property is restored to the estate therein sold at the sale.

(e) Liens extinguished by the sale as provided in Section 701.630 do not reattach to the property after redemption and the property that was subject to the extinguished lien may not be applied to the satisfaction of the claim or judgment under which the lien was created.

SEC. 56.9. Section 729.090 is added to the Code of Civil Procedure, to read:

729.090. (a) From the time of the sale until a redemption, the purchaser is entitled to receive from the person in possession the rents and profits from the property or the value of the use and occupation of the property.

(b) Notwithstanding subdivision (a), the purchaser is liable to the person who redeems for any rents or profits that have been received by the purchaser pursuant to subdivision (a).

(c) The purchaser, from the time of sale until redemption, is entitled to enter the property during reasonable hours to repair and maintain the premises and is entitled to an order restraining waste on the property from the court. Such order may be granted with or without notice in the discretion of the court.

Amendment 14

On page 64, between lines 17 and 18, insert:

(5) For the purpose of subdivision (4), a secured party shall be deemed not to have knowledge of a judgment lien on personal property acquired pursuant to Section 697.510 of the Code of Civil Procedure until the time the judgment creditor serves a copy of the notice of judgment lien on the secured party personally or by mail pursuant to Chapter 4 (commencing with Section 684.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure. If service on the secured party is by mail, it shall be sent to the secured party at the address shown in the financing statement or security agreement.

SEC. 82.7. Section 9304 of the Commercial Code is amended to read:

9304. (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subdivisions (4) ~~and~~ (5) and (7) of this section and subdivisions (2) and (3) of Section 9306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected

by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subdivision (3) of Section 9312; or

(b) Delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subdivisions (4) and (5) perfection depends upon compliance with applicable provisions of this division.

(7) If an instrument claimed as proceeds (other than cash proceeds) under Section 9306 is in the custody of a levying officer, a secured party may perfect a security interest in such instrument by filing a third-party claim with the levying officer pursuant to Chapter 3 (commencing with Section 720.210) of Division 4 of Title 9 of Part 2 of the Code of Civil Procedure within the 10-day period allowed under Section 9306.

SEC. 82.8. Section 9306 of the Commercial Code is amended to read:

9306. (1) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than

a party to the security agreement. Money, checks, deposit accounts, and the like are "cash proceeds." All other proceeds are "noncash proceeds."

(2) Except where this division otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor unless

(a) A filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or

(b) A filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(c) The security interest in the proceeds is perfected before the expiration of the 10-day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this division for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds

(a) In identifiable noncash proceeds and in a separate deposit account containing only proceeds;

(b) In identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) In identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) In all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is

(1) Subject to any right of setoff; and

(ii) Limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subdivision (4).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale, for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under Section 9308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

(6) Cash proceeds retain their character as cash proceeds while in the possession of a levying officer pursuant to Title 6.5

(commencing with Section 481.010) or Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

Amendment 15

On page 64, between lines 37 and 38, insert:

SEC. 83.5. Section 9504 of the Commercial Code is amended to read:

9504. (1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the division on sales (Division 2). The proceeds of disposition shall be applied in the order following to

(a) The reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorney's fees and legal expenses incurred by the secured party;

(b) The satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed and to the satisfaction of any subordinate attachment lien or execution lien pursuant to subdivision (b) of Section 701.040 of the Code of Civil Procedure if notice of the levy of execution is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus except as provided in Section 701.040 of the Code of Civil Procedure, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides and the provisions of Section 701.040 of the Code of Civil Procedure relating to payment of proceeds

and the liability of the secured party apply only if the security agreement provides that the debtor is entitled to any surplus .

(3) A sale or lease of collateral may be as a unit or in parcels, at wholesale or retail and at any time and place and on any terms, provided the secured party acts in good faith and in a commercially reasonable manner. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the secured party must give to the debtor, if he has not signed after default a statement renouncing or modifying his right to notification of sale, and to any other person who has a security interest in the collateral and who has filed with the secured party a written request for notice giving his address (before that secured party sends his notification to the debtor or before debtor's renunciation of his rights), a notice in writing of the time and place of any public sale or of the time on or after which any private sale or other intended disposition is to be made. Such notice must be delivered personally or be deposited in the United States mail postage prepared addressed to the debtor at his address as set forth in the financing statement or as set forth in the security agreement or at such other address as may have been furnished to the secured party in writing for this purpose, or, if no address has been so set forth or furnished, at his last known address, and to any other secured party at the address set forth in his request for notice, at least five days before the date fixed for any public sale or before the day on or after which any private sale or other disposition is to be made. Notice of the time and place of a public sale shall also be given at least five days before the date of sale by publication once in a newspaper of general circulation published in the county in which the sale is to be held. Any public sale shall be held in a county or place specified in the security agreement, or if no county or place is specified in the security agreement, in the county in which the collateral or any part thereof is located or in the county in which the debtor has his residence or chief place of business, or in the county in which the secured party has his residence or a place of business if the debtor does not have a residence or chief place of business within this state. If the collateral is located outside of this state or has been removed from this state, a public sale may be held in the locality in which the

collateral is located. Any public sale may be postponed from time to time by public announcement at the time and place last scheduled for the sale. The secured party may buy at any public sale and if the collateral is customarily sold in a recognized market or is the subject of widely or regularly distributed standard price quotations he may buy at private sale. Any sale of which notice is delivered or mailed and published as herein provided and which is held as herein provided is a public sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interest even though the secured party fails to comply with the requirements of this chapter or of any judicial proceedings

(a) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) In any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this division.

Amendment 16

On page 95, between lines 14 and 15, insert:

SEC. 141.1. Section 205 of the Probate Code is amended to read:

205. (a) Except as provided by Section 951.1, upon the death of a married person, the surviving spouse is personally liable for the debts of the deceased spouse chargeable against the community property and the debts of the deceased spouse chargeable against the separate property of the deceased spouse to the extent such separate property is characterized as quasi-community property under Section 201.5 by the

provisions of Title 8 (commencing with Section 5100) of Part 5 of Division 4 of the Civil Code, unless the interests of both spouses in the community property or quasi-community property, or both, are administered under Division 3 (commencing with Section 300). The personal liability shall not exceed the value at the date of death, less the amount of any liens and encumbrances, of the interest of the surviving spouse (1) in the community property immediately prior to the death and (2) in quasi-community property arising by virtue of the death which is not exempt from execution enforcement of a money judgment plus the interest of the deceased spouse in such property passing to the surviving spouse without administration.

(b) If proceedings are commenced in this state for the administration of the estate of the deceased spouse and notice to creditors has been given by the personal representative, any action upon the liability of the surviving spouse pursuant to subdivision (a) shall be barred to the same extent as provided for claims under Article 1 (commencing with Section 700) of Chapter 12 of Division 3 except as to the following:

(1) Creditors who had commenced judicial proceedings for the enforcement of the debts and had served the surviving spouse with process prior to the date of the last publication of the notice to creditors.

(2) Creditors who secure the acknowledgment in writing of the liability of the surviving spouse for the debts.

(3) Creditors who file a timely claim in the proceedings.

(c) Except as provided by subdivision (b), any debt described in subdivision (a) may be enforced against the surviving spouse in the same manner as it could have been enforced against the deceased spouse if the deceased spouse had not died. In any action based upon the debt, the surviving spouse may assert any defenses, counterclaims, or setoffs which would have been available to the deceased spouse if the deceased spouse had not died.

SEC. 141.3. Section 660 of the Probate Code is amended to read:

660. (a) Until the inventory is filed and for a period of 60 days thereafter or such other period as is ordered by the court for good cause, the decedent's surviving spouse and minor children are entitled to remain in possession of the family dwelling, the wearing apparel of

the family, the household furniture and other property of the decedent exempt from execution enforcement of a money judgment .

(b) Upon the filing of the inventory or at any subsequent time during the administration, the court, on petition therefor, may in its discretion:

(1) Set apart to the surviving spouse, or, in case of his or her death, to the minor children of the decedent, all or any part of the property of the decedent exempt from execution enforcement of a money judgment other than the dwelling.

(2) Select and set apart one homestead in the manner provided in this article.

SEC. 141.5. Section 663 of the Probate Code is amended to read:

663. (a) Property of the decedent set apart as a homestead is liable for claims against the estate of the decedent, subject to the homestead right. The homestead right in property of the decedent is liable for claims that are secured by liens and encumbrances on the property at the time of the decedent's death but is exempt to the extent of the dwelling homestead exemption provided by Article 4 (commencing with Section 704.710) of Chapter 4 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure as to any claim that would have been subject to a dwelling such homestead exemption at the time of the decedent's death.

(b) The homestead right in the property of the decedent is not liable for claims against the person for whose use the homestead is set apart.

(c) Property of the decedent set apart as a homestead is liable for claims against the testate or intestate successors of the decedent or other successors to the property after administration, subject to the homestead right.

SEC. 141.7. Section 704.2 of the Probate Code is amended to read:

704.2. A claim may be filed by the surviving spouse or the personal representative, guardian of the estate, or conservator of the estate of the surviving spouse for the payment of the debts of the deceased spouse described in Section 205. The claim must be filed prior

to the filing of a petition for final distribution. It shall set forth the reason why the debts are not barred by subdivision (b) of Section 205 and a statement whether the debts remain unpaid or have been paid by the surviving spouse. If the surviving spouse is personally liable for the debts, the claim shall also include an inventory of the separate property of the surviving spouse and any community property not administered in the estate and a statement of the value of the property less the amount of the liens and encumbrances upon the property as of the date of death of the deceased spouse. The statement may identify any property which is exempt from ~~execution~~ enforcement of a money judgment .

SEC. 141.9. Section 704.4 of the Probate Code is amended to read:

704.4. If any community property is administered in the estate, the surviving spouse or the personal representative, guardian of the estate, or conservator of the estate of the surviving spouse may file a claim against the estate for the payment of the debts of the surviving spouse for which the community property is liable. The claim must be filed prior to the filing of a petition for final distribution. It shall include a statement whether the debts remain unpaid or have been paid by the surviving spouse. It shall also include an inventory of the separate property of the surviving spouse and any community property not administered in the estate and a statement of the value of the property less the amount of the liens and encumbrances upon the property as of the date of death of the deceased spouse. The statement may identify any property which is exempt from ~~execution~~ enforcement of a money judgment .