

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

*proposing*

The Enforcement of Judgments Law

October 1980

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Room D-2  
Palo Alto, California 94306

# THE CALIFORNIA LAW REVISION COMMISSION

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The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 15 of the Commission's *Reports, Recommendations, and Studies* which is scheduled to be published late in 1981.

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*Ex Officio*

September 15, 1980

To: THE HONORABLE EDMUND G. BROWN JR.  
*Governor of California* and  
THE LEGISLATURE OF CALIFORNIA

The California Law Revision Commission was authorized by Resolution Chapter 202 of the Statutes of 1957 to study "attachment, garnishment, and property exempt from execution." The Legislature has expanded this directive, most recently by Resolution Chapter 45 of the Statutes of 1974, so that the Commission is now authorized to study the entire field of creditors' remedies.

During the past 10 years, the Commission has submitted and the Legislature has enacted many statutes dealing with particular aspects of the creditors' remedies study. In addition, during the last five years, the Commission has devoted a significant portion of its time and resources to the preparation of this recommendation for a new comprehensive enforcement of judgments statute.

In March 1979, the Commission distributed a tentative recommendation on this subject in typewritten form. As a result of the comments received from interested persons and organizations, many changes have been made in that tentative recommendation. Because of these substantial changes, this recommendation has been designated a tentative recommendation to indicate that the Commission solicits comments from interested persons and organizations for revisions in its proposed legislation. Nevertheless, the Commission will seek to obtain enactment of the proposed legislation at the 1981-82 session of the California legislature.

Many persons—too many to mention individually—contributed to the development of this recommendation. Some attended Commission meetings and gave generously of their time and expertise. Others submitted valuable written comments. The Commission is especially indebted to Professor Stefan Riesenfeld, its principal consultant on this project, and to Professor Charles Adams, its consultant on the homestead exemption. Particularly useful assistance was provided by Mr. Carl Olsen, County Clerk and Clerk of the Superior Court, City and County of San Francisco, and Captain Martin LeFevre, Santa Clara County Sheriff's Department. Several committees of the State Bar have aided in this project. These committees sent written comments and their representatives attended Commission meetings.

A contract with the office of the Legislative Counsel made available the services of Susan Stein, an exceptionally able and dedicated employee of that office, on a short term basis to assist the Law Revision Commission in the preparation of this publication. The Commission wishes to take this opportunity to express its gratitude to the Legislative Counsel and Miss Stein for their assistance.

Respectfully submitted,

BEATRICE P. LAWSON  
*Chairperson*



## PREFACE

This report contains the new Enforcement of Judgments Law recommended by the Commission to replace the existing title of the Code of Civil Procedure that governs this matter.

Two bills are recommended in this report. These bills were introduced by Assemblyman Alister McAlister at the 1981-82 Regular Session. The first bill—Assembly Bill No. 707—is the proposed new Enforcement of Judgments Law. The second bill—Assembly Bill No. 798—makes the necessary conforming revisions (additions, amendments, and repeals) of other statutes that will be required upon enactment of the proposed Enforcement of Judgments Law.

The full text of each section of the new Enforcement of Judgments Law bill and the text of the significant sections of the bill to make conforming revisions are set out in this report. The Comment to each section of each bill is also set out.

The recommended statute sections and the Comments to them are drafted as if both bills were enacted. Thus, when a reference is made to a section by another section, or by a Comment, the reference is to the section as it would exist if both of the bills were enacted.

The disposition of each section of the existing Code of Civil Procedure title governing enforcement of judgments is noted in the Comment to the section set out in the Appendix to this report. The Comment to each section of the proposed Enforcement of Judgments Law (set out following the text of the section) includes a reference to the comparable provisions, if any, of the existing statutes.



## SUMMARY OF REPORT

The proposed comprehensive statute governs the enforcement of judgments (money judgments, judgments for the possession or sale of real or personal property, and judgments enforceable only by contempt). It replaces the existing title of the Code of Civil Procedure relating to enforcement of judgments. The recommended legislation also makes conforming revisions in other code provisions.

The proposed law retains much of the substance of existing law but makes important substantive changes and many minor and technical revisions. The operative date of the proposed law is deferred until January 1, 1983. Provisions governing the transition to the new law are included.

The more important changes that would be made by the proposed law are indicated below.

### **Time for Enforcement of Judgments**

The proposed law provides a 10-year period of enforceability running from the date of entry of the judgment. The 10-year period is not tolled for any reason, but the proposed law provides a simple procedure for extending the period of enforceability. The judgment may be renewed by filing an application with the court clerk during the period of enforceability. The debtor is given 30 days after service of a copy of the application within which to object to the renewal. A renewal permits enforcement of the judgment for another 10 years running from the date the application for renewal is filed. A renewed judgment may be renewed for additional 10-year periods using the same procedure. This new procedure is drawn from the existing procedure for entry of a California judgment based on a sister state judgment.

The statutory scheme described above does not apply to judgments, orders, or decrees under the Family Law Act. The proposed law permits enforcement of court-ordered child or spousal support payments without prior court approval for amounts that are not more than 10 years

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The statutory scheme described above does not apply to judgments, orders, or decrees under the Family Law Act. The proposed law permits enforcement of court-ordered child or spousal support payments without prior court approval for amounts that are not more than 10 years

overdue and permits the court to make an order permitting enforcement of amounts more than 10 years overdue.

### **Interest on Judgments**

The proposed law provides a 10 percent rate of interest on judgments. The existing rate is seven percent.

Where the judgment is satisfied in full pursuant to a writ, interest ceases to accrue under the proposed law when proceeds are received by the levying officer. Interest ceases to accrue under existing law when the levy occurs.

The proposed law permits the creditor to collect interest on costs that have been allowed by memorandum or motion. Whether interest is allowed on costs is unclear under existing law.

### **Judgment Lien on Real Property**

The proposed law continues the existing rule that a judgment lien on real property (obtained by recording an abstract or certified copy of a money judgment) is good for 10 years from the entry of the judgment and adds a provision that permits the lien to be extended for additional 10-year periods by recording a notice of renewal of judgment.

Under existing law, a judgment lien on real property reaches only vested ownership interests in land. The proposed law expands the coverage of the lien to leasehold interests (with a term of at least two years remaining), equitable interests (other than the interest of a trust beneficiary), and contingent interests. By eliminating declared homesteads, the proposed law permits the creation of a judgment lien on property used as a dwelling, but the lien is subject to the claimed exemption for a dwelling.

### **Judgment Lien on Personal Property**

The proposed law adds a new procedure for obtaining a judgment lien on certain types of business property. The lien is obtained by filing a notice of judgment lien with the Secretary of State in the same manner as a security interest

is perfected under the Commercial Code by filing a financing statement. The lien attaches to accounts receivable, chattel paper, equipment, farm products, inventory, and negotiable documents of title, but does not reach a vehicle or boat that is required to be registered. The lien extends to after-acquired property and identifiable cash proceeds of property subject to the lien.

### **Levy Under Writ of Execution**

The proposed law includes specific provisions prescribing the manner of levy on particular types of property. The existing law incorporates by reference the manner of levy under writs of attachment.

The proposed law sets forth a procedure for obtaining a court order permitting levy on property in a private place.

The proposed law provides that the court may issue an order in appropriate cases requiring the debtor to transfer possession of property sought to be levied upon to the levying officer or to transfer to the levying officer evidence of title to property levied upon.

### **Levy on Property Subject to Security Interest**

The proposed law includes provisions designed to minimize the disruption of commercial relationships that might be caused by an execution levy. If a garnishee is making payments to a person other than the judgment debtor, the notice of levy instructs that future payments continue to be made to that person. The issue of the right to such payments may then be settled between the judgment creditor and such payee, depending upon who has priority. If the garnishee is making payments to the judgment debtor, the notice of levy instructs that the future payments be made to the levying officer.

### **Duties of Garnishee**

The proposed law requires the garnishee to furnish a memorandum describing the property of the judgment debtor in the garnishee's possession and the debts owed to the judgment debtor. A garnishee who fails to comply may be liable for the cost of obtaining the required information.

The proposed law requires that the garnishee make prompt payment to the levying officer of debts that are due, and any payments falling due during the one-year lien of execution must be similarly paid. Existing law does not provide for a continuing levy on payments as they fall due.

### **Property Exempt From Enforcement of Money Judgments**

The proposed law makes a number of significant changes in the exemptions allowed under existing law. Other changes of a minor or technical nature also are made. The most significant changes are indicated below.

*Dwelling exemptions.* The coverage of the dwelling exemption has been extended to cover any type of property constituting a dwelling, and any type of interest in the property, thus eliminating the provision of existing law that precludes an exemption claim in a leasehold of less than 30 years. The exemption for family units and persons over 65 is increased from \$45,000 to \$60,000.

The confusing and overlapping procedures for asserting a dwelling exemption under existing law are replaced in the proposed law by an exclusively post-levy procedure; the declared homestead system is abandoned.

In the case of a real property dwelling, the creditor is required to apply for an order permitting sale of the dwelling and the court then determines whether the property is exempt and the amount of the exemption. In the case of a personal property dwelling, the debtor must apply for an exemption within 10 days after notice of levy. Under this procedure, the exemption may be claimed even if a judgment lien has been recorded on the property if the dwelling qualified for the exemption at the time of recording.

If the property is offered for sale on execution, the minimum bid must exceed the exempt amount. Lienholders superior to the judgment creditor are not paid off, but subordinate voluntary liens may resort to the otherwise exempt proceeds. If the minimum bid is not received at the sale, the proposed law makes the creditor liable for costs and attorney's fees and bars levy on the homestead by that creditor for one year.

Proceeds from a voluntary or involuntary sale are exempt in the amount of the homestead exemption for a period of 18 months, in place of the six-month proceeds exemption of existing law.

*Household and personal effects.* Instead of listing specific household items that are exempt from execution, the proposed law exempts furnishings, appliances, wearing apparel, provisions, and other personal effects “ordinarily and reasonably necessary for an average household” and personally used by the debtor and the debtor’s family at their principal residence. This revision eliminates the “station in life” test and will permit the creditor to reach, for example, valuable antique furniture.

A separate exemption is provided for jewelry, heirlooms, works of art, and other personal effects if the court determines that the “reasonable sentimental or psychological value to the judgment debtor or the spouse or a dependent of the judgment debtor outweighs the right of the judgment creditor to enforce the judgment to such an extent that it would be clearly inequitable to subject the property to enforcement.” This exemption will permit the court to exempt, for example, a wedding ring or inherited property of great sentimental value.

*Motor vehicles.* The motor vehicle exemption is raised from \$500 to \$1,000 equity to take account of increases in motor vehicle prices. A second motor vehicle may be exempt under the proposed law only if it is necessary to enable both spouses to work. The 90-day proceeds exemption is extended to proceeds from a voluntary sale or from insurance.

*Tools of a trade.* The proposed law continues the existing \$2,500 exemption for the debtor’s equity in tools of a trade and permits the debtor’s spouse to claim a second \$2,500 exemption if the spouse qualifies. The proposed law also exempts proceeds from sale or insurance for 90 days.

*Deposit accounts.* Existing law exempts \$1,000 in a savings and loan association account and \$1,500 in a credit union account. The proposed law cuts these exemptions in half but adds a \$250 exemption for bank accounts. Each



exemption would be reduced to the extent there are other exempt funds traced into the account. Both the debtor and the debtor's spouse may claim an exemption under the proposed law.

*Life insurance.* The proposed law protects the cash surrender value of a life insurance policy but permits the creditor to reach the loan value in excess of \$4,000. Each spouse may claim this exemption. The existing provision exempting life insurance proceeds to the extent they derive from a \$500 annual premium is replaced with a provision exempting the amount reasonably necessary for the support of the insured and the spouse and dependents of the insured or decedent.

*Disability and health benefits.* The existing exemption for disability and health benefits to the extent they derive from a \$500 annual premium is replaced by a total exemption, except as against a provider of health care whose claim is the basis on which the benefits are paid.

*Damages for personal injury or wrongful death.* A new exemption is provided for damages for personal injury or wrongful death to the extent necessary for the support of the debtor or the debtor's family.

*Strike benefits.* A new exemption is provided for strike benefits paid by a union.

*Charitable aid.* The exemption for welfare benefits and similar governmental aid is extended to aid provided by a charitable organization.

*Prisoner's trust funds.* The proposed law raises the prisoner's trust fund exemption from \$40 to \$1,000 and also permits the debtor's spouse to claim the exemption.

*Cemetery plots.* The one-quarter acre cemetery plot exemption is replaced by an exemption of a plot for the debtor and the debtor's spouse. The proposed law also recognizes the exemption of family plots from enforcement of money judgments.

*Earnings.* The wage garnishment provisions of existing law provide for a hardship exemption which permits the debtor to protect more of his or her earnings than would otherwise be exempt. However, the hardship exemption is not allowed if the judgment is based on a debt for "common

necessaries of life.” The proposed law permits the court to allow a hardship exemption even though the debt was incurred for the common necessities of life if the debtor does not own an interest (excluding a lease of less than five years) in real or personal property occupied as a principal dwelling. This new provision should help equalize the exemptions available to renters with those available to homeowners. This new provision does not apply if the debt was incurred for rent.

### **Exemptions Determined Under Law in Effect When Lien Created**

The proposed law provides for the determination of exemptions under the law in effect at the time the creditor’s lien attached to the property. Decisions under existing law hold that the exemptions in effect at the time an obligation is incurred apply when a judgment on that obligation is enforced.

### **Tracing Exempt Amounts**

Decisions under existing law permit the continuation of an exemption to the extent that exempt proceeds can be traced into bank accounts and as cash or checks. The proposed law codifies these decisions and includes a general provision that provides for tracing by means of the lowest intermediate balance principle unless the exemption claimant or the creditor shows that some other method would be more appropriate under the circumstances of the case.

### **Exception to Exemptions in Support Cases**

The proposed law contains a general provision permitting the court to apply property to a judgment for child or spousal support, notwithstanding that an exemption is claimed and otherwise would be allowed. This general provision is derived from the exception applicable to the retirement benefits exemption under existing law.

## **General Exemption Procedures**

The proposed law adds a general requirement that a person claiming an exemption based on need provide a detailed financial statement to the court and the creditor. If the debtor claims an exemption for certain types of property, such as a motor vehicle, tools of a trade, deposit accounts, or life insurance, the proposed law requires that the debtor list all other such property so that the court can determine the property to which the exemption is to be applied.

## **Execution Sale Procedure**

Certain types of property are particularly susceptible to sacrifice sales, such as accounts receivable, chattel paper, general intangibles, money judgments, and instruments. The proposed law encourages collection rather than sale in these cases by precluding sale unless the creditor first serves the debtor with a notice of intended sale. The debtor may apply to the court within 10 days after service for an order to prevent sale of the property. Upon such application, the court may make an order appropriate under the circumstances of the case, such as an order permitting an execution sale or a sale under specified conditions or an order requiring the debtor to assign the debt to the creditor for collection. If the debtor fails to make the application within the 10 days allowed, the property may be sold.

In order to encourage outside bidding at an execution sale, the proposed law permits the highest bidder at the sale to treat a bid of over \$5,000 as a credit transaction. At the time of sale, the bidder must pay \$5,000 or 10 percent of the amount bid, whichever is greater. The balance of the amount bid (with additional costs and interest on the balance) must be paid within 30 days.

A general provision in the proposed law—derived from existing homestead law—precludes the sale of any property at an execution sale if the amount bid does not exceed the total of superior claims that are required by statute to be satisfied (preferred labor claims), third-party claims that have been satisfied by the judgment creditor, and any

applicable proceeds exemption. The proposed law does not require the satisfaction of superior interests out of the proceeds of the execution sale, and in the case of a homestead the proposed law precludes acceleration of obligations secured by the property.

### **Distribution of Proceeds of Execution Sale**

The proposed law includes a new procedure designed to resolve disputes concerning the proper distribution of proceeds of sale or collection before the proceeds are actually distributed.

### **Repeal of Statutory Redemption**

The right of statutory redemption is the right of the judgment debtor and junior lienholders to redeem real property within one year after it is sold at an execution or foreclosure sale. One effect of the redemption right is that the purchaser of real property is forced to take a title which is defeasible for a year. The proposed law repeals the redemption right and makes the sale absolute. However, in order to give the debtor an opportunity to save the property or obtain a higher price for it at the sale, a grace period of 120 days is provided between serving notice of levy on the debtor and giving notice of sale of the real property.

### **Miscellaneous Procedures for Enforcement of Money Judgments**

The proposed law continues the existing special procedures for enforcement of money judgments—examinations, creditors' suits, interrogatories, charging orders, receivers, liens in pending actions, and procedures for collecting from a public entity that owes money to the debtor—and makes several of these special procedures more readily available by eliminating the traditional prerequisite of resort to execution.

*Examinations.* Under the proposed law, a third person owing money to the debtor may not be examined unless the debt is \$250 or more. Existing law sets this amount at \$50.

The proposed law allows the creditor to recover attorney's fees if the person served with an order to appear fails without good cause to appear. The debtor is also to be given notice of an examination of a third person.

The proposed law makes clear that the debtor may obtain a determination of exemption claims in the proceedings before the court. The proposed law gives the court discretion to determine an adverse claim of a third person made in examination proceedings; the court does not have this authority under existing law.

*Creditors' suits.* The proposed law makes clear the statute of limitations applicable to creditors' suits. The debtor is required to be joined in a creditor's suit under the proposed law but is not an indispensable party.

*Receivers.* The proposed law makes clear that a receiver may be appointed on direct application to the court where appropriate under the circumstances of the particular case. The proposed law also provides for the appointment of receivers to sell alcoholic beverage licenses, which are unreachable under existing law.

*Lien in pending action.* Existing law permits the judgment creditor to obtain a lien in a pending action by application to the court where the action is pending. The proposed law permits the lien to be obtained merely by filing a notice of lien in the action.

The proposed law makes clear that the lien extends to the right of the debtor to recover property under the judgment in the pending action. Existing law covers money and it is unclear whether property is covered.

The proposed law permits the court to approve a settlement without the consent of the creditor.

Under existing law, the method of enforcing the lien is not clear. The proposed law permits the court, on application of the creditor or a party to the action, to order the money or property applied to the satisfaction of the lien. The proposed law also adds a procedure for determining any exemption claim.

*Assignment order.* The proposed law adds a new procedure that permits the creditor to apply to the court for an order requiring the debtor to assign rights to future

payments, such as future rents, commissions, and federal wages.

*Interest of trust beneficiary.* The proposed law includes a procedure that permits the creditor to reach the debtor's interest in a trust that is subject to the enforcement of the judgment.

*Contingent future interests.* Under existing law, a future interest that is contingent is not subject to enforcement of a money judgment. The proposed law permits the court, on application of the creditor, to apply a contingent interest to the satisfaction of a judgment by such means as are appropriate under the circumstances of the case.

### **Third-Party Claims**

The proposed law makes significant revisions in the law governing the third-party claims procedure.

The proposed law makes the third-party claims procedure applicable to claims to real property. Existing law limits the third-party claims procedure to claims to personal property, and a claimant to real property must usually resort to an action to quiet title.

Under existing law, the creditor may file an undertaking in response to the third-party claim to prevent the release of the property. The undertaking is required to be twice the amount of the property or, as an alternative in the case of a security interest, twice the amount of the claim. The proposed law eliminates the need to value the property or the claim and the attendant disputes by providing that the creditor's undertaking is to be not less than a flat amount—\$7,500 in superior court and \$2,500 in municipal and justice courts. The third person may obtain the release of the property by filing an undertaking in favor of the creditor in the same amount as the undertaking filed by the creditor. As an alternative, the third person may apply to the court for an order increasing the amount of the undertaking to an amount sufficient to compensate the third person for any damages that are likely to result from the levy should the third person prevail.

The proposed law requires that the debtor be given notice of the third-party claim in order to guard against an incorrect determination of the respective interests of the parties.

The burden of proof at a hearing on a third-party claim by a secured party under the proposed law is shifted to the creditor in recognition of the presumption of validity of security interests.

The proposed law eliminates the provisions of the existing Attachment Law which create liability for wrongful attachment of property of third persons. Under the proposed law, a third person whose property is levied upon under a writ of attachment may make a third-party claim or may resort to common law remedies.

### **Service of Writs, Notices, and Other Papers**

The proposed law makes clear when service on the creditor's attorney or the debtor's attorney is permitted or required.

The proposed law permits the debtor or creditor to serve a paper (other than a writ or notice of levy) that otherwise would be served by the levying officer if the levying officer gives permission.

The proposed law expands the existing authority of a registered process server. A registered process server is given new authority to make a levy upon (1) real property, (2) growing crops, (3) timber to be cut, (4) minerals and the like to be extracted, and (5) personal property used as a dwelling where levy is accomplished by service or posting rather than by taking possession of the property. The duties to be performed by the registered process server and by the levying officer when a levy is made by a registered process server are clarified.

### **Costs of Enforcement**

The proposed law includes a new provision which permits judicial review of costs incurred by the levying officer in enforcing the judgment.

**Enforcement by Assignee of Judgment**

The proposed law codifies the requirement of existing practice that an assignee of a judgment may enforce the judgment only if the assignee has become an assignee of record. A new provision permits an assignee to become an assignee of record by filing with the court clerk an acknowledgment of assignment, but this does not limit any other method by which the assignee may become an assignee of record. New rules are included to determine priorities among two or more assignees of the same judgment.

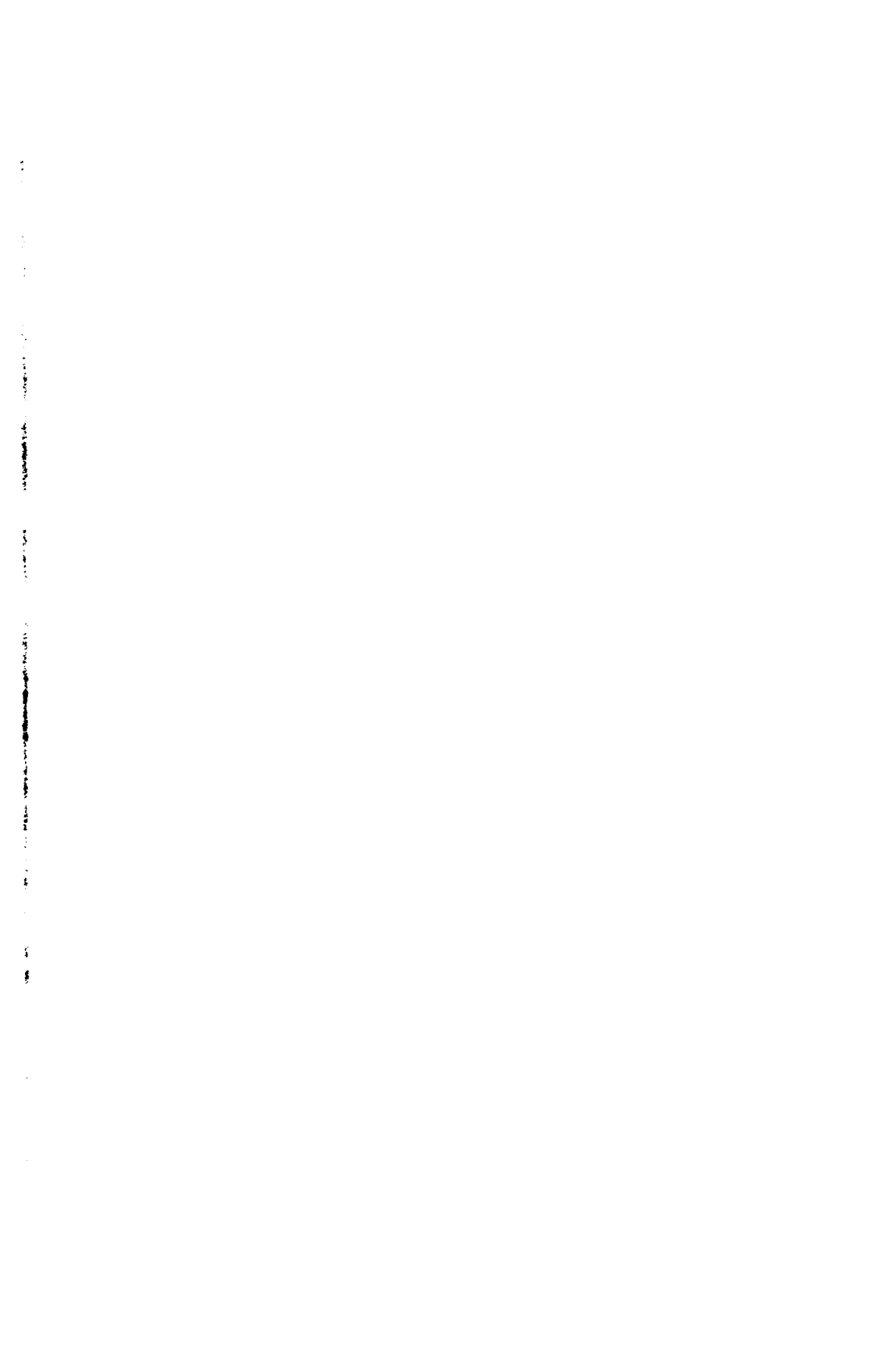
**Satisfaction of Judgment**

The proposed law clarifies the provisions governing acknowledgment of full satisfaction of a judgment. New procedures are added (1) for acknowledgment of partial satisfaction and (2) for acknowledgment of satisfaction of matured installments under an installment judgment.

**Forms and Judicial Council Rules**

Statutory forms are included in the proposed law but may be superseded by Judicial Council forms. The Judicial Council is given authority to make rules governing practice and procedure under the proposed law.





# RECOMMENDATION

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# PROPOSED ENFORCEMENT OF JUDGMENTS LAW

## INTRODUCTION

The law relating to enforcement of judgments has long been in need of a thorough study and revision. Many provisions in existing law date from the 1872 enactment of the Code of Civil Procedure<sup>1</sup> and some have remained largely unchanged since 1851, and piecemeal amendments have accumulated over the last century. As a result, the statutory law falls far below the standards of the modern California codes. There are long and complex sections that are difficult to read and more difficult to understand. There are duplicating and inconsistent provisions. There are provisions that are obsolete and inoperative. Judicial decisions interpreting the statutory language are conflicting and obscure. Important matters are not covered at all in the existing statute or are covered inadequately. The principles and terminology of the Commercial Code are not recognized in the statutes governing enforcement of judgments, even though portions of the Commercial Code deal with the same or related subject matter.

The proposed law is a new comprehensive statute that will provide a full and clear statutory treatment of the law governing enforcement of judgments.<sup>2</sup> It will streamline procedures to the extent practicable in an effort to reduce the procedural costs to the judicial system and the parties and will provide better remedies for creditors and protections for debtors where needed. The more important changes in existing law are discussed below. Other changes

<sup>1</sup> Unless otherwise indicated, all statutory citations in this recommendation are to the Code of Civil Procedure.

<sup>2</sup> The proposed law will replace existing Title 9 of Part 2 of the Code of Civil Procedure (Sections 631-724e). Existing Title 9 deals with the enforcement of money judgments, judgments for the possession or sale of real or personal property, and judgments enforceable by contempt. Its provisions are also available for the enforcement of a tax liability in a situation where the state is authorized to issue a prejudgment collection warrant. For the most part, however, Title 9 is concerned with enforcement of money judgments. The scope of the new comprehensive statute is essentially the same as that of existing law. The proposed law separates the provisions pertaining to the enforcement of various types of judgments and clarifies the extent to which general provisions apply to nonmoney judgments. Under existing law, it is not always clear which provisions apply to which types of judgments.

are noted in the Comments following the sections of the proposed legislation.

The operative date of the proposed law is deferred until January 1, 1983. This will allow a sufficient time for interested persons to familiarize themselves with the new law and for the Judicial Council to prepare any necessary forms.

## PERIOD FOR ENFORCEMENT OF JUDGMENTS AND RENEWAL OF JUDGMENTS

### Existing Law

Under existing law, a writ or order for the enforcement of a judgment may be obtained as a matter of right within 10 years after the entry of the judgment.<sup>3</sup> The time during which the enforcement of the judgment is stayed or enjoined is excluded from the computation of the 10 years within which the writ or order may issue.<sup>4</sup> The judgment may be enforced after 10 years in the discretion of the court upon motion by the judgment creditor with notice to the judgment debtor.<sup>5</sup> The judgment may also be renewed by bringing an action on the judgment if the 10-year statute of limitations has not run.<sup>6</sup> This scheme is a direct descendant

<sup>3</sup> Section 681. Section 681 and its companion provision, Section 685 pertaining to issuance after 10 years, govern issuance of writs or orders for the enforcement of money judgments and judgments for the possession or sale of property. See, e.g., *Butcher v. Brouwer*, 21 Cal.2d 354, 132 P.2d 205 (1942) (money judgment); *Laubisch v. Roberdo*, 43 Cal.2d 702, 708-09, 713-15, 277 P.2d 9, 13, 16-17 (1954) (judgment for sale of real property); *City of Los Angeles v. Forrester*, 12 Cal. App.2d 146, 148-49, 55 P.2d 277, 278 (1936) (judgment for possession of real property). See also 5 B. Witkin, *California Procedure Enforcement of Judgment* § 68, at 3442, § 199, at 3553 (2d ed. 1971); *Review of 1955 Code Legislation* 101 (Cal. Cont. Ed. Bar 1955). But see Civil Code § 4380 (court has discretion as to manner of enforcement of judgment, order, or decree under Family Law Act).

<sup>4</sup> Section 681.

<sup>5</sup> Section 685. This provision requires the judgment creditor to file an affidavit stating the reasons for failure to enforce the judgment within the 10 years allowed by Section 681. See the cases cited in 5 B. Witkin, *California Procedure Enforcement of Judgment* § 202, at 3555 (2d ed. 1971). There is no fixed time limit for a motion under Section 685. Cases cited in *Long v. Long*, 76 Cal. App.2d 716, 722, 173 P.2d 840, 843 (1946), reveal that execution has been permitted under Section 685 for as much as 20 years after judgment. In *Hatch v. Calkins*, 21 Cal.2d 364, 371, 132 P.2d 210, 214 (1942), the court denied issuance of a writ of execution 29 years after entry of judgment for lack of diligence.

<sup>6</sup> Section 337.5. See *Atkinson v. Adkins*, 92 Cal. App. 424, 426, 268 P. 461, 462 (1928). The statute of limitations does not begin to run until the judgment is final. See *Turner v. Donovan*, 52 Cal. App.2d 236, 126 P.2d 187 (1942). The statute of limitations may be tolled for reasons such as the debtor's absence from the state. See Section 351.

of the common law rules concerning actionability and executability of a money judgment.<sup>7</sup>

## Proposed Law

### Period of Enforcement

The proposed law establishes a 10-year period of enforcement for money judgments and judgments for possession or sale of property, but permits the 10-year period to be extended by renewal of the judgment.<sup>8</sup> A stay of enforcement does not extend the 10-year period. If the judgment is not renewed, it becomes unenforceable at the conclusion of 10 years from its entry and all enforcement proceedings against the judgment debtor must cease.<sup>9</sup> The proposed law does not, however, limit the existing right to renew the judgment by an action on the judgment.<sup>10</sup>

In the case of a money judgment payable in installments,<sup>11</sup> the proposed law codifies case law holding

<sup>7</sup> At common law, a writ of the appropriate type—*leviari facias*, *fieri facias*, or *elegit*—could be issued to enforce a money judgment only for a year and a day after the signing of the judgment. If a writ was not issued within this time, the judgment became dormant and the judgment creditor was required to initiate proceedings to revive the judgment by means of a writ of *scire facias* or to bring an action of debt to renew the judgment. *Scire facias* could be obtained without application to the court for a period of 10 years after judgment. At a later time, the common law developed a rebuttable presumption of payment after 20 years. See Riesenfeld, *Collection of Money Judgments in American Law—A Historical Inventory and a Prospectus*, 42 Iowa L. Rev. 155, 156-59, 172-73 (1957).

<sup>8</sup> See discussion under "Streamlined Renewal Procedure" *infra*.

<sup>9</sup> The rule announced in *Alonso Inv. Corp. v. Doff*, 17 Cal.3d 539, 551 P.2d 1243, 131 Cal. Rptr. 411 (1976), permitting the enforcement of a writ of execution after the expiration of the 10-year period provided by Section 681 if the writ had been timely issued, is not continued in the proposed law. If an enforcement proceeding is in progress when the 10-year period expires, the proposed law permits the enforcement proceeding to continue if the judgment is renewed before the expiration of the 10-year period. In addition, the proposed law makes clear that an otherwise unenforceable judgment may be used as an offset if the judgment was enforceable at the same time that the judgment debtor had a claim against the judgment creditor.

<sup>10</sup> A judgment that has become unenforceable under the proposed law may still be renewed by an action if the 10-year statute of limitations provided by Section 337.5 has not run. This may occur because the statute of limitations does not begin to run until the judgment is final and may be tolled for reasons such as the debtor's absence from the state. See note 6 *supra*. In addition, the proposed law permits the judgment creditor to continue a creditor's suit against a third person holding property of or owing debts to the judgment debtor (and to enforce any judgment obtained in that suit) after the time for enforcement of the original judgment against the judgment debtor has expired. See the discussion in the text at notes 460-463 *infra*.

<sup>11</sup> See, e.g., Code Civ. Proc. §§ 85 (installment payment of money judgments of municipal or justice court), 117 (small claims court judgment), 667.7 (periodic payment of future damages under judgment against provider of health care



that the time for enforcement of each installment begins to run from the time the installment falls due.<sup>12</sup> If an installment judgment is not renewed, the proposed law makes payments due more than 10 years unenforceable, but payments not more than 10 years overdue and future installments are enforceable even though the judgment was entered more than 10 years previously.

The provisions outlined above would not apply to the enforcement of a judgment, order, or decree under the Family Law Act. The proposed law would not affect the existing general rule that the court has discretion as to the manner of enforcement of judgments, orders, and decrees under the Family Law Act.<sup>13</sup> However, the proposed law adds provisions to the Family Law Act to make a judgment, order, or decree for the payment of child or spousal support enforceable by writ of execution without the need for a court order if the payments are not more than 10 years overdue and a final judgment has been entered decreeing the dissolution of the marriage or the legal separation of the parties. After the expiration of the 10-year period, the overdue support payments are enforceable only in the discretion of the court, and the lack of diligence in seeking enforcement is required to be considered by the court in determining whether to permit enforcement.

### Streamlined Renewal Procedure

The proposed law provides a simple renewal procedure for extending the period of enforceability of a money judgment or judgment for the possession or sale of property. The new procedure is drawn from the existing statutory provisions that permit entry of a California judgment based on a sister state judgment upon application of the judgment creditor.

Under the proposed law, the judgment creditor may file an application for renewal with the court where the judgment was entered. Thereupon, the clerk enters the

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services); Labor Code §§ 5801, 5806 (judgment for installment payment of workers' compensation award); Veh. Code § 16380 (installment payment of vehicle accident damage judgment).

<sup>12</sup> *Cf. Wolfe v. Wolfe*, 30 Cal.2d 1, 4, 180 P.2d 345 (1947) (installment judgment for support).

<sup>13</sup> Civil Code § 4380.

renewal in the amount required to satisfy the judgment on the date the application is filed. This amount is determined on the basis of the judgment creditor's application for renewal.<sup>14</sup> The renewal extends the enforceability of the judgment for 10 years from the date of filing the application for renewal. The judgment creditor is required to serve notice of the filing of the application on the judgment debtor who then has 30 days after service within which to make a motion to vacate the renewal. A writ to enforce the judgment may not be issued nor may enforcement proceedings be commenced until after the judgment creditor files proof of service on the judgment debtor with the court clerk. The judgment can be vacated on any grounds that would be a defense to an action on the judgment.<sup>15</sup> In addition, the court has authority to modify the amount of the renewal if it is shown at the hearing on the motion to vacate the renewed judgment that the amount due has been incorrectly stated in the judgment creditor's application. An application for renewal must be filed before the expiration of the 10-year period of enforceability.<sup>16</sup> In the case of an installment judgment (other than an installment judgment for child or spousal support which is governed by the Family Law Act), only installments due not more than 10 years will be renewed by the application.<sup>17</sup> There is no limit placed on the number of times the judgment creditor may renew the judgment by means of this procedure, except that a judgment may not be renewed more often than once every five years.<sup>18</sup> There

<sup>14</sup> The amount due on the judgment includes the amount of unsatisfied principal, allowed costs, accrued interest, and the fee for renewal. This provision is analogous to the provision governing an entry of a California judgment based on a sister state judgment upon the filing of an application with the clerk. See Section 1710.25.

<sup>15</sup> This procedure is analogous to Sections 1710.30 and 1710.40 (sister state judgments).

<sup>16</sup> An application for renewal may be filed under the proposed law even if enforcement of the judgment is stayed since renewal has no effect on the stay but the renewal will prevent the expiration of the 10-year period of enforceability.

<sup>17</sup> In the case of an installment judgment, the past due installments are aggregated into a lump sum with a period of enforceability running 10 years from the filing of the application for renewal. Future installments may continue to fall due under the terms of the judgment and are not affected by the renewal.

<sup>18</sup> By preventing the renewal of a judgment more often than once every five years, the proposed law prevents the judgment creditor from renewing a judgment more frequently merely to compound the interest on the judgment. Renewal has the effect of compounding the interest on the judgment, since interest accrues on the total amount of the judgment as renewed and the judgment as renewed includes the accrued interest on the date of filing the application for renewal.

is no requirement that the judgment creditor demonstrate diligence in enforcing the judgment during the previous 10 years.<sup>19</sup>

A certified copy of the judgment creditor's application for renewal may be recorded with the county recorder in order to continue a judgment lien on an interest in real property for 10 years running from the date the application for renewal was filed with the court clerk.<sup>20</sup> Other liens and enforcement proceedings may also be continued after the expiration of a prior 10-year enforcement period if a certified copy of the application for renewal has been served on or filed with the proper person.

## INTEREST AND COSTS

### Rate of Interest

The proposed law increases the rate of interest on a money judgment from the existing seven percent<sup>21</sup> to 10 percent. This is consistent with a previously published recommendation of the Commission proposing this increase.<sup>22</sup>

<sup>19</sup> The necessity of satisfying the reasonable diligence requirement of existing law is a waste of judicial resources for no significant benefit. Prior to the amendment of Section 685 in 1933, the creditor could obtain issuance of a writ of execution "almost as a matter of right" after the expiration of the period prescribed by Section 681 (five years at that time). *Butcher v. Brouwer*, 21 Cal.2d 354, 357, 132 P.2d 205 (1942). However, in *Butcher* the court held that execution could issue only if the judgment creditor has "exercised due diligence in locating and levying upon property owned by the debtor, or in following available information to the point where a reasonable person would conclude that there was no property subject to levy within that time. And even though the creditor may have satisfied the court that he has proceeded with due diligence . . . , the court may still deny him its process if the debtor shows circumstances occurring subsequent to the five-year period upon which, in the exercise of a sound discretion, it should conclude that he is not now entitled to collect his judgment." *Id.* at 358, 132 P.2d at 207. For the application of this standard in a variety of factual settings, see the cases cited in 5 B. Witkin, *California Procedure Enforcement of Judgment* § 202, at 3555 (2d ed. 1971).

<sup>20</sup> This provision achieves the same result as under existing law in a case where a judgment in an action on a money judgment is recorded to create a judgment lien on the judgment debtor's property that is still subject to the judgment lien of the original judgment. See *Provisor v. Nelson*, 234 Cal. App.2d Supp. 876, 44 Cal. Rptr. 894 (1965). The proposed law also permits the renewal of a judgment lien on an interest in real property that has been transferred subject to the lien if a copy of the application for renewal is personally served on the transferee and proof of service is filed within 30 days after the application is filed.

<sup>21</sup> Cal. Const. art. 15, § 1 (fixing the rate of interest on judgments at seven percent but giving the Legislature authority to set the rate at not more than 10 percent and to provide a variable rate). The Legislature has not exercised this authority.

<sup>22</sup> *Recommendation Relating to Interest Rate on Judgments*, 15 Cal. L. Revision Comm'n Reports 7 (1980). Senate Bill No. 203 was introduced in 1981 to effectuate this

### Accrual of Interest

The proposed law continues the general rule that interest on a money judgment commences to accrue upon entry of the judgment.<sup>23</sup> In the case of a money judgment payable in installments, the proposed law makes clear that interest accrues on each installment from the date it becomes due unless the judgment otherwise provides.<sup>24</sup>

As a general rule, the judgment creditor is entitled to receive interest on the unpaid principal amount of the judgment until the judgment is satisfied.<sup>25</sup> However, full satisfaction of a judgment through the levy process would not be possible if minimal amounts of interest were to continue to accrue until the judgment creditor is actually paid the proceeds of collection or sale by the levying officer.<sup>26</sup> For this reason, existing law grants interest only to the date of levy if the judgment is satisfied in full pursuant to a levy under writ of execution.<sup>27</sup> The proposed law modifies this rule to provide that, if a money judgment is satisfied in full pursuant to a writ, interest ceases to accrue when the proceeds are actually received by the levying officer. This change will reduce the lost interest to a practical minimum.<sup>28</sup> In all other cases of full or partial satisfaction, the proposed law makes clear that interest runs until the judgment is satisfied, whether by actual receipt of

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recommendation. The proposed law also includes the conforming changes proposed in the earlier recommendation with respect to the amount of accrued interest allowed under a sister state judgment when a California judgment is entered based on the sister state judgment.

<sup>23</sup> See Sections 682.2, 1033; *Dixon Mobile Homes, Inc. v. Walters*, 48 Cal. App.3d 964, 122 Cal. Rptr. 202 (1975).

<sup>24</sup> See, e.g., *Huellmantel v. Huellmantel*, 124 Cal. 583, 589-90, 57 P. 582 (1899); *In re Marriage of Hoffee*, 60 Cal. App.3d 337, 131 Cal. Rptr. 637 (1976).

<sup>25</sup> See, e.g., *State v. Day*, 76 Cal. App.2d 536, 556, 173 P.2d 399 (1946); *City of Los Angeles v. Aitken*, 32 Cal. App.2d 524, 531-32, 90 P.2d 377 (1939).

<sup>26</sup> Many collections are in the form of personal checks which must clear before the levying officer may safely pay the amount collected to the judgment creditor. There is also an inevitable delay in processing the proceeds through the sheriff's or marshal's office and in the issuance of warrants by the appropriate auditing agency. Judgment creditors are probably content with receiving a substantially full satisfaction by this process and are not unduly troubled by the loss of several weeks' worth of interest.

<sup>27</sup> See Section 682.2.

<sup>28</sup> The judgment creditor will be entitled to interest accruing from the date of levy until the date of sale or collection, but will still not receive any interest for the time it takes to pay out the funds received by the levying officer.

payment by the judgment creditor, tender, deposit in court, or otherwise.<sup>29</sup>

### Costs of Enforcement

Scattered provisions of existing law govern the award of costs incurred in enforcing a judgment and the collection of those costs.<sup>30</sup> The proposed law reorganizes these provisions and makes clarifying changes.

The proposed law also corrects one substantive defect. Under existing law, a levying officer who makes a levy under the writ collects, in addition to the costs entered on the writ, "the commissions and costs of the levying officer,"<sup>31</sup> but no provision is made for review of the amount collected. The proposed law adds a provision to enable the judgment debtor to have the costs collected by the levying officer under a writ taxed by the court within six months after their collection.

### Interest on Costs

The existing statutes are silent on the question whether interest accrues on costs that have been incurred during the enforcement process. Generally, interest accrues on "judgments."<sup>32</sup> Allowed costs (pursuant to a memorandum of costs or a motion for costs) are entered "on the margin of the judgment" and are included in writs subsequently issued to enforce the judgment.<sup>33</sup> Whether this makes costs part of the judgment for purposes of interest is not clear. The Judicial Council form of the writ of execution, through a quirk of drafting, provides for interest on costs if there has been a partial satisfaction of the judgment but not otherwise.<sup>34</sup>

<sup>29</sup> For example, if a partial satisfaction is received as the result of a levy, the judgment creditor will be entitled to apply the partial satisfaction to the total amount due, including interest and allowed costs, on the date the partial satisfaction is received by the judgment creditor from the levying officer. In the case of a partial satisfaction, the expense of the law's delay is borne by the judgment debtor who had the ability to pay part of the judgment voluntarily and so could have avoided the extra amount of interest as well as collection costs.

<sup>30</sup> See Sections 682.2, 691, 1032.6, 1033.7. Provisions relating to advance deposit of costs of the levying officer are found in Section 488.050 (incorporated by Section 688(b)) and Government Code Sections 6103.2 and 24350.5.

<sup>31</sup> Section 682.2.

<sup>32</sup> See Sections 682.1, 682.2.

<sup>33</sup> Section 1033.7; see also Sections 682.1, 682.2, 691.

<sup>34</sup> See Writ of Execution (Form Approved by the Judicial Council of California, effective January 1, 1979).

The proposed law provides that costs advanced by the judgment creditor draw interest from the date costs are added to the judgment. This occurs when a court order allowing the costs is filed or when the time expires for making a motion to tax costs after a memorandum of costs is filed. Interest is intended to compensate the judgment creditor for the loss of use of money advanced by the judgment creditor to cover collection costs.

## PROPERTY SUBJECT TO ENFORCEMENT

As a general rule, all property of the judgment debtor is subject to enforcement procedures to satisfy a money judgment.<sup>35</sup> This rule is subject to a number of significant qualifications:

(1) As a general rule, property that is not transferable is not subject to enforcement.<sup>36</sup>

(2) Property of a public entity is not subject to enforcement.<sup>37</sup>

(3) Property that would otherwise be subject to enforcement may be exempt.<sup>38</sup>

These rules, and other technical limitations on property subject to enforcement,<sup>39</sup> are continued in the proposed law.

In three situations, property that is not owned by the judgment debtor is also subject to execution or some other enforcement procedure:

<sup>35</sup> In general, nonexempt property interests that are assignable may, by some procedure, be reached to satisfy a money judgment. See *Murphy v. Allstate Ins. Co.*, 17 Cal.3d 937, 945-46, 553 P.2d 584, 589-90, 132 Cal. Rptr. 424, 429-30 (1976). For a discussion of procedures to reach property not subject to levy of execution, see the discussion in the text under "Miscellaneous Creditors' Remedies" beginning at note 425 *infra*.

<sup>36</sup> See, e.g., 1 A. Freeman, *Law of Executions* § 119 (3d ed. 1900); *Murphy v. Allstate Ins. Co.*, 17 Cal.3d 937, 553 P.2d 584, 132 Cal. Rptr. 424 (1976) (chose in action founded upon torts subject to creditors' suits only if assignable by the law of the state). Although not subject to execution, a nonassignable cause of action is subject to the procedure for creation of a lien if the cause of action is the subject of a pending action or special proceeding. See the discussion in the text under "Lien in Pending Action or Proceeding" beginning at note 473 *infra*.

<sup>37</sup> See Gov't Code §§ 965.5(b), 970.1(b). See also *Recommendation Relating to Enforcement of Claims and Judgments Against Public Entities*, 15 Cal. L. Revision Comm'n Reports 1257 (1980).

<sup>38</sup> See the discussion in the text under "Exemptions From Enforcement of Money Judgments" beginning at note 217 *infra*.

<sup>39</sup> See, e.g., Civil Code § 765 (estate at will); Educ. Code § 21116 (educational endowment funds). See the discussion in the text under "Miscellaneous Creditors' Remedies" beginning at note 425 *infra*.

(1) Community property is liable for the satisfaction of the debts of either spouse; and, if the debt was incurred for necessities of life after marriage, the separate property of the nondebtor spouse may also be applied to the judgment against the other spouse.<sup>40</sup> Case law provides that the separate property of the nondebtor spouse may not be applied to the satisfaction of a money judgment unless the nondebtor spouse is made a party to the action.<sup>41</sup> This rule is codified in the proposed law. The nondebtor spouse, for due process reasons, should have the opportunity to contest the validity of the debt before his or her separate property is applied to the satisfaction of the judgment.

(2) Property that was subject to an enforcement lien when owned by the debtor and later transferred may be reached.<sup>42</sup>

(3) Where the debtor makes a fraudulent conveyance, the creditor may "disregard the conveyance and . . . levy execution upon the property conveyed."<sup>43</sup>

## ENFORCEMENT LIENS

### Liens Generally

#### Introduction

Under existing law, the important matters of the creation and effect of liens that arise in the course of enforcing a money judgment are left largely to case law. Existing statutes provide for the creation of a judgment lien on real property,<sup>44</sup> an execution lien,<sup>45</sup> and a lien in a pending

<sup>40</sup> See Civil Code §§ 5116, 5120, 5121, 5122, 5132. The Commission is now engaged in a study of the liability of marital property for obligations of either or both of the spouses. The Commission plans to submit a separate recommendation on this subject to a future session of the Legislature.

<sup>41</sup> See, e.g., *Evans v. Noonan*, 20 Cal. App. 288, 128 P. 794 (1912); *Credit Bureau of Santa Monica Bay Dist., Inc. v. Terranova*, 15 Cal. App.3d 854, 93 Cal. Rptr. 538 (1971).

<sup>42</sup> See Section 682 (real property subjected to judgment lien); *Riley v. Nance*, 97 Cal. 203, 31 P. 1126 (1893) (property subjected to attachment lien when owned by debtor); *Puissegur v. Yarbrough*, 29 Cal.2d 409, 412-13, 175 P.2d 830, 832 (1946) (property subjected to execution lien when owned by judgment debtor).

<sup>43</sup> Civil Code § 3439.09. The proposed law does not affect the provisions relating to fraudulent conveyances.

<sup>44</sup> Sections 674, 674.5, 674.7. See the discussion in the text under "Judgment Lien on Real Property" beginning at note 54 *infra*.

<sup>45</sup> Section 688(d), (e). See the discussion in the text under "Execution Lien" beginning at note 103 *infra*.

action or proceeding.<sup>46</sup> The proposed law continues these liens with some revisions and with more detail and provides also for a judgment lien on certain types of business personal property and for liens arising pursuant to examination proceedings, creditors' suits, and charging orders. The proposed law also specifies the time when the lien arises, which is the primary factor in determining the rights of a creditor against transferees and encumbrancers of the debtor's property and against other creditors.<sup>47</sup>

### Codification of Doctrine of Relation Back

The proposed law codifies the case law rule that a creditor's priority relates back to the time as of which the first of a series of overlapping liens is created on a particular item of tangible property or a debt.<sup>48</sup> For example, the relation back doctrine may provide the judgment creditor with a priority predating the date of entry of the judgment if property of the debtor has been attached in the action.<sup>49</sup> However, the relation back doctrine does not affect the priorities or rights of third persons established while the earlier lien was in effect under the law governing the earlier lien. Thus, for example, if a good faith encumbrancer obtains priority over the rights of the judgment creditor while the first lien is in effect under the law applicable to the first lien, the good faith encumbrancer retains this priority even though a lien that would give the judgment creditor a priority over a good faith encumbrancer is obtained later.

<sup>46</sup> Section 688.1. See the discussion in the text under "Lien in Pending Action or Proceeding" beginning at note 473 *infra*.

<sup>47</sup> A lien signifies the right of the judgment creditor to resort to the property subject to the lien for the satisfaction of the money judgment. In a sense, acquisition of a lien elevates a general judgment creditor to the status of a secured creditor. See S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 54 (2d ed. 1975). Determination of the time as of which a lien is created is essential because as a general rule the creditor having the earliest valid lien in time will prevail over other creditors. See Civil Code §§ 2897-2899 (general provisions concerning the priority of liens). In general, a judgment creditor holding a valid lien will also prevail over a secured party whose security interest is not perfected before the creation of the lien. See Com. Code § 9301.

<sup>48</sup> See, e.g., *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242 (1909); *Riley v. Nance*, 97 Cal. 203, 205, 31 P. 1126 (1893); *Bagley v. Ward*, 37 Cal. 121, 131 (1869) (dictum); *Durkin v. Durkin*, 133 Cal. App.2d 283, 294, 284 P.2d 185 (1955); *Balzano v. Traeger*, 93 Cal. App. 640, 643-44, 270 P. 249 (1928).

<sup>49</sup> An attachment lien may run for as long as eight years. See Sections 488.500, 488.510. See also Section 488.500(i) (lien of attachment effective as of date of service of temporary protective order pursuant to Section 486.080).



## Duration of Liens Generally

The proposed law makes clear that, unless a lien is specifically limited to a shorter duration,<sup>50</sup> a lien expires when the period of enforcement of the judgment under which it was created ends.<sup>51</sup> The proposed law also requires the release of property subject to the lien when the lien terminates.

## Stay of Enforcement of Judgment

Under existing law, unless enforcement of the judgment is stayed on appeal, an order staying the enforcement of a money judgment does not preclude the judgment creditor from recording an abstract of the judgment to create a judgment lien on real property.<sup>52</sup> The effect of a stay of enforcement on execution liens and liens arising out of enforcement proceedings is unclear. The proposed law includes a detailed provision governing the effect of a stay of enforcement on the creation and maintenance of enforcement liens.<sup>53</sup>

## Judgment Lien on Real Property

Under existing law, the abstract of a money judgment, or a certified copy of certain installment money judgments, may be recorded with the county recorder to create a judgment lien on the real property owned by the judgment debtor in the county or thereafter acquired.<sup>54</sup> The judgment lien is one of the simplest and most effective means by which a judgment creditor may seek to secure payment of the judgment and establish a priority over other

<sup>50</sup> Section 688(e) provides that a writ of execution does not bind property for more than a year from the date of issuance of the writ. Under the proposed law, the lien of execution would also last until a year after the issuance of the writ, and a judgment lien on personal property would last for five years.

<sup>51</sup> See the discussion in the text under "Period For Enforcement of Judgments and Renewal of Judgments" beginning at note 3 *supra*.

<sup>52</sup> Section 674(a); *Industrial Indem. Co. v. Levine*, 49 Cal. App.3d 698, 699, 122 Cal. Rptr. 712 (1975). See also Section 1710.50 (effect of stay on enforcement of California judgment entered on judgment creditor's application upon basis of sister state judgment).

<sup>53</sup> See the discussion in the text under "Effect on Enforcement Liens of Stay of Enforcement of Money Judgment" beginning at note 609 *infra*.

<sup>54</sup> See Sections 674 (money judgments in general), 674.5 (child and spousal support judgments), 674.7 (installment judgments against health care provider). Section 674 refers to judgments, but only *money* judgments may create judgment liens. See *Laubisch v. Roberdo*, 43 Cal.2d 702, 707-08, 277 P.2d 9 (1954); 4 B. Witkin, *California Procedure Judgment* § 139, at 3286 (2d ed. 1971).

judgment creditors. It is among the least disruptive of creditors' remedies because it results in a lien that does not usually interfere with the use of the property. If the judgment is not voluntarily satisfied, the judgment lien is generally enforced by levy on and sale of the real property under a writ of execution.<sup>55</sup>

### Courts Which May Issue Judgments as Basis for Lien

A judgment, order, or decree for the payment of money that is enforceable in California may provide the basis for a judgment lien.<sup>56</sup> Existing law specifically refers to judgments and decrees of courts of this state, judgments entered in this state on the basis of sister state judgments, judgments of small claims courts, judgments of "any court of record of the United States," and orders for the reimbursement to a county for legal services, probation supervision, or support in a county institution, provided to wards and dependent children.<sup>57</sup> The proposed law continues the substance of existing law except that the misleading language pertaining to judgments of federal courts is eliminated.<sup>58</sup>

### Property Subject to Judgment Lien

Under existing law, a judgment lien reaches all the nonexempt real property owned by the judgment debtor in the county where the lien is created.<sup>59</sup> This provision has

<sup>55</sup> If execution is unavailable, the judgment lien may be foreclosed by an action in equity. For example, after the death of the judgment debtor, a claim may be made against the estate or the judgment lien may be foreclosed. See Prob. Code §§ 716, 732; *Corporation of America v. Marks*, 10 Cal.2d 218, 220-22, 73 P.2d 1215 (1937). The judgment creditor may also foreclose a judgment lien by a cross-complaint in an action to foreclose by a mortgagee. See *Hibernia Sav. & Loan Soc'y v. London & Lancashire Fire Ins. Co.*, 138 Cal. 257, 71 P. 334 (1903).

<sup>56</sup> The law relating to whether some types of installment judgments may be the basis for a judgment lien is unclear. See the discussion in the text under "Judgment Lien Under Installment Judgment" beginning at note 71 *infra*.

<sup>57</sup> See Section 674 (a). Orders for reimbursement to a county issuable under Welfare and Institutions Code Section 908 are referred to in Section 674 (b). A judgment may be entered in California on the basis of a sister state money judgment pursuant to Sections 1710.10-1710.65 and is enforceable as if originally entered in California. Section 1710.35. A sister state support order may be registered in California and enforced as a support order issued in California. Section 1699. A foreign nation money judgment may be recognized and enforced as provided in Sections 1713-1713.8.

<sup>58</sup> A federal money judgment may be recorded to create a judgment lien pursuant to federal law if it is rendered in California or is registered in a federal court sitting in California. 28 U.S.C. §§ 1962 (judgment lien of federal judgment), 1963 (registration of judgment of one federal district court in another district).

<sup>59</sup> Section 674 (a).

been strictly construed with the effect that the lien does not reach estates for years,<sup>60</sup> equitable interests,<sup>61</sup> contingent interests,<sup>62</sup> or naked title.<sup>63</sup>

The proposed law expands the coverage of judgment liens to leasehold interests with an unexpired term of two or more years at the time of creation of the lien,<sup>64</sup> equitable interests,<sup>65</sup> and contingent interests. The equitable interest of a buyer of real property is subject to execution<sup>66</sup> and should be subject to a judgment lien. Leasehold interests should be subject to the judgment lien for the same reason. Contingent interests are made subject to the judgment lien to help ensure eventual collection of the judgment, but the proposed law requires court approval before a contingent interest may be applied to the satisfaction of a money judgment since such an interest often can be sold only at a great sacrifice.<sup>67</sup>

### Duration of Judgment Lien Under Lump-Sum Judgments

Under existing law, a judgment lien on real property may continue for as long as 10 years from the date of entry of

<sup>60</sup> See *Summerville v. Stockton Milling Co.*, 142 Cal. 529, 537-40, 76 P. 243 (1904); *Arnett v. Peterson*, 15 Cal. App.3d 170, 173, 92 Cal. Rptr. 913 (1971) (90 years remaining of a 99-year lease). It has been asserted, however, that a lease for an indefinite term would be real property subject to a judgment lien. See 2 A. Bowman, *Ogden's Revised California Real Property Law* § 19.19 (1975).

<sup>61</sup> See *Helvey v. Bank of America*, 43 Cal. App.2d 532, 535, 111 P.2d 390 (1941) (right of redemption of tax deeded property). *Poindexter v. Los Angeles Stone Co.*, 60 Cal. App. 686, 214 P. 241 (1923) (interest of beneficiary of trust in land); *Belieu v. Power*, 54 Cal. App. 244, 246, 201 P. 620 (1921) (interest of purchaser in possession under executory contract for sale of land).

<sup>62</sup> *Cf. Anglo California Nat'l Bank v. Kidd*, 58 Cal. App.2d 651, 655, 137 P.2d 460 (1943) (contingent remainder under trust not subject to execution).

<sup>63</sup> See *Ikoian v. Winter*, 94 Cal. App. 223, 225, 270 P. 999 (1928) (lien did not apply against fully paid vendor under installment land contract who neglected to give deed). See also *Majewsky v. Empire Constr. Co.*, 2 Cal.3d 478, 483-84, 467 P.2d 547, 85 Cal. Rptr. 819 (1970); *Parsons v. Robinson*, 206 Cal. 378, 379, 274 P. 528 (1929). The proposed law makes no change in the rule that the lien does not reach naked title.

<sup>64</sup> The treatment of leases with an unexpired term of two years or more is consistent with the extent of the right of redemption under existing law (see Section 700a(a)) and the proposed provisions for delay of sale of real property. See the discussion in the text under "Repeal of Statutory Redemption From Judicial Sales" beginning at note 380 *infra*.

<sup>65</sup> The lien would not reach the interest of a beneficiary in real property held in trust. The proposed law provides a separate procedure for reaching the judgment debtor's interest as beneficiary of a trust. See the discussion in the text under "Trusts" beginning at note 510 *infra*.

<sup>66</sup> See *Hansen v. d'Artenay*, 13 Cal. App.2d 293, 297, 57 P.2d 202 (1936).

<sup>67</sup> See generally Halbach, *Creditors' Rights in Future Interests*, 43 Minn. L. Rev. 217 (1958). The proposed law gives the court discretion to determine the appropriate

judgment.<sup>68</sup> The lien may be extended in effect by bringing an action on the judgment and obtaining a judgment lien under the second judgment before the judgment lien under the first judgment expires.<sup>69</sup>

The term of the judgment lien under the proposed law is 10 years, but the lien may be renewed with the same priority if a certified copy of an application for renewal of the judgment is recorded before the lien expires.<sup>70</sup> The renewed judgment lien runs for 10 years from the date the application for renewal was filed with the court clerk to renew the judgment. By using this renewal procedure, the judgment lien may be continued for as long as the judgment is enforceable.

### Judgment Lien Under Installment Judgment

Until the rule was changed by statute, a money judgment payable in installments for an indefinite period could not create a judgment lien because the total amount was uncertain.<sup>71</sup> In the case of child or spousal support judgments<sup>72</sup> and certain medical malpractice judgments,<sup>73</sup> this rule was changed to permit recordation of a certified copy of the judgment to create a judgment lien in the amount of installments as they become due. Whether a

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method of enforcing a judgment against a contingent interest. Sale of the interest is only one of the several choices available to the court. See the discussion in the text under "Contingent Interests" beginning at note 515 *infra*.

<sup>68</sup> Section 674(a). For a discussion of special rules applicable to installment judgments, see "Judgment Lien Under Installment Judgment" *infra*. From 1851 until 1923, the judgment lien lasted two years although a writ of execution could be issued without prior court approval for five years after entry of judgment. See 1851 Cal. Stats. ch. 5, § 204. In 1923 the duration of the judgment lien was increased to five years, consistent with the period for automatic issuance of a writ of execution. See 1923 Cal. Stats. ch. 368, § 3. In 1955, the duration of the judgment lien and the period for automatic issuance of a writ of execution were raised to 10 years. See 1955 Cal. Stats. ch. 781, § 1; ch. 754, § 1. The 10-year periods do not necessarily run concurrently under existing law because the time during which enforcement is stayed other than on appeal is excluded from the time during which execution may automatically issue but not from the running of the judgment lien. Compare Section 674 with Section 681. The proposed law eliminates this purposeless inconsistency.

<sup>69</sup> See *Provisor v. Nelson*, 234 Cal. App.2d Supp. 876, 879-80, 44 Cal. Rptr. 894 (1965).

<sup>70</sup> See the discussion at note 20 *supra*.

<sup>71</sup> See *Moniz v. Moniz*, 142 Cal. App.2d 641, 646, 299 P.2d 329 (1956); *Bird v. Murphy*, 82 Cal. App. 691, 694-95, 256 P. 258 (1927); 2 A. Freeman, *Law of Judgments* § 932, at 1965 (5th ed. 1925). Under this rule, the judgment creditor could obtain a judgment lien only for installments that had fallen due and remained unpaid, thus requiring repeated filings over a period of time.

<sup>72</sup> See Section 674.5 (enacted in 1959).

<sup>73</sup> See Section 674.7 (enacted in 1975).

judgment for a lump-sum amount payable in installments may create a judgment lien under existing law is unclear.<sup>74</sup>

Under the proposed law, judgment liens created under lump-sum judgments that are payable in installments pursuant to Code of Civil Procedure Section 85 (municipal court judgments) or 117 (small claims court judgments) or Vehicle Code Section 16380 (vehicle accident damage awards) are treated basically the same as other lump-sum money judgments.<sup>75</sup> The whole amount of the judgment is a lien on the real property when an abstract of judgment is recorded with the county recorder, but the lien may not be enforced for installments that have not matured unless the court so orders. This scheme recognizes that the installment payment feature of such judgments is for the benefit of the judgment debtor and is not an inherent part of the judgment as is the case with installment judgments for support. The judgment creditor is given a lien for the full amount to prevent a transfer of property free of the lien and to establish a priority for the full amount over other creditors.

Under the proposed law, a different rule applies to judgment liens created under installment judgments for child or spousal support, installment judgments against health care providers for future damages, and installment judgments based on workers' compensation awards.<sup>76</sup> Judgment liens under these types of judgments are created by recording a certified copy of the judgment with the county recorder. The lien continues for 10 years from the date of recording and may be renewed by rerecording within that time. The amount of the lien is discussed below.

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<sup>74</sup> Such judgments may be issued pursuant to Code Civ. Proc. § 85 (installment payment of judgment of municipal or justice courts), 117 (small claims court judgment), Labor Code § 5801 (installment payment of workers' compensation award), and Veh. Code § 16380 (installment payment of vehicle accident damage award).

<sup>75</sup> The treatment of lump-sum judgments payable in installments is not specified under existing law.

<sup>76</sup> See Sections 674.5 (judgment lien for installment judgments for child or spousal support), 674.7 (judgment lien for installment judgment against health care provider); Labor Code §§ 5801 (installment workers' compensation awards), 5806 (entry of judgment based on award). Existing law does not provide specifically for judgment liens based on workers' compensation awards, but since a judgment may be entered on the basis of the award and there is no exception prescribed by statute, a judgment lien should be available. *Cf. Myers v. Workmen's Compensation Appeals Bd.*, 2 Cal. App.3d 621, 626, 83 Cal. Rptr. 427 (1969) (dictum). Lump-sum workers' compensation awards are treated like other lump-sum judgments under the proposed law.

## Amount of Judgment Lien

Existing law does not clearly prescribe the amount of the judgment lien.<sup>77</sup> The proposed law provides a general rule that the lien is for the amount required to satisfy the judgment (the principal amount of the judgment and costs that are added to the judgment pursuant to an appropriate procedure, plus interest as it accrues,<sup>78</sup> and less the amount of any partial satisfactions). Interest and costs are added to the judgment lien without the need of any additional recording and have the same priority as the remainder of the lien. Hence, the amount of the judgment enforceable by execution is the same as the amount of the judgment lien, except for certain lump-sum judgments payable in installments<sup>79</sup> in which case the judgment lien is for the full principal amount of the judgment plus interest and costs even though installments not yet due may not be enforced by execution.

The proposed law continues the existing rule that a judgment lien created under an installment judgment for child or spousal support or under an installment judgment against a health care provider is for the amount of the installments as they mature<sup>80</sup> and makes clear that the lien also includes interest as it accrues and costs as they are added to the judgment. The same rule is made applicable to an installment judgment based on a workers' compensation award.

The proposed law prescribes special rules governing the amount of a judgment lien on property that is transferred or encumbered without satisfying the lien. In the case of a lump-sum judgment, interest and costs after transfer or encumbrance are included under the lien since they are likely to be a limited amount and may be reasonably anticipated by the purchaser at the time the sale price is negotiated or the encumbrance made. However, in the case of an installment judgment for child or spousal support,

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<sup>77</sup> Section 674 states that "from such recording the judgment or decree becomes a lien." Sections 674.5 and 674.7 provide that certain installment judgments become a lien "for the respective amounts and installments as they mature (but shall not become a lien for any sum or sums prior to the date they severally become due and payable)."

<sup>78</sup> See the discussions in the text beginning at note 23 and note 32 *supra*.

<sup>79</sup> See the text at notes 80 and 81 *infra*.

<sup>80</sup> See Sections 674.5, 674.7.

against a health care provider for future damages, or based on a workers' compensation award, the amount of the lien is determined by the amount due at the time of transfer or encumbrance since the liability for future amounts is usually incalculable,<sup>81</sup> but the interest thereafter accruing on such amount is covered by the lien since this interest is computed on an amount known at the time of the transfer or encumbrance.

The proposed law also contains a new provision governing the amount of a judgment lien in a case where the amount of the judgment is modified. This provision is designed to protect persons who rely on the papers recorded to create the lien. Hence, if the amount of the judgment is increased, the lien continues under its original terms until the modification is recorded. If the amount of the judgment is reduced, the judgment lien is considered modified, whether or not the modification is recorded.

### Priorities of Judgment Liens

The proposed law continues the existing rule that a lump-sum judgment lien has priority over a lump-sum judgment lien thereafter created.<sup>82</sup> The rules under existing law are not clear concerning the priorities where there is a conflict between a lump-sum judgment lien and an installment judgment lien or between two installment judgment liens. Since the installment judgment lien is only a lien for installments as they mature on the judgment, the proposed law gives a lump-sum judgment lien later recorded priority over the lien under the installment judgment as to unmatured installments but not as to matured installments. Where there are competing installment judgment liens, each lien is given priority as to installments as they mature over the unmatured installments on the other judgment.

<sup>81</sup> Installment judgments for child or spousal support may be modified in amount, and are subject to other contingencies such as death, remarriage, or continuation in school. See Civil Code §§ 4700, 4801, 4801.5. Installment judgments for future damages against a health care provider are subject to modification upon the death of the judgment creditor. See Section 667.7. Workers' compensation awards may be rescinded or modified by the appeals board. Labor Code § 5803.

<sup>82</sup> However, a judgment lien later recorded may prevail over an earlier recorded judgment lien, for example, where the later recorded lien dates back to the effective date of an attachment lien. See the discussion in the text under "Codification of Doctrine of Relation Back" beginning at note 48 *supra*.

### Judgment Lien on After-Acquired Property

A judgment lien on real property acquired by the judgment debtor in the county after the creation of the lien attaches at the time the property is acquired.<sup>83</sup> Under existing law, if there are two or more judgment liens in effect in that county against property of the judgment debtor, they attach with equal status to the newly-acquired property, regardless of the order in which the liens were created. However, the judgment creditor who first levies upon and sells the after-acquired property is permitted to do so free of the other equal liens.<sup>84</sup> The nonexecuting equal lienholders in effect become subordinate lienholders and have the right to redeem the real property from the execution sale under the lien of the executing judgment creditor in order to protect their security.<sup>85</sup> The proposed law repeals this right of redemption,<sup>86</sup> and the priority in after-acquired property is determined on the basis of the priority established at the time of the creation of the judgment liens. There is no compelling reason for determining lien priorities differently depending on the time of acquisition of the property. This change preserves the benign aspect of the judgment lien by avoiding a race to levy on after-acquired property.

### Judgment Lien on Personal Property

Although existing law permits the judgment creditor to obtain a judgment lien on real property,<sup>87</sup> there is no comparable procedure for obtaining a judgment lien on personal property. The proposed law includes a new procedure for obtaining a judgment lien<sup>88</sup> on certain types of personal property of a business that is analogous to the procedure provided in the Commercial Code for perfecting

<sup>83</sup> See Section 674(a); *Hertweck v. Fearon*, 180 Cal. 71, 73, 179 P. 190 (1919).

<sup>84</sup> *Hertweck v. Fearon*, 180 Cal. 71, 75, 179 P. 190 (1919).

<sup>85</sup> See Section 701; 4 B. Witkin, *California Procedure Judgment* § 146, at 3292 (2d ed 1971).

<sup>86</sup> See the discussion in the text under "Repeal of Statutory Redemption From Judicial Sales" beginning at note 380 *infra*.

<sup>87</sup> See the discussion in the text under "Judgment Lien on Real Property" beginning at note 54 *supra*.

<sup>88</sup> The judgment lien may be obtained only on a lump-sum judgment (including a lump-sum judgment payable in installments) or on an installment judgment or which all installments have become due and payable at the time the lien is created



a security interest by filing a financing statement in the office of the Secretary of State.<sup>89</sup>

Under the proposed law, the judgment creditor may obtain a judgment lien on the following kinds of personal property:

- Accounts receivable
- Chattel paper
- Equipment
- Farm products
- Inventory
- Negotiable documents of title

The judgment lien on personal property does not attach to a vehicle or boat required to be registered with the Department of Motor Vehicles or a mobilehome or commercial coach required to be registered pursuant to the Health and Safety Code.<sup>90</sup>

The judgment lien on personal property is obtained by filing a notice of judgment lien in the office of the Secretary of State.<sup>91</sup> The judgment lien is good for not more than five

<sup>89</sup> See Com. Code §§ 9302, 9304, 9305. This judgment lien procedure is an expanded version of the provisions in the Attachment Law for obtaining an attachment lien on equipment of a going business (Section 488.340) and inventory, growing crops, and timber to be cut (Section 488.360). Unlike an attachment lien, the judgment lien will not reach growing crops or timber to be cut. The new procedure is also similar to but more limited than the provisions for the filing of notice of a state tax lien. See Gov't Code § 7171. See also Section 2101 (filing of notice of federal tax lien). Iowa has recently adopted a procedure for filing a sheriff's inventory of property with the Secretary of State or county recorder with the effect of a financing statement. Iowa R. Civ. Proc. 260.

<sup>90</sup> "Equipment" may include vehicles and boats required to be registered with the Department of Motor Vehicles, but such vehicles and boats are not subject to the judgment lien on personal property as "equipment" because a security interest in such property is generally perfected by deposit of a properly endorsed certificate of ownership to the vehicle or boat with the Department of Motor Vehicles. See Veh. Code §§ 6300-6303 (vehicle), 9919-9924 (boat).

"Inventory" may include vehicles and boats required to be registered with the Department of Motor Vehicles, but such vehicles and boats are not subject to the judgment lien on personal property as "inventory" because generally a security interest may be obtained only if the secured party has possession of the certificate of ownership. See Veh. Code § 5907. See also Veh. Code §§ 6300-6303, 9919-9924.

For provisions governing the perfection of security interests in mobilehomes and commercial coaches, see Health & Saf. Code §§ 18077.1-18077.4.

Although a judgment lien is not allowed, the judgment creditor may, of course, obtain an execution lien on the vehicle, boat, mobilehome, or commercial coach by levy of execution.

<sup>91</sup> Because the notice of judgment lien is filed in the office of the Secretary of State, a judgment lien can be obtained only on property in which a security interest could be perfected by filing a financing statement in that office. As to the place of filing to perfect a security interest, see Com. Code § 9401.

years, the same duration as a security interest.<sup>92</sup> The filed notice of judgment lien is to be reported (along with security interests, state and federal tax liens, and attachment liens) in a certificate issued by the Secretary of State pursuant to a request.<sup>93</sup> Upon satisfaction of the judgment, the judgment creditor is required on written demand to send the judgment debtor a termination statement.<sup>94</sup> The judgment creditor may also release the lien as to all or part of the property or may subordinate the lien.<sup>95</sup>

The judgment lien extends to after-acquired property of the type to which a judgment lien initially attaches,<sup>96</sup> but a secured party having a purchase money security interest in the after-acquired property may obtain priority by the timely filing of a financing statement.<sup>97</sup> The judgment lien also extends to identifiable cash proceeds of the transfer of the property subject to the lien. This provision is similar to but narrower than the Commercial Code provision relating to proceeds where a financing statement has been filed to perfect a security interest.<sup>98</sup>

The proposed law makes clear that a judgment lien has the same priority over a security interest that is given a lien creditor under Section 9301 of the Commercial Code. Accordingly, the judgment lien has priority if the notice of judgment lien is filed before the security interest is perfected,<sup>99</sup> but a purchase money security interest may have priority over an earlier filed notice of judgment lien.<sup>100</sup>

<sup>92</sup> See Com. Code § 9403(2). Unlike a security interest, the judgment lien on personal property under the proposed law may not be extended. The judgment creditor can reasonably be expected to apply the property subject to the lien to the satisfaction of the judgment within the five-year period.

<sup>93</sup> See Com. Code § 9409, as proposed to be amended.

<sup>94</sup> This provision is comparable to Commercial Code Section 9404 but is drawn from the procedure provided in the proposed law for enforcing a demand for an acknowledgment of satisfaction of judgment.

<sup>95</sup> This provision is comparable to Commercial Code Section 9405.

<sup>96</sup> This provision is consistent with Commercial Code Section 9204, but the judgment lien automatically extends to such after-acquired property.

<sup>97</sup> This provision is consistent with the Commercial Code rule as to the rights of a lien creditor. See Com. Code § 9301(2).

<sup>98</sup> See Com. Code § 9306. Money, checks, deposit accounts, and the like are "cash proceeds."

<sup>99</sup> This provision gives the judgment lien on personal property the same effect against unperfected security interests as an execution lien under Commercial Code Section 9301.

<sup>100</sup> See Com. Code § 9301(2).

In the case of a nonpurchase money security interest, the security interest has priority if it is perfected before the notice of judgment lien is filed.<sup>101</sup>

The judgment lien on personal property does not follow the property when it is transferred to any of the following:

—A buyer in the ordinary course of business who, under the Commercial Code, would take free of a security interest created by the seller.

—A holder to whom a negotiable document of title has been duly negotiated.

—A purchaser of chattel paper who gives new value and takes possession of the chattel paper in the ordinary course of business.

The proposed judgment lien on personal property offers a speedy and inexpensive means whereby a judgment creditor may obtain priority over other creditors with a less drastic disruption of the judgment debtor's business affairs than a levy of execution.<sup>102</sup> Moreover, the judgment creditor does not risk incurring considerable expenses with no return, such as might happen if a person with a perfected security interest in inventory levied upon makes a successful third-party claim. The judgment lien on personal property pressures the judgment debtor to settle with the judgment creditor since the property subject to the lien cannot be pledged to finance continuation of the business unless the judgment is satisfied or the lien is released or subordinated. The interests of the judgment creditor are also protected to some extent because the judgment lien on personal property covers after-acquired property and identifiable cash proceeds from the sale of the inventory or other property subject to the lien. Ultimately, if the judgment lien does not result in voluntary compliance or a settlement, the judgment creditor may find it necessary to resort to an execution levy to enforce the lien.

### Execution Lien

The proposed law continues the rule of existing law that an execution lien is created when property is levied on

<sup>101</sup> See Com. Code § 9301 (4). A special rule is provided by Section 9301 (4) as to future advances made after a creditor's lien is created.

<sup>102</sup> The judgment lien on personal property is available as an addition to other enforcement procedures and its creation does not preclude the judgment creditor from using other procedures.

pursuant to a writ of execution and that the execution lien terminates one year after the issuance of the writ.<sup>103</sup>

The proposed law adds new provisions to specify the effect of an execution lien where the property levied upon is transferred or encumbered after the creation of the lien. Under the proposed law, the following rules govern the effect of an execution lien after transfer or encumbrance:

(1) A transferee or encumbrancer of a judgment debtor's interest in real property that is subject to an execution lien takes the property subject to the lien. The recording of a copy of the writ of execution and a notice of levy to create an execution lien provides constructive notice to any potential transferee or encumbrancer.

(2) A transferee or encumbrancer of a judgment debtor's interest in growing crops, timber to be cut, or minerals to be extracted takes the interest subject to any prior execution lien. The form of levy on this type of property—by recording a writ of execution and a notice of levy with the county recorder—provides constructive notice to all potential transferees or encumbrancers, just as does a levy upon real property.

(3) If a levying officer has levied upon tangible personal property by taking possession, the execution lien created by the levy remains on the property despite any later purported encumbrance or transfer to a third person. This rule is based on the principle that the potential transferee or encumbrancer has a duty of inquiry where it appears that the judgment debtor does not have possession of the property or is unable to deliver it. The inability to deliver the property is constructive notice of the execution lien in such cases.<sup>104</sup>

(4) If a lien is created on personal property pursuant to a levy of execution, but the property subject to the lien is not in the possession of a levying officer, the interests of bona fide purchasers or encumbrancers not affected by the lien because the process that creates the lien is not sufficient to provide constructive notice. Accordingly, the lien does not follow the property when it is transferred to a transferee or encumbrancer who gives fair consideration

<sup>103</sup> See Section 688(d), (e).

<sup>104</sup> Cf. Civil Code § 3440 (transfer without delivery under Uniform Fraudulent Conveyance Act).

without knowledge of the lien, including a purchaser of chattel paper or an instrument.<sup>105</sup> Certain types of property subject to a lien of this type may be transferred free of the lien even where the transferee knows of the lien. This principle applies to:

- A buyer in ordinary course of business.<sup>106</sup>
  - A holder in due course of a negotiable instrument.<sup>107</sup>
  - A holder to whom a negotiable document has been duly negotiated.<sup>108</sup>
  - A bona fide purchaser of a security.<sup>109</sup>
  - A purchaser of chattel paper or an instrument who gives new value and takes possession of the chattel paper or instrument in the ordinary course of business.<sup>110</sup>
  - A holder of a purchase money security interest.<sup>111</sup>
  - A collecting bank holding a security interest in items being collected and accompanying documents and proceeds pursuant to the Commercial Code.<sup>112</sup>
  - A person acquiring any right or interest in letters of credit, advices of credit, or money.<sup>113</sup>
  - A person acquiring any right of interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of the perfection of the security interest.<sup>114</sup>
- This recognition of the rights of purchasers and transferees is consistent with case law relating to the effect of equitable liens and recent legislation governing the effect of state tax liens.<sup>115</sup>

<sup>105</sup> This is consistent with the treatment of a perfected security interest in chattel paper or instruments pursuant to Commercial Code Section 9308.

<sup>106</sup> "Buyer in ordinary course of business" is defined in Commercial Code Section 1201 (9). This principle is consistent with the treatment of a perfected security interest pursuant to Commercial Code Section 9307.

<sup>107</sup> See Com. Code § 3302.

<sup>108</sup> See Com. Code § 7501.

<sup>109</sup> See Com. Code § 8302.

<sup>110</sup> See Com. Code § 9308.

<sup>111</sup> See Com. Code § 9312.

<sup>112</sup> See Com. Code § 4208.

<sup>113</sup> See Com. Code § 5116.

<sup>114</sup> See Com. Code § 9103(2).

<sup>115</sup> See Gov't Code § 7170.

### Other Enforcement Liens

The existing statutes do not specify the effect of equitable liens that are created in the enforcement process. However, the courts have held that liens created by service of an order in supplementary proceedings or by the commencement of a creditor's suit<sup>116</sup> are not effective against a subsequent transferee of the property subject to the lien who gives fair consideration for the property without knowledge of the lien.<sup>117</sup>

The proposed law includes provisions specifying the effect of the lien created in examination proceedings, a creditor's suit, or charging order proceedings. The lien is given the same effect as the execution lien is given where the property levied upon is not in the custody of the levying officer.<sup>118</sup>

## EXECUTION

### Introduction

A number of enforcement procedures are available for collection of a money judgment, the simplest and most common being execution.<sup>119</sup> With certain exceptions,<sup>120</sup> all of the judgment debtor's nonexempt property, tangible and intangible, may be levied upon under a writ of execution. In general, the property levied upon is sold in the case of

<sup>116</sup> See *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 28-30, 87 P.2d 830, 844 (1939).

<sup>117</sup> See *Jud Whitehead Heater Co. v. Obler*, 111 Cal. App.2d 861, 872-74, 245 P.2d 608, 616 (1952); *Wagner v. Sariotti*, 56 Cal. App.2d 693, 698, 133 P.2d 430, 433 (1943); *cf. Taylor v. S & M Lamp Co.*, 190 Cal. App.2d 700, 711-13, 12 Cal. Rptr. 323 (1961) (transferee of partnership property with knowledge of charging order which created lien is liable in tort to judgment creditor); see generally 1 J. Pomeroy, *Equity Jurisprudence* §§ 165, 171(4) (5th ed. 1941); 4 *id.*, §§ 1233-1234. The effect of an execution lien against a bona fide purchaser under existing law is not clear. In one early decision, it was indicated that a levy of attachment would not be effective as against a good faith purchaser from the defendant. See *Rogers v. Gilmore*, 51 Cal. 309, 312 (1876). In the case of real property, it is clear that a transferee takes the property subject to a judgment lien that attached when it was owned by the judgment debtor. See Section 682, subd. 1; *Kinney v. Vallentyne*, 15 Cal.3d 475, 479, 541 P.2d 537, 124 Cal. Rptr. 897 (1975).

<sup>118</sup> See the discussion in the text under "Execution Lien" beginning at note 103 *supra*.

<sup>119</sup> For a discussion of other remedies, see the text under "Miscellaneous Creditors' Remedies" beginning at note 425 *infra*.

<sup>120</sup> Property that is not subject to execution but is subject to enforcement of a money judgment is reached using one of the miscellaneous creditors' remedies. See the discussion in the text under "Miscellaneous Creditors' Remedies" beginning at note 425 *infra* for the manner of subjecting property not subject to execution to enforcement of a money judgment.

tangible property or either collected or sold in the case of a debt.

## Issuance and Return of Writ of Execution

### Existing Law

Under existing law, a writ of execution for enforcement of a money judgment is issued by the clerk of the court where the judgment is entered upon application of the judgment creditor.<sup>121</sup> A writ may be issued to the levying officer in each county in which the judgment debtor has property that the judgment creditor desires to reach.<sup>122</sup> Only one writ to enforce the judgment may be outstanding in a county at a time.<sup>123</sup>

The writ of execution may be in force for one year from its date of issuance, but it must be returned to the court clerk between 10 and 60 days after its delivery to the levying officer.<sup>124</sup> The return provides an account of the levying officer's activities in executing the writ and the amounts collected in satisfaction of the judgment.<sup>125</sup> If proceeds are received after the writ has been returned or if a sale has not been completed before the return date, the

<sup>121</sup> See Section 682. Under existing law, a court hearing is required before a writ of execution may be issued to enforce a judgment for support of a child or spouse. See Civil Code § 4380; *Messenger v. Messenger*, 46 Cal.2d 619, 630, 297 P.2d 988 (1956); *Jackson v. Jackson*, 51 Cal. App.3d 363, 366-68, 124 Cal. Rptr. 101 (1975). In the interest of efficiency and economy, the proposed law permits resort to execution in such cases without prior court approval so long as amounts sought to be collected are not more than 10 years overdue. See the text at note 13 *supra*. Existing law also requires a judgment creditor who seeks to execute upon a dwelling house (for which a homestead declaration has not been recorded) to apply to the court in the county where the house is located. See Section 690.31; *Krause v. Superior Court*, 78 Cal. App.3d 499, 505, 144 Cal. Rptr. 194, 197 (1978). For the proposed modification of this feature of existing law, see the discussion in the text at note 294 and under "Exemption procedure under proposed law" beginning at note 298 *infra*.

<sup>122</sup> See Sections 682, 687. The writ may also be issued to a registered process server where the judgment creditor seeks to levy upon a debt owed the judgment debtor by a third person. See the discussion in the text under "Registered Process Server" beginning at note 141 *infra*.

<sup>123</sup> See Section 683; 32 Ops. Cal. Att'y Gen. 22 (1958). Section 690.31 may create an implied exception to this general rule because the special writ issued pursuant to court order under that section for the purpose of levying upon a dwelling presumably may not be used for a levy on other property and, correspondingly, a general writ of execution issued by the clerk to the same county may not be used against a dwelling.

<sup>124</sup> See Sections 683, 688(e). The writ may, however, be retained to complete a sale after its return date. See Section 683(c).

<sup>125</sup> See Section 682.1; *Marshal's Manual of Procedure* § 404 (rev. 1980).

writ may be redelivered to the levying officer who then makes an alias return.<sup>126</sup>

The writ of execution states the amount due on the judgment at the time of its issuance.<sup>127</sup> The clerk also enters the amount of interest accruing daily and the fee for issuance of the writ, and the levying officer adds the costs of levy and sale to the amount to be collected under the writ.<sup>128</sup>

### Proposed Law

The proposed law modifies these procedures in several important respects in order to provide more time for locating and levying on property and to avoid levy under a writ that no longer accurately reflects the amount due on the judgment. The writ of execution is leviable at any time during the first 90 days after its issuance, rather than 60 days after its delivery to the levying officer. If property is levied upon during the 90-day period, the writ is retained by the levying officer for the purpose of selling or collecting thereafter during the life of the writ, thus avoiding the need for redelivery of the writ and an alias return. The creditor may obtain another writ of execution for the same county after the first writ is at least 90 days old so that additional property may be levied upon while the sale or collection process continues under the first writ.

If no property is levied upon during the first 90 days after the writ is issued, the writ is returnable promptly after the expiration of the 90-day period. The writ also is returnable at the written request of the judgment creditor; this permits issuance of a new writ when the time for levy under the prior writ has almost expired without any property having been levied upon.

Writs are returnable after the duties thereunder have been performed, but not later than one year after issuance.<sup>129</sup> The writ is returnable earlier if the time for enforcement of the judgment has expired.

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<sup>126</sup> See Section 683.

<sup>127</sup> See Sections 682, 682.2.

<sup>128</sup> See Section 682.2.

<sup>129</sup> In the case of a levy upon an interest of an heir, devisee, or legatee in personal property in the estate of a decedent, the writ is returnable as late as one year after the date the decree distributing the interest is final.



### Levy Under Writ of Execution

The writ of execution is executed by the levying officer<sup>130</sup> pursuant to instructions from the judgment creditor describing the nature and location of the property to be levied upon.<sup>131</sup>

Under existing law, the levying officer is required first to apply property previously attached in the action to the satisfaction of the judgment and then to levy upon personal property and finally upon real property.<sup>132</sup> This rule is ineffective, however, because the levying officer follows the instructions of the judgment creditor as to the property to be levied upon. The order of levy rule is not continued in the proposed law because it is not efficient and is not necessarily beneficial to either the debtor or the creditor.

The existing rule requiring that attached property be applied to the satisfaction of the judgment is replaced by a more flexible rule. The new rule recognizes that in some cases it may not be desirable to resort to the attached property before levying on other property. For example, the creditor may have attached real property before entry of the judgment in a case where liquid assets such as earnings or bank accounts can be more efficiently and economically reached after judgment.<sup>133</sup> The proposed law protects the judgment debtor from excessive levies by requiring the judgment creditor to either release attached property or levy upon it under execution (or, in the case of real property, subject it to a judgment lien) before any other property may be levied upon.

The proposed law does not continue the requirement that the creditor levy on personal property before real property. The creditor should not be prevented from

<sup>130</sup> Service of the writ on a third person may also be accomplished by a registered process server if the levy does not require the sale, delivery, or custody of the property levied upon. Sections 682, 687. See also the discussion in the text under "Registered Process Server" beginning at note 141 *infra*.

<sup>131</sup> See Section 262 (levying officer not liable for carrying out signed instructions); *cf.* Section 692 (instructions for sale of property); see generally Marshal's Manual of Procedure §§ 301, 341 (rev. 1979); California State Sheriffs' Ass'n, Civil Procedural Manual 4.05 (rev. 1980).

<sup>132</sup> Sections 682, 684.2. The preferential protection of real property from the claims of creditors dates from feudal times and was recognized in clause 9 of the Magna Carta.

<sup>133</sup> An individual debtor's real property may be attached before entry of judgment (Section 487.010(c)(1)), but the creditor may not attach earnings (Section 487.020(c)) or accounts receivable, chattel paper, or choses in action with an individual balance of less than \$150 (Section 487.010(c)(2)).

reaching real property simply because there may be some personal property which might be applied to the satisfaction of the judgment. In some cases, the creditor may wish to levy on the real property because a levy on personal property would be likely to give rise to an exemption claim or a third-party claim. In other cases, real property rather than personal property might be levied upon because the levy on and sale of the personal property could be made only at a great sacrifice to the debtor, as in the case of used furniture or intangibles.

### General Rules Governing Levy

Under the proposed law, property is levied upon—seized in the eyes of the law—in four ways:

(1) *By taking custody and serving a writ and notice of levy.* Custody and service are used where tangible personal property to be levied upon is in the judgment debtor's possession.

(2) *By serving a writ and notice of levy without taking custody (garnishment).* Service alone is used for a levy upon intangible personal property or tangible personal property under the control of a third person.

(3) *By filing or recording of a writ and a notice of levy.* Filing or recording is used to levy upon real property, growing crops, standing timber, and minerals to be extracted, property under estate administration, or a final money judgment.

(4) *By delivering a writ and instructions to levy to the levying officer.* Delivery of a writ and instructions to the levying officer constitutes a "paper levy" upon property already levied upon by the levying officer.<sup>134</sup>

The levy procedures under the proposed law are largely the same as existing procedures. However, existing law generally adopts by reference the rules governing levy under a writ of attachment,<sup>135</sup> whereas the proposed law includes specific provisions that prescribe the manner of levy upon the various types of property. This avoids conflicts in terminology that would otherwise arise when attachment provisions are applied in the execution context.

<sup>134</sup> See *O'Connor v. Blake*, 29 Cal. 312, 315 (1865); *Colver v. W.B. Scarborough Co.*, 73 Cal. App. 441, 443, 238 P. 1104 (1925).

<sup>135</sup> See Section 688(b).

Since the vast majority of levies take place after judgment, specific execution levy procedures are more convenient for practitioners and levying officers.

The proposed law also employs the terminology of the Commercial Code to the extent practicable. For example, references to "things in action" and "debts" in existing law<sup>136</sup> are replaced by references to "accounts receivable" and "general intangibles" in the proposed law.<sup>137</sup>

Under the proposed law, both a copy of the writ of execution and a notice of levy are to be served on the judgment debtor and on other persons affected by the levy. The notice of levy informs the person served of the capacity in which the person is served (such as judgment debtor, garnishee, or interest holder of record), the property that is levied upon, the person's rights under the levy (including the right to make a third-party claim or to claim an exemption), and the person's duties under the levy (such as the requirement that a garnishee file a memorandum with the levying officer). Notice of levy is required to be given promptly to the judgment debtor in every case. A levy is valid, however, even if no notice is given to the judgment debtor or a third person, provided that the essential levy requirements are satisfied.<sup>138</sup>

### Creation of Execution Lien

A levy creates a lien upon the property levied upon which runs for one year from the date of the issuance of the writ.<sup>139</sup> This general principle is continued in the proposed law. By clarifying the method of levy applicable to a particular type of property, the proposed law facilitates the determination of the exact time a lien is created. This is a

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<sup>136</sup> See Sections 688(b), 691.

<sup>137</sup> Under the proposed law, "account receivable" means "account" as defined by Commercial Code Section 9106 and "general intangibles" means "general intangibles" as defined in Commercial Code Section 9106.

<sup>138</sup> This continues a feature of attachment levies that, under the incorporation provision of Section 688(a), applies to execution. See, e.g., Sections 488.310(e), 488.320(b), 488.330(c).

<sup>139</sup> See Section 688(e). The lien of execution has a longer duration in the case of a levy on interests or claims of heirs, devisees, or legatees in assets of decedents remaining in the hands of executors or administrators. See note 129 *supra*.

necessary step in determining the priorities among various creditors.<sup>140</sup>

### Registered Process Server

The proposed law expands the role of registered process servers in levying of property pursuant to writs of execution. Under existing law, a registered process server may levy where the property levied upon is not in the possession of the judgment debtor and "the levy of execution does not require the person serving the writ to sell, deliver, or take custody of such property."<sup>141</sup> This appears to mean that a registered process server may levy on intangible property where the method of levy is by service on a third person and the property may be applied to the satisfaction of the judgment by collection rather than sale (as in the case of accounts receivable, deposit accounts, and general intangibles). The proposed law continues this aspect of existing law and also permits a registered process server to levy on real property, growing crops, timber to be cut, and minerals to be extracted, where the method of levy is by recording a copy of the writ and a notice of levy with the county recorder. The proposed law also permits a registered process server to levy on personal property used as a dwelling, such as a mobilehome or boat, where the method of levy is by posting or serving an occupant.<sup>142</sup> The proposed law also makes clear that the registered process server is to serve persons required to be served as an adjunct of the levy, such as the judgment debtor, an occupant of real property, or a co-obligee of an account receivable or general intangible.<sup>143</sup>

After levy and any other service or posting is accomplished, the registered process server is required by the proposed law to file the writ with the levying officer

<sup>140</sup> See note 47 *supra*. See generally the discussions in the text under "Execution Lien" beginning at note 103 *supra* and under "Distribution of Proceeds of Sale and Collection" beginning at note 378 *infra*.

<sup>141</sup> Section 687.

<sup>142</sup> See the discussion in the text under "Methods of Levy on Particular Types of Property" beginning at note 159 *infra*. The proposed law provides an alternative method of levy on personal property used as a dwelling that involves a keeper taking possession and eventual removal of the occupants. The registered process server would not be involved in this type of levy.

<sup>143</sup> See the discussion in the text under "Methods of Levy on Particular Types of Property" beginning at note 159 *infra*.

along with an affidavit stating the activities of the registered process server. The levying officer then performs the remaining duties under the writ, such as receiving garnished amounts, selling real property, crops, timber, or minerals, processing any third-party claims or exemption claims, and returning the writ to the court clerk.

Existing law does not make clear whether the fee of the registered process server is a recoverable cost of collection. The proposed law incorporates the general standard for recovery of the costs of employing a registered process server which allows recovery of the fee charged by public officers for the same duties or a larger fee in the case of an unusually difficult service.<sup>144</sup> The levying officer's fee for completing the processing of the writ and returning it to the court is also recoverable under the general rules.<sup>145</sup>

#### Levy on Personal Property in a Private Place

The right of the judgment creditor to cause a levying officer to seize personal property from the possession of the judgment debtor is limited by the debtor's right to privacy.<sup>146</sup> Consistent with constitutional protections, the proposed law permits the judgment creditor to apply to the court *ex parte*, or on noticed motion if the court so directs or court rule so requires, for an order directing the levying officer to seize personal property in a private place. As a prerequisite to issuance of such an order, the judgment creditor must describe with particularity both the property sought to be levied upon and the place where it is to be found. The court must be satisfied that there is probable cause to believe that the property is located in the place described.

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<sup>144</sup> See Section 1032b.

<sup>145</sup> See the discussion in the text under "Costs of Enforcement" beginning at note 30 *supra*.

<sup>146</sup> The right to privacy and the protection of the security of the home was recognized in early common law. See 2 A. Freeman, *Law of Executions* § 256 (3d ed. 1900). In *Blair v. Pitchess*, 5 Cal.3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971), the prejudgment claim and delivery procedure was held unconstitutional partly because the seizure of the property in a private place constituted an unreasonable intrusion on the debtor's privacy in the absence of probable cause. *Cf. Camara v. Municipal Court*, 387 U.S. 523, 528-29 (1967) (attempted warrantless search by municipal health inspector).

### Turnover Orders

The proposed law makes available the remedy of a turnover order derived from the laws pertaining to claim and delivery and attachment.<sup>147</sup> The judgment creditor may obtain an order on ex parte application, or on noticed motion if the court so directs or court rule so requires, requiring the judgment debtor to transfer possession of property sought to be levied upon or documentary evidence of title to property or a debt sought to be levied upon. The order is enforceable by the power of the court to punish for contempt. Use of a turnover order in appropriate cases may avoid the need to obtain an order for a levy on property in a private place, may facilitate reaching intangible assets with a situs outside California, and by permitting a turnover of evidence of title may facilitate eventual collection of a debt or sale of property such as a motor vehicle.

### Disposition of Perishable Property

The proposed law makes specific provision for the prompt sale by the levying officer or a receiver of perishable property that has been levied upon.<sup>148</sup> Such property may be sold pursuant to court order obtained ex parte or on noticed motion if the court or a court rule so requires. However, if the levying officer determines that the property is so perishable or so subject to deterioration or depreciation that there is not time to obtain a court order, the levying officer may take any action necessary to preserve its value. The levying officer is protected from liability if the determination is made in good faith.

### Release of Property

The proposed law contains provisions governing the release of property. Existing law incorporates by reference the provisions of the Attachment Law pertaining to the release of property that has been levied upon.<sup>149</sup>

The proposed law continues the substance of existing law but permits property to be sold rather than released if the

<sup>147</sup> See Sections 482.080 (attachment), 512.070 (claim and delivery).

<sup>148</sup> This provision is derived from Section 488.530 (attachment), and portions of Sections 689 (third-party claims proceedings) and 690.50(g) (exemption proceedings).

<sup>149</sup> See Section 488.560.

person from whom it was taken cannot be found. In such a case, the proceeds are deposited in the county treasury payable to the order of the person from whom the property was taken.

## Levy on Property Subject to Security Interest

### Existing Law

Levy procedures under existing statutory law take no account of the possibility of a security interest having priority in the personal property levied upon.<sup>150</sup> However, if a secured party has collateral that a judgment creditor seeks to levy upon, the secured party may protect his or her rights by refusing to turn the property over to the levying officer. A priority determination may then be made in a creditor's suit brought by the judgment creditor against the secured party.<sup>151</sup> If the collateral is in the possession of the judgment debtor or some person other than the secured party (such as a bank or bailee) or if the collateral is intangible property (such as an account receivable), the secured party may make a third-party claim<sup>152</sup> or seek to enforce the security interest after the property levied upon is sold.<sup>153</sup> Judgment creditors are permitted to levy on property in disregard of the perfected interests of secured

<sup>150</sup> Under Commercial Code Section 9301(1), (2), a lien creditor has priority over an unperfected security interest, except where a secured party with a purchase money security interest files no later than 10 days after the debtor receives possession of the collateral, in which case the secured party has priority. A perfected security interest has priority over an execution lien with respect to advances made before the execution levy and with respect to advances made within 45 days after levy or advances or commitments made thereafter without knowledge of the lien. Com. Code § 9301(4). *Cf.* Civil Code § 2897 (lien priority according to time of creation). It should be noted that a lien creditor with knowledge of the contents of an improperly filed financing statement may lose priority over an unperfected security interest if the filing was made in good faith. See Com. Code § 9401(2). This would be an unlikely occurrence, however, under the single filing alternative of the Uniform Commercial Code adopted in California.

<sup>151</sup> See Section 720. See also the discussion in the text under "Creditor's Suit" beginning at note 453 *infra*. This course subjects the secured party to liability for costs.

<sup>152</sup> See Section 689b. See also the discussion in the text under "Third-Party Claims and Related Procedures" beginning at note 519 *infra*. The judgment creditor may also force the secured party to make a third-party claim within 30 days after a demand therefor or forfeit the security interest in the property levied upon. Section 689b(8). See also discussion in the text at notes 543-544 *infra*.

<sup>153</sup> See Sections 689, 699 (purchaser at execution sale takes judgment debtor's interest in the property); 5 B. Witkin, California Procedure *Enforcement of Judgment* §§ 116-117, at 3482-83 (2d ed. 1971).

parties, but this aspect of existing law is needlessly burdensome to secured parties and results in excessive disruptions of ongoing business relations.

### Proposed Law

The proposed law attempts to alleviate the conflict between levying creditors and secured parties through two procedures:

(1) Permitting a judgment creditor to obtain a judgment lien on personal property by filing with the Secretary of State in the manner provided for perfecting a security interest.<sup>154</sup>

(2) Revising the execution levy procedures to take account of paramount interests of secured parties.

The proposed law codifies the substance of decisional law regarding the rights of secured parties with perfected security interests as against levying creditors<sup>155</sup> and adopts the terminology of the Commercial Code as far as practicable to accomplish this goal. In summary, a levy under the proposed law reaches the judgment debtor's rights in the collateral<sup>156</sup> while minimizing the disruption of the secured party's rights to satisfaction of the security interest from collateral consisting of goods in the possession of the secured party, bailee, lessee, or conditional buyer, or from an account debtor or obligor obligated on collateral such as accounts receivable, chattel paper, instruments, or general intangibles.<sup>157</sup> The priority of the judgment creditor is established at the time of levy, although it is not then known whether the secured party has the priority of a perfected security interest or is subordinate to the

<sup>154</sup> See the discussion in the text under "Judgment Lien on Personal Property" beginning at note 87 *supra*.

<sup>155</sup> The cases hold in general that a secured party with a perfected security interest in collateral involving a bailment or the indebtedness of an account debtor is entitled to the disposition of the collateral, including the collection of payments due thereon, without interference deriving from a subsequent levy by the creditor on the debtor's interest in the pledged property. See, e.g., *Puissegur v. Yarbrough*, 29 Cal.2d 409, 412-14, 175 P.2d 830, 831-32 (1946); *Dubois v. Spinks*, 114 Cal. 289, 294-95, 46 P. 95, 96 (1896); *William Deering & Co. v. Richardson-Kimball Co.*, 109 Cal. 73, 84, 41 P. 801, 803-04 (1895); *Robinson v. Tevis*, 38 Cal. 611, 614-15 (1869); *Axe v. Commercial Credit Corp.*, 227 Cal. App.2d 216, 220-23, 38 Cal. Rptr. 558, 563 (1964); *Crow v. Yosemite Creek Co.*, 149 Cal. App.2d 188, 308 P.2d 421 (1957).

<sup>156</sup> See Code Civ. Proc. § 689a; Com. Code § 9311.

<sup>157</sup> The levy procedures are considered in more detail under "Methods of Levy on Particular Types of Property" *infra*.



judgment creditor's lien. This is accomplished by means of the notice served on account debtors, bailees, and obligors, which is designed to preserve the status quo pending a determination of the priorities between the judgment creditor and the secured party.<sup>158</sup> If it is determined that the judgment creditor's lien has priority over the security interest, the secured party is then liable to the judgment creditor for any payments received after the levy or the value of any property subject to the execution lien.

### Methods of Levy on Particular Types of Property

The proposed law contains specific provisions for levy upon various categories of property. Many of these provisions are the same in substance as existing law which in general incorporates the methods of levy under attachment.<sup>159</sup> Significant revisions are discussed below.

#### Real Property

The proposed law requires the recording of a copy of the writ of execution and a notice of levy with the county recorder in all cases of a levy on an interest in real property. Under existing law, no recordation is required if the judgment is already a lien on the property.<sup>160</sup> The proposed law also makes clear that a leasehold interest in real property is to be levied upon in the same manner as a freehold interest. It is the practice under existing law to treat some leases as personal property and some as real property for the purpose of determining the correct manner of levy.<sup>161</sup>

#### Growing Crops and Timber to be Cut

Under existing law, the manner of levy on growing crops or timber to be cut is the same as a levy on the underlying

<sup>158</sup> See the discussion in the text under "Methods of Levy on Particular Types of Property" *infra* and under "Duties and Liabilities of Third Persons After Levy" beginning at note 209 *infra*.

<sup>159</sup> Section 688(b). See the discussion in the text beginning at note 135 *supra*.

<sup>160</sup> See *Lehnhardt v. Jennings*, 119 Cal. 192, 195-97, 48 P. 56, 51 P. 195 (1897). The practice has been to make a complete levy in every case. See *Marshal's Manual of Procedure* § 303.2 (rev. 1980).

<sup>161</sup> See *Marshal's Manual of Procedure* § 300.3 (rev. 1977) (leases for definite term of years treated as personal property, leases for indefinite term treated as real property). The Attachment Law, however, does not make this distinction. See Section 488.310.

land.<sup>162</sup> The proposed law continues existing law and also requires that notice of the levy be given to any secured party who has filed a financing statement with respect to the crops or timber before the date of levy.<sup>163</sup> This notice is needed so that the secured party can obtain protection in the event the crops or timber are to be sold at an execution sale or the levying officer or a receiver is ordered by the court to cultivate, harvest, pack, or sell the property because of its perishable nature.

### **Minerals to be Extracted**

The proposed law makes clear that minerals and the like (including oil and gas) to be extracted and accounts receivable resulting from the sale thereof at the wellhead or minehead are levied upon in the same manner as real property. This provision is consistent with the manner of perfection of a security interest in such property.<sup>164</sup>

### **Tangible Personal Property Already in Custody of Levying Officer**

The proposed law contains a new provision governing levy on tangible personal property that is already in a levying officer's custody.<sup>165</sup> There is no need to seize the property again in such a case, so the levy is accomplished and a lien arises when the creditor delivers the writ of execution to the levying officer with instructions to levy upon the property already in the officer's custody. If the writ is to be executed by a levying officer other than the one having custody of the property, the executing officer will levy upon the property by serving a copy of the writ and a notice of levy on the levying officer having custody. This procedure enables a second judgment creditor to establish a lien on the surplus proceeds that might remain after a sale of the property<sup>166</sup> and to prevent the release of the property

<sup>162</sup> See Section 488.360(c) (incorporated by Section 688(b)).

<sup>163</sup> A security interest in growing crops or timber to be cut may be perfected by filing in the office where a mortgage on real estate would be recorded. Com. Code §§ 9302, 9401(1)(b), 9402(1), (5).

<sup>164</sup> See Com. Code §§ 9103(5), 9401(1)(b).

<sup>165</sup> See *O'Connor v. Blake*, 29 Cal. 312, 315 (1865) (valid paper levy effected by levying officer's return on back of attachment); *Colver v. W.B. Scarborough Co.*, 73 Cal. App. 441, 443, 238 P. 1104 (1925).

<sup>166</sup> See the discussion in the text under "Distribution of Proceeds of Sale and Collection" beginning at note 378 *infra*.

should the lien of the first judgment creditor cease, such as pursuant to satisfaction of the first judgment or otherwise at the direction of the first judgment creditor.

### Goods in Possession of Bailee

If the judgment debtor's property is in the possession of a bailee, levy is made by personal service of a copy of the writ of execution and a notice of levy on the bailee, just as on any other third person. If a negotiable document has been issued, it must be levied upon to reach the goods.<sup>167</sup> If the goods are subject to a security interest, the proposed law permits service on the secured party, but does not make such service a prerequisite of a valid levy.<sup>168</sup> The security interest in the bailed goods may be enforced notwithstanding the levy, but if the security interest was unperfected at the time of levy, the secured party will be liable to the judgment creditor to the extent of the creditor's lien on the property. If the security interest was perfected, the levy reaches the judgment debtor's interest in the goods that remains after the security interest is satisfied.<sup>169</sup> Thus, if any proceeds remain after the secured party has sold the goods to satisfy the security interest, the secured party is required to pay the surplus over to the levying officer.<sup>170</sup>

### Property of a Going Business

Existing law requires that tangible personal property of a going business be levied upon by placing a keeper in charge of the property; the business is permitted to operate for at least two days under the keeper unless the judgment debtor objects to the keeper.<sup>171</sup> Under the proposed law, the judgment creditor is not required to use a keeper but may have the property seized immediately. The two-day keeper requirement has been defended as a grace period during

<sup>167</sup> See the discussion in the text under "Negotiable Documents of Title" beginning at note 187 *infra*.

<sup>168</sup> This changes the rule in *Crow v. Yosemite Creek Co.*, 149 Cal. App.2d 188, 308 P.2d 421 (1957).

<sup>169</sup> See *Com. Code* §§ 9311, 9504, 9506.

<sup>170</sup> See the discussion in the text under "Duties and Liabilities of Third Persons After Levy" beginning at note 209 *infra*.

<sup>171</sup> Section 688(c).

which the debtor may work out a settlement with the creditor. While a grace period is useful in prejudgment attachment, a grace period is unnecessary once a judgment has been entered and becomes enforceable. The proposed law does, however, permit the judgment creditor to choose to levy by means of a keeper for a period specified by the creditor, so long as the judgment debtor does not object. At the end of the keeper period specified by the creditor, or if the debtor objects to the keeper, the levying officer takes exclusive custody of the property to the extent necessary to satisfy the judgment.

### **Personal Property Used as a Dwelling**

Existing law also provides for a two-day keeper levy on personal property used as a dwelling, such as a houstrailer, mobilehome, or vessel. At the end of the two-day period, the levying officer is required to remove the occupants and take exclusive custody of the dwelling unless some other disposition is agreed on by the parties or ordered by the court.<sup>172</sup> This procedure is defective because no adequate opportunity is afforded to claim a dwelling exemption<sup>173</sup> or assert a right to possession such as under a lease. This procedure is also needlessly expensive because of the keeper fees and any moving and storage charges that would be incurred if the occupant is able to stay proceedings pending a determination of an exemption claim or for some other reason.<sup>174</sup>

The proposed law permits levy to be made by service on the occupant and posting the property. While this method of levy does not offer the same security as a keeper levy, it should suffice in most cases since it is unlikely that the judgment debtor could transfer the dwelling to a bona fide

<sup>172</sup> Section 688(c). This procedure would apparently not apply if the dwelling is of a type that could be selected as a homestead or is a mobilehome as defined in Health and Safety Code Section 18008 (exceeding 8 by 40 feet and designed to be used without permanent foundation). See Section 690.31(a)(2).

<sup>173</sup> Existing law affords the judgment debtor 10 days after levy within which to make an exemption claim for such property not governed by Section 690.31. See Section 690.50(a).

<sup>174</sup> A two-day keeper levy on an occupied mobilehome requires a deposit of \$200 plus the cost of moving the mobilehome and storing its contents. See Marshal's Manual of Procedure §§ 11 (rev. 1980), 369 (rev. 1977); see also California State Sheriffs' Ass'n, Civil Procedural Manual 1.22-1.23, 4.09 (rev. 1980).

purchaser free of the lien on such short notice.<sup>175</sup> If the judgment creditor is unwilling to take this risk, however, a keeper levy remains available under the proposed law. The proposed law requires the judgment creditor to apply on noticed motion for an order directing the removal of the occupants if they do not voluntarily vacate the dwelling. This would eliminate the harsh aspect of existing law that purports to permit the levying officer to remove any occupant of the dwelling after two days without any determination of the right to possession.

### **Vehicles and Boats Required to be Registered**

Existing law requires the levying officer to give notice of levy on a vehicle or boat required to be registered to the legal owner if different from the registered owner.<sup>176</sup> The proposed law is worded so as to avoid giving duplicate notice to legal owners; if the legal owner is in possession, notice generally will be given at the time the property is levied upon.

### **Chattel Paper**

Under existing law, chattel paper is levied upon by serving a third person in possession of the chattel paper or, if it is in the possession of the judgment debtor, by taking custody of it.<sup>177</sup> After levy the account debtor obligated on the chattel paper is served with notice of the levy, but the rights of the account debtor are not affected before notice is given.

This method of levy works perfectly well if no competing rights of secured parties are involved. However, if the chattel paper is subject to a prior security interest, the account debtor may cease making payments in response to the levy, to the detriment of the secured party. The proposed law revises this levy procedure by making clear that the account debtor may be given notice of levy only if (1) the levying officer obtains custody of the chattel paper or (2) a secured party has left with the judgment debtor the liberty to collect payments due on the chattel paper or to

<sup>175</sup> See the discussion in the text under "Execution Lien" beginning at note 103 *supra*.

<sup>176</sup> See Section 689b(1).

<sup>177</sup> See Section 488.380 (incorporated by Section 688(b)). This method of levy is the same as that provided for levy on any tangible personal property.

enforce or accept the return of goods leased or sold to create the chattel paper.<sup>178</sup> The notice given the account debtor under the proposed law states that the account debtor is to continue making payments to a secured party, but if any payments are being made or are required to be made to the judgment debtor, such payments must be made to the levying officer. In a case where payments are being made to the judgment debtor on chattel paper that is subject to a security interest having priority over the judgment creditor's lien, the secured party will find it necessary to take some action to assert the priority of the security interest.<sup>179</sup> After satisfaction of the security interest, any excess payments or excess proceeds from the sale of the collateral in the hands of the secured party are subject to the judgment creditor's lien and are to be paid over to the levying officer. The proposed law also makes clear that a levy on chattel paper creates a lien on the judgment debtor's interest in the collateral as well.<sup>180</sup>

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<sup>178</sup> Commercial Code Section 9205 recognizes the validity of a security interest where the debtor has "liberty . . . to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions . . . ." In such a case, a notice of levy instructing the account debtor to cease making payments to the judgment debtor and to make payments or return property to the levying officer is served whether or not the levying officer has obtained custody of the chattel paper. This protects the interests of the judgment creditor by depriving the judgment debtor of the power to dispose of the collateral levied upon. Such notice to the account debtor is not needed if the secured party has retained power over the disposition of the collateral because the secured party in possession of the chattel paper is liable for compliance with the levy after satisfaction of the security interest.

<sup>179</sup> A security interest in chattel paper is perfected either by filing (Com. Code § 9304(1)) or by possession of the chattel paper (Com. Code § 9305). If the secured party has perfected by filing, the proposed law gives the secured party no additional protection in a case where the levying officer obtains custody of the chattel paper and where the account debtor is making payments to the judgment debtor. However, if the payments are being made to the secured party, the account debtor will be instructed by the notice of levy to continue making payments even if the levying officer has obtained custody of the chattel paper.

<sup>180</sup> This proposal is derived from the rule that a perfected security interest in chattel paper gives the secured party a perfected security interest in the rights to payment evidenced thereby and in the debtor's security interest in the goods sold if that security interest is perfected by filing. See *Bolduan v. Normandin (In re Western Leasing, Inc.)*, 17 U.C.C. Rep. 1369 (D. Ore. 1975). The proposed provision resolves for the purposes of execution levy the conflict in decisions under the Uniform Commercial Code concerning whether a security interest in chattel paper that is perfected by possession results in a perfected security interest in the lessor's property interest in the leased goods since the lessor's interest is not a security interest in need of perfection. See Comment, *In Re Leasing Consultants, Inc.: The Double Perfection Rule for Security Assignments of True Leases*, 84 Yale L.J. 1722 (1975).

## Instruments

Under existing law, a negotiable instrument is levied upon by serving a third person in possession or, if the negotiable instrument is in the possession of the judgment debtor, by taking custody of it.<sup>181</sup> A nonnegotiable instrument<sup>182</sup> is treated as a chose in action which is levied upon by service on the obligor.<sup>183</sup>

The proposed law revises these procedures to conform more closely to the Commercial Code provisions governing security interests in instruments.<sup>184</sup> Hence, all instruments, negotiable as well as nonnegotiable, are levied upon by taking custody (if the instrument is in the judgment debtor's possession) or by service on a third person in possession.<sup>185</sup> Notice is not given to the person obligated on the instrument unless the levying officer obtains custody of the instrument. This limitation is intended to prevent interference with the rights of secured parties<sup>186</sup> and holders in due course. As in the case of chattel paper subject to a security interest, the secured party is liable for any excess payments made after satisfaction of the security interest. The rights of the obligor are not affected until notice of levy is received, but payments made to a person other than the levying officer after notice of levy is received do not discharge the obligation on the instrument.

## Negotiable Documents of Title

A negotiable document is levied upon under existing law by serving a third person in possession of the document or, if it is in the possession of the judgment debtor, by taking

<sup>181</sup> See Section 488.400(a) (incorporated by Section 688(b)).

<sup>182</sup> A nonnegotiable instrument is an instrument which is otherwise negotiable within Division 3 (commencing with Section 3101) of the Commercial Code but which is not payable to order or to bearer.

<sup>183</sup> Section 481.050 classes nonnegotiable instruments as choses in action which are levied upon pursuant to Section 488.370 (incorporated by Section 688(b)).

<sup>184</sup> Under Commercial Code Section 9105(1) (i) an instrument includes a negotiable instrument, a security, or "any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment." The proposed law treats levy on securities separately.

<sup>185</sup> The provision governing levy on instruments does not apply to levy on an instrument that constitutes a part of chattel paper, which would be levied upon in the manner provided for chattel paper. See Com. Code § 9105(1) (b).

<sup>186</sup> A security interest in an instrument is perfected by possession. Com. Code §§ 9304, 9305.

custody of it.<sup>187</sup> In addition, notice of levy must be given the obligor on the document (*i.e.*, the bailee who has issued it).<sup>188</sup> The proposed law deletes this additional requirement since the bailee cannot deliver the goods covered by the negotiable document to anyone not in possession of it.<sup>189</sup> There is no need to further alter these rules to take account of conflicting interests of secured parties.<sup>190</sup>

## Securities

Existing law governing levy on securities is consistent with the rule stated in Section 8317 of the Commercial Code.<sup>191</sup> The proposed law continues the substance of existing law by incorporating Commercial Code Section 8317.

## Deposit Accounts

A deposit account is levied upon by service on the financial institution holding the account.<sup>192</sup> If the deposit account is held in the name of a person other than the judgment debtor or in the names of both the judgment debtor and another person, the levy is not effective unless the judgment creditor delivers a bond that indemnifies the nondebtor account holder in twice the amount of the judgment or twice the amount sought to be reached by levy, whichever is less.<sup>193</sup> A levy freezes the deposit account.<sup>194</sup> Under the proposed law, the financial institution

<sup>187</sup> See Section 488.400(a) (incorporated by Section 688(b)).

<sup>188</sup> See Section 488.400(c).

<sup>189</sup> See Com. Code §§ 7403, 7602.

<sup>190</sup> A security interest in a negotiable document is perfected by possession (Com. Code § 9305) or by filing (Com. Code § 9304(1)). If the security interest is perfected by possession, the existing rules governing levy require service on the secured party. Thus the secured party will be liable to the judgment creditor for any excess proceeds after satisfaction of the security interest. If the security interest in the negotiable document is perfected by filing and the negotiable document is in the hands of the judgment debtor, the levy is by seizure in order to prevent negotiation to a holder free of the lien pursuant to Commercial Code Section 7501. See also Com. Code § 9309. If the levying officer obtains possession of the negotiable document, the interest of the secured party may be asserted through the third-party claims procedure.

<sup>191</sup> See Section 488.410 (incorporated by Section 688(b)).

<sup>192</sup> See Sections 488.390 (incorporated by Section 688(b)), 682a.

<sup>193</sup> Section 682a. Under the proposed law, a corporate surety bond is required whereas under existing law personal sureties are permitted. This will minimize the need for proceedings to justify sureties.

<sup>194</sup> See Sections 488.390, 682a. The Commission is informed, however, that in practice at least some banks withhold in a suspense account only the amount needed to satisfy the levy.



is required to hold in the account the amount levied upon. The proposed law balances the interests of the judgment creditor and the judgment debtor where accounts are sufficiently large by permitting the debtor to use excess amounts while making the levy effective.<sup>195</sup>

### Safe Deposit Boxes

The procedures for levy on property in a safe deposit box are analogous to procedures for levy on deposit accounts.<sup>196</sup> A bond is required if the box is in the name of a person other than the judgment debtor. No access is permitted to the box after levy. In order to reduce costs, the proposed law specifically provides that the box holder be given an opportunity to open the box to permit the removal of its contents pursuant to the levy.

### Accounts Receivable and General Intangibles

Under existing law, accounts receivable, choses in action, and other debts owed the judgment debtor are levied upon by service on the person obligated.<sup>197</sup> After levy the account debtor is relieved of the duty to pay the judgment debtor and must pay the levying officer.<sup>198</sup>

The proposed law continues the substance of these provisions but uses the term "general intangibles" in place of "choses in action" and "debts."<sup>199</sup> After levy, the account debtor must continue making payments as before, but if payments are being made or are required to be made to the judgment debtor,<sup>200</sup> such payments must be made thereafter to the levying officer. In such a situation, a secured party having priority over the judgment creditor's

<sup>195</sup> In the case of a levy on a joint deposit account, withdrawals of the excess amount may be made by either the judgment debtor or the nondebtor account holder and the interest of the nondebtor account holder to the amount held under the levy may be asserted by way of a third-party claim.

<sup>196</sup> See Sections 488.390 (incorporated by Section 688(b)), 682a.

<sup>197</sup> See Sections 488.370 (incorporated by Section 688(b)), 688(b) (manner of levy on debts for which a method of attachment is not provided).

<sup>198</sup> See Sections 488.370, 488.540, 488.550.

<sup>199</sup> Compare Section 481.050 ("choses in action" defined) with Com. Code § 9106 ("general intangibles" defined).

<sup>200</sup> See Com. Code § 9205 ("liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions").

lien will find it necessary to take action to assert the priority of the security interest. If an account receivable or general intangible is being collected by a third person, such as a secured party or assignee for collection, the judgment creditor may establish a lien on any amounts owed the judgment debtor by serving the third person. If the third person has a perfected security interest,<sup>201</sup> the third person has the right to receive payments due from the account debtor without interference from the levy.<sup>202</sup> After satisfaction of the security interest, any excess payments or excess proceeds from the sale of the collateral in the hands of the secured party are subject to the judgment creditor's lien and are to be paid over to the levying officer. If the security interest is unperfected, the secured party is liable under the proposed law for all amounts received after the levy.

### Property That is Subject of Pending Action or Proceeding

The effect of an execution levy on property that is the subject of a pending action or special proceeding is unclear under existing law.<sup>203</sup> The proposed law clarifies the extent to which such property is subject to levy and also allows the judgment creditor to obtain a lien in the pending action or proceeding.<sup>204</sup> Real property that is the subject of a pending action or proceeding is levied upon by recording in the same manner as if the action or proceeding were not pending. This recording provides constructive notice of the execution lien to subsequent purchasers or encumbrancers and establishes the judgment creditor's priority with

<sup>201</sup> A security interest in an account receivable or general intangible is perfected by filing. Com. Code § 9302(1).

<sup>202</sup> See Com. Code § 9301.

<sup>203</sup> Existing law precludes levy upon or sale of a cause of action or judgment "as such." See Section 688(f). There is no provision dealing with levy on tangible property that is the subject of a pending action or proceeding. See also the discussion in the text under "Final Money Judgment" beginning at note 206 *infra*.

<sup>204</sup> See the discussion in the text under "Lien in Pending Action or Proceeding" beginning at note 473 *infra*. Levy of execution may not be a sufficient remedy where the property levied upon is the subject of a pending action or proceeding. The judgment creditor may need to restrict the ability of the judgment debtor to settle the pending action or proceeding and to collect on the judgment procured therein. The judgment creditor may wish to intervene in the pending action or proceeding to protect the rights obtained by the levy of execution. For this reason, the judgment creditor may choose, as permitted by the proposed law, both to levy on the property and to obtain a lien in the pending action or proceeding. Such a lien will provide the further protections mentioned above to the judgment creditor.

respect to other creditors. The proposed law permits a levy on tangible personal property in possession of the judgment debtor that is the subject of a pending action or proceeding in the usual manner. By taking custody of the property, the levying officer deprives the judgment debtor of the ability to dispose of it. The proposed law does not permit a levy of execution on tangible personal property not in the possession of the judgment debtor or on intangible personal property where the property is the subject of a pending action or proceeding. This prohibition protects the party involved in litigation with the judgment debtor and permits the party to await the outcome of the litigation before being required to deliver the property or pay the debt or other obligation. Although execution is not permitted, the judgment creditor may obtain a lien in the pending action or proceeding and thus establish a priority and protect his or her interests in the property.<sup>205</sup>

### Final Money Judgment

It is unclear under existing law whether levy of execution can be made on a final money judgment obtained by the judgment debtor.<sup>206</sup> The proposed law permits a levy of execution on a final money judgment and prescribes the manner and effect of the levy. The levy is made by filing a copy of the writ of execution and a notice of levy with the clerk of the court that entered the judgment.<sup>207</sup> Notice of levy must also be served on the judgment debtor and the judgment debtor's judgment debtor under the judgment levied upon. This service is not an essential element of the levy, but a judgment debtor who makes a payment on the judgment levied upon without notice of the levy is protected against having to pay twice.

<sup>205</sup> See the discussion in the text under "Lien in Pending Action or Proceeding" beginning at note 473 *infra*.

<sup>206</sup> Existing law precludes levy upon or sale of a judgment "as such." See Section 688(f). However, Section 688(f) provides that the manner of levy of execution is the same as in attachment, and the Attachment Law (Section 488.420) provides for the attachment of a final judgment.

<sup>207</sup> In order to attach a judgment, Section 488.420 requires the filing of a copy of the writ and notice of levy in the court that rendered the judgment and also requires service of a copy of the writ and a notice of levy on the judgment debtor obligated to pay the judgment attached. The proposed law does not require such service as an essential element of a levy of execution, but does require the levying officer to make service promptly after levy.

## Interest in Personal Property of Estate of Decedent

The manner of levy on an interest of a judgment debtor in personal property in the estate of a decedent remains unchanged under the proposed law.<sup>208</sup>

## Duties and Liabilities of Third Persons After Levy

The proposed law contains detailed provisions governing the duties and liabilities of third persons who are served with a copy of a writ of execution and a notice of levy in the course of enforcement of a money judgment. These provisions expand and clarify the existing law pertaining to the liability of garnishees<sup>209</sup> and prescribe the duties of secured parties, obligors, account debtors, and other third persons in situations where the property levied upon is subject to a security interest or the rights of an assignee.

If tangible personal property in the possession of a third person is levied upon, the proposed law makes clear that the third person is liable to the extent of the value of the judgment debtor's interest in the property for failing without good cause to comply with the levy by delivering the property to the levying officer.<sup>210</sup> If an account receivable, deposit account, or general intangible is levied upon, the third person is required to pay over the amount due at the time of levy and any amounts falling due during the period of the execution lien. Unless there is good cause for failure to pay over these amounts, the third person is liable in proceedings taken for the enforcement of the lien.<sup>211</sup>

A third person who is served with a copy of the writ of execution and a notice of levy is also required to prepare a memorandum to be mailed or delivered to the levying officer within 10 days after service.<sup>212</sup> A memorandum is not required, however, if the third person has delivered to the

<sup>208</sup> See Section 488.430 (incorporated by Section 688(b)).

<sup>209</sup> See Section 488.550; *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212, 100 P. 242 (1909). This law is presumably incorporated by the general language of Section 688(b).

<sup>210</sup> This requirement is subject to the qualification that the garnishee may assert an adverse claim. In such situations, the judgment creditor may contest the adverse claim by means of an examination proceeding or a creditor's suit.

<sup>211</sup> See Section 488.550.

<sup>212</sup> This requirement is consistent with the procedure upon attachment under Section 488.080 (incorporated by Section 688(b)). See California State Sheriffs' Ass'n, *Civil Procedural Manual* 4.24-4.25 (rev. 1980); *Marshal's Manual of Procedure* § 404 (rev. 1980).

levying officer all of the property sought to be levied upon and has paid to the levying officer the amount due at the time of levy on any obligation to the judgment debtor that was levied upon and there is no additional amount that thereafter will become payable on the obligation levied upon. A financial institution need not deliver a memorandum to the levying officer when a levy is made upon a deposit account or safe deposit box if the financial institution fully complies with the levy.

If a memorandum is required, it must describe tangible personal property sought to be levied upon that is not delivered to the levying officer and the reasons for not delivering it, state the terms of any debt sought to be levied upon that is not paid or will not be paid to the levying officer and the reasons for nonpayment, describe any other tangible personal property of the judgment debtor in the possession or control of the third person or any debt owed the judgment debtor, and describe any claims or rights of other persons in the property levied upon that are known to the third person. This expanded memorandum is intended to provide the judgment creditor with needed information and inhibit evasive answers by third persons. If the levy is not complied with, the third person must give a complete memorandum and may, in the court's discretion, be held liable for the costs and reasonable attorney's fees in any proceedings necessary to obtain the withheld information.<sup>213</sup>

Additional rules are provided in the proposed law governing the duties of secured parties, account debtors obligated on collateral, and obligors under instruments. A secured party may continue to enforce a security interest without regard to priority but is liable for any excess property or payments received by the secured party after satisfaction of the security agreement.<sup>214</sup> If it is determined that the levying judgment creditor has priority over the security interest,<sup>215</sup> the secured party is liable for any payments received after levy.

<sup>213</sup> Such proceedings include examination proceedings and creditors' suits. The liability for noncompliance is not new, but the existing law has no exception to liability where good cause is shown for the failure to comply with the levy. See Section 488.550.

<sup>214</sup> See Com. Code § 9311 (transferability of debtor's rights in collateral).

<sup>215</sup> See Com. Code § 9301.

The proposed law provides a statutory presumption in favor of security interests even in the absence of a determination of priority. Consequently, an account debtor on collateral levied upon is instructed to continue payments to the secured party pending a contrary direction by a court. If the account debtor is making payments to a secured party, such payments are to continue. If the account debtor is paying the judgment debtor,<sup>216</sup> the account debtor is to pay the levying officer.

An obligor on an instrument is instructed to make payments to the levying officer if the levying officer has obtained possession of the instrument. If the obligor pays the prior holder of the instrument after receiving notice of levy, such payments will not satisfy the obligation of the obligor.

## EXEMPTIONS FROM ENFORCEMENT OF MONEY JUDGMENTS

### Introduction

In general, laws exempting property from the enforcement of a money judgment are intended to protect an amount of property sufficient to support the judgment debtor and the judgment debtor's family and to facilitate the financial rehabilitation of the judgment debtor.<sup>217</sup> Exemption laws also serve to shift the cost of social welfare for debtors from the community to judgment creditors.<sup>218</sup>

Since 1851 California law has provided that certain property of judgment debtors is exempt.<sup>219</sup> The California exemptions are among the most generous in the United

<sup>216</sup> See Com. Code § 9205.

<sup>217</sup> *Bailey v. Superior Court*, 215 Cal. 548, 554, 11 P.2d 865, 867 (1932); see generally Vukowich, *Debtors' Exemption Rights*, 62 Geo. L.J. 779, 782-88 (1974). It has also been suggested that early exemptions were enacted to attract settlers in newly admitted states. See Haskins, *Homestead Exemptions*, 63 Harv. L. Rev. 1289, 1290 (1950).

<sup>218</sup> See Comment, *Bankruptcy Exemptions: Critique and Suggestions*, 68 Yale L.J. 1459, 1497-1502 (1959). Although it has been suggested that no property should be exempt and that insolvent debtors should rely on social welfare legislation, this alternative is undesirable because of the cost to the community of providing welfare and the low level of available benefits, because most creditors are in a position to control their extension of credit, and because the lack of exemptions would drive greater numbers of debtors into bankruptcy. See *id.*

<sup>219</sup> 1851 Cal. Stats. ch. 5, § 219.

States.<sup>220</sup> They were extensively revised in 1970 in response to a 1967 report by the State Bar Committee on Debtor and Creditor.<sup>221</sup> Both the exemptions and the procedural provisions applicable to exemptions are in need of further revision. Important factors prompting the proposals in this recommendation include the occurrence during recent years of dramatic inflation, the enactment in 1978 of the new Bankruptcy Code containing new exemption provisions,<sup>222</sup> and the approval in 1976 of the Uniform Exemptions Act by the National Conference of Commissioners on Uniform State Laws.

### Exempt Property

The substantive exemption provisions should accommodate both the interest of the judgment debtor in maintaining a basic standard of living and the interest of the judgment creditor in satisfying the money judgment. Accordingly, the general approach of the proposed law is to protect income and property needed for the subsistence of the judgment debtor and his or her family. The Commission's recommendations are tempered with the knowledge that exemption laws are controversial.<sup>223</sup>

A matter of particular concern in the formulation of exemptions is the treatment of property of a married judgment debtor and spouse. As a general rule, all the community property as well as the separate property of a married judgment debtor is available to satisfy the judgment.<sup>224</sup> Because the interest in community property of the judgment debtor's spouse is vulnerable to the judgment creditor, the exemption rights of the spouse must be recognized as well as the exemption rights of the judgment

<sup>220</sup> D. Cowans, *Bankruptcy Law and Practice* § 589, at 326 (1963); Committee on Debtor and Creditor of State Bar of California, *Modernization of Statutory Exemptions*, 42 Cal. St. B.J. 869, 873 (1967).

<sup>221</sup> See Committee on Debtor and Creditor of State Bar of California, *Modernization of Statutory Exemptions*, 42 Cal. St. B.J. 869 (1967).

<sup>222</sup> See 11 U.S.C. § 522. See also Report of the Commission on the Bankruptcy Laws of the United States, House Doc. No. 93-137, Part I, 93d Cong., 1st Sess. (1973).

<sup>223</sup> The Advisory Committee in charge of the revision of New York laws on enforcement of money judgments gave as a reason for declining to recommend changes in exemption provisions "that they are the result of legislative compromise; that they reflect the diverse pulls of various groups within the state." 6 J. Weinstein, H. Korp, & A. Miller, *New York Civil Practice* ¶ 5205.01 (1980).

<sup>224</sup> See the discussion in the text at note 40 *supra*.

debtor.<sup>225</sup> The proposed law treats a married judgment debtor and spouse as a marital unit for purposes of exemptions. Some of the exemptions are increased to accommodate the needs of the marital unit and others are shared between the spouses, depending on the nature of the particular exemption. Exemptions based on need or based on the availability of other property of the same character are determined by taking into account all the marital property, whether or not all the property would be liable to satisfy the judgment. The fact that one or both spouses are debtors under the judgment does not affect the availability or the amount of their exemptions.

In drafting the proposed exemptions, the Commission has sought to strike a balance between designating specific items as exempt (such as a table, refrigerator, or stove) and creating general categories of exempt property (such as household furnishings).<sup>226</sup> Specific exemptions result in more certainty but can be overly restrictive and are more likely to be rendered obsolete over time. General exemptions provide greater flexibility and equality of treatment but are more difficult to administer.

The major statutory exemptions of existing law and the more important revisions proposed by the Commission are indicated in the following discussion.<sup>227</sup> The extent to which these exemptions are available where the judgment is for child or spousal support is limited under the proposed law.<sup>228</sup>

## Earnings

The proposed law continues the existing exemptions for earnings but revises the hardship exemption to provide

<sup>225</sup> Cf. *White v. Gobey*, 130 Cal. App. Supp. 789, 791, 19 P.2d 876, 877 (1933).

<sup>226</sup> See generally Joslin, *Debtors' Exemption Laws: Time for Modernization*, 34 Ind. L.J. 355, 356-57 (1959); Note, *Debtor Exemptions in Personal Property—Proposals for Modernization*, 52 Kent. L.J. 456, 457-58, 465 (1964); Rombauer, *Debtors' Exemption Statutes—Revision Ideas*, 36 Wash. L. Rev. 484, 490-95 (1961).

<sup>227</sup> Property that is not subject to the enforcement of a money judgment is exempt without making a claim. As to property not subject to enforcement of a money judgment, see the discussion in the text under "Property Subject to Enforcement" beginning at note 35 *supra*. The more technical revisions in the exemptions are discussed in the Comments to sections in the Proposed Legislation *infra* and in the Comments to the repealed sections in the Appendix *infra*.

<sup>228</sup> See the discussion in the text under "Judgments for Spousal or Child Support" beginning at note 334 *infra*.



additional protection to wage earning renters.<sup>229</sup>

### Household Furnishings and Personal Effects

Existing law provides a general exemption for necessary household furnishings, appliances, and wearing apparel, and a specific exemption for a piano, radio, television receiver, shotgun, rifle, provisions and fuel for three months, and works of art by the debtor or the judgment debtor's resident family.<sup>230</sup> Under this provision, the courts have applied a "station-in-life" test resulting in the exemption of substantial amounts of personal property.<sup>231</sup>

The proposed law provides a more restrictive exemption for this type of property. It protects household furnishings, appliances, provisions, wearing apparel, and other personal effects if they are "ordinarily and reasonably necessary for an average household" and personally used or procured for use by the judgment debtor and members of the debtor's family at the judgment debtor's principal residence. The limitation to items "ordinarily and reasonably necessary for an average household" eliminates the station-in-life standard but protects a basic living standard. If the judgment debtor and spouse live separate and apart, each household is entitled to an exemption appropriate to a household of that size.

A limited exemption, not subject to the necessity standard, is provided for an item of jewelry, an heirloom, a work of art, or other personal effect items of special sentimental or psychological value to the judgment debtor if the court determines that its reasonable sentimental or psychological value to the judgment debtor or the judgment debtor's family outweighs the right of the judgment creditor to enforce the judgment to such an extent that it would be clearly inequitable to subject the property to enforcement. This exemption is intended to protect a special item such as a wedding ring or an inherited item of furniture that has great sentimental value.

<sup>229</sup> See the discussion in the text under "Wage Garnishment" beginning at note 418 *infra*.

<sup>230</sup> Section 690.1.

<sup>231</sup> See *Independence Bank v. Heller*, 275 Cal. App.2d 84, 79 Cal. Rptr. 868 (1969) (furniture worth over \$22,000 held exempt); *Newport Nat'l Bank v. Adair*, 2 Cal. App.3d 1043, 83 Cal. Rptr. 1 (1969) (furniture for 14-room apartment held exempt); Comment, *California's New Household Goods Exemption and the Problem of Personal Accountability*, 12 Santa Clara Law. 155 (1972).

## Motor Vehicle

Existing law provides an exemption for one motor vehicle with a value not exceeding \$500 over all liens and encumbrances on the vehicle.<sup>232</sup> The value of the vehicle is required to be determined from used car price guides customarily used by California automobile dealers or, if not listed, by fair market value. If the judgment debtor's equity in the motor vehicle exceeds \$500, it may be sold at an execution sale, but the proceeds remaining after satisfaction of liens and encumbrances are exempt in the amount of \$500 for a period of 90 days.

The proposed law increases the motor vehicle exemption to \$1,000 in light of the increased value of motor vehicles generally. In the case of a married judgment debtor, a second motor vehicle is exempt in such amount only if that vehicle is necessary to enable both spouses to work. The exemption for proceeds is extended to proceeds from a voluntary sale or from insurance or other indemnification received for the damage or destruction of the vehicle.<sup>233</sup>

## Tools of a Trade

Existing law provides an exemption for tools and other items, including one commercial fishing boat and one commercial motor vehicle, reasonably necessary to and actually used in the exercise of the trade, calling, or profession by which the judgment debtor earns a livelihood, to the maximum aggregate actual cash value of \$2,500 in excess of liens and encumbrances on such items.<sup>234</sup>

The proposed law continues the substance of this exemption, but makes clear that the exemption covers "materials" used in the trade, business, or profession and eliminates the existing separate \$1,000 exemption that covers only building materials.<sup>235</sup> If the judgment debtor is married, the tools of a trade exemption is available to each

<sup>232</sup> Section 690.2. Section 690.4 also provides an exemption for a commercial motor vehicle used in the judgment debtor's trade, calling, or profession.

<sup>233</sup> Section 9(a) of the Uniform Exemptions Act (1976) provides a similar exemption traceable for 18 months. *Cf. Houghton v. Lee*, 50 Cal. 101, 103 (1875) (exemption of proceeds from insurance of homestead).

<sup>234</sup> Section 690.4.

<sup>235</sup> Section 690.17. The proposed law provides a separate \$1,000 exemption for building materials that have been purchased in good faith by a homeowner for the repair or improvement of a home. In the case of a married judgment debtor living separate and apart from a spouse, each spouse is entitled to this exemption.

spouse, and the spouses may aggregate their exemptions if they work together. The proposed law also includes within the exemption proceeds from the sale or indemnification for the loss, damage, or destruction of such items for a period of 90 days after a voluntary sale or, in other cases, after receipt of the proceeds or indemnification.<sup>236</sup>

### Health Aids

Existing law provides an exemption for prosthetic and orthopedic appliances personally used by the debtor.<sup>237</sup> This exemption is too narrow<sup>238</sup> and is expanded in the proposed law to include health aids reasonably necessary to enable the judgment debtor or the spouse or dependents of the judgment debtor to work or sustain health. This provision—derived from the Uniform Exemption Act—permits the exemption of items such as a wheel chair for a person unable to walk to work or an air conditioner for a person afflicted with asthma, but does not exempt a swimming pool, sauna, bicycle, or golf clubs merely because its use is conducive to good health.<sup>239</sup>

### Deposit Accounts

Existing law provides exemptions for \$1,000 in a savings and loan association account<sup>240</sup> and \$1,500 in a credit union account.<sup>241</sup> An account into which social security benefits are directly deposited is protected from levy to the extent of \$500 if there is one recipient and \$750 if there are two or more recipients, and is exempt to the extent that additional amounts consist of social security payments<sup>242</sup> There is no

<sup>236</sup> Section 9(a) of the Uniform Exemptions Act (1976) provides a similar exemption traceable for 18 months. The 90-day limitation on the protection of proceeds is the same as that provided by Section 690.2(e) in the case of a motor vehicle. The proceeds exemption does not increase the amount of the exemption. The amount of \$2,500 covers both the tools of a trade and the proceeds; there is not a separate \$2,500 exemption for proceeds.

<sup>237</sup> Section 690.5.

<sup>238</sup> "Prosthesis" is defined as the "addition to the human body of some artificial part, as a leg, eye, or tooth." Webster's New Collegiate Dictionary 678 (1956). "Orthopedics" is defined as the "correction or prevention of deformities, esp. in children." *Id.* at 593.

<sup>239</sup> This provision is derived from Section 5(2) of the Uniform Exemptions Act (1976). See the Comment to that section of the Uniform Act.

<sup>240</sup> Section 690.7.

<sup>241</sup> Fin. Code § 14864.

<sup>242</sup> Section 690.30. Section 690.30 requires the judgment creditor to initiate the exemption proceedings to determine whether nonexempt amounts are in the account. At the

specific exemption for savings or checking accounts in banks.<sup>243</sup>

There is no justification for discriminating against a judgment debtor who happens to have a bank account rather than savings and loan or credit union account. Under the proposed law, the exemptions for savings and loan association and credit union accounts are halved, and a new exemption is created in the aggregate amount of \$250 for cash and deposit accounts in banks, but the new exemption is reduced by any amount in a savings and loan association or credit union account. If the judgment debtor is married, each spouse is entitled to a separate exemption or the spouses may combine their exemptions. The bank, savings and loan association, and credit union exemptions would be reduced to the extent there are other exempt funds from exempt sources in the accounts. If there are deposit accounts in addition to the one levied upon, the exemption may under some circumstances be applied first to the deposit accounts not before the court.

The general purpose of the proposed exemptions is to provide a basic minimum of liquid assets to meet immediate needs of the judgment debtor and the judgment debtor's family. The recommended scheme will ensure that a judgment debtor or spouse having a bank account receives the exemption, but will preclude judgment debtors and their spouses from accumulating substantial exempt amounts to the detriment of judgment creditors. Although the Commission believes that a uniform exemption for deposit accounts of all types is preferable to exemptions that vary with the type of account, the Commission recognizes that for historical and political reasons it may be impossible either to increase further the amount of the proposed bank account exemption or to

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hearing, however, the judgment debtor has the burden of proof. This provision (enacted by 1976 Cal. Stats. ch. 810, § 1) limits the application of the rule in *Phillips v. Bartolomie*, 46 Cal. App.3d 346, 121 Cal. Rptr. 56 (1975), which held that a judgment debtor is not entitled to a hearing before social security, AFDC, county welfare, and veterans' benefits in a bank account could be levied upon. Of course, such benefits are exempt when a claim is made under general principles regarding tracing of exempt benefits. See note 341 *infra*. Section 690.30 provides an additional protection since it shields a certain portion of the account from the reach of creditors without the necessity of making a claim of exemption. This exemption is continued in the proposed law with some procedural changes.

<sup>243</sup> Exempt amounts may be traced into bank accounts under existing law. See the discussion in the text under "Tracing Exempt Amounts" beginning at note 341 *infra*.

decrease further the amount of the savings and loan association and credit union exemptions, and therefore does not recommend a uniform deposit account exemption at this time.

### Life Insurance

Existing law exempts "all moneys, benefits, privileges, or immunities, accruing or in any manner growing out of any life insurance" in an amount resulting from payment of a \$500 annual premium and provides an additional exemption in the same amount in favor of the insured's spouse or minor children.<sup>244</sup> Certain types of group life insurance are completely exempt.<sup>245</sup> The life insurance exemption shields benefits from the reach of judgment creditors of the insured and of the beneficiary.<sup>246</sup> The exemption also protects a beneficiary under a credit insurance policy.<sup>247</sup>

Consistent with the policy of protecting a minimal amount of property necessary to support the judgment debtor and the judgment debtor's family, the proposed law consolidates and substantially revises these exemptions:

(1) A judgment creditor may not reach the cash surrender value of a policy. The judgment debtor and spouse should not be forced to surrender their policies since they may be uninsurable or insurable only at a prohibitive premium.

(2) A judgment creditor may reach the loan value of the policy to the extent it exceeds \$4,000.<sup>248</sup> In the case of a married judgment debtor, each spouse is entitled to this exemption and they may combine their exemptions to protect \$8,000 in one policy.

(3) Benefits from a matured life insurance policy (including endowment and annuity policies) paid or

<sup>244</sup> Section 690.9. The exemption also applies to endowment and annuity policies. See *Hing v. Lee*, 37 Cal. App. 313, 318, 174 P. 356, 357 (1918). Where there are multiple beneficiaries entitled to claim the exemption, each beneficiary is entitled to assert an exemption in proportion to the total proceeds of the policy. *Jackson v. Fisher*, 56 Cal.2d 196, 201, 363 P.2d 479, 481-82, 14 Cal. Rptr. 439, 441-42 (1961).

<sup>245</sup> Code Civ. Proc. § 690.10; Ins. Code § 10213. This exemption does not apply in certain cases. See Ins. Code §§ 10203.5 (borrower and installment purchaser groups), 10203.6 (credit union groups), 10203.8 (savings account depositors).

<sup>246</sup> *Holmes v. Marshall*, 145 Cal. 777, 779-82, 79 P. 534, 535-36 (1905).

<sup>247</sup> *Jackson v. Fisher*, 56 Cal.2d 196, 199-200, 363 P.2d 479, 481, 14 Cal. Rptr. 439, 441 (1961).

<sup>248</sup> The amount of this exemption is the same as that provided in bankruptcy. See 11 U.S.C. § 522(d)(8).

payable to the judgment debtor or the spouse or a dependent of the judgment debtor are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

The proposed law eliminates the arbitrary feature of existing law which exempts benefits to the extent represented by a \$500 annual premium.<sup>249</sup> The existing standard can result in widely varying exempt amounts depending upon the type of policy (e.g., straight life, endowment, or annuity), the type of insurer (e.g., private, group, industrial, government), the age of the insured when the policy was taken out, and the length of coverage,<sup>250</sup> but having no relation to the needs of the judgment debtor or the judgment debtor's family.

### Public or Private Retirement Plan Benefits

Existing law exempts public retirement plan benefits both before payment (when no claim is required to be made) and after payment (when the exemption must be claimed).<sup>251</sup> The law governing private retirement plans is not clear but appears to be that funds held by the retirement plan are exempt before payment to the judgment debtor,<sup>252</sup> that contributions and interest

<sup>249</sup> This standard dates from 1868 when the life insurance exemption was enacted. 1868 Cal. Stats. ch. 406, § 1. The first life insurance exemption provision, the Verplanck Act enacted in New York in 1840, also based the exemption upon the amount of the annual premium. See Riesenfeld, *Life Insurance and Creditors' Remedies in the United States*, 4 U.C.L.A. L. Rev. 583, 589 (1957). At the time such exemptions were first enacted, life insurance was used to provide support for the family of the deceased. Today, a majority of payments under life insurance policies are made to policyholders. See American Council of Life Insurance, 1980 Life Insurance Fact Book 45-46 (1980); Vukowich, *Debtors' Exemption Rights*, 62 Geo. L.J. 779, 810 & n.183 (1974).

<sup>250</sup> For example, the exempt benefits deriving from a \$500 annual premium amounted to \$113,200 in *Jackson v. Fisher*, 56 Cal.2d 196, 363 P.2d 479, 14 Cal. Rptr. 439 (1961) (\$883 annual premium on \$100,000 policy with double indemnity clause), and \$8,900 in *California United States Bond & Mortgage Corp. v. Grodzins*, 139 Cal. App. 240, 34 P.2d 192 (1934) (\$558 annual premium on \$10,000 policy).

<sup>251</sup> Section 690.18(a), (b). This exemption covers pensions, annuities, and retirement, disability, death, or other benefits, and return of contributions and interest, from a public entity, and public employee vacation credits. The exemption for vacation credits is continued in the proposed law as a separate exemption. See also note 255 *infra* for special exemption provisions applicable to particular public retirement plans.

<sup>252</sup> Section 690.18(d). The existing exemption applies only to retirement plans that meet the requirements specified in the exemption provision. These requirements are continued in the proposed law.

returned to the judgment debtor are exempt if the exemption is claimed,<sup>253</sup> and that periodic payments to the judgment debtor from the plan are exempt to the same extent as wages.<sup>254</sup> The exemptions for public and private retirement plans do not apply against a judgment for child or spousal support.<sup>255</sup>

The proposed law continues the substance of the exemptions, but clarifies the extent to which funds are available to satisfy judgments for child and spousal support.<sup>256</sup>

### Disability and Health Benefits

Existing law provides several exemptions for benefits from a disability or health insurance policy or program. Disability or health insurance benefits are exempt to the extent represented by a \$500 annual premium.<sup>257</sup> Money of a fraternal organization used to pay sick benefits to members of the organization is exempt in the amount of \$500.<sup>258</sup> Money paid by a fraternal benefit society is exempt before and after payment.<sup>259</sup> Disability benefits under a retirement plan are exempt to the same extent as other retirement benefits.<sup>260</sup>

The proposed law consolidates these provisions. Under the proposed law, disability and health benefits are exempt before payment without the requirement of making a claim and are exempt after payment upon a claim of exemption.

<sup>253</sup> Section 690.18(d).

<sup>254</sup> 15 U.S.C. §§ 1672-1673.

<sup>255</sup> Section 690.18(a), (b), (d). Other code sections were amended to delete specific exemptions for public retirement plans in the case of court-ordered child or spousal support payments and to instead to incorporate by reference the general exemption provided by Section 690.18. See Educ. Code § 22005; Gov't Code § 21201; Pub. Util. Code §§ 12337, 25337. But all public retirement fund sections were conformed to the general exemption provision. See Gov't Code §§ 9359.3, 31913, 32210; Pub. Util. Code §§ 28896, 50146, 95836, 98196; Water Code § 22142. The proposed law makes the necessary conforming amendments to provide a uniform and consistent treatment of this aspect of the exemption. See also Civil Code §§ 4701, 4801.6 (wage assignment for support directed to public retirement fund authorized).

<sup>256</sup> See the discussion in the text at notes 339-340, *infra*.

<sup>257</sup> Section 690.11. For a discussion of tying the exemption of insurance benefits to the amount of the premium, see the text under "Life Insurance" beginning at note 244 *supra*.

<sup>258</sup> Section 690.13.

<sup>259</sup> Section 690.14.

<sup>260</sup> Section 690.18. See the discussion in the text under "Public or Private Retirement Plan Benefits" *supra*.

This exemption does not apply where the judgment creditor provided health care concerning the condition for which the benefits are collected.

### **Damages for Personal Injury**

Existing law provides an exemption for insurance benefits for injury<sup>261</sup> or death<sup>262</sup> but does not exempt settlements or awards for the personal injury of the judgment debtor. The proposed law provides an exemption for a settlement or award arising out of the personal injury of the judgment debtor to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.<sup>263</sup> This exemption would not apply when the judgment creditor provided health care for the personal injury for which the settlement or award was made.

### **Wrongful Death Awards**

Existing law does not exempt wrongful death settlements or awards. The proposed law exempts settlements and awards arising out of the wrongful death of a person of whom the judgment debtor was a spouse or a dependent to the extent reasonably necessary for support.<sup>264</sup>

### **Unemployment Benefits and Contributions and Strike Benefits**

Under existing law, contributions of employees and employers to unemployment programs, and benefits from such programs, prior to payment, are exempt without making a claim.<sup>265</sup> After payment, these benefits are exempt if a claim is made.<sup>266</sup> The proposed law continues the

<sup>261</sup> Section 690.11 (disability and health insurance).

<sup>262</sup> Sections 690.9 (life insurance), 690.10 (group life insurance).

<sup>263</sup> Section 6(a) (3) of the Uniform Exemptions Act (1976) provides a similar exemption.

<sup>264</sup> Section 6(a) (3) of the Uniform Exemptions Act (1976) provides a similar exemption.

<sup>265</sup> Code Civ. Proc. §§ 690.13 (\$500 used by fraternal organization as unemployment benefits for members), 690.16 (contributions to the Unemployment Compensation Disability Fund and the Unemployment Fund), 690.175 (state and federal-state benefits and payments under a plan or system established by an employer for employees generally or for a class or group of employees for the purpose of supplementing unemployment compensation benefits), 690.18(c) (contributions and reimbursement for benefits received under Unemployment Insurance Code by government employees); Unemp. Ins. Code §§ 988 (incorporating Section 690.16), 1342 (incorporating Sections 690.175, 690.18).

<sup>266</sup> See Sections 690.13, 690.175.



substance of this exemption and also provides a similar exemption for strike benefits paid to a union member.

### **Public Assistance and Similar Assistance From Charitable Organization**

Existing law provides a complete exemption for aid given under a public assistance program<sup>267</sup> and for aid from a fraternal benefit society.<sup>268</sup> Under the proposed law, these exemptions are combined and the protection is extended to aid of the same nature given by a charitable organization.

### **Relocation Benefits**

Under existing law, relocation benefits paid or payable by a public entity for displacement from a dwelling owned or rented by the judgment debtor are exempt without making a claim.<sup>269</sup> The proposed law extends this exemption to include relocation benefits from a public utility or quasi-public entity.<sup>270</sup> Under the proposed law, once the benefits have been paid, an exemption claim must be made since it is necessary for the judgment debtor to trace the funds to their source in order to qualify for the exemption.

### **Workers' Compensation**

The existing exemption for workers' compensation<sup>271</sup> is continued in the proposed law.

### **Cemetery Plot**

Existing law exempts a judgment debtor's cemetery lot, not exceeding one-quarter of an acre and, in the case of a religious or benevolent association or corporation, not exceeding five acres.<sup>272</sup> The exemption under the proposed law includes graves, crypts, vaults, and niches,<sup>273</sup> whereas existing law specifically applies only to land to be used for burial purposes and fixtures. The proposed law exempts a

<sup>267</sup> Section 690.19. Before payment, the aid is exempt without making a claim; after payment, a claim of exemption must be made.

<sup>268</sup> Section 690.14. This exemption must be claimed.

<sup>269</sup> Section 690.8a.

<sup>270</sup> See Gov't Code § 7276 (quasi-public entity); Pub. Util. Code § 600 (public utility).

<sup>271</sup> Section 690.15.

<sup>272</sup> Section 690.24.

<sup>273</sup> See Health & Saf. Code § 7022.

cemetery plot for the judgment debtor and spouse. The proposed law also protects a family plot<sup>274</sup> from enforcement of a money judgment. Land held for the purpose of sale as cemetery plots is nonexempt as under existing law.<sup>275</sup> The restrictions included in the proposed law make it unnecessary to retain the existing limitations on the size of the cemetery plot.

### Prisoners' Trust Fund

Under existing law, a prison inmate's trust fund is exempt in the amount of \$40.<sup>276</sup> The proposed law raises this exemption to \$1,000 so that a prisoner who is released will have some funds on which to live. If the judgment debtor is married, each spouse is entitled to a separate \$1,000 exemption or the spouses may combine their exemptions.

### Church Pews

Existing law exempts pews in churches and meetinghouses used for religious purposes and owned by the debtor.<sup>277</sup> The proposed law does not continue this exemption because it is obsolete, the practice of member ownership of pews having generally ceased.<sup>278</sup>

## Homestead Exemption

### Introduction

California law provides a substantial homestead exemption for the purpose of promoting the security of the home and protecting it from the consequences of the owner's economic misfortune.<sup>279</sup> Under existing law there are three separate homestead exemption statutes: the declared homestead,<sup>280</sup> the dwelling house exemption for

<sup>274</sup> For provisions concerning family plots, see Health & Saf. Code §§ 8650-8653.

<sup>275</sup> Section 690.24.

<sup>276</sup> Section 690.21.

<sup>277</sup> Section 690.25.

<sup>278</sup> See 6 J. Weinstein, H. Korn, & A. Miller, *New York Civil Practice* ¶ 5205.15 (rev. 1980).

<sup>279</sup> The California Constitution requires the Legislature to provide for the protection of a portion of the homesteads of heads of families. Cal. Const. art. 20, § 1.5. For a discussion of the development of the homestead provisions, see *Taylor v. Madigan*, 53 Cal. App.3d 943, 955-61, 126 Cal. Rptr. 376, 384-88 (1975).

<sup>280</sup> See Civil Code §§ 1237-1304.

persons who have failed to declare a homestead,<sup>281</sup> and the claimed exemption for a mobilehome or vessel.<sup>282</sup> The amount of the exemption provided by each statute is the same—\$45,000 if the judgment debtor is married, the head of a family, or over 65 years old, and \$30,000 in other cases.<sup>283</sup> Each statute protects the dwelling from sale to satisfy a money judgment if the judgment debtor's equity is less than the exempt amount; if the judgment debtor's equity exceeds the exempt amount, the dwelling may be sold to satisfy the judgment and the statute preserves the sale proceeds for the judgment debtor in the amount of the exemption.<sup>284</sup>

### Amount of Exemption

The scheme of protecting \$45,000 if the judgment debtor is married, the head of a family, or over 65 years old, and \$30,000 in other cases discriminates against married judgment debtors. If judgment debtors are living together but are not married, each is entitled to \$30,000 for a total of \$60,000, whereas married debtors are limited to \$45,000 between them. Under the proposed law, the exemption for a family unit or for a person age 65 or older is twice the exemption for an individual, or \$60,000. If spouses live in separate dwellings, they should be able to select which dwelling is the homestead for purposes of the exemption.<sup>285</sup>

Under the proposed law, the exemption is available as long as the judgment debtor or spouse continues to own and reside in the dwelling, but a judgment creditor may obtain a judgment lien on the dwelling that facilitates collection from proceeds in case of a future sale of the dwelling or in case the judgment creditor ultimately chooses to subject it to a forced sale. If the dwelling is sold, the amount of the homestead exemption should be paid in cash to the judgment debtor and should be exempt for use by the judgment debtor for any purpose, including rental housing,

<sup>281</sup> See Section 690.31.

<sup>282</sup> See Sections 690.3, 690.50. See also Sections 690.31(a)(2).

<sup>283</sup> Civil Code § 1260; Code Civ. Proc. §§ 690.3(a), 690.31(a). See 1980 Cal. Stats. ch. 15.

<sup>284</sup> Civil Code §§ 1245-1256; Code Civ. Proc. §§ 690.31(c)-(k), 690.3, 690.50(i).

<sup>285</sup> If the spouses have a legal separation or an interlocutory dissolution decree, each spouse is entitled to a separate homestead. This continues the effect of existing law. See Civil Code § 1300-1304 (married person's separate homestead).

for a period of 18 months.<sup>286</sup> The extended period for protection of the sale proceeds is consistent with the period for reinvestment of sale proceeds of a personal residence under the tax laws.<sup>287</sup>

### Exemption Procedure

The three dwelling exemption procedures provided by existing law display unnecessary differences and complexities. They should be simplified and unified.

**Declared homestead.** The judgment debtor may exempt a real property dwelling by filing a homestead declaration with the county recorder<sup>288</sup> if the judgment creditor has not earlier obtained a judgment lien.<sup>289</sup> After an effective declaration is recorded, the judgment creditor cannot obtain a judgment lien on the property described in the declaration, even if the judgment debtor's equity in the property exceeds the amount of the exemption.<sup>290</sup> The result of this scheme is a race to the recorder's office. If the judgment creditor wins the race, the judgment debtor may still assert a dwelling house exemption in a court hearing on the judgment creditor's application for a writ of execution.<sup>291</sup> If the judgment debtor wins the race, the exemption is not secure since a hearing on entitlement to the exemption is still necessary should the judgment creditor levy execution on the dwelling.<sup>292</sup> The practical effect of a declared homestead is that judgment creditors may be precluded from securing payment of the judgment by means of the relatively benign judgment lien. Judgment creditors must thus seek immediate execution in order to reach any equity the judgment debtor may have in excess

<sup>286</sup> Civil Code Section 1265 and Code of Civil Procedure Section 690.31(k) protect the proceeds of sale of a homestead for a period of six months without any requirement that the proceeds be used to purchase another dwelling. Under the proposed law, the proceeds may be subject to voluntary liens that attached to the property after the judgment creditor's lien. See the discussion in the text under "Distribution of Proceeds of Sale and Collection" beginning at note 378 *infra*.

<sup>287</sup> See, e.g., Rev. & Tax. Code § 18091.

<sup>288</sup> See Civil Code §§ 1262-1265, 1266-1269, 1300-1303.

<sup>289</sup> See Civil Code § 1241.

<sup>290</sup> See *Boggs v. Dunn*, 160 Cal. 283, 285-87, 116 P. 743, 744-75 (1911); *Swearingen v. Byrne*, 67 Cal. App.3d 580, 585, 136 Cal. Rptr. 736, 739 (1977).

<sup>291</sup> Section 690.31.

<sup>292</sup> Civil Code §§ 1245-1247.

of the dwelling exemption, since the creditor who first levies has priority.<sup>293</sup>

**Dwelling house exemption.** Before a judgment creditor may obtain a writ of execution against a dwelling, the judgment creditor must apply to a court in the county where the dwelling is located.<sup>294</sup> This requirement applies whether or not the judgment debtor has recorded a homestead declaration on the dwelling. A judgment debtor who has not recorded a prior homestead declaration may nonetheless assert the dwelling house exemption at the hearing on the issuance of the writ.<sup>295</sup> This manner of asserting the exemption is preferable to the declared homestead because it comes into play only when the exemption is needed—when the judgment creditor seeks to apply the property to the satisfaction of the judgment.

**Mobilehome and vessel exemption.** Under existing law, the judgment debtor may, within 10 days after the property is levied upon, claim a dwelling exemption for a housetrailer, mobilehome, houseboat, boat, or other waterborne vessel pursuant to the general procedure for claiming exemptions for personal property levied upon under execution.<sup>297</sup>

**Exemption procedure under proposed law.** The proposed law would unify these varying procedures and make them consistent to the extent practicable. Under the proposed law, if the dwelling is personal property (a mobilehome not affixed to land or a boat) or a leasehold estate with an unexpired term of less than two years at the time of levy, the general procedure for claiming exemptions for personal property applies.<sup>298</sup>

The declared homestead would be eliminated as unnecessary. If the dwelling is real property other than a leasehold estate with an unexpired term of less than two years at the time of levy, a procedure patterned after the

<sup>293</sup> See Adams, *Homestead Legislation in California*, 9 Pac. L.J. 723, 728 (1978).

<sup>294</sup> Civil Code § 1245; Code Civ. Proc. § 690.31(c).

<sup>295</sup> Section 690.31(a), (b).

<sup>297</sup> Sections 690.3, 690.50(a). See the discussion in the text under "Procedure for Claiming Exemptions After Levy" beginning at note 357 *infra*.

<sup>298</sup> This continues the aspect of existing law that requires the debtor to initiate exemption proceedings as to personal property. It eliminates the overlap between Sections 690.3 and 690.31 insofar as certain mobilehomes are concerned.

existing declared homestead and dwelling house exemptions would apply, subject to the following important differences:

(1) As under existing law, the proposed law would require the judgment creditor to initiate court proceedings to determine whether the property is exempt and the amount of the exemption. However, instead of requiring the judgment creditor to apply for a writ of execution, the proposed law permits the judgment creditor to have the property levied upon first and then apply for an order permitting sale of the property. The writ is issued by the court clerk where the judgment is entered; the order for sale is made by the court where the dwelling is located. This will eliminate the confusion caused by issuance of writs of execution for different purposes and out of different courts for the enforcement of the same judgment.

(2) Under the proposed law, the judgment creditor must apply to the court for an order permitting sale of the dwelling within 20 days after the levying officer has served on the judgment creditor a notice that the levy has been made. If the application is not made within the 20-day period, the property must be released. The hearing is to be held within 45 days after the application is filed and the judgment debtor must be given 30 days' notice of the hearing. This provision is intended to provide a resolution of the exemption question early in the period during which the sale of real property is delayed under the proposed law,<sup>299</sup> while permitting adequate time for the judgment debtor to prepare. It also enables prompt clearing of title where property is levied upon but an order for sale is not diligently pursued.

(3) Under existing law, if the judgment creditor alleges the dwelling is not exempt, the judgment debtor has the burden of proof on the exempt status of the dwelling.<sup>300</sup> The proposed law creates a presumption in favor of exempt status if the judgment debtor has claimed a homeowner's or veteran's property tax exemption for the dwelling. Such property tax exemptions are available only for a person's principal place of residence.<sup>301</sup> If the judgment debtor is not

<sup>299</sup> See the discussion in the text beginning at note 405 *infra*.

<sup>300</sup> Civil Code § 1247; Code Civ. Proc. § 690.31(e).

<sup>301</sup> Rev. & Tax. Code §§ 205.5, 218, 252.1, 253.5.

present or represented at the hearing where the order for sale is obtained, the proposed law includes a provision drawn from existing law<sup>302</sup> requiring notice to the judgment debtor that an order of sale has been made and notifying the judgment debtor of the procedure for asserting the exemption if the judgment debtor failed to do so because of mistake, inadvertence, surprise, or excusable neglect. The form of the notice in layman's language is included in the proposed law in English and Spanish.

(4) Before a dwelling that is entitled to homestead protection under existing law may be sold on execution, it must be determined whether a portion of the land on which it is located can be divided without material injury to the dwelling and sold to satisfy the judgment.<sup>303</sup> This requirement is time-consuming, costly, and burdensome, and results in few partitions in kind. It dates from an era when dwellings were commonly located on larger tracts. Today most dwellings are located on standard lots that cannot be divided. The proposed law does not require a determination whether the property can be divided without material injury to the dwelling. A judgment debtor living on a larger tract who desires to save the dwelling from forced sale may voluntarily divide the property and sell the remainder to satisfy the judgment.

(5) Under existing law, before a dwelling subject to the homestead exemption may be sold on execution, it must be determined that the judgment debtor's equity exceeds the amount of the exemption.<sup>304</sup> This determination is unnecessary, since the market place is a better determinant of value and the property should not be sold unless the minimum bid equals or exceeds the amount of the homestead exemption. The proposed law eliminates the determination of the judgment debtor's equity. To help ensure that the judgment creditor does not attempt to force sale of property in which the equity is less than the exempt amount, the proposed law provides that if the minimum bid at sale is not received, the judgment creditor is not entitled to recover the costs of the sale procedure and the court is

<sup>302</sup> Civil Code §§ 1251, 1252; Code Civ. Proc. § 690.31(g).

<sup>303</sup> Civil Code § 1248; *cf.* Code Civ. Proc. § 690.31(c) (determination of exemption in manner provided in Civil Code).

<sup>304</sup> Civil Code § 1249; Code Civ. Proc. § 690.31(f).

required to award to the judgment debtor reasonable attorney's fees. In addition, the judgment creditor is precluded from again levying on the homestead for a period of one year.

(6) Existing law requires that a dwelling be sold at a price not less than 90 percent of its fair market value; but, if no such bid is received, the court, upon motion, may accept the highest bid exceeding encumbrances and the amount of the homestead exemption or may order a new sale.<sup>305</sup> This requirement is intended to protect the judgment debtor against sacrifice sales of the dwelling. But it necessitates the added expense of an appraisal and a court determination of market value. Moreover, the authority of the court to waive the 90 percent requirement limits its usefulness. A more effective means of protecting the interest of the judgment debtor is to defer the execution sale for a period of 120 days during which time the judgment debtor may find a buyer for the dwelling willing to bid a satisfactory price.<sup>306</sup> The judgment debtor will receive the proceeds exemption and the rest of the equity will be available to satisfy the judgment. The 90 percent value limitation, with its attendant procedural expenses, should be eliminated in favor of such a scheme.

### Other Improvements

In addition to the amount of the dwelling exemption and the basic exemption procedures, there are a number of other features of the dwelling exemption that are revised in the proposed law.

**Liens on the dwelling.** To what extent must senior liens and encumbrances on a homestead be satisfied in case of a sale? To what extent can the judgment debtor defeat the efforts of the judgment creditor to sell the homestead by creating voluntary liens and encumbrances subordinate to the judgment creditor's lien, including mechanics' and contractors' liens? Existing law is unclear. The dwelling exemption is an amount over and above "all" liens and

<sup>305</sup> Civil Code § 1254.

<sup>306</sup> The proposed law precludes the giving of notice of sale of real property (whether or not a dwelling) for 120 days from the date notice of levy is served on the judgment debtor.



encumbrances<sup>307</sup> and proceeds of sale are applied first to the discharge of "all" liens and encumbrances.<sup>308</sup> Existing law does not distinguish between liens that are superior to the judgment creditor's lien and those that are inferior.<sup>309</sup>

Under the proposed law, a homestead may be sold if the minimum bid equals or exceeds the amount of the homestead exemption. The sale is made subject to existing senior liens, which would not be required to be satisfied and which could not be accelerated because of the sale. This will minimize the need for new financing and make it easier to obtain an adequate sale price. Voluntary liens and encumbrances junior to the judgment creditor's lien are to be satisfied out of the proceeds representing the homestead exemption.<sup>310</sup> Moreover, junior voluntary liens and encumbrances are to be satisfied along with junior involuntary liens in their order of priority out of any surplus remaining after satisfaction of the judgment creditor's lien.

**Joint tenancy and tenancy in common property.** Under existing law, if there are co-owners of a dwelling and the judgment debtor's interest in the dwelling is sold to satisfy the judgment, the proceeds of sale are used to pay all liens and encumbrances jointly burdening the property before setting apart the amount of the exempt proceeds for the judgment debtor.<sup>311</sup> When this occurs, the buyer at the execution sale becomes a co-owner in place of the judgment debtor and has an equitable claim against the other co-owners for their proportionate share of the liens and encumbrances paid off.<sup>312</sup> Ultimately, the parties may find

<sup>307</sup> Civil Code § 1260.

<sup>308</sup> Civil Code § 1255; Code Civ. Proc. § 690.31(j).

<sup>309</sup> The relevant language was amended in 1945 to require satisfaction of all liens and encumbrances. Pre-1945 cases indicate that the lien of the judgment creditor had priority over subsequent liens and encumbrances. See *Marelli v. Keating*, 208 Cal. 528, 530, 282 P. 793, 794 (1929) (dictum); *Lean v. Givens*, 146 Cal. 739, 742, 81 P. 128, 129 (1905). In practice, language requiring satisfaction of "all" liens and encumbrances may be ignored. See 3 H. Miller & M. Starr, *Current Law of California Real Estate* § 16:32, at 61 n.19 (rev. ed. 1977).

<sup>310</sup> This is consistent with the general principle that exemptions are ineffective against a judgment foreclosing a mortgage or other lien on the property. See Section 690.52.

<sup>311</sup> *Schoenfeld v. Norberg*, 11 Cal. App.3d 755, 762-67, 90 Cal. Rptr. 47 (1970). The holding in *Schoenfeld* is the result of the application of two rules: (1) that a joint encumbrance burdens both cotenants' interests to the full amount and must be satisfied in an execution sale of either interest and (2) that a co-owner may claim the entire exemption as to his or her interest.

<sup>312</sup> *Id.*

it necessary to partition the property. The proposed law simplifies this scheme by eliminating the requirement that joint liens and encumbrances be satisfied. The judgment debtor's interest is sold subject to senior liens and encumbrances, so that contribution among the co-owners is unnecessary and the co-owners are able to preserve their existing financing despite the execution sale.

### **Collateral Effect of Homestead Declaration**

In addition to shielding the home from general creditors, the declaration of a homestead under existing law prevents the conveyance or encumbrance of the homestead property without the acknowledged written consent of both spouses.<sup>313</sup> The proposed law repeals the declared homestead system but includes new provisions that protect against conveyance or encumbrance of the dwelling without the consent of both spouses. Under the proposed law, a community personal property dwelling may not be conveyed or encumbered without the consent of both spouses. In addition, a spouse may record a *lis pendens* in a dissolution proceeding and thereby prevent the transfer or encumbrance of a separate property dwelling for three months, unless the court otherwise orders. These new provisions supplement the existing general rules limiting the ability of spouses to convey or encumber community property and requiring the spouses to support each other out of separate property.<sup>314</sup>

### **Exemptions in Bankruptcy**

A debtor in bankruptcy is entitled to select either the applicable state exemptions or the federal exemptions provided in the Bankruptcy Code.<sup>315</sup> The California exemptions are more favorable to a debtor who is a homeowner since California law provides a liberal dwelling exemption,<sup>316</sup> while the federal exemptions are more favorable to a debtor who is a renter since the bankruptcy

<sup>313</sup> See Civil Code § 1242.

<sup>314</sup> See, e.g., Civil Code §§ 5100, 5102, 5125, 5127 (Family Law Act).

<sup>315</sup> 11 U.S.C. § 522(b).

<sup>316</sup> See the discussion in the text under "Homestead Exemption" beginning at note 279 *supra*.

law provides a liberal "blanket" exemption to the extent the \$7,500 bankruptcy dwelling exemption is not used.<sup>317</sup>

Each state is permitted to preclude use of the federal exemptions in bankruptcy and to require that a debtor in bankruptcy be subject to the state exemptions. The Commission has considered whether California should exercise its option to bar use of the federal exemptions by a debtor. To the extent that the federal exemptions are more favorable to debtors than the state exemptions, the debtor will be inclined to undergo voluntary bankruptcy, to the possible detriment of creditors. However, the federal exemptions are advantageous to renters, who do not receive the same protection under California law that homeowners receive. The Commission believes that as a matter of fairness, the federal exemptions should be available to debtors as a remedy for the discrimination inherent in the California exemption scheme. The Commission recommends that California take no action to preclude use of the federal exemptions.

### Applicability of Exemptions

It is implicit under existing law that property which is exempt from execution is also exempt from other procedures for the enforcement of a money judgment.<sup>318</sup> This principle is made explicit in the proposed law, and provisions for the determination of exemption claims are included in the special procedures for enforcement of money judgments where appropriate.<sup>319</sup>

<sup>317</sup> 11 U.S.C. § 522(d) (5).

<sup>318</sup> Section 690(a) provides that the property mentioned in Sections 690.1-690.29 is "exempt from execution." Section 690.31 exempts a dwelling house from "execution" and Civil Code Section 1240 provides that a homestead is "exempt from execution or forced sale." Section 690.50(i) provides that the judgment rendered in exemption proceedings thereunder is "determinative as to the right of the creditor . . . to subject the property to payment or other satisfaction of his judgment." Section 710(c) incorporates Section 690.50 for the determination of exemption claims concerning money owed to the debtor by a public entity. Section 719 provides that the court in supplementary proceedings may order the application of property "not exempt from execution" toward the satisfaction of the judgment. Section 690.51 incorporates Section 690.50 for the determination of exemption claims when property is levied upon pursuant to certain warrants or notices of levy for the collection of tax liability. Section 302(c) of the Consumer Credit Protection Act, 15 U.S.C. § 1672(c) (1976), defines garnishment to mean "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt."

<sup>319</sup> See the discussion in the text under "Miscellaneous Creditors' Remedies" beginning at note 425 *infra*.

The principle that exemptions do not apply where the judgment is for the foreclosure of a lien on the property<sup>320</sup> (other than a lien created in the course of enforcing a general money judgment) is continued in the proposed law. However, the existing provision that exemptions do not apply where the judgment is for the purchase price of the property<sup>321</sup> is not continued. This rule is not enforceable in practice since a levying officer will resist levying on property that appears to be exempt. Moreover, the purchase money creditor can obtain more direct protection by taking a security interest in the property.

The proposed law also makes clear that exemptions are to be determined and applied under the circumstances existing at the time an enforcement lien—such as an attachment lien, judgment lien, or execution lien—is created upon the property for which the exemption claim is made.<sup>322</sup> This provision is intended to reject the holding in *California United States Bond & Mortgage Corp. v. Grodzins*<sup>323</sup> which held that the portion of life insurance benefits which exceeded the exempt amount at the time they were received was “earmarked” for creditors even though the amount of benefits remaining at the time they were levied upon was less than the amount protected by statute.<sup>324</sup> Exemption laws are intended to protect an amount of property sufficient for the support of the debtor and the debtor’s family at the time it is needed, *i.e.*, when

<sup>320</sup> See Civil Code § 1241; Code Civ. Proc. §§ 690.28, 690.31, 690.52; *Willen v. Willen*, 121 Cal. App. 351, 353, 8 P.2d 942, 943 (1932) (lien on insurance policies created by court order in proceedings to enforce alimony award foreclosed by execution).

<sup>321</sup> Section 690.52.

<sup>322</sup> The court may however disallow an exemption if property was used for the exempt purpose when the enforcement lien was created but is not used for the exempt purpose at the time of the hearing on the exemption. The court may consider (1) a change in the value of the property occurring after the time an enforcement lien is created if the exemption is based on value and (2) a change in the financial circumstances of the judgment debtor and the judgment debtor’s family if the exemption is based on their needs.

<sup>323</sup> 139 Cal. App. 240, 34 P.2d 192 (1934).

<sup>324</sup> In *Grodzins* the surviving wife received \$10,000 in life insurance benefits, deposited \$5,000 in a savings and loan account, and spent the remainder for the support of herself and her minor children. Under the exemption in effect at the time, approximately \$8,900 of the \$10,000 would have been exempt if the creditor had levied upon the funds immediately. The creditor was permitted to reach \$1,100 of the remaining \$5,000. The result can be more detrimental. For example, if the lump-sum originally received at some remote time before levy had been \$18,000 and the wife had spent the amount exempt (approximately \$8,900) before levy, the creditor would have been able to apply all of the remaining amount to the judgment.

the creditor attempts to enforce the judgment. The question of whether property is exempt does not arise until the creditor seeks to reach the property and apply it toward the satisfaction of a judgment.<sup>325</sup>

### Determination of Exemptions Under Law in Effect When Lien Created

Decisions of state and federal courts in California have held that the grant of a new or increased exemption for property sought to be applied to the satisfaction of a contractual obligation incurred before the change in the exemption would violate the Contract Clause of Article 1, Section 10, of the United States Constitution and of Article 1, Section 9, of the California Constitution.<sup>326</sup> This rule has also been applied in bankruptcy cases with the result that the debtor is restricted to the exemptions in effect at the time of the earliest of the scheduled debts.<sup>327</sup>

Decisions in this area during the last forty years have almost completely ignored the gradual erosion of the rigid application of the Contract Clause by the United States Supreme Court.<sup>328</sup> California decisions concerning the retroactive application of statutory provisions in other areas of the law, such as community property and sovereign immunity, have engaged in a modern and more sophisticated analysis of the constitutional issues and found

<sup>325</sup> *Medical Fin. Ass'n v. Rambo*, 33 Cal. App.2d Supp. 756, 758-60, 86 P.2d 159, 160-61 (1938). This case involved the garnishment of wages at a time when one-half of the earnings received during a 30-day period were exempt. The debtor had already received some earnings and the creditor argued that those earnings should be counted toward the exemption, leaving the remainder earned during the 30-day period subject to levy in the amount of one-half of the total. The court held that only one-half of the particular paycheck could be garnished.

<sup>326</sup> See *In re Rauer's Collection Co.*, 87 Cal. App.2d 248, 253-54, 196 P.2d 803, 807 (1948) (increase in homestead exemption); *Daylin Medical & Surgical Supply, Inc. v. Thomas*, 69 Cal. App.3d Supp. 37, 41-42, 138 Cal. Rptr. 878, 880-81 (1977) (extension of time for claiming homestead exemption); *Smith v. Hume*, 29 Cal. App.2d Supp. 747, 749-50, 74 P.2d 566, 567-68 (1937) (new motor vehicle exemption); *Medical Fin. Ass'n v. Wood*, 20 Cal. App.2d Supp. 749, 751-53, 63 P.2d 1219, 1220 (1936) (new motor vehicle exemption); *In re Fox*, 16 F. Supp. 320, 324 (S.D. Cal. 1936) (motor vehicle exemption); *The Queen*, 93 F. 834, 835 (N.D. Cal. 1899) (seamen's earnings exemption).

<sup>327</sup> See *England v. Sanderson*, 236 F.2d 641, 643 (9th Cir. 1956), *rev'g In re Sanderson*, 134 F. Supp. 484, 485 (N.D. Cal. 1955); *In re Towers*, 146 F. Supp. 882, 885-86, *aff'd sub nom. Towers v. Curry*, 247 F.2d 738, 739 (9th Cir. 1957).

<sup>328</sup> See *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 447-48 (1934) (upholding the Minnesota Mortgage Moratorium Law); *City of El Paso v. Simmons*, 379 U.S. 497 (1965).

no constitutional impediment to retroactive application.<sup>329</sup> Recent decisions in at least two other states have recognized the erosion of the Contract Clause and upheld application of an increased exemption to preexisting debts.<sup>330</sup> Most commentators also urge the views set forth in these recent decisions.<sup>331</sup>

The proposed law determines an exemption under the law in effect at the time an attachment, judgment, or execution lien is created on the property claimed to be exempt or the time the property otherwise subjected to a lien by the creditor.<sup>332</sup> This principle furthers the policy of the exemption laws—to provide the debtor with sufficient assets to remain self-supporting and to avoid making the debtor a charge upon the state. At the same time the judgment creditor can protect against any new or increased exemption by obtaining a judgment lien on the property or, if that is not possible, by levying on the property.

Increased or new exemptions are generally enacted to take account of inflation or to recognize the importance of new forms of assets. This intention is defeated if the fortuity of the time of contract or tort liability determines the applicable exemption. Tort creditors clearly do not have any reliance interest in exemptions in effect at the time

<sup>329</sup> See, e.g., *Robertson v. Willis*, 77 Cal. App.3d 358, 366-68, 143 Cal. Rptr. 523, 527-28 (1978) (community property); *In re Marriage of Bouquet*, 16 Cal.3d 583, 592-94, 546 P.2d 1371, 1376-77, 128 Cal. Rptr. 427, 432-33 (1976) (community property); *Flournoy v. State*, 230 Cal. App.2d 520, 530-37, 41 Cal. Rptr. 190, 195-201 (1964) (sovereign immunity). These cases have applied a balancing approach, relying heavily on the analysis developed in Hochman, *The Supreme Court and the Constitutionality of Retroactive Legislation*, 73 Harv. L. Rev. 692 (1960). See also Reppy, *Retroactivity of the 1975 California Community Property Reforms*, 48 So. Cal. L. Rev. 977 (1975).

<sup>330</sup> See *Wilkinson v. Carpenter*, 277 Or. 557, 561 P.2d 607, 609-12 (1977) (application of homestead exemption in effect at time of sale); *Hooter v. Wilson*, 273 So.2d 516, 521-22 (La. 1973) (wage garnishment exemption); *Ouachita Nat'l Bank v. Rowan*, 345 So.2d 1014, 1016-17 (La. Ct. App. 1977) (homestead exemption); see also *Natchitoches Collections, Inc. v. Gorum*, 274 So.2d 449, 450 (La. Ct. App. 1973) (homestead exemption).

<sup>331</sup> See, e.g., Countryman, *For a New Exemption Policy in Bankruptcy*, 14 Rutgers L. Rev. 678, 726-32 (1960); Reppy, *Retroactivity of the 1975 California Community Property Reforms*, 48 So. Cal. L. Rev. 977, 1120 n.470 (1975); Comment, *The Contract Clause and the Constitutionality of Retroactive Application of Exemption Statutes: A Reconsideration*, 9 Pac. L.J. 889 (1978); Note, *Bankruptcy Exemptions: Critique and Suggestions*, 68 Yale L.J. 1459, 1471-72 (1959); Comment, *Contract Clause Prevents Exemption Change*, 1 Stan. L. Rev. 350 (1949). Similarly, Section 23(b) of the Uniform Exemptions Act (1976) would apply exemptions retroactively. See also *In re Towers*, 146 F. Supp. 882, 885 n.2 (N.D. Cal. 1956).

<sup>332</sup> The proposed law also provides that contracts are made in recognition of the power of the state to alter or make additions to exemptions. See *Wilkinson v. Carpenter*, 277 Or. 557, 561 P.2d 607, 610-11 (1977); *Hooter v. Wilson*, 273 So.2d 516, 521-22 (La. 1973).

liability arises. It is highly doubtful that general contract creditors have a significant vested interest in exemptions in effect when the contract is executed. The debtor's financial status at the time a contract is executed is certainly an important consideration to the creditor, but there is no guarantee that the assets listed in a financial statement will not be transferred or exhausted before a default occurs. The creditor may also be protected by insisting on security for the obligation. The incremental increase of the amount of exemptions is necessary to take account of inflation.<sup>333</sup> Under current economic conditions, inflation is much more a certainty than the expectation that the debtor will have nonexempt assets that were listed in a financial statement. To the extent that exemptions are increased to take account of inflation, creditors should not be heard to complain that vested rights are being abrogated by the proposed law which determines the exemption under the law in effect when the enforcement lien attached. This rule protects the creditor, for example, from an increase in the amount of an exemption after the attachment, judgment, or execution lien has attached to the property.

## Judgments for Spousal or Child Support

### Existing Law

Under existing law, the standard exemptions from enforcement of money judgments apply where the judgment is for child or spousal support unless there is a specific statutory exception.<sup>334</sup> Several exceptions are now provided by statute. A support creditor can reach one-half of a debtor's earnings (instead of the usual one-fourth), subject to the power of the court to increase or decrease the exemption in the interest of equity.<sup>335</sup> Public retirement, disability, and death benefits after payment are not exempt

<sup>333</sup> See the discussion in the text under "Continuing Review of Exemptions" beginning at note 345 *infra*.

<sup>334</sup> See *Miller v. Superior Court*, 69 Cal.2d 14, 442 P.2d 663, 69 Cal. Rptr. 583 (1968) (retirement funds); *Yager v. Yager*, 7 Cal.2d 213, 218, 60 P.2d 422 (1936) (homestead).

<sup>335</sup> Section 723.052. Federal law limits the extent of the court's authority to increase the amount that may be withheld. See 15 U.S.C. § 1673 (Supp. III 1979). The proposed law makes clear that federal law limits the court's authority.

in support cases;<sup>336</sup> before payment, such benefits and vacation credits, if payable, are subject to enforcement in the same amount as wages. Private retirement, disability, and death benefits are not exempt from enforcement of support either before or after payment.<sup>337</sup> It also appears that a court may avoid the potential application of an exemption by imposing a lien on specific property to secure the payment of a support obligation by exercise of its powers under Civil Code Section 4380.<sup>338</sup>

### **Proposed Law**

The proposed law contains detailed provisions that make clear the extent to which otherwise exempt property may be applied to the satisfaction of a judgment for child or spousal support.

No substantive change is made in the provisions that now govern withholding for support judgments from earnings.

Where property is levied upon to obtain satisfaction of court-ordered child or spousal support and the property is exempt if a claim is made, the court may order that some or all of the property be applied to the satisfaction of the support judgment notwithstanding that the property is otherwise exempt. In determining the extent to which the otherwise exempt property is to be applied to the satisfaction of the judgment, the court is required to weigh the needs of the judgment creditor, the needs of the judgment debtor and persons dependent on the judgment debtor, and any other relevant circumstances. This general exception to the application of exemption statutes in support cases recognizes that the exemptions should not be used to defeat the claims of persons dependent on the judgment debtor for support, since these are the very persons the exemption laws are designed to protect.

The proposed law continues the general rule that property which is exempt without making a claim may not be applied to the satisfaction of a judgment for child or

<sup>336</sup> Code Civ. Proc. § 690.18(a), (b); Gov't Code § 21201. An exception is also provided for benefits in the State Teachers' Retirement System, but without the limitation to amounts that could be garnished as wages. Educ. Code § 22005.

<sup>337</sup> Section 690.18(d).

<sup>338</sup> See *Willen v. Willen*, 121 Cal. App. 351, 6 P.2d 554 (1932) (no exemption where lien created on money payable under husband's insurance policies and enforced by execution).



spousal support. However, the proposed law continues and clarifies the exception to this general rule which makes certain retirement plan benefits subject to payment of court-ordered support.<sup>339</sup> Where an amount under a retirement plan becomes payable to a person and is sought to be applied to the satisfaction of a support judgment, the amount is exempt only to the extent that the court determines under the general standard discussed above. However, if the amount is payable periodically, the amount withheld for support may not exceed the amount permitted to be withheld on a wage garnishment. This amount is 50 percent of the amount that otherwise would be received by the support obligor unless the court orders a greater or lesser amount. The maximum amount that may be withheld for support from a periodic payment is subject to the restriction imposed by federal law.<sup>340</sup>

### Tracing Exempt Amounts

An exemption for money derived from a particular source, such as retirement or life insurance benefits, is illusory if the exemption is lost when the benefits are deposited in a bank or held in the form of a check or cash. Present case law and, to a limited extent, statutory law recognize the right of a debtor to trace exempt amounts through a change in form.<sup>341</sup> The proposed law contains a general provision that permits the judgment debtor to trace exempt amounts through deposit accounts and in the form of cash and the equivalent of cash, including cashier's checks, certified checks, and money orders. This tracing provision applies to relocation, life insurance, retirement, unemployment, disability, health, social security, and

<sup>339</sup> The proposed law also provides a uniform \$2 maximum fee for each payment made by a public retirement system. This amount is the same as that provided in Government Code Section 21201. Section 690.18(b) provides a \$1 fee.

<sup>340</sup> See 15 U.S.C. § 1673 (Supp. III 1979).

<sup>341</sup> See, e.g., Sections 690.18(a) (pension benefits exempt in debtor's possession and when deposited), 690.30 (direct deposit of social security payments); *Kruger v. Wells Fargo Bank*, 11 Cal.3d 352, 368, 521 P.2d 441, 450, 113 Cal. Rptr. 449, 458 (1974) (unemployment benefits in checking account); *Holmes v. Marshall*, 145 Cal. 777, 782-83, 79 P. 534, 536-37 (1905) (life insurance benefits deposited in bank account); *Bowman v. Wilkinson*, 153 Cal App.2d 391, 395-96, 314 P.2d 574, 577 (1957) (life insurance check converted to cashier's check and deposited in attorney's trust account); *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 416-17 (1973) (disability benefits in bank account); *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 162 (1962) (veterans' benefits in savings and loan account).

veteran's benefits, worker's compensation, aid, exempt earnings, and proceeds from the sale of or indemnification for a homestead, a motor vehicle, and tools of a trade.<sup>342</sup> Consistent with the general burden on the judgment debtor to claim exemptions,<sup>343</sup> the judgment debtor has the burden of tracing the exempt amount under the proposed law. Tracing is accomplished by the lowest intermediate balance principle<sup>344</sup> unless the judgment debtor or the judgment creditor shows that some other method is more appropriate under the circumstances of the case.

### Continuing Review of Exemptions

Exemptions subject to dollar amount limitations have the virtue of certainty and prevent the abuse that arises where specific items are exempt without value limits. Legislatures have typically been slow to adjust exemptions in response to changes in the value of the dollar.<sup>345</sup> For example, the exemption for an account in a savings and loan association<sup>346</sup> was set at \$1,000 in 1901.<sup>347</sup> The dollar was worth over seven times as much in 1901 as it is now,<sup>348</sup> yet the amount of the exemption remains unchanged. The credit union account exemption<sup>349</sup> was raised to \$1,500 in 1939<sup>350</sup> when the dollar was worth over four times as much as it now is.<sup>351</sup> The life insurance exemption<sup>352</sup> was set at the amount of benefits represented by a \$500 annual premium in 1868<sup>353</sup> when the

<sup>342</sup> The opportunity to trace exempt proceeds from the sale of a motor vehicle or tools would be limited to 90 days, and to 18 months in the case of homestead proceeds.

<sup>343</sup> See Section 690.50(i).

<sup>344</sup> See *Republic Supply Co. v. Richfield Oil Co.*, 79 F.2d 375, 379 (9th Cir. 1935) (determination of lowest intermediate balance).

<sup>345</sup> See Countryman, *For a New Exemption Policy in Bankruptcy*, 14 Rutgers L. Rev. 678, 683 (1960); Joslin, *Debtors' Exemption Laws: Time for Modernization*, 34 Ind. L.J. 355, 356 (1959).

<sup>346</sup> Section 690.7.

<sup>347</sup> 1901 Cal. Stats. ch. 28, § 1 (then building and loan associations).

<sup>348</sup> See Bureau of Census, *Historical Statistics of the United States*, Table E-183, at 212, (1975) [hereinafter cited as *Historical Statistics*]. Bureau of Census, *Statistical Abstract of the United States: 1976*, Table No. 708, at 439 [hereinafter cited as *Statistical Abstract*].

<sup>349</sup> Fin. Code § 14864.

<sup>350</sup> 1939 Cal. Stats. ch. 965, § 2.

<sup>351</sup> See *Historical Statistics*, *supra* note 348, Table E-135, at 210; *Statistical Abstract*, *supra* note 348, Table No. 708, at 439.

<sup>352</sup> Section 690.9.

<sup>353</sup> 1868 Cal. Stats. ch. 406, § 1.

dollar was worth over six times what it is today.<sup>354</sup> Less dramatic but still significant disparities have occurred in exemptions such as the motor vehicle exemption which has been frequently amended since its original enactment in 1935.<sup>355</sup> The protection of a motor vehicle in which the debtor has no more than \$500 equity, established in 1972, has been significantly eroded because by 1976 the average price of new cars had risen over 20 percent and the average price of used cars had risen over 40 percent.<sup>356</sup>

The proposed law provides a means for periodic and continuing review of the exemptions and exempt amounts. The California Law Revision Commission is charged with the responsibility to review the exemptions every five years, and more frequently if desirable, and make any necessary recommendations to the Legislature. This will assist the Legislature periodically to consider adjustment of the exemptions without mandating automatic increases tied to inflation.

### Procedure for Claiming Exemptions After Levy

Existing law provides a detailed procedure through which exemptions may be claimed and determined.<sup>357</sup> The judgment debtor may, within 10 days after property has been levied upon, claim an exemption by filing an affidavit with the levying officer; otherwise the exemption is waived and the property may be applied toward the satisfaction of the judgment.<sup>358</sup> If the judgment debtor files an affidavit,

<sup>354</sup> Historical Statistics, *supra* note 348, Table E-183, at 212; Statistical Abstract, *supra* note 348, Table No. 708, at 439.

<sup>355</sup> 1935 Cal. Stats. ch. 723, § 24. The motor vehicle exemption at first protected a vehicle valued at \$100, regardless of the amount of the debtor's equity. This limit was raised to \$250 in 1949 and to \$350 in 1959. In 1967 the debtor's equity was protected in the amount of \$350 so long as the vehicle was not worth more than \$1,000. The equity exemption was raised to \$500 in 1972 and in 1976 the value limitation was repealed. See 1949 Cal. Stats. ch. 628, § 1; 1959 Cal. Stats. ch. 1474, § 1; 1967 Cal. Stats. ch. 1241, § 1; 1972 Cal. Stats. ch. 744, § 1; 1976 Cal. Stats. ch. 1210.

<sup>356</sup> Statistical Abstract, *supra* note 348, Table No. 709, at 440.

<sup>357</sup> Section 690.50; see generally 5 B. Witkin, California Procedure *Enforcement of Judgment* §§ 88-92 (2d ed. 1971 & Supp. 1979). Special procedures are provided for determining certain exemptions. See Sections 690.30 (deposit account into which social security benefits directly deposited), 690.31 (dwelling exemption).

<sup>358</sup> Section 690(a). Some exemptions are not subject to waiver. See, e.g., Sections 690.15 (worker's compensation benefits prior to payment), 690.19 (aid under public assistance program prior to payment), 723.051 (portion of earnings not subject to garnishment); *Smith v. Rhea*, 72 Cal. App.3d 361, 370-72, 140 Cal. Rptr. 116, 120-22 (1977) (exempt portion of proceeds from execution sale of motor vehicle).

the levying officer immediately serves it on the judgment creditor along with a notice that the property will be released unless the judgment creditor files a counteraffidavit with the levying officer within five days after the judgment debtor's affidavit is served. The judgment creditor is also required to serve a copy of this counteraffidavit on the judgment debtor and file proof of service with the levying officer. Once the counteraffidavit is filed, either party is permitted to make a motion for an order determining the exemption claim within five days after the filing of the counteraffidavit. The hearing is required to be held within 15 days after the motion is made unless a continuance is granted. The moving party must give at least five days' notice of the hearing to the other party and to the levying officer. If no motion is made within five days after the counteraffidavit is filed or, if the levying officer is not served with notice of the hearing within 10 days after such filing, the property is required to be released to the debtor. At the hearing the judgment debtor has the burden of proof. The affidavit and counteraffidavit are filed with the court by the levying officer and constitute the pleadings of the parties, subject to the power of the court to permit amendments. The court may also permit the production of other evidence. At the conclusion of the hearing, the court determines the exemption and makes any necessary orders for the disposition of the property.

The proposed law makes several changes in this procedure.<sup>359</sup> Since the judgment debtor may not receive notice of levy for some time after levy has occurred,<sup>360</sup> the 10-day period within which the claim of exemption must be filed with the levying officer runs from the date notice of levy is served on the judgment debtor. As a condition of claiming an exemption for a motor vehicle or tools of a trade, the judgment debtor is required to describe other property of the same type in the claim of exemption. Similarly, where the judgment debtor claims an exemption for deposit accounts and money or for the loan value of an insurance policy, the judgment debtor must describe all

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<sup>359</sup> For minor and technical revisions, see the Comments to the sections in the proposed legislation *infra*.

<sup>360</sup> Notice of levy is required to be given the judgment debtor promptly after levy. See Section 688(b) (incorporating the levy provisions in the Attachment Law, Sections 488.310-488.430).

other such funds. Where property is claimed as exempt pursuant to a provision exempting property to the extent necessary for the support of the judgment debtor and the judgment debtor's family, the judgment debtor must provide a detailed financial statement of assets and obligations. Exemptions based on need or based on the availability of other property of the same character are determined by taking into account all the marital property, whether or not all the property would be liable to satisfy the judgment. These provisions will enable the judgment creditor to obtain information regarding other property of the judgment debtor and will help achieve the policy of the exemptions laws to protect only a limited amount of the judgment debtor's property.

The right of the judgment debtor to move for a hearing on the exemption claim is eliminated as unnecessary. Under the proposed law, if the judgment creditor does not file the notice of opposition with the levying officer and file notice of motion within the five-day period after service of the claim of exemption, the property will be released and the judgment creditor will be precluded from levying on it again absent a showing of changed circumstances. Accordingly, the judgment debtor has nothing to gain by moving for a hearing on the exemption claim. The 15-day period after the motion is filed during which the hearing is required to be commenced is increased to 20 days to ensure that the judgment debtor may be given 10 days' notice of the hearing.<sup>361</sup>

## SALE AND COLLECTION

### Sale in General

The general assumption of existing law is that property levied upon will be sold to satisfy the money judgment.<sup>362</sup> This principle is continued in the proposed law with one important modification.<sup>363</sup> The proposed law encourages collection rather than sale of certain types of property that

<sup>361</sup> The proposed law requires that the judgment debtor be given 10 days notice of the hearing. If the notice of hearing is served by mail, the notice must be mailed 15 days prior to the hearing.

<sup>362</sup> See Section 691.

<sup>363</sup> The proposed law also makes clear that cash or the equivalent of cash is not to be sold.

are especially susceptible to sacrifice sales—accounts receivable, chattel paper, general intangibles, final money judgments, and instruments that are not of a type customarily transferred in established markets or that arise out of consumer transactions. These types of property are to be collected rather than sold unless the judgment creditor first serves a notice of intended sale on the judgment debtor. If the judgment debtor applies to the court within 10 days after service for an order to prevent the sale, the court may make an order appropriate under the circumstances of the case. The order may permit the execution sale, may order sale only on specified conditions, or may order that the property continue to be collected. The court may condition an order restraining sale on an assignment of the property by the judgment debtor to the judgment creditor to the extent necessary to satisfy the judgment.<sup>364</sup> If the judgment debtor does not apply within the 10-day period for an order to prevent the sale, the property may be sold.

### Collection

If the judgment creditor does not seek to have collectible property sold or if the court denies the sale upon the judgment debtor's application, amounts due on a right to payment are to be collected under the proposed law during the period of the lien of execution which lasts until one year from the date of issuance of the writ of execution unless the execution lien is renewed by another levy.<sup>365</sup> This represents a significant change from existing law under which the writ of execution has active force only for a maximum 60-day period after delivery to the levying officer after which time it must be returned.<sup>366</sup> By permitting collection over a year's time or longer if the execution lien is renewed, the proposed law should save enforcement costs and result in much less disruption of the relation between the judgment debtor and the judgment debtor's debtors.

<sup>364</sup> See the discussion in the text under "Order to Assign Right to Payment" beginning at note 483 *infra*.

<sup>365</sup> The execution lien on another levy on the same property may relate back to the date of the earlier execution lien. See discussion in text beginning at note 48 *supra*. The proposed law also provides other remedies for collecting debts. See the discussion in the text under "Miscellaneous Creditors' Remedies" beginning at note 425 *infra*.

<sup>366</sup> See Section 683.

## Sale Procedure

### Notice of Sale

The proposed law continues the substance of existing law governing the notice of sale with the following changes:

(1) In order to reach potentially interested bidders at an execution sale more effectively, the proposed law permits the judgment creditor to advertise the sale in an advertising section of a newspaper or other periodical and recover the reasonable costs of such advertising.

(2) The proposed law gives the judgment debtor an opportunity to claim any available exemption for personal property by precluding its sale until 10 days after the notice of levy is given to the debtor. Under existing law the 10-day period runs from the date of levy;<sup>367</sup> but, since the debtor may not be aware of the levy, the existing provision provides little protection.

(3) If real property is to be sold, the proposed law requires both a legal description and a street address, other common designation, or directions to the location of the property. Existing law permits the omission of the street address and apparently provides for a designation of the location of property only in the case of a foreclosure sale.<sup>368</sup>

(4) The proposed law requires that notice of sale of real property be served on lienholders of record, be personally served on the judgment debtor, and be personally served on an occupant of the property or left at the premises.

(5) The notice of sale of real property is delayed under the proposed law until 120 days after the notice of levy is served on the judgment debtor. This important provision gives the judgment debtor time to redeem the property from the judgment creditor's lien before the sale, to sell the property, or to seek the attendance of other potential purchasers at the judicial sale. This delay provision compensates for the proposed elimination of the statutory right to redeem real property for one year after a judicial sale.<sup>369</sup>

<sup>367</sup> See Section 690.50(a).

<sup>368</sup> See Section 692.

<sup>369</sup> See the discussion in the text under "Repeal of Statutory Redemption From Judicial Sales" beginning at note 380 *infra*.

## Manner of Sale

The existing law pertaining to the time, place, and manner of sale is largely continued in the proposed law.<sup>370</sup> However, the requirement that personal property be in view of those attending the sale is subject to an exception where the court orders otherwise. This option avoids the expense of moving bulky objects or large lots of items to the place where the sale is to be held.

Under the proposed law, the judgment debtor may request that property be sold in certain lots or in a particular order, but the levying officer is not bound to follow the request unless it is likely that the requested manner of sale will yield an amount equal to any other manner of sale. Under existing law, it appears that the judgment debtor has absolute control over this aspect of sale.<sup>371</sup>

## Manner of Payment

The practice under existing law requires bidders at an execution sale other than the judgment creditor to pay in cash or by certified check or cashier's check.<sup>372</sup> The judgment creditor may credit the judgment on any bids but must pay cash to cover the expenses of the levying officer, preferred labor claims, exempt proceeds, and other superior claims that are required to be satisfied.<sup>373</sup> The proposed law continues this general requirement, but also would permit a high bidder to elect to treat a bid over \$5,000 as a credit transaction by paying \$5,000 or 10 percent of the amount bid, whichever is greater, in cash, and paying the balance with interest on the balance and additional accruing costs within 30 days after the date of the sale.<sup>374</sup> This provision should encourage outside bidding at execution sales of valuable property, particularly real property, whereas under existing law it is difficult for

<sup>370</sup> See Section 694.

<sup>371</sup> See Section 694.

<sup>372</sup> Marshal's Manual of Procedure § 423.4 (rev. 1980); California State Sheriffs' Ass'n, Civil Procedural Manual 6.10-6.11, 6.20 (rev. 1980).

<sup>373</sup> See *Turner v. Donovan*, 64 Cal. App.2d 375, 377, 148 P.2d 912 (1944); cf. *Kelly v. Barnet*, 24 Cal. App. 119, 121-22, 140 P. 605 (1914) (levying officer has discretion to require judgment creditor to pay cash).

<sup>374</sup> This proposal is patterned after Revenue and Taxation Code Section 3693.1 pertaining to sales of tax deeded property to private persons.



interested bidders to have the necessary cash at a sale. If the credit bidder does not complete payment of the amount bid within the 30-day period allowed, the amount paid will be applied to the satisfaction of the judgment and any excess will be returned to the bidder.

### Minimum Bid

The proposed law specifically precludes the sale of property at an execution sale if the amount bid does not exceed the total of superior claims that are required by statute to be satisfied,<sup>374.1</sup> third-party claims that have been paid off by the judgment creditor,<sup>375</sup> and any proceeds exemption.<sup>376</sup> This provision is intended to enforce the principle that the debtor's property should not be sold, particularly at a sacrifice, if none of the proceeds would be applied to the satisfaction of the judgment.

### Distribution of Proceeds of Sale and Collection

Existing law contains several incomplete and somewhat contradictory provisions relating to the distribution of the proceeds of sale and collection.<sup>378</sup> The proposed law contains a general section governing the distribution of proceeds resulting from sale or collection under a writ of execution. Proceeds are applied in the following order:

(1) To the satisfaction of liens and claims that are required by statute to be paid off, including a third-party claim that the judgment creditor has satisfied.

(2) To the judgment debtor in the amount of any applicable exemption of proceeds except to the extent such proceeds are required to satisfy voluntary encumbrances subordinate to the judgment creditor's lien.

(3) To the levying officer for the reimbursement of costs which have not been advanced.

(4) To the judgment creditor to satisfy costs advanced to the levying officer, costs and interest accruing after entry

<sup>374.1</sup> See, e.g., Section 1206 (preferred labor claims).

<sup>375</sup> Cf. Section 689c (proceeds of sale paid first to repayment of sum paid by creditor to satisfy interest of third-party claimant). See the discussion in the text under "Distribution of Proceeds of Sale and Collection" beginning at note 378 *infra*.

<sup>376</sup> Proceeds of sale may be exempt where a homestead, motor vehicle, or tools of trade are sold. See the discussion in the text under "Exemptions From Enforcement of Money Judgments" beginning at note 217 *supra*.

<sup>378</sup> See Civil Code § 1255; Code Civ. Proc. §§ 689c, 690.2(c), (d), 690.31(j), 691.

of judgment but before issuance of the writ, the fee for issuance of the writ, and the amount remaining unsatisfied on the judgment.

(5) To any other judgment creditor who has delivered a writ of execution to the levying officer with instructions to levy on the same property and to other persons entitled to a share of the proceeds of sale.<sup>379</sup>

(6) To the judgment debtor.

Under existing law, proceeds of a sale or collection apparently may be distributed immediately. The proposed law includes new provisions designed to permit the resolution of disputes as to the proper distribution of the proceeds before they are actually distributed. The levying officer is required to prepare a schedule of proposed distribution. Notice that the schedule has been prepared is mailed or delivered to the judgment debtor, judgment creditor, and any other persons known by the levying officer to have or claim a right to any of the proceeds. Within 10 days of service, an exception to the proposed distribution may be filed, and the proposed law provides a procedure for court determination of the issue raised by the exception. If no timely exception is filed, the levying officer distributes the proceeds in accordance with the schedule of proposed distribution. This new procedure gives the judgment debtor an opportunity to be sure that the proceeds will be distributed properly and to claim any available exemption for the proceeds. It also gives third parties having an interest in the proceeds an opportunity to establish their relative priorities before the proceeds are actually distributed. The new procedure will not apply to amounts collected under a wage garnishment; such amounts will be paid to the judgment creditor who obtained the wage garnishment as under existing law.

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<sup>379</sup> See *Mitchell v. Alpha Hardware & Supply Co.*, 7 Cal. App.2d 52, 57, 45 P.2d 442 (1935).

## REPEAL OF STATUTORY REDEMPTION FROM JUDICIAL SALES

### Existing Law

Statutes providing a right of redemption from execution sales were first enacted in California in 1851.<sup>380</sup> This system, patterned after the Field Code proposed for New York,<sup>381</sup> has been described as the "scramble" type of redemption.<sup>382</sup> Under this system, the right to redeem is afforded the judgment debtor who owns the land, the successors in interest of the judgment debtor, and persons holding liens on the land that are subordinate to the lien under which the sale takes place.<sup>383</sup> Redemption may take place at any time within twelve months after the sale of the property.<sup>384</sup> Redemption is accomplished by paying the execution sale purchaser or prior redemptioner the amount paid to purchase or redeem the property plus the amount of a prior redemptioner's lien and specified amounts of interest and other expenses.<sup>385</sup> Redemption by the judgment debtor or

<sup>380</sup> 1851 Cal. Stats. ch. 5, §§ 229-236. Statutory redemption from execution and foreclosure sales is currently governed by Sections 700a-707.

<sup>381</sup> See New York Commissioners on Practice and Pleading, *The Code of Civil Procedure of the State of New-York* §§ 844-850 (1850). Although the redemption system proposed in the Field Code was not enacted in New York, it became the prevailing type of redemption in the United States. S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 150-51 (2d ed. 1975). The California statute in turn became the model for redemption laws in the western states. See Durfee & Doddridge, *Redemption From Foreclosure Sale—The Uniform Mortgage Act*, 23 Mich. L. Rev. 825, 866 n.93 (1925).

<sup>382</sup> See generally J. Hetland, *Secured Real Estate Transactions* §§ 7.7-7.19 (Cal. Cont. Ed. Bar 1974); S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 149-54 (2d ed. 1975); 5 B. Witkin, *California Procedure Enforcement of Judgment* §§ 98-102, at 3464-68 (2d ed. 1971); Comment, *The Statutory Right of Redemption in California*, 52 Calif. L. Rev. 846 (1964).

<sup>383</sup> Section 701. Creditors entitled to redeem are termed "redemptioners" by this section.

<sup>384</sup> Section 702. A redemption by a redemptioner must occur within 60 days after a redemption by a prior redemptioner. Section 703. It has been suggested that these 60-day redemption periods conceivably may continue to run after the 12-month period as long as there are qualified redemptioners prepared to redeem within 60 days after a prior redemption. See Comment, *The Statutory Right of Redemption in California*, 52 Calif. L. Rev. 846, 852-53 (1964).

<sup>385</sup> See Sections 702-703. A person redeeming from the purchaser must pay two-thirds of one percent per month interest. Section 702. A person redeeming from a redemptioner must pay, in addition, two percent of the amount paid by the prior redemptioner. Section 703. The other items making up the redemption price specified in the statute are assessments, taxes, reasonable sums for fire insurance, maintenance, upkeep, or repair of improvements on the property, and sums necessarily paid on a prior obligation secured by the property. Sections 702-703. Rents and profits or the value of the use and occupation of the property may be set off

a successor in interest terminates the effect of the sale so that the judgment debtor or successor in interest is restored to his or her estate.<sup>386</sup> However, liens that have not been paid off in the process of redemption reattach,<sup>387</sup> and a judgment lien under which the property is sold reattaches to the extent it has not been satisfied when the debtor redeems.<sup>388</sup> Redemption by a junior lienholder has the effect of satisfying a prior lien that is a part of the redemption price and preserving the junior lienholder's security in the property that would otherwise be lost at the conclusion of the redemption period as a result of the sale under a superior lien.<sup>389</sup>

These provisions apply as well to foreclosure sales under a mortgage or deed of trust.<sup>390</sup> If the property is sold for less than the amount of the judgment, the redemption period is 12 months, as in the case of redemption from an execution sale.<sup>391</sup> If the property is sold at a foreclosure sale under a deed of trust or a mortgage with the power of sale at a price sufficient to satisfy the judgment, including interest, costs, and expenses of sale, the redemption period is three months.<sup>392</sup> There is, however, no statutory right of

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against the redemption price. Section 707; *House v. Lala*, 214 Cal. App.2d 238, 245-46, 29 Cal. Rptr. 450, 454 (1963). Section 702 provides a summary hearing procedure in the event of a disagreement over the redemption price. As the discussion in Comment, *The Statutory Right of Redemption in California*, 52 Calif. L. Rev. 846, 863-69 (1964), fully demonstrates, the determination of the redemption price frequently is not an easy matter.

<sup>386</sup> Section 703; *Bateman v. Kellogg*, 59 Cal. App. 464, 474-78, 211 P. 46, 51-52 (1922).

<sup>387</sup> Section 703; *Kaiser v. Mansfield*, 160 Cal. App.2d 620, 628-29, 325 P.2d 865, 870-71 (1958).

<sup>388</sup> See *Fry v. Bihl*, 6 Cal. App.3d 248, 251-52, 85 Cal. Rptr. 742, 743 (1970); *Moore v. Hall*, 250 Cal. App.2d 25, 29, 58 Cal. Rptr. 70, 72 (1967).

<sup>389</sup> *Bank of America v. Hill*, 9 Cal.2d 495, 502, 71 P.2d 258, 261 (1937).

<sup>390</sup> Subdivision (a) of Section 700a provides in relevant part: "Sales of personal property, and of real property, when the estate therein is less than a leasehold of two years' unexpired term, are absolute. In all other cases the property is subject to redemption, as provided in this chapter." Similar language in the law in effect in 1852 was termed "inapt" but found to be sufficiently comprehensive to apply to foreclosure sales. *Kent & Cahoon v. Laffan*, 2 Cal. 595 (1852).

<sup>391</sup> Section 725a. Even if there is a power of sale in the mortgage or deed of trust, a mortgagee or trustee must follow the judicial foreclosure procedures in order to be able to obtain a deficiency judgment for the difference between the fair market value of the property and the total debt. See Sections 580b, 580d, 726; *Roseleaf Corp. v. Chierighino*, 59 Cal.2d 35, 40-44, 378 P.2d 97, 99-101, 27 Cal. Rptr. 873, 875-77 (1963).

<sup>392</sup> Section 725a.

redemption after a private sale under a power of sale in a mortgage or deed of trust.<sup>393</sup>

Where a right of redemption exists, the judgment debtor or a tenant of the debtor is entitled to remain in possession of the real property during the redemption period.<sup>394</sup> The purchaser is entitled to receive rent or the value of the use and occupancy of the property from the tenant in possession until a redemption takes place.<sup>395</sup> If the debtor redeems, rents and profits paid to the purchaser are a credit on the redemption price.<sup>396</sup> If the purchaser or redemptioner has occupied the property, the debtor who redeems is entitled to the value of the use and occupancy of the property.<sup>397</sup>

### Purpose of Statutory Redemption

The primary purpose of statutes permitting redemption from judicial sales of real property is to force the purchaser at the execution or foreclosure sale (almost always the judgment creditor or mortgagee)<sup>398</sup> to bid an amount near the property's fair value.<sup>399</sup> The theory behind permitting

<sup>393</sup> *Penryn Fruit Co. v. Sherman-Worrell Fruit Co.*, 142 Cal. 643, 645, 76 P. 484, 485 (1904); *Py v. Pleitner*, 70 Cal. App.2d 576, 579, 161 P.2d 393, 395 (1945); Hetland, *Land Contracts*, in *California Real Estate Secured Transactions* § 3.78, at 130 (Cal. Cont. Ed. Bar 1970).

<sup>394</sup> Section 706; *First Nat'l Trust & Sav. Bank v. Staley*, 219 Cal. 225, 227, 25 P.2d 982, 983 (1933).

<sup>395</sup> Section 707; see *Carpenter v. Hamilton*, 24 Cal.2d 95, 101-03, 147 P.2d 563, 566-67 (1944) ("tenant in possession" includes judgment debtor occupying property during redemption period); Comment, *The Statutory Right of Redemption in California*, 52 Calif. L. Rev. 846, 865-69 (1964). A redemptioner has the same rights to rents and profits from the time such person redeems until a later redemption.

<sup>396</sup> Section 707.

<sup>397</sup> *House v. Lala*, 214 Cal. App.2d 238, 245-46, 29 Cal. Rptr. 450, 454 (1963) (free use of property by judgment creditor is a profit within meaning of Section 707).

<sup>398</sup> The defeasible title obtained at a sale subject to redemption, the lack of notice, and the requirement of cash payment by outside bidders, while the judgment creditor or mortgagee can bid the amount of the judgment, are the major factors discouraging bidding. See National Conference of Commissioners on Uniform State Laws, *Handbook* 258-59 (1922); G. Osborne, *Handbook on the Law of Mortgages* § 8, at 18 (2d ed. 1970); Durfee & Doddridge, *Redemption From Foreclosure Sale—The Uniform Mortgage Act*, 23 Mich. L. Rev. 825, 832-33 (1925); Madsen, *Equitable Considerations of Mortgage Foreclosure and Redemption in Utah: A Need for Remedial Legislation*, 1976 Utah L. Rev. 327, 335. In a study in New York in 1938, it was reported that, out of 40,853 foreclosures, the mortgagee bid in the amount of the obligation in 40,570 cases. Murray, *Statutory Redemption: The Enemy of Home Financing*, 28 Wash. L. Rev. 39, 40 n.13 (1953).

<sup>399</sup> See *Moore v. Hall*, 250 Cal. App.2d 25, 29, 58 Cal. Rptr. 70, 73 (1967); G. Osborne, *Handbook on the Law of Mortgages* § 8, at 17-18 (2d ed. 1970); Durfee & Doddridge, *Redemption From Foreclosure Sale—The Uniform Mortgage Act*, 23 Mich. L. Rev.

other lien creditors to redeem is that the property should be used to satisfy as many creditors as possible.<sup>400</sup> If the property is valuable enough, subordinate lienholders may thus protect security they would otherwise lose.<sup>401</sup> Statutory redemption also has the purpose of giving the debtor another chance to save the property by refinancing or otherwise finding assets sufficient to pay off the debt.<sup>402</sup>

It is difficult to assess the actual effect of statutory redemption. The states are almost evenly divided between those that permit redemption from execution or foreclosure sales and those that do not;<sup>403</sup> however, there do not appear to be any studies comparing the results in redemption states as opposed to nonredemption states. It is certain that very few redemptions take place.<sup>404</sup>

### Proposed Law

The Commission has concluded that statutory redemption from execution and foreclosure sales has failed to achieve its purposes. The very existence of the right of

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825, 839-41, 851 (1925); Comment, *The Statutory Right of Redemption in California*, 52 Calif. L. Rev. 846, 848 (1964).

<sup>400</sup> S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 149 (2d ed. 1975).

<sup>401</sup> See Comment, *The Statutory Right of Redemption in California*, 52 Calif. L. Rev. 846, 848 (1964).

<sup>402</sup> See G. Osborne, *Handbook on the Law of Mortgages* § 8, at 17-18 (2d ed. 1970); Durfee & Doddridge, *Redemption From Foreclosure Sale—The Uniform Mortgage Act*, 23 Mich. L. Rev. 825, 839 (1925). The one-year redemption period has been termed a "farm mortgage proposition . . . based on the allowance to the mortgagor of possession of his farm for another crop year after default, to see if conditions will not better and he be able to save the farm." National Conference of Commissioners on Uniform State Laws, *Handbook* 270 (1922). A commentary on the law of New York, where statutory redemption was eliminated in 1962, terms the "desire to give judgment debtors every opportunity to recover their real property—a form of paternalism predicated in part on the special status accorded ownership of real property." 6 J. Weinstein, H. Korn, & A. Miller, *New York Civil Practice* ¶ 5236.02, at 52-720 (1980).

<sup>403</sup> See G. Osborne, *Handbook on the Law of Mortgages* § 307 (2d ed. 1970); S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 150-51 (2d ed. 1975). Although there are some exceptions, redemption states usually permit redemption from both execution and foreclosure sales. Of the 27 states permitting redemption from execution sales, five permit only the judgment debtor to redeem, three permit redemption by the debtor and by creditors in order of priority, 13 provide "scramble" redemption, and six have some other variation. Among the states without redemption are Florida, Georgia, Missouri, New Jersey, New York, Ohio, Pennsylvania, Texas, and Virginia. Approximately 17 states have neither redemption nor any other special provisions designed to prevent sacrifice sales of real property.

<sup>404</sup> G. Osborne, *Handbook on the Law of Mortgages* § 8, at 18 (2d ed. 1970); Brodkey, *Current Changes in Illinois Real Property Law*, 10 DePaul L. Rev. 567, 578 (1961) (fewer than one percent of foreclosed properties are redeemed); Murray, *Statutory Redemption: The Enemy of Home Financing*, 28 Wash. L. Rev. 39, 42 n.25 (1953)

redemption operates as the greatest impediment to the achievement of the primary purpose of obtaining a fair bid at a sale of real property because the purchaser can only obtain title that is defeasible for another year or, in certain cases, three months.<sup>405</sup> The right of redemption thus makes "sacrifice" sales even more sacrificial. There are, no doubt, exceptional cases in which the purchase price is unreasonably low and in which the debtor manages to obtain the money necessary to save the property. The Commission has concluded, however, that whatever protection is afforded debtors by the right to redeem in these exceptional cases does not justify the detrimental effect in the vast majority of cases of the right to redeem. Accordingly, the proposed law eliminates the statutory right of redemption from judicial sales. This change would not affect the equitable right of a judgment debtor to redeem from a sale at a grossly inadequate price where the

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(reporting a 1938 study showing that, out of 22,000 properties foreclosed, only 204 were redeemed); Stattuick, *Washington Legislation 1961—Real Property Mortgage Foreclosure—Redemption*, 36 Wash. L. Rev. 239, 309, 311 n.3 (1961) (reporting a four-year study showing that, out of 276 foreclosures, one redemption was made by a mortgagor and two by other persons). The records of the San Francisco Sheriff's Department from mid-1970 through mid-1975 show that there were three redemptions out of 86 sales of real property. Letter from Carl M. Olsen, County Clerk, City and County of San Francisco (October 20, 1975) (on file at office of California Law Revision Commission).

<sup>405</sup> The commentators are nearly unanimous in recognizing the drastic effect that the nature of the title obtained at a sale subject to redemption has on bidding. See, e.g., G. Osborne, *Handbook on the Law of Mortgages* § 8, at 19 (2d ed. 1970); Carey, Brabner-Smith, & Sullivan, *Studies in Foreclosures in Cook County: II. Foreclosure Methods and Redemption*, 27 Ill. L. Rev. 595, 615 (1933); Durfee & Doddridge, *Redemption From Foreclosure Sale—The Uniform Mortgage Act*, 23 Mich. L. Rev. 825, 841 n.51 (1925) (Redemption "certainly caps the wall we have built to keep the public away from the public sale. The best market for land is found among those who desire it for immediate use, and to them, obviously, the redemption feature is prohibitive."); Madway & Pearlman, *A Mortgage Foreclosure Primer: Part III Proposals for Change*, 8 Clearinghouse Rev. 473, 478-79 (1974) ("Protecting the title of the bid purchaser and eliminating post-sale redemption rights . . . would meet one of the major objections of mortgagees because these practices tend to depress foreclosure sale prices significantly."); Murray, *Statutory Redemption: The Enemy of Home Financing*, 28 Wash. L. Rev. 39, 40 (1953) ("A person's desire for a particular piece of property would have to be very strong to cause him to bid for it, as he knows he is buying a mere expectation."); Comment, *The Statutory Right of Redemption in California*, 52 Calif. L. Rev. 846, 848 (1964) (The "conditional title is not attractive to investors."). It is interesting to note that the commentary following the redemption provisions in the Field Code, which served as the model for the California statute, questions whether redemption affords any benefit to the debtor. New York Commissioners on Practice and Pleading, *The Code of Civil Procedure of the State of New-York* 359 (1850).

purchaser is guilty of unfairness or has taken undue advantage.<sup>406</sup>

The Commission recognizes that a hurried, forced sale of real property may result in a depressed price even where the sale is absolute. Consequently, the proposed law provides a 120-day grace period between the time when notice of a levy on the property is given<sup>407</sup> and the time when notice of sale is first given.<sup>408</sup> This 120-day period is analogous to the three-month period before notice of sale which is allowed to a mortgagor or trustor for the purpose of curing the default under a mortgage or deed of trust containing a power of sale.<sup>409</sup> During this time, the judgment debtor may refinance the property in order to pay off the lien under which it would otherwise be sold, sell the property privately subject to valid liens in order to realize a higher price than would be obtained at a forced sale, or acquiesce in the judicial sale but seek potential buyers by advertising and personal contact.

The provision for delay of sale would not apply to leasehold estates with less than two years' unexpired term at the time of levy. This exception is consistent with existing law which provides that sales of such interests are absolute, that is, not subject to redemption.<sup>410</sup>

The proposed scheme should accomplish more effectively the main purposes of the redemption statute—to obtain a higher price at execution and foreclosure sales and to provide the debtor with an opportunity to retain the property.<sup>411</sup> Junior lienholders

<sup>406</sup> See *e.g.*, *Odell v. Cox*, 151 Cal. 70, 90 P. 194 (1907); *Smith v. Kessler*, 43 Cal. App.3d 26, 31-33, 117 Cal. Rptr. 470, 473-74 (1974).

<sup>407</sup> Under the proposed law, notice of levy is required in every case. Under existing law, no levy is required where a foreclosure judgment is being enforced. See Section 684; *Southern Cal. Lumber Co. v. Ocean Beach Hotel Co.*, 94 Cal. 217, 222-24, 29 P. 627, 629 (1892). See the discussions in the text under "General Rules Governing Levy" beginning at note 134 *supra* and "Judgments for Sale of Real or Personal Property" beginning at note 582 *infra*.

<sup>408</sup> At least 20 days' notice of sales of real property is required by subdivision 3 of Section 692. Hence, under this proposal, the property could not be sold sooner than 140 days after notice of levy is given to the judgment debtor.

<sup>409</sup> Civil Code §§ 2924, 2924f.

<sup>410</sup> See Section 700a.

<sup>411</sup> The proposed law would also improve the chances of obtaining a fair price by permitting credit bids (see the discussion in the text under "Manner of Payment" beginning at note 372 *supra*) and providing more extensive notice of levy and notice of sale (see the discussions in the text under "General Rules Governing Levy" beginning at note 134 *supra* and "Notice of Sale" beginning at note 367 *supra*).



may protect their interests by redeeming from the superior lien before the property is sold and thus being subrogated to the benefits of the superior lien.<sup>412</sup> The proposed law eliminates the speculative aspect of existing law which results from the fluctuation in land values during a year's time. It should achieve a more equitable balance between the interests of the judgment debtor and the judgment creditor and has the added virtues of simplicity and ease of administration.<sup>413</sup>

The Commission has considered several other alternatives to statutory redemption—the most important being: requiring court confirmation of sale,<sup>414</sup> fixing an upset price,<sup>415</sup> allowing advance bidding,<sup>416</sup> and extending antideficiency legislation to cover execution sales.<sup>417</sup>

<sup>412</sup> The pre-sale right of subrogation upon redemption from a superior lien is provided by Civil Code Section 2904:

2904. One who has a lien inferior to another, upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and,

2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

The Commission does not propose to alter this right.

<sup>413</sup> Indiana recently enacted a statute providing a six-month delay of execution sales coupled with an upset price of two-thirds the appraised value of the property. Ind. Code Ann. § 34-1-37-1 (Burns 1973). One commentator suggested in 1938 that California substitute a grace period of a year for the one-year redemption period. King, *The Enforcement of Money Judgments in California*, 11 So. Cal. L. Rev. 224, 228-29 (1938). For reasons given in the text, the Commission believes that its proposal is preferable to these alternatives.

<sup>414</sup> Court confirmation, in the absence of an upset price feature, would be intended to protect against unreasonably low sale prices. It does not appear that any state provides for court confirmation of execution sales without combining it with an upset price or advance bid procedure. In California, Section 568.5 provides for court confirmation of sales by receivers and there is no right of redemption after a sale by a receiver.

<sup>415</sup> Five states have a procedure for appraising the property and setting an upset price, usually two-thirds of the appraised value. *E.g.*, Ohio Rev. Code Ann. §§ 2329.17, 2329.20 (Page 1954). California law provides an upset price of 90 percent of the appraised value in private probate sales by an executor or administrator. Prob. Code § 784. Appraisals are a matter of course in probate for tax purposes but would be an additional expense in execution and foreclosure sales. Civil Code Section 1254 also provides that a homestead is to be sold on execution at not less than 90 percent of appraised fair market value, if possible. See the discussion in the text at notes 305-306 *supra*.

<sup>416</sup> Only North and South Carolina provide for continuing an execution sale so that the judgment debtor may find a buyer who will pay a specified amount over the last bid. N.C. Gen. Stat. §§ 1-339.64 to 1-339.68 (repl. vol. 1969); S.C. Code § 15-39-720 (1976). California law provides for advance bids at private partition and probate sales. Code Civ. Proc. §§ 873.730, 873.740; Prob. Code § 785.

<sup>417</sup> Pennsylvania requires the judgment creditor to petition the court within six months of an execution sale to fix the fair market value of the property if the price obtained at the sale is insufficient to satisfy the judgment. Satisfaction is granted to the extent

Although some of these options may be preferable to statutory redemption as it exists in California, they have their own drawbacks that are avoided in the proposed law. Generally speaking, these alternatives would require a court hearing in every case, thereby increasing the expenditure of time and resources by the parties and the judicial system. The Commission is mindful of the fact that the costs incurred in such additional proceedings would be borne by the judgment debtor, to the extent that the debtor is solvent, and ultimately by borrowers and consumers in general. The proposed law is most likely to forward the interests of both debtors and creditors in this area.

### WAGE GARNISHMENT

The proposed law continues the wage garnishment provisions of existing law<sup>418</sup> with several technical changes<sup>419</sup> and one important substantive change which will provide some additional relief to wage earning renters who are unable to take advantage of the generous homestead exemption available under California law.<sup>420</sup>

Existing law permits a judgment debtor to claim as exempt the portion of earnings that is necessary for the support of the judgment debtor and the judgment debtor's spouse and family supported in whole or in part by the judgment debtor.<sup>421</sup> This hardship exemption is not available, however, where the debt was incurred for the

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of the fair market value of the property. If a petition is not timely filed, the debtor is released from liability. 42 Pa. Cons. Stat. §§ 5522, 8103 (Purdon 1980). Kansas also permits the court to credit the fair market value of property on the judgment. Kan. Stat. § 60-2415(b) (1976). California's antideficiency legislation applies only to foreclosures under mortgages and deeds of trust. Sections 580b, 580d, 726.

<sup>418</sup> See Sections 723.010-723.154. These provisions were enacted upon the recommendation of the Law Revision Commission. Recommendations relating to wage garnishment are found in 10 Cal. L. Revision Comm'n Reports 701 (1971); 11 Cal. L. Revision Comm'n Reports 101 (1973); 12 Cal. L. Revision Comm'n Reports 901 (1974); 13 Cal. L. Revision Comm'n Reports 601, 1703 (1976). See also 14 Cal. L. Revision Comm'n Reports 261 (1978).

<sup>419</sup> The technical changes made by the proposed law include (1) the name "Employees' Earnings Protection Law" is changed to the more descriptive name "Wage Garnishment Law" and (2) the types of state taxes that are subject to the wage garnishment law are somewhat expanded.

<sup>420</sup> See the discussion in the text under "Homestead Exemption" beginning at note 279 *supra*.

<sup>421</sup> Section 723.051.

“common necessities of life,” such as food, clothing, shelter, and medical care.<sup>422</sup>

The proposed law permits the judgment debtor to claim the hardship exemption despite the common necessities exception in a case where the judgment debtor does not own a dwelling used as the principal residence of the judgment debtor or the family of the judgment debtor.<sup>423</sup> However, if the debt was incurred for rent of a dwelling, the common necessities exception would still apply and the special hardship exemption would not be available. This recognizes that the landlord may be compelled to continue to provide housing after a failure to pay rent because an unlawful detainer action will be required to recover possession of the property if a tenant refuses to vacate the premises voluntarily.

The special hardship exemption affords hardpressed wage earners who do not own homes an alternative to declaring bankruptcy in order to take advantage of the \$7,500 blanket exemption permitted by federal law for property not otherwise exempt.<sup>424</sup>

## MISCELLANEOUS CREDITORS' REMEDIES

### Introduction

Levy under a writ of execution is not a complete remedy for enforcement of a money judgment. It may be ineffective where the judgment debtor conceals or disposes of assets that are subject to execution or where a third person refuses to cooperate with the levy. In addition, there are types of property that for historical or practical reasons cannot be reached by execution. Other procedures have

<sup>422</sup> Common necessities of life include articles or services that may be regarded universally, or substantially so, as necessities to sustain life. See *Los Angeles Fin. Co. v. Flores*, 110 Cal. App.2d Supp. 850, 243 P.2d 139 (1952).

<sup>423</sup> Under the proposed law, a judgment debtor may exempt as much as \$60,000 of equity in a dwelling used as the principal residence. See the discussion in the text beginning at note 285 *supra*.

<sup>424</sup> See 11 U.S.C. § 522(d) (5). The Commission does not recommend providing a blanket exemption from enforcement of money judgments, such as the \$7,500 exemption applicable to any property in bankruptcy, because it is not administratively feasible unless all the debtor's property is before the court, as in bankruptcy proceedings. The availability of a blanket exemption from enforcement of money judgments would turn enforcement proceedings into quasi-bankruptcy proceedings and put an unacceptable administrative burden on the state courts. See also the discussion in the text under “Exemptions in Bankruptcy” beginning at note 315 *supra*.

been developed to deal with these special situations, first by the courts of equity, and later by statute.

The proposed law revises and expands the various special procedures to provide to the judgment creditor a greater variety of effective remedies consistent with fair treatment of the interests of the judgment debtor.

### Examination Proceedings

Examination proceedings<sup>425</sup>—frequently called proceedings in aid of execution or supplementary proceedings—permit the judgment creditor to examine the judgment debtor, or a third person who has property of or is indebted to the judgment debtor, in order to discover property and apply it toward the satisfaction of the money judgment. Examination proceedings are initiated by application for an order that the judgment debtor or third person appear and answer concerning the judgment debtor's property.

A judgment debtor may be examined once every four months<sup>426</sup> or more frequently where a writ of execution has been issued and the judgment creditor shows that there is property that the judgment debtor "unjustly refuses" to apply toward the satisfaction of the judgment.<sup>427</sup> The four-month limitation is retained in the proposed law since it is designed to prevent harassment of the judgment debtor.<sup>428</sup> However, the requirement that in order to obtain a more frequent examination the judgment creditor must obtain issuance of a writ of execution is eliminated.<sup>429</sup> The

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<sup>425</sup> See Sections 714-723.

<sup>426</sup> Section 714.

<sup>427</sup> Section 715.

<sup>428</sup> For the sake of precision, it is recommended that the four-month period be changed to 120 days.

<sup>429</sup> Originally, California adopted the system provided in the Field draft of a Code of Civil Procedure for New York under which issuance of a writ and its return unsatisfied were required before the judgment debtor could be examined, but only issuance was required where the proceedings were aimed at the application of particular property that the judgment debtor unjustly refused to apply. See 1851 Cal. Stats. ch. 5, §§ 238, 239; S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 283-84 (2d ed. 1975). It was not until 1957 that the four-month limitation was added to the California provision for judgment debtor examinations where no special showing is made. See 1957 Cal. Stats. ch. 1194, § 1. An amendment of Section 714 in 1955 eliminated the requirement that a writ be issued and returned unsatisfied, and substituted therefor the requirement that a writ be "issuable"—in effect, a test of whether the judgment is currently enforceable. See 1955 Cal. Stats. ch. 1191, § 1. This amendment recognized that the former requirement was an outgrowth of the time when the

requirement that the judgment creditor show that the judgment debtor's refusal to apply property has been "unjust" is replaced in the proposed law with a requirement that the judgment creditor show good cause for a more frequent examination.<sup>430</sup> The proposed law adds an express provision that the judgment debtor be personally served with the order of examination not less than 10 days prior to the date set for the examination.

Examinations of third persons are more circumscribed. Under existing law, the order to appear may be issued only if a writ of execution has been issued or returned and the judgment creditor must show that the third person has property of the judgment debtor or is indebted in an amount exceeding \$50.<sup>431</sup> The prerequisite of the issuance or return of a writ of execution should be eliminated as an outmoded historical relic. The judgment creditor should be free to select the most appropriate means of reaching the property held or controlled by the third person. The \$50 requirement, dating from 1851,<sup>432</sup> is increased to \$250 under the proposed law to compensate for the change in the value of the dollar. The proposed law requires that notice of the examination of the third person be given the judgment debtor since the judgment debtor is an interested party. If the judgment creditor describes in the application for the order the property of the judgment debtor in the hands of the third person or the debt owed to the judgment debtor by the third person and the judgment debtor receives at least 10 days' notice of the examination, the judgment

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courts of equity and law were separate and when equity would not act unless the legal remedies had been exhausted, and that the return of a writ unsatisfied creates no presumption that the legal remedy is inadequate since the levying officer may not have been instructed to levy under the writ. See S. Riesenfeld, *supra* at 283.

<sup>430</sup> The requirement that the judgment debtor's refusal to apply property under Section 715 be alleged to be unjust serves no apparent purpose. If it means that the judgment debtor has nonexempt property, as opposed to exempt property or property of third persons which may not properly be applied to the judgment, then the language is unneeded because the proposed law elsewhere makes clear which property may be applied toward the satisfaction of a judgment. If it is designed to make sure the judgment creditor first attempts to reach property by levy under a writ of execution, it should be eliminated, consistent with the 1955 amendment of Section 714 and the policy of the proposed law to expunge the exhaustion of legal remedies doctrine and permit the judgment creditor to pursue whichever remedy is thought to be most effective in given circumstances.

<sup>431</sup> Section 717.

<sup>432</sup> 1851 Cal. Stats. ch. 5, § 241.

debtor must make any applicable exemption claim at the hearing or the exemption will be deemed waived. Notice of this requirement is to be included in the order which is served on the judgment debtor.

As an added incentive to the judgment debtor or the third person served with an order of examination to appear as directed in the order, the proposed law provides for an award of reasonable attorneys' fees in favor of the judgment creditor if the person has been served by an authorized person<sup>433</sup> but fails to appear for the examination without good cause. The order will contain a notice to the person served that, in addition to the contempt sanction for nonappearance, attorneys' fees may be awarded.

Under existing law, if the third person being examined claims an interest in the property or denies the debt, the court may not adjudicate the dispute and may not order the property to be applied toward the satisfaction of the judgment.<sup>434</sup> The judgment creditor must resort instead to a creditor's suit in which the interest of the third person may be determined.<sup>435</sup> The proposed law relaxes this restrictive rule so that the court in which the examination proceeding is pending may adjudicate a dispute between the judgment debtor and the third person concerning ownership of the property or the existence of the debt unless any one of the following conditions exist: (1) if the court in which the examination proceeding is pending would not be a proper court for the trial of an independent civil action to resolve the dispute and the third person objects to the dispute being resolved in the examination proceeding; (2) if there is a civil action pending concerning the dispute at the time the order of examination is served on the third person; or (3) if the court in its discretion

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<sup>433</sup> The proposed law continues existing provisions that require service of an order of examination to be made by a sheriff, constable, marshal, a person specially appointed by the court in the order, or a registered process server before the judgment debtor or a third person may be brought before the court pursuant to a warrant. See Sections 714, 717. Under the proposed law, service must be similarly made before the attorney's fee sanction may be invoked.

<sup>434</sup> See Section 719. The third person is entitled to a determination of the respective interests in the property or debt in an independent action. *Takahashi v. Kunishima*, 34 Cal. App.2d 367, 373, 93 P.2d 645, 648 (1939).

<sup>435</sup> See Section 720 and the discussion in the text under "Creditor's Suit" beginning at note 453 *infra*.

determines that the dispute should be determined in an independent civil action.<sup>436</sup>

The provision of existing law which authorizes the court to forbid the third person from transferring or otherwise disposing of the property pending resolution of the dispute<sup>437</sup> is restricted by the proposed law. An order forbidding the third person to transfer property to the judgment debtor may be made *ex parte*, but an order forbidding transfer to another person may be made only on noticed motion, and after the court has determined that the judgment debtor probably owns an interest in the property, and an undertaking by the judgment creditor is required.

The proposed law codifies the case law concerning the lien created by service of an order of examination.<sup>438</sup> Service on the judgment debtor creates a lien on the judgment debtor's personal property which is subject to the enforcement of a money judgment. Service on a third person creates a lien on the property in the third person's possession in which the judgment debtor has an interest and on any debt owing to the judgment debtor if the property or debt is described in the judgment creditor's affidavit or application for the order.<sup>439</sup> The proposed law also makes clear that a lien is created by a court order that the third person apply such property or debt to the satisfaction of the judgment. This provision will be useful where the property or debt was not described in the judgment creditor's affidavit or application for the order.

The proposed law provides a procedure for claim of exemption by the judgment debtor and for the determination of the claim.

The proposed law makes several other changes in the existing examination procedure. The provision of existing law permitting the arrest of the judgment debtor on ex

<sup>436</sup> The provision in the proposed law for summary adjudication in examination proceedings of disputed ownership of property or a disputed debt is comparable to provisions in the Probate Code for determination of some kinds of claims in the course of estate administration or in guardianship or conservatorship proceedings. See Prob. Code §§ 851.5-853, 2520-2828.

<sup>437</sup> See Section 720. See also the discussion in the text at notes 466-468 *infra* (creditor's suit).

<sup>438</sup> See *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 28-30, 87 P.2d 830, 844 (1939); *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242, 245 (1909).

<sup>439</sup> See the discussion in the text under "Other Enforcement Liens" beginning at note 116 *supra*.

parte application of the judgment creditor where it appears that there is a danger that the judgment debtor will abscond and providing for the imprisonment of the judgment debtor unless an undertaking is given<sup>440</sup> is repealed since it conflicts with the policies supporting the repeal of the civil arrest provisions.<sup>441</sup> The provision of existing law that grants a privilege to the spouse of the judgment debtor to refuse to be examined as a debtor of the judgment debtor<sup>442</sup> is not continued, and the proposed law expressly provides that the marital testimonial privilege<sup>443</sup> is not applicable in examination proceedings. This is to prevent the privilege from being used as a collusive device for the spouse to conceal assets liable for the satisfaction of the judgment. Mileage fees for third persons attending examination proceedings are made the same as for witnesses generally.<sup>444</sup> The proposed law authorizes the court to permit a nonparty who claims an interest in the property or debt sought by the judgment creditor to intervene in the proceeding and to determine the person's rights in the property or debt. The proposed law adds express authority for the court to make such protective order as justice may require, comparable to the court's authority in civil discovery proceedings.<sup>445</sup> The proposed law includes a detailed provision, drawn from the civil discovery provisions,<sup>446</sup> concerning examination of a corporation, partnership, or similar organization. Existing law provides that a referee appointed to conduct examinations in a county with a population of one million or more must have been licensed to practice law for five years.<sup>447</sup> The proposed law requires only that a referee be a member of the State Bar of California. The proposed law

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<sup>440</sup> Section 715.

<sup>441</sup> See *Recommendation and Study Relating to Civil Arrest*, 11 Cal. L. Revision Comm'n Reports 1 (1973).

<sup>442</sup> Section 717.

<sup>443</sup> Evid. Code §§ 970-971. The proposed law does not affect the privilege which protects confidential marital communications. See Evid. Code § 980.

<sup>444</sup> Section 717.1 provides mileage fees for third persons to be examined in the amount of \$0.15 per mile one way. Government Code Section 68093 was amended in 1970 to raise the fee for witnesses to \$0.20 per mile one way. 1970 Cal. Stats. ch. 1061, § 2.

<sup>445</sup> See Sections 2019(b)(1), 2030(c).

<sup>446</sup> See Section 2019(a)(6).

<sup>447</sup> Section 723.



specifies the powers that only the court (but not a referee) may exercise in examination proceedings.

### Interrogatories to the Judgment Debtor

Existing law permits a judgment creditor to serve interrogatories upon the judgment debtor if the debtor is represented by counsel.<sup>448</sup> The form of, answer to, and enforcement of the interrogatories is the same as that provided for interrogatories in a civil action.<sup>449</sup> The proposed law continues this procedure but permits the use of interrogatories whether or not the debtor is represented by counsel. This will make the use of postjudgment interrogatories consistent with interrogatories used in civil discovery.<sup>450</sup> In order to prevent harassment, the proposed law provides that interrogatories may not be served if within the preceding 120 days the judgment debtor has responded to postjudgment interrogatories or an examination has been conducted.<sup>451</sup> Under this provision, judgment creditors will be able to use the order obtainable in an examination proceeding to apply to the satisfaction of the judgment the property that is described in the answer to the interrogatories. Service of interrogatories will not have the effect of creating a lien on property of the judgment debtor, as does service of an order of examination.<sup>452</sup>

### Creditor's Suit

Under existing law, the judgment creditor may bring an action against a third person who has property in which the judgment debtor has an interest, or who is indebted to the

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<sup>448</sup> Section 714.5.

<sup>449</sup> See Sections 714.5, 2030.

<sup>450</sup> See Section 2030.

<sup>451</sup> Section 714.5 provides that interrogatories may be used "cumulative to" and "in conjunction with" examination proceedings under Section 714 and also that the judgment debtor may not be required to respond to interrogatories more frequently than once in any four-month period or within any four-month period during which an examination has been conducted pursuant to Section 714. The effect on the right to examine the judgment debtor of using interrogatories is not specified in Section 714.5, nor is the relation between interrogatories and an examination under Section 715 indicated.

<sup>452</sup> See the discussion in the text under "Examination Proceedings" beginning at note 425 *supra*.

judgment debtor, for the application of the property or debt to the satisfaction of the money judgment.<sup>453</sup> The remedy of the creditor's suit developed when the types of property reachable by the writs that were predecessors of the writ of execution were fairly limited.<sup>454</sup> Although the reach of the writ of execution has been considerably expanded,<sup>455</sup> the creditor's suit has persisted and is continued in the proposed law in order to reach certain types of property that still cannot be reached by execution, or only inefficiently so, and to enforce the liability of a recalcitrant third person holding property of, or owing debts to, the judgment debtor.<sup>456</sup>

Creditors' suits, as a creation of the courts of equity, are subject to the doctrine requiring exhaustion of legal remedies before the action can be commenced.<sup>457</sup> Consistent with the policy of providing flexibility to the judgment creditor in the selection of the appropriate remedy, the proposed law does not require the exhaustion of any other remedies. The judgment creditor may recover costs incurred in the creditor's suit, however, only if the third person actually claims an interest in the disputed property or denies the debt to the judgment debtor. This

<sup>453</sup> See Section 720; 5 B. Witkin, *California Procedure Enforcement of Judgment* § 143, at 3506-07 (2d ed. 1971).

<sup>454</sup> See generally, G. Gilbert, *The Law of Executions* 1-58 (London 1763); R. Millar, *Civil Procedure of the Trial Court in Historical Perspective* 419-26, 437-42 (1952); Riesenfeld, *Collection of Money Judgments in American Law—A Historical Inventory and a Prospectus*, 42 *Iowa L. Rev.* 155, 160-63 (1957).

<sup>455</sup> Section 688(a) provides (somewhat overinclusively): "All goods, chattels, moneys or other property, both real and personal, or any interest therein, of the judgment debtor, not exempt by law, and all property and rights of property levied upon under attachment in the action, are subject to execution."

<sup>456</sup> A creditor's suit and an examination proceeding against third persons may reach the same types of property (examination proceedings being an outgrowth of the creditor's suit), but under existing law a creditor's suit is necessary where the third person claims an adverse interest or denies the debt in an examination proceeding. See the discussion in the text under "Examination Proceedings" beginning at note 425 *supra*. This discussion is not concerned with another aspect of creditors' suits—the action to set aside a fraudulent conveyance—from which the action to set aside under the Uniform Fraudulent Conveyance Act was derived. See Civil Code § 3439.09; 5 B. Witkin, *California Procedure Enforcement of Judgment* §§ 152-153, at 3516-18 (2d ed. 1971).

<sup>457</sup> See *Farmers' & Merchants' Bank v. Bank of Italy*, 216 Cal. 452, 455-58, 14 P.2d 527, 528-29 (1932) (resort to examination proceedings required); *Bond v. Bulgheroni*, 215 Cal. 7, 10-11, 8 P.2d 130, 132 (1932) (resort to examination proceedings not required where inadequate or futile).

is intended to discourage the filing of a creditor's suit where there is no real issue.<sup>458</sup>

Unlike existing law,<sup>459</sup> the proposed law would require that the judgment debtor be joined in the creditor's suit in order to permit a full adjudication of the issues. However, the proposed law provides that the judgment debtor is not an indispensable party, and that the judgment debtor's residence may not be considered in the determination of proper venue unless otherwise provided by contract between the judgment debtor and the third person. The proposed law includes a procedure for a claim of exemption by the judgment debtor and for the determination of the claim by the court.

Under existing law, it appears that the creditor's suit is subject to the general four-year statute of limitations<sup>460</sup> and, at least in certain circumstances, that the time begins to run from the return of the writ of execution unsatisfied.<sup>461</sup> Under the proposed law, the creditor's suit may be commenced at any time when the judgment debtor may bring an action against the third person concerning the property or debt or, if a lien is created on the property or debt within such time, at a later time extending for one year from the creation of the lien (subject to the time limit for enforcement of the judgment).<sup>462</sup> This provision would have the effect of extending the liability of the third person for up to an additional year after the judgment debtor may no longer sue, in order to prevent the third person from avoiding liability by delaying tactics. Once commenced, the

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<sup>458</sup> The proposed law also provides that the judgment creditor may not recover costs incurred in a creditor's suit from the judgment debtor as a cost of enforcing the judgment.

<sup>459</sup> *Cf. Coffee v. Haynes*, 124 Cal. 561, 564-565, 57 P. 482 (1899) (notice to judgment debtor not required in examination proceedings under Sections 717 and 719); *Blanc v. Paymaster Mining Co.*, 95 Cal. 524, 528-29, 30 P. 765 (1892) (fraudulent transferor a proper but not necessary party in action to set aside); *High v. Bank of Commerce*, 95 Cal. 386, 387-88, 30 P. 556 (1892) (notice to judgment debtor not required when court authorizes creditor's suit pursuant to Section 720).

<sup>460</sup> See Section 343 (four-year statute of limitations where no specific provision); *Sherman v. S.K.D. Oil Co.*, 185 Cal. 534, 538, 545, 197 P. 799 (1921).

<sup>461</sup> See *Spencer v. Anderson*, 193 Cal. 1, 5, 222 P. 355 (1924); *Sherman v. S.K.D. Oil Co.*, 185 Cal. 534, 538, 197 P. 799, 801 (1921). There is, however, no requirement that a writ be returned unsatisfied as a precondition to bringing a creditor's suit. Even if exhaustion of the remedy of examination proceedings is required, only issuance of a writ is necessary pursuant to Section 717.

<sup>462</sup> See the discussion in the text under "Period For Enforcement of Judgments and Renewal of Judgments" beginning at note 3 *supra*.

creditor's suit may be pursued to judgment, even though the judgment creditor could no longer enforce the original judgment against the judgment debtor. The judgment in the creditor's suit is independently enforceable against the third person.<sup>463</sup> The existing case law to the effect that service of summons in a creditor's suit creates a lien on the property that is the subject of the action is codified in the proposed law.<sup>464</sup>

Under existing law, if a third person in an examination proceeding claims an interest in property adverse to the judgment debtor or denies the debt, the court may not order the property to be applied toward the satisfaction of the judgment, but may, with or without notice,<sup>465</sup> forbid a transfer or other disposition of the property or debt until a creditor's suit can be commenced and prosecuted to judgment.<sup>466</sup> Under the proposed law, the court in which the examination proceeding is pending has a more limited power to forbid transfer of the property.<sup>467</sup> Once a creditor's suit is commenced, the judgment creditor may obtain an order, on notice if required by the court and with a bond if required by the court, forbidding such transfer or payment to the judgment debtor. The judgment creditor also may, after notice and hearing, obtain a temporary restraining order or a temporary injunction restraining the third person from transferring the property to any person.<sup>468</sup> This is to prevent the third person from

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<sup>463</sup> Where it is determined that the third person owes a debt to the judgment debtor, the judgment in the creditor's suit will be, in effect, a money judgment against the third person. Where it is determined that the third person has property of the judgment debtor, the judgment creditor may apply only that property (or, if it cannot be found, its value) to the satisfaction of the judgment against the judgment debtor. Any money collected from the third person goes toward the satisfaction of both the judgment in the creditor's suit and the original money judgment.

<sup>464</sup> See *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 28-30, 87 P.2d 830, 844 (1939); *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242, 245 (1909). See also the discussion in the text under "Other Enforcement Liens" beginning at note 116 *supra*.

<sup>465</sup> See, e.g., *High v. Bank of Commerce*, 95 Cal. 386, 30 P. 556 (1892). Because notice to the third person is not required, this procedure is constitutionally suspect. *Cf. North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 606-08 (1975); *Randone v. Appellate Dep't*, 5 Cal.3d 536, 547-52, 488 P.2d 13, 20-23, 96 Cal. Rptr. 709, 716-19 (1971).

<sup>466</sup> Section 720.

<sup>467</sup> See the discussion in the text under "Examination Proceedings" beginning at note 425 *supra*.

<sup>468</sup> If a preliminary injunction is issued, the judgment creditor must furnish an undertaking. See 2 B. Witkin, *California Procedure Provisional Remedies* § 47, at 5-80717

frustrating the purpose of the proceeding by collusive or evasive action.

The proposed law makes clear that there is no right to trial by jury in a creditor's suit.<sup>469</sup>

### Charging Order

A charging order is the usual means to reach the judgment debtor's interest in a partnership and apply it to the satisfaction of a money judgment where the partner, but not the partnership, is liable under the judgment.<sup>470</sup> This procedure is continued in the proposed law. Existing case law recognizes that a lien arises from a charging order but is unclear as to the time of its creation and its effect.<sup>471</sup> The proposed law provides for creation of the lien at the time the notice of motion for a charging order is served on the judgment debtor and on the other partners or the partnership and contains general provisions governing the effect of the lien.<sup>472</sup>

### Lien in Pending Action or Proceeding

Existing law<sup>473</sup> permits a judgment creditor to apply on noticed motion for an order granting a lien in a pending action or proceeding on a cause of action of the judgment debtor that is the subject of the action or proceeding and upon any moneys subsequently recovered by the judgment

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1496-97 (2d ed. 1970). Under the proposed law, the authority for the judgment creditor to commence a creditor's suit is not conditioned on the third person claiming an interest in the property or denying the debt. However, if the third person does not claim an interest in the property or deny the debt, the judgment creditor will not be entitled to recover costs in the creditor's suit.

<sup>469</sup> Under existing law, a creditor's suit is an equitable proceeding. See, e.g., *Woodcock v. Petrol Corp.*, 48 Cal. App.2d 652, 120 P.2d 889 (1941). Thus there appears to be no right to jury trial in a creditor's suit under existing law. See *Misrach v. Liederman*, 14 Cal. App.2d Supp. 757, 762, 58 P.2d 746, 748 (1936). See generally 21 Am. Jur.2d *Creditors' Bills* § 9, at 10 (1965); 21 C.J.S. *Creditors' Suits* § 73, at 1125 (1940).

<sup>470</sup> See Corp. Code §§ 15028 (charging order under Uniform Partnership Act), 15522 (charging order under Uniform Limited Partnership Act); 5 B. Witkin, *California Procedure Enforcement of Judgment* § 142, at 3504-06, Supp. at 57-58 (2d ed. 1971 & Supp. 1979); Gose, *The Charging Order Under the Uniform Partnership Act*, 28 Wash. L. Rev. 1 (1953).

<sup>471</sup> See *Taylor v. S & M Lamp Co.*, 190 Cal. App.2d 700, 707-12, 12 Cal. Rptr. 323, 329-31 (1961).

<sup>472</sup> The lien provision in the proposed law is analogous to that provided in examination proceedings. See the discussions in the text under "Examination Proceedings" beginning at note 425 *supra* and "Other Enforcement Liens" beginning at note 116 *supra*.

<sup>473</sup> Section 688.1.

debtor in such action or proceeding. All parties to the action or proceeding must be given notice of the application for the lien. The court may also authorize the judgment creditor to intervene in the action or proceeding. The consent of the judgment creditor having the lien is required before a compromise, settlement, or satisfaction is entered into by or on behalf of the judgment debtor unless the lien is sooner satisfied or discharged.

The proposed law continues the existing procedure with some significant modifications:

(1) A lien is created when the judgment creditor files in the action or proceeding a notice of lien and an abstract or certified copy of the judgment creditor's money judgment.<sup>474</sup> The requirement of a prior court hearing authorizing the creation of a lien is not continued. The court hearing serves no useful purpose since it has been held under existing law to be an abuse of discretion for the court to refuse to order the lien on the ground that it would impede settlement negotiations.<sup>475</sup> Thus the proposed law leaves to the judgment creditor the choice of what assets to pursue in satisfaction of the judgment and is consistent with the freedom the judgment creditor has to select assets of the debtor when levy of execution is the method of collection used. If the judgment debtor wishes to avoid the lien, he or she may do so by voluntarily applying any other available assets to the satisfaction of the judgment.

(2) The requirement that notice be given to all parties to the action is continued, but failure to give notice to one or more of the parties does not affect the validity of the lien. However, the proposed law makes clear that the rights of a party who makes a settlement, dismissal, compromise, or

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<sup>474</sup> This provides a definite rule governing the time the lien is created and its priority. The general rule under existing law is that the priority of the lien is determined as of the time the lien is granted. See *Takehara v. H.C. Muddox Co.*, 8 Cal.3d 168, 170, 501 P.2d 913, 104 Cal. Rptr. 345 (1972); Civil Code § 2897 (priority based on time of creation of lien, other things being equal). But the equitable rule granting priority to the one who first applies for the lien has also been invoked. See *Del Conte Masonry Co. v. Lewis*, 16 Cal. App.3d 678, 681, 94 Cal. Rptr. 439 (1971).

<sup>475</sup> Existing law provides no standard for denial of the application for a lien. In *Atiya v. DiBartolo*, 63 Cal. App.3d 121, 133 Cal. Rptr. 611 (1976), the court held that it was an abuse of discretion to deny the lien on the ground that the lien would impede settlement negotiations but in dictum stated that a substantial showing that other assets were available might justify denial of a lien.

satisfaction without notice of the existence of the lien are not affected.<sup>476</sup>

(3) The lien extends to all rights of the judgment debtor to recover money or property under the judgment in the pending action or proceeding. Existing law may limit the lien to the judgment debtor's right to money under the judgment.<sup>477</sup> The expansion of the lien under the proposed law is consistent with the scope of a creditor's suit which may be brought against a person indebted to or holding property of the judgment debtor.<sup>478</sup>

(4) The proposed law specifies the contents of the notice of lien. This notice is filed in the pending action or proceeding and is served on the parties to the action or proceeding. The notice will inform the parties of the relevant facts and the consequences of the lien (such as the judgment debtor's right to claim an exemption and the prohibition against compromise, dismissal, settlement, or satisfaction without the judgment creditor's consent or prior court approval).

(5) The proposed law empowers the court to make an order permitting a compromise, dismissal, settlement, or satisfaction without the consent of the judgment creditor. This will prevent the judgment creditor from forcing the judgment debtor to proceed with the action or proceeding when the court concludes that it is in the best interests of the parties to settle.<sup>479</sup>

(6) Under existing law, it appears that an action to foreclose the lien is necessary in order to reach the amount represented by the judgment.<sup>480</sup> The proposed law permits a party or the judgment creditor to obtain an order from the court applying the money or property to the satisfaction of the lien in the same manner as property may be applied in a creditor's suit. This enables the defendant in the action, for example, to obtain an early determination of whom to

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<sup>476</sup> This principle of protecting obligors without notice is consistent with comparable general provisions. See Civil Code § 955.1; Com. Code § 9318.

<sup>477</sup> See *Abatti v. Eldridge*, 103 Cal. App.3d 484, 163 Cal. Rptr. 82 (1980).

<sup>478</sup> See the discussion in the text under "Creditor's Suit" beginning at note 453 *supra*.

<sup>479</sup> *Cf. Abatti v. Eldridge*, 112 Cal. App.3d 411, 169 Cal. Rptr. 330 (1980) (court has equitable power to approve settlement that does not fully satisfy judgment creditor's lien).

<sup>480</sup> See *Roseburg Loggers, Inc. v. Plywood-Champion Papers, Inc.*, 14 Cal.3d 742, 748, 537 P.2d 399, 402-3, 122 Cal. Rptr. 567, 571 (1975) (dictum); *Work of the 1941 California Legislature*, 15 So. Cal. L. Rev. 1, 18 (1941).

pay upon the conclusion of the action. If no order to apply the property is sought, the judgment debtor may employ any appropriate remedy after final judgment, such as levy under a writ of execution on a final money judgment, appointment of a receiver, or assignment of the judgment. These remedies will be more effective and efficient than an equitable action to foreclose a lien.

(7) The proposed law provides for a determination of the judgment debtor's exemption claim before judgment in the main proceeding, analogous to determination of exemptions in a creditor's suit. Exemption claims not made within 30 days after the judgment debtor has notice of the lien are waived. Existing law makes no provision for claiming or determining exemptions.

Existing law provides that an assignee by operation of law of a party to a personal injury action may not acquire a lien on money recovered for general damages.<sup>481</sup> This provision is not continued because it has been held to be in conflict with bankruptcy law.<sup>482</sup>

### Order to Assign Right to Payment

The proposed law permits the judgment creditor to apply to the court on noticed motion for an order requiring the judgment debtor to assign to the judgment creditor or a receiver all or part of a right to payment.<sup>483</sup> Under this procedure, the terms of the assignment are subject to the court's discretion depending upon the circumstances, but the judgment creditor may not receive amounts in excess of that needed to satisfy the money judgment. The terms of the order are subject to later modification to take account of changed circumstances. The judgment creditor may obtain an order restraining assignment by the judgment debtor pending the hearing on the motion for an assignment order. The judgment debtor may make a claim

<sup>481</sup> Section 688.1(b).

<sup>482</sup> See *In re Kanter*, 505 F.2d 228 (9th Cir. 1974), *aff'd* 345 F. Supp. 1151 (C.D. Cal. 1972).

<sup>483</sup> This procedure is derived from cases involving examination proceedings or creditors' suits where property was ordered to be assigned or delivered to a receiver. See *Habenicht v. Lissak*, 78 Cal. 351, 357, 20 P. 874, 877 (1889); *Pacific Bank v. Robinson*, 57 Cal. 520 (1881); *Hathaway v. Brady*, 26 Cal. 581 (1864); *Tucker v. Fontes*, 70 Cal. App.2d 768, 774-5, 161 P.2d 697, 701 (1945). See also N.Y. Civ. Prac. Law & R. § 5226 (McKinney 1978) (order requiring judgment debtor to make specified installment payments where shown that debtor will be receiving money).



of exemption which is determined at the hearing on the issuance of the assignment order. If an assignment is ordered, the effect and priority of the assignment are governed by the rules that apply to a voluntary assignment.<sup>484</sup> The rights of the person obligated to make payments are not affected until notice of the order is received by the obligor.

The assignment order remedy is designed to be used to reach forms of property that cannot be reached by levy under a writ of execution,<sup>485</sup> such as wages due from the federal government.<sup>486</sup> This remedy is also available to reach and apply royalties, commissions, and payments falling due on accounts receivable, general intangibles, and judgments—forms of property that are subject to levy and either sale or collection.<sup>487</sup> By restricting the assignment of payments to the amount necessary to satisfy the judgment, the assignment order procedure (in conjunction with the proposed restrictions on the sale of certain obligations) is designed to avoid cases where valuable or potentially valuable obligations are purchased by the judgment

<sup>484</sup> See Civil Code § 955.1; see also Com. Code § 9318.

<sup>485</sup> Existing law is not especially clear in delineating the conditions making a debt subject to garnishment. *Compare* *Philbrook v. Mercantile Trust Co.*, 84 Cal. App. 187, 195-96, 257 P. 882 (1927) (existing debt fixed in amount but payable in the future subject to garnishment), *Brainard v. Rogers*, 74 Cal. App. 247, 248-50, 239 P. 1095 (1925) (fire insurance policy after fire but before adjustment subject to garnishment), *Meacham v. Meacham*, 262 Cal. App.2d 248, 252, 68 Cal. Rptr. 746 (1968) (contract for royalties from marketing invention subject to garnishment), and Section 706.022(b) (continuing levy on future earnings) *with* *Early v. Redwood City*, 57 Cal. 193, 195 (1881) (garnishment did not reach money due only after completion of work under contract), *Hustead v. Superior Court*, 2 Cal. App.3d 780, 785-88, 83 Cal. Rptr. 26 (1969) (future rent not subject to garnishment), and *Dawson v. Bank of America*, 100 Cal. App.2d 305, 309-10, 223 P.2d 280 (1950) (escrow not subject to garnishment where amount not certain and conditions necessary to establish proper claimant not fulfilled).

<sup>486</sup> As a function of the principle of sovereign immunity, wages in the hands of the federal government are not subject to garnishment without the consent of the government. However, wages may be reached by an order obtained in examination proceedings directed to the judgment debtor to endorse and deliver paychecks to a receiver. See *Sheridan v. Sheridan*, 33 Cal. App.3d 917, 920-22, 109 Cal. Rptr. 466 (1972). Pursuant to 42 U.S.C. § 659 (Supp. III 1979), the wages of federal employees may be garnished for the enforcement of child support and alimony payments as if the United States were a private person. See also *Standard Oil Div., American Oil Co. v. Starks*, 528 F.2d 201, 203-04 (7th Cir. 1975) (employees of U.S. Postal Service not immune from garnishment).

<sup>487</sup> See the discussion in the text under "Sale and Collection" beginning at note 362 *supra*.

creditor or a third person on a speculative basis, perhaps resulting in a large windfall to the purchaser.<sup>488</sup>

## Receivers

### Existing Law

Existing law permits the appointment of a receiver in aid of execution where the writ of execution has been returned unsatisfied or where the judgment debtor refuses to apply property toward the satisfaction of the judgment.<sup>489</sup> Appointment of a receiver may also enable the judgment creditor to reach and apply types of property that cannot be reached by levy under a writ of execution.<sup>490</sup> Generally, receivers are appointed in examination proceedings where the requisite showing is made,<sup>491</sup> but a receiver may also be appointed in independent proceedings on noticed motion.<sup>492</sup> Receivership is considered a drastic remedy, and the courts are reluctant to appoint a receiver unless it is shown that other remedies are inadequate.<sup>493</sup>

### Proposed Law

Under the proposed law, the appointment of a receiver to enforce a money judgment continues as a remedy requiring a special showing, but a new standard is provided. The judgment creditor may obtain the appointment of a receiver upon a showing that, considering the interests of both the judgment creditor and the judgment debtor, it is a reasonable method to achieve the fair and orderly satisfaction of the judgment. The proposed law eliminates the existing statutory requirement that the writ be returned unsatisfied. This requirement is an empty

<sup>488</sup> See, e.g., *Meacham v. Meacham*, 262 Cal. App.2d 248, 253 n.2, 68 Cal. Rptr. 746, 749 n.2 (1968), where it was asserted that a \$13,000 windfall would result from the sale of a right to royalties from the marketing of an invention in satisfaction of judgment for plaintiff's attorney's fees.

<sup>489</sup> Section 564, subd. 4.

<sup>490</sup> See *Habenicht v. Lissak*, 78 Cal. 351, 357, 20 P. 874, 877 (1889) (seat on stock exchange); *Pacific Bank v. Robinson*, 57 Cal. 520, 524 (1881) (patent); *Medical Fin. Ass'n v. Short*, 36 Cal. App.2d Supp. 745, 747, 92 P.2d 961 (1939) (federal wages).

<sup>491</sup> See *Tucker v. Fontes*, 70 Cal. App.2d 768, 771, 161 P.2d 697 (1945); *Bruton v. Tearle*, 7 Cal.2d 48, 53, 59 P.2d 953 (1936).

<sup>492</sup> *Olsan v. Comora*, 73 Cal. App.3d 642, 647-49, 140 Cal. Rptr. 835 (1977).

<sup>493</sup> *Jackson v. Jackson*, 253 Cal. App.2d 1026, 1040-41, 62 Cal. Rptr. 121 (1967); *Olsan v. Comora*, 73 Cal. App.3d 642, 646-47, 140 Cal. Rptr. 835 (1977).

formality which results in a delay of at least 10 days in the attempt to reach the judgment debtor's assets and merely increases the costs of collection.<sup>494</sup> The law concerning the appointment, qualification, powers, and duties of a receiver is continued unchanged.<sup>495</sup>

The proposed law also specifically provides for the appointment of a receiver to transfer the judgment debtor's interest in a liquor license which, under existing law, may not be forceably applied to the satisfaction of a money judgment.<sup>496</sup> The proposed law includes specific authority for the use of a receiver to dispose of perishable property<sup>497</sup> and for the use of a receiver to enforce a nonmoney judgment in an appropriate case.<sup>498</sup>

### Collection Where Judgment Debtor Is Creditor of Public Entity

Existing law provides an exclusive procedure for reaching money, other than wages, owed to the judgment debtor by a public entity.<sup>499</sup> Under this procedure, the

<sup>494</sup> The 10-day delay is the result of Section 683 which provides that the writ is returnable not less than 10 nor more than 60 days after its receipt by the levying officer. The cost of issuance of a writ is recoverable pursuant to Section 1033.7(c). It may be argued that the provision that the writ be returned *nulla bona* (no goods) before a receiver may be appointed is no longer the law since a receiver may be appointed in examination proceedings under Section 714 which, since 1955, has not required the return of the writ unsatisfied. See 1955 Cal. Stats. ch. 1191, § 1. Levying officers no longer make an independent search for property subject to execution, but instead act at the instructions of the judgment creditor. See 1 A. Freeman, *Law of Executions* § 107, at 395-98 (3d ed. 1900) (former practice); California State Sheriffs' Ass'n, *Civil Procedural Manual* 4.05 (rev. 1980) (modern practice). If so instructed, the levying officer will return the writ unsatisfied and will not attempt to levy under the writ. Obviously, this procedure should not result in a presumption that there is no property subject to levy and sale.

<sup>495</sup> See Sections 564-571.

<sup>496</sup> Since 1959, Section 688 has precluded the use of any enforcement process against licenses, including liquor licenses. See Section 688(f); 37 Ops. Cal. Att'y Gen. 4 (1961). The use of a receiver permits application of the proceeds according to the set of priorities spelled out in *Business and Professions Code* Section 24074. See *Grover Escrow Corp. v. Gole*, 71 Cal.2d 61, 65, 453 P.2d 461, 463, 77 Cal. Rptr. 21, 23 (1969) (statutory priorities are mandatory and exclusive). The proposed law will not permit appointment of a receiver to sell a liquor license if the probable sale price of the license does not exceed the amount necessary to satisfy the claims of creditors with priority over the judgment creditor who is seeking the appointment of a receiver.

<sup>497</sup> See the discussion in the text under "Disposition of Perishable Property" beginning at note 148 *supra*.

<sup>498</sup> See the discussion in the text under "Enforcement of Nonmoney Judgments" beginning at note 557 *infra*.

<sup>499</sup> See Sections 710, 710a. As provided in Section 710(h), earnings are withheld pursuant to Sections 723.010-723.154.

judgment creditor files with the state agency or local public entity an abstract or transcript of the judgment and an affidavit stating the amount owing on the judgment. Filing in this manner is the equivalent of levy under a writ of execution and the priorities among creditors are determined as of the time of filing with the public entity.<sup>500</sup> The public entity is required to pay the money into court and the court then pays the nonexempt portion of the money to the judgment creditor.

This scheme is generally continued in the proposed law;<sup>501</sup> however, several revisions are made. Under existing law, the relation between the procedure for obtaining a lien in a pending action on any eventual judgment<sup>502</sup> and the procedure for reaching money owed the judgment debtor by a public entity is unclear. The proposed law provides that the special procedure for obtaining a lien in a pending action must be followed when the obligation is the subject of a pending action.

Under existing law, the general procedure for determining exemptions from execution by Section 690.50 is incorporated with the provision that the court is to be considered the levying officer.<sup>503</sup> This exemption procedure is inadequate. The judgment debtor is not required to be given notice of the filing, the payment into court, or the payment to the judgment creditor, although the statute assumes that exemptions will be claimed and determined despite the judgment debtor's lack of notice.<sup>504</sup> The judgment creditor should give notice of the filing to the judgment debtor, just as a judgment debtor is given notice of levy under a writ of execution. The proposed law

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<sup>500</sup> See *Department of Water & Power v. Inyo Chem. Co.*, 16 Cal.2d 744, 751-53, 108 P.2d 410 (1940); *Ott Hardware Co. v. Davis*, 165 Cal. 795, 800, 134 P. 973 (1913). This principle is codified in the proposed law.

<sup>501</sup> Several minor and technical changes are recommended. For example, the provision for setting off amounts owed by, or advanced to, the judgment debtor applies only to the state under Section 710(a); the proposed law makes this provision also applicable to local public entities.

<sup>502</sup> See the discussion in the text under "Lien in Pending Action or Proceeding" beginning at note 473 *supra*.

<sup>503</sup> Section 710(c).

<sup>504</sup> The purpose of this special procedure is "to shift to the court the burden of adjudicating any claims of exemption which may arise and to insulate the governmental units from liability for wrongful payments to garnishing creditors." *McDaniel v. City & County of San Francisco*, 259 Cal. App.2d 356, 363, 66 Cal. Rptr. 384 (1968).

requires the court clerk to give the judgment debtor notice when the court receives the payment from the public entity, and the judgment debtor is then given 10 days from service of the notice of payment within which to make a claim of exemption on noticed motion before the court pays over to the judgment creditor.

Existing law provides a special procedure that applies where the money owed to the judgment debtor by a public entity is an award in a condemnation proceeding brought by the public entity. It is provided that the money may be paid into the court in which the condemnation proceeding was tried and that the clerk then sends notice to "all parties interested in said award" of the hearing to determine conflicting claims to the award.<sup>505</sup> The court is directed to determine the conflicting claims and order the distribution of the money accordingly. This special procedure is unnecessary;<sup>506</sup> the general procedures under the proposed law for reaching money owed to the judgment debtor by a public entity afford adequate remedies. Before final judgment in the condemnation proceeding, the judgment creditor may obtain a lien in the pending eminent domain proceeding on any amounts eventually awarded.<sup>507</sup> If the judgment is final and the public entity has not paid the award or deposited the award with the court,<sup>508</sup> the judgment creditor may follow the general procedure for reaching money owed to the judgment debtor by a public entity. If the public entity has deposited the amount of the

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<sup>505</sup> Section 710(d). It is not clear under this provision whether the judgment creditor is to receive notice.

<sup>506</sup> The existing procedure is also inadequate in several respects and is not consistent with the relevant provisions of the Eminent Domain Law. For example, the reference to the hearing where conflicting claims to the award are to be determined is ambiguous, and the provision that the court order the distribution of the money deposited conflicts with the Eminent Domain Law. The value of divided interests in property acquired by eminent domain are determined in the condemnation proceeding itself pursuant to Section 1260.220. If an amount of probable compensation is deposited, it may be withdrawn on application pursuant to Section 1255.210. If the amount of compensation has been determined, the defendant may apply for withdrawal of the deposit pursuant to Section 1268.140. There is no reason for the judgment creditor to be involved in the condemnation proceeding at the time the interests of the condemnation defendants are determined; the creditor should be involved only when payment is to be made to the judgment debtor, at which time the issue is whether the award is exempt, such as where it represents the homestead exemption.

<sup>507</sup> See the discussion in the text under "Lien in Pending Action or Proceeding" beginning at note 473 *supra*.

<sup>508</sup> See Sections 1255.010 (deposit of probable compensation), 1268.010 (payment directly to defendant), 1268.110 (deposit of full amount of award).

award with the court where the condemnation proceeding is held and the creditor has not obtained a lien before final judgment, the creditor may use some other appropriate procedure, such as garnishment or motion.<sup>509</sup>

### Trusts

Existing California law permits execution against the judgment debtor's equitable interest in a trust.<sup>510</sup> However, it is not clear whether the purchaser at the execution sale acquires the right to receive the income or the principal of the trust and what the measure of the income or principal will be. Trust instruments vary so widely in their character that automatic execution and sale is inadvisable. The proposed law provides an exclusive remedy under which the judgment creditor may apply to the probate court to reach the judgment debtor's interest in the trust. The court may permit such enforcement means as are appropriate in the circumstances of the case, such as imposition of a lien, sale of the interest, collection of income, or liquidation and transfer of trust assets. The proposed law does not affect the validity of a spendthrift trust<sup>511</sup> or Totten trust.<sup>512</sup>

### Property in Guardianship or Conservatorship Estate

If the judgment debtor is a ward or conservatee, the judgment debtor's property that is part of the guardianship or conservatorship estate is not subject to the normal enforcement remedies, whether or not it is held in the name of the guardian or conservator.<sup>513</sup> The property may be applied to the satisfaction of a judgment only by order

<sup>509</sup> See, e.g., *Kimball v. Richardson-Kimball Co.*, 111 Cal. 386, 394, 43 P. 1111 (1896) (levy of attachment); *Phoenix v. Kovacevich*, 246 Cal. App.2d 774, 778-79, 55 Cal. Rptr. 135 (1966) (permission to levy by court order); *Credit Bureau of San Diego v. Getty*, 61 Cal. App.2d Supp. 823, 826-29, 142 P.2d 105 (1943) (affidavit procedure for former Section 710 not effective where court deposited money with county); *Colver v. W.B. Scarborough*, 73 Cal. App. 455, 457-59, 238 P. 1110 (1925) (levy of execution).

<sup>510</sup> See, e.g., *Houghton v. Pacific Southwest Trust & Sav. Bank*, 111 Cal. App. 509, 295 P. 1079 (1931).

<sup>511</sup> Under the proposed law, the new procedure is available to reach surplus income from a spendthrift trust to the extent such income is liable. See Civil Code § 859. This alters existing law pursuant to which a creditor's suit is the appropriate remedy. See, e.g., *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 87 P.2d 830 (1939).

<sup>512</sup> See *Recommendation Relating to Non-Probate Transfers*, 15 Cal. L. Revision Comm'n Reports 1605 (1980).

<sup>513</sup> *McCracken v. Lott*, 3 Cal.2d 164, 44 P.2d 355 (1935).

of the probate court having jurisdiction of the estate.<sup>514</sup> The proposed law codifies this rule.

### Contingent Interests

A future interest that is contingent is not subject to enforcement of a money judgment.<sup>515</sup> The proposed law changes this rule since there are appropriate means of applying contingent interests to the satisfaction of a money judgment.<sup>516</sup> Under the proposed law, the court, upon application of the judgment creditor, may apply a contingent interest to the satisfaction of a judgment by such means as are appropriate under the circumstances of the case, such as imposition of a lien or sale of the interest.

### Franchises

At common law, a governmental franchise<sup>517</sup> was not subject to enforcement of a money judgment. In California the common law rule is abrogated by a statute that permits levy of execution on and sale of a franchise.<sup>518</sup> The California rule creates a number of problems. Levy on the franchise may be impractical and sale may not be the most satisfactory means of reaching the value of the franchise. Moreover, the franchise may not be transferable or transfer may be subject to approval by a regulatory agency such as the Public Utilities Commission. For these reasons, the proposed law repeals the provisions for levy upon and sale of a franchise. Under the proposed law, a creditor may apply a franchise to satisfy a money judgment only upon court order, taking into consideration factors such as the nature of the franchise and its transferability. The court may prescribe the most appropriate means of applying the franchise to the satisfaction of the judgment such as sale, collection of proceeds, or appointment of a receiver, subject to all applicable statutory and administrative regulations.

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<sup>514</sup> Prob. Code § 2404.

<sup>515</sup> See, e.g., *Anglo California Nat'l Bank v. Kidd*, 58 Cal. App.2d 651, 137 P.2d 460 (1943).

<sup>516</sup> See Halbach, *Creditors' Rights in Future Interests*, 43 Minn. L. Rev. 217 (1958).

<sup>517</sup> A franchise is a special privilege or right in the nature of a license granted by a governmental entity to a private person. Examples of franchises are the right granted to a public utility to place facilities in a public street, a right to operate a parking lot on publicly-owned property, and a right to provide cable television or community antenna service.

<sup>518</sup> Sections 724a-724e.

## THIRD-PARTY CLAIMS AND RELATED PROCEDURES

### Introduction

A levy on property to satisfy a judgment may infringe on the property rights of a third person (a person other than the creditor or the debtor). The third person may own the property or have the right to its possession or the third person may have a superior right under a lien or security interest to resort to the property for the satisfaction of an obligation. Although the superior rights of a third person are not lost if the property is applied to the satisfaction of the creditor's judgment, it may not be practical or economical for the third person to bring an appropriate action after the property has been sold on execution or otherwise applied to the satisfaction of a judgment.<sup>519</sup> In recognition of these difficulties, and also to protect the creditor and the levying officer from liability, existing law provides a summary special proceeding for the determination of certain third-party claims before the property is applied to the satisfaction of a judgment.<sup>520</sup> The Commission recommends that the third-party claims procedure be made available in a broader variety of

<sup>519</sup> The interest of the third person in property levied upon is not affected by the third person's failure to make a third-party claim. An execution sale conveys the interest of the debtor in the property sold. See Sections 698, 699, 700. In appropriate circumstances, the third person may bring an action for specific recovery of personal property or for damages for conversion. See 5 B. Witkin, *California Procedure Enforcement of Judgment* § 115, at 3481 (2d ed. 1971). The third person may also seek declaratory relief. See *City of Torrance v. Castner*, 46 Cal. App.3d 76, 120 Cal. Rptr. 23 (1975).

<sup>520</sup> See Sections 689, 689b. The existing third-party claims procedure derives from Section 218 of the Practice Act, enacted in 1851, under which the sheriff could summon a jury of six persons in the county to determine the validity of a third-party claim. The purpose of this procedure was to aid the sheriff, although he remained liable for a wrongful levy or for improperly releasing the property despite the determination of the jury which was held not to be conclusive against the parties. See *Perkins v. Thornburgh*, 10 Cal. 189 (1858). See generally 2 A. Freeman, *Law of Executions* § 276 (3d ed. 1900); G. Gilbert, *The Law of Executions* § 1 (London 1763); Curtis, *A Legal Headache*, 9 Cal. St. B.J. 167 (1934). In 1891, the statute was amended to substitute a provision for an undertaking in favor of the sheriff in place of the provision for a sheriff's jury. 1891 Cal. Stats. ch. 32, § 1. In light of this history, it has frequently been stated by the courts that a primary purpose of the procedure is to protect the levying officer from liability for taking, holding, and selling the property. See, e.g., *Sunset Realty Co. v. Dadmun*, 34 Cal. App.2d Supp. 733, 736, 88 P.2d 947, 949 (1939). Section 689 has provided since 1929 that the undertaking is in favor of the third person and, since 1933, that the levying officer is not liable if he complies therewith. 1929 Cal. Stats. ch. 341, § 1; 1933 Cal. Stats. ch. 744, § 135.



situations, as discussed below, and that several revisions be made to improve the operation of the procedure.

### Proposed Revisions

#### Third-Party Claims to Personal Property

Existing law permits a person claiming title and the right to possession of personal property or the rights of a chattel mortgagee or conditional seller in personal property to make a third-party claim if the property was levied upon under a writ of attachment or a writ of execution to satisfy a money obligation,<sup>521</sup> or under a writ of possession in claim and delivery proceedings,<sup>522</sup> or where a lien on personal property has been foreclosed.<sup>523</sup> The proposed law expands the class of permissible claimants to include persons claiming any security interest in the property or claiming a lien on the property.<sup>524</sup> However, only a third person claiming an interest superior to the creditor's lien may make a claim.<sup>525</sup> The proposed law also makes clear that a third-party claim may be made where personal property is levied upon under a postjudgment writ of possession.

#### Third-Party Claims to Real Property

Existing law limits the third-party claims procedure to claims of interests in personal property.<sup>526</sup> The proposed law permits a third-party claim of ownership or the right to

<sup>521</sup> See Sections 488.090 (attachment), 689 (title and right to possession in execution), 689b (chattel mortgage or conditional sale in execution).

<sup>522</sup> See Section 514.050.

<sup>523</sup> See *Lawler v. Solus*, 101 Cal. App.2d 816, 226 P.2d 348 (1951) (judgment foreclosing chattel mortgage).

<sup>524</sup> See Division 9 (commencing with Section 9101) of the Commercial Code (secured transactions). Under existing law, a lienholder other than a chattel mortgagee or conditional seller may not make a third-party claim. See *Palmquist v. Palmquist*, 228 Cal. App.2d 789, 791-93, 39 Cal. Rptr. 871 (1964).

<sup>525</sup> Existing law is not specifically limited to determination of superior interests in property levied upon, but there would be no point in making a claim on the basis of an interest in the property that is inferior to that of the creditor since an inferior interest does not stand in the way of the levy. An inferior lien is lost when the property is sold on execution although the inferior lienholder may have the right to share in any excess proceeds at the sale. See *Mitchell v. Alpha Hardware & Supply Co.*, 7 Cal. App.2d 52, 57, 45 P.2d 442, 445 (1935).

<sup>526</sup> See Sections 689, 689b. The usual remedy where real property is wrongfully sold on execution is an action to quiet title. See *First Nat'l Bank v. Kinslow*, 8 Cal.2d 339, 345, 65 P.2d 796, 799 (1937). If the third person acts quickly enough, an execution sale of property may be enjoined. See *Einstein v. Bank of California*, 137 Cal. 47, 69 P. 616 (1902).

possession of real property levied upon under a writ of attachment or writ of execution if the interest claimed in the real property is superior to the creditor's lien. Levy under a writ of attachment or a writ of execution can create a cloud on title preventing a third person who is the rightful owner from selling the property. Existing remedies do not provide adequate protection to the third person. In an action to enjoin the sale, the third person must provide an undertaking<sup>527</sup> whereas a person who is permitted to file a third-party claim need not file an undertaking and is entitled to the benefit of the creditor's undertaking if the property is not released pursuant to the claim. If the third person relies on an action to quiet title<sup>528</sup> after the property is sold on execution, considerable delay and expense will be involved.

### Amount of Judgment Creditor's Undertaking

Under the proposed law, if a third-party claim is timely filed with the levying officer,<sup>529</sup> the officer serves a copy of the claim on the creditor.<sup>530</sup> If the third person is claiming ownership or the right to possession of the property, the judgment creditor must file an undertaking within 10 days after service of the claim to prevent the release of the property.<sup>531</sup> If the third person is claiming a security interest

<sup>527</sup> See Section 529.

<sup>528</sup> See *First Nat'l Bank v. Kinslow*, 8 Cal.2d 339, 65 P.2d 796 (1937).

<sup>529</sup> The proposed law requires that the third-party claim be filed before the levying officer sells the property, pays the proceeds of collection to the creditor, or delivers possession of the property to the creditor. Sections 689 and 689b refer only to disposition by sale under the writ but, inasmuch as these provisions specifically apply to garnishment of intangibles and to claim and delivery proceedings (see Section 514.050), they must be read broadly to include collection and payment and to delivery of possession to the judgment creditor. *Cf. National Bank v. Finn*, 81 Cal. App. 317, 337, 253 P. 757, 766 (1927) (third-party claim must be made before it has become impossible for sheriff to deliver property to claimant or to obtain undertaking from creditor).

<sup>530</sup> Under Sections 689 and 689b(3), the third-party claim is served on the creditor by registered or certified mail. Under the proposed law, the claim is served personally or by first-class mail.

<sup>531</sup> Under Section 689, the creditor is allowed five days after service (date of mailing) of the claim within which to file the undertaking. This time is extended pursuant to Section 1013 when the claim is served by mail. See California State Sheriffs' Ass'n, *Civil Procedural Manual* 10.04-10.05 (rev. 1980). If the claim is served by mail under the proposed law, the time allowed for filing an undertaking is extended. See the discussion in the text under "Service of Writs, Notices, and Other Papers" beginning at note 623 *infra*. If the creditor is a public entity, the creditor is exempt from filing the undertaking. Section 1058. The proposed law therefore provides for the public entity to file with the levying officer a notice of opposition to the third-party claim.

or lien, the creditor must either file an undertaking or make a deposit of the amount claimed within 10 days after service of the claim to prevent the release of the property.<sup>532</sup>

Under existing law, the creditor's undertaking to prevent release of the property is required to be in an amount equal to twice the value of the property if the third person claims ownership.<sup>533</sup> If the claim is made by a chattel mortgagee or conditional seller, the undertaking must be twice the amount due on the contract or twice the value of the property.<sup>534</sup> The proposed law takes a different approach, permitting the creditor to give an undertaking in a flat amount in response to a third-party claim. If the action is pending or judgment was rendered in superior court, the amount of the undertaking is \$7,500; if the action is pending or judgment was rendered in municipal or justice court, the amount of the undertaking is \$2,500. This provision, derived from the Attachment Law, eliminates the need for the courts to consider objections to the amount of undertakings based on the value of the property claimed by the third person or the amount of the indebtedness secured by the property.<sup>535</sup>

The proposed law permits the third person to object to the undertaking and obtain a court order that the undertaking be increased to an amount sufficient to compensate the third person for any damages that probably may result from the levy should the third person ultimately prevail in the proceedings. If a motion to increase the

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This is drawn from the existing practice of giving the levying officer a letter stating that the public entity is exempt from giving an undertaking. See California State Sheriffs' Ass'n, Civil Procedural Manual 13.02 (rev. 1980).

<sup>532</sup> Under Section 689b(4), the creditor is allowed five days after receipt of the claim within which to file an undertaking or make a deposit. This time period is not subject to extension when the claim is mailed. See California State Sheriffs' Ass'n, Civil Procedural Manual 10.04-10.05 (rev. 1980). If the claim is served by mail under the proposed law, the time allowed for filing an undertaking is extended. See the discussion in the text under "Service of Writs, Notices, and Other Papers" beginning at note 623 *infra*. The proposed law also continues the substance of a portion of Section 689b(9) that requires the creditor to file a statement contesting the validity of a security interest as a condition of filing an undertaking.

<sup>533</sup> Section 689, para. 1.

<sup>534</sup> Section 689b(9).

<sup>535</sup> See Section 489.220(a) (plaintiff's undertaking in attachment). The fourth and fifth paragraphs of Section 689 provide an appraisal procedure for determining an objection to the amount of an undertaking to indemnify an unsecured third-party claimant. Section 689b(9) gives the levying officer discretion to determine the value of the property for the purpose of setting the amount of the undertaking required to maintain the levy against a claim by a secured party.

undertaking is made, the court also has authority to decrease the amount of the undertaking where it is found to be more than sufficient.

As an alternative to objecting to the amount of the undertaking, the third person may obtain the release of the property by filing an undertaking in the same amount as the undertaking given by the creditor.<sup>536</sup> The creditor may give an undertaking in a greater amount than that required by statute and thereby reduce the chance that the third person will object to its amount. Accordingly, if the creditor files a larger undertaking than one in the amount required by statute (\$7,500 for superior court or \$2,500 for municipal or justice court), the third person will also have to file a larger undertaking to obtain the release of the property.

These features of the proposed law give the parties greater flexibility than that provided by existing law, and enable the parties to fashion a course of action most appropriate in the circumstances of the case.

### Hearing on Third-Party Claim

Under existing law, if the creditor gives an undertaking in response to a third-party claim, the third person may choose to rely on the undertaking and permit the property to be sold or otherwise applied toward the satisfaction of the judgment.<sup>537</sup> However, if either the creditor or the third person petitions the court within 15 days after the third-party claim is filed with the levying officer, a hearing may be held on the third-party claim and the matter brought to a prompt resolution.<sup>538</sup> Even in a case where the property has been released because the creditor refuses or fails to file an undertaking within the time allowed, either the creditor or the third person may petition for a hearing

<sup>536</sup> See the discussion in the text under "Third Person's Undertaking to Release Property" beginning at note 545 *infra*.

<sup>537</sup> See Sections 689, para. 7, 689b(9). If the creditor makes a deposit with the levying officer in the amount of the indebtedness claimed by a secured party (and also a lienholder under the proposed law), the interest of the secured party passes to the creditor and the property may be sold free of the security interest. See Section 689b(6). The creditor is then entitled to be reimbursed in the amount of the satisfied security interest from the proceeds obtained at the execution sale. See Section 689c. No hearing is held if a deposit has been made.

<sup>538</sup> Unless continued by the court, a hearing must be held within 20 days from the filing of the petition. See Sections 689, para. 8, 689b(10). There is no right to a jury trial in a hearing on a third-party claim. *Mazuran v. Finn*, 53 Cal. App. 656, 200 P. 769 (1921). This holding is codified in the proposed law.

within 15 days after the claim is filed with the levying officer.<sup>539</sup> At a hearing on the claim, the third person has the burden of proof.<sup>540</sup> The proposed law continues this procedure, but in a case where a secured party has made a third-party claim, the proposed law places the burden of proof on the creditor in recognition of the general presumption of the validity of security interests.<sup>541</sup>

### Notice to Debtor

Existing law ignores the interests of the debtor in third-party claim proceedings, even though it is readily apparent that the debtor is vitally interested in the disposition of the property. The proposed law requires that a copy of any third-party claim be served on the debtor when it is served on the creditor. Furthermore, if a hearing is held on the third-party claim, the petitioning party must give notice of the hearing to the debtor. Participation of the debtor should guard against an incorrect determination of the respective interests of the parties and a misallocation of the property.<sup>542</sup>

### Creditor's Demand for Claim by Secured Party or Lienholder

Existing law permits the judgment creditor to serve a secured party with a demand that the secured party either file a third-party claim or forfeit the security interest in personal property levied upon under a writ of attachment or execution.<sup>543</sup> The proposed law modifies this procedure to provide that if a demand is made and the secured party (or other lienholder) does not file a third-party claim within the time allowed, any superiority the security interest or lien may have had over the creditor's lien is lost, but the security interest or lien itself remains. This provision preserves the rights of secured parties and lienholders in situations where the property is later released rather than sold on execution. In a situation where

<sup>539</sup> See Sections 689, para. 8, 689b(10). If the creditor prevails at the hearing on the third-party claim, the property may again be levied upon or otherwise sought to be applied to the satisfaction of the judgment. *Id.*

<sup>540</sup> See Sections 689, para. 8, 689(10).

<sup>541</sup> See Com. Code § 9201.

<sup>542</sup> See *Rubin v. Barasch*, 275 Cal. App.2d 835, 80 Cal. Rptr. 337 (1969).

<sup>543</sup> See Section 689b(8).

there are excess proceeds at the execution sale, this provision entitles a demoted secured party or lienholder to a share along with any other junior lienholders.<sup>544</sup>

### Third Person's Undertaking to Release Property

Under existing law, a third person may give an undertaking to release personal property levied upon to satisfy a money judgment if the third person claims ownership and the right to possession of the property.<sup>545</sup> The proposed law extends this useful remedy to cover the following cases:

(1) Where the third person claims ownership or the right to possession of real property levied upon under a writ of attachment or a writ of execution.

(2) Where the third person claims ownership or the right to possession of personal property levied upon under a writ of attachment, a writ of execution, or a writ of sale.

(3) Where the third person claims a security interest in or a lien on personal property levied upon under a writ of attachment, a writ of execution, or a writ of sale.

As noted earlier, the proposed law also permits the third person to obtain the release of property where the creditor has given an undertaking to preserve the lien in response to the third party's claim by giving a counter-undertaking in the same amount. If the third person has not previously filed a third-party claim to the property, the proposed law requires a third-party claim to be filed with the levying officer when the release undertaking is filed. If the creditor has not given an undertaking to preserve the lien, the amount of the release undertaking under the proposed law is twice the market value of the property or twice the amount of the creditor's lien on the property sought to be released, whichever is the lesser.<sup>546</sup> The proposed law requires the release undertaking to be filed with the levying officer rather than with the court as under existing law,<sup>547</sup> since the levying officer must be informed of matters affecting the disposition of the property. If a hearing is held

<sup>544</sup> See the discussion in the text under "Distribution of Proceeds of Sale and Collection" beginning at note 378 *supra*.

<sup>545</sup> Section 710b.

<sup>546</sup> This provision continues existing law. See Section 710c.

<sup>547</sup> Section 711.

on the third party's claim, the levying officer will file the undertaking with the court along with the claim. If a hearing is not held, the levying officer will file the undertaking with the court when the writ is returned.

### **General Provisions Relating to Undertakings**

The proposed law sets forth general provisions governing undertakings in third-party claims proceedings, whereas existing law contains some provisions and otherwise incorporates provisions governing undertakings in attachment.<sup>548</sup> In addition, the proposed law makes clear that the beneficiary of an undertaking may enforce the liability of sureties by a motion in the action without the necessity of bringing an independent action.<sup>549</sup>

### **Liability for Wrongful Attachment of Property of Third Person**

Under existing law, it is a wrongful attachment to attach property of a person other than the defendant.<sup>549.1</sup> The existing law provides one narrow exception for a levy in good faith and in reliance on registered or recorded ownership.<sup>549.2</sup> The plaintiff is liable for all damages proximately caused to the third person by the wrongful attachment and all costs and expenses, including attorney's fees, reasonably expended in defeating the attachment, but liability is limited by the amount of the plaintiff's undertaking filed to obtain issuance of the writ of attachment.<sup>549.3</sup>

The proposed law eliminates the statutory liability for wrongful attachment of property of a third person but does not limit the right of the third person to make a third-party

<sup>548</sup> See Sections 689, 689b, 710c to 713½.

<sup>549</sup> See Section 1058a (enforcement of liability of sureties).

<sup>549.1</sup> Section 490.010 (d).

<sup>549.2</sup> Section 490.010 (d) provides that "it is not a wrongful attachment if all of the following exist:

(1) The property levied on is required by law to be registered or recorded in the name of the owner.

(2) It appeared that, at the time of the levy, the person against whom the writ was issued was such registered or record owner.

(3) The plaintiff made the levy in good faith and in reliance on the registered or recorded ownership."

<sup>549.3</sup> Section 490.020. As to the right of the third person to intervene in the action in which the attachment was obtained and to recover for wrongful attachment in that action, see Section 490.050.

claim or to resort to common law remedies. This change recognizes that the plaintiff often is not aware of the interests of third persons in property when the plaintiff attaches property which in good faith appears to be owned by the defendant. The plaintiff is in the same situation as a judgment creditor who causes a levy of execution to be made upon property in which a third person has an interest but which appears to be owned by the judgment debtor. The proposed law would treat both situations the same since, from the standpoint of the third person, it is irrelevant whether the interfering levy takes place under a writ of attachment or a writ of execution.

### ENFORCEMENT OF STATE TAX LIABILITY

Under existing law, whenever a state agency may properly issue a warrant for the collection of taxes pursuant to eight enumerated Sections of the Revenue and Taxation Code and the Unemployment Insurance Code, the agency is entitled to all of the remedies available to judgment creditors.<sup>550</sup> Whenever pursuant to these sections the agency actually issues the warrant, or pursuant to Section 1755 of the Unemployment Insurance Code issues a notice of levy, the tax debtor is entitled to the exemptions available to a judgment debtor<sup>551</sup> and a third party may claim ownership or the right to possession of the property levied upon by the state.<sup>552</sup> The proposed law continues these provisions and extends them to apply to seven other comparable warrant provisions.<sup>553</sup>

<sup>550</sup> Section 722.5. Section 10111 of the Revenue and Taxation Code, which is referred to in Section 722.5 of the Code of Civil Procedure, was repealed in 1972. See 1972 Cal. Stats. ch. 563.

<sup>551</sup> See Section 690.51.

<sup>552</sup> See Section 689d.

<sup>553</sup> Pub. Res. Code §§ 3423.2 (oil and gas conservation charges), 3772.2 (geothermal resources charges); Rev. & Tax. Code §§ 3201 (postponed property taxes), 16071 (gift tax), 38541 (timber yield tax), 40161 (energy resources surcharge), 41125 (emergency telephone surcharge). The proposed law also adds language requiring that, before the state may use the remedies available to a judgment creditor, the provision authorizing the warrant must also provide that the warrant may be levied with the same effect as a levy pursuant to a writ of execution. Such a provision is contained in the various warrant sections. See Pub. Res. Code §§ 3423.2, 3772.2; Rev. & Tax. Code §§ 3202, 6776, 7882, 9001, 16071, 18907, 26191, 30341, 32365, 38541, 40161, 41125; Unemp. Ins. Code § 1785. The proposed law omits the references to specific sections providing authority for issuing warrants to collect a tax so that further amendment will not be required when tax laws in the Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code are revised.



Unlike a warrant which is given to a levying officer for levy,<sup>554</sup> a notice of levy pursuant to Section 1755 of the Unemployment Insurance Code does not involve a levying officer. Hence, the proposed law provides that, when a notice of levy is used, the claim of exemption or the third-party claim shall be filed with the state agency that issued the notice of levy. Determination of the claim is made in judicial proceedings in the same manner as if the property were levied upon pursuant to a writ of execution.

Under existing law, the superior court has jurisdiction when judicial proceedings are required for the enforcement of a tax liability.<sup>555</sup> The proposed law continues the provision for superior court jurisdiction and adds concurrent jurisdiction in the municipal or justice court when the amount of the tax claim being enforced is within the jurisdictional limits of the municipal or justice court and the legality of the tax liability is not contested.

The proposed law also adds a provision making clear that when a tax claim is reduced to judgment, the judgment is enforceable in the same manner as judgments generally.

In addition to tax enforcement by warrant or notice of levy, existing law permits enforcement in a number of situations by giving a notice to withhold or notice of delinquency to any person who has personal property of or owes a debt to the tax debtor.<sup>556</sup> There are no provisions permitting the tax debtor to claim exemptions when enforcement is by a notice to withhold or notice of delinquency. The Commission does not recommend that exemptions be extended to apply to a notice to withhold or notice of delinquency at the present time. The Commission may study this question and make a recommendation in the future.

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<sup>554</sup> See Pub. Res. Code §§ 3423.2, 3772.2; Rev. & Tax. Code §§ 3202, 6776, 7882, 9001, 16071, 18907, 26191, 30341, 32365, 38541, 40161, 41125; Unemp. Ins. Code § 1785.

<sup>555</sup> See Sections 689d, 690.51, 722.5.

<sup>556</sup> See, e.g., Rev. & Tax. Code §§ 6702 (sales and use taxes), 7851 (vehicle fuel license tax), 8952 (use fuel tax), 11451 (private car tax), 16101 (gift tax), 18817 (personal income tax), 26132 (bank and corporation taxes), 30311 (cigarette tax), 32381 (alcoholic beverage tax).

## ENFORCEMENT OF NONMONEY JUDGMENTS

### Introduction

Existing law contains a few scattered references to enforcement of judgments other than money judgments—*i.e.*, judgments for the sale or possession of property or requiring the performance of some other act. The extent to which the provisions concerning enforcement of money judgments govern the enforcement of these other types of judgments is not clear.<sup>557</sup> The proposed law is designed to make clear which aspects of the law relating to the enforcement of money judgments apply to other judgments and to make enforcement procedures uniform to the extent practicable.

Another source of confusion under existing statutory and case law derives from the variety of names given the writs or other process used in the course of enforcing nonmoney judgments. The writ used to enforce a judgment for possession of personal property has been termed a writ of possession<sup>558</sup> or a writ of execution.<sup>559</sup> The writ used to enforce a judgment for possession of real property has been

<sup>557</sup> The word "execution" leads a chameleon-like existence in existing law; in many instances it is unclear whether "execution" or "writ of execution" refers to process to enforce money judgments and judgments for the possession or sale of property, process to enforce money judgments and judgments for the possession but not the sale of property, or only process to enforce money judgments. For example, Section 684 provides that a writ of execution may be used to enforce a money judgment or a judgment for the possession of real or personal property; a judgment for the sale of property may be enforced by a "writ reciting such judgment." Section 683 provides for the return of the "execution" not less than 10 nor more than 60 days after its receipt by the levying officer, but it was held in *Magnaud v. Traeger*, 66 Cal. App. 526, 530-31, 226 P. 990 (1924), that a writ of execution for the possession of real property remained in force insofar as it directed the restitution of the premises although it had expired insofar as it directed the levying officer to levy on property to satisfy the part of the judgment awarding damages. Section 681 was amended in 1955 to add a reference to "enforcement" of the judgment since it was felt that the word "execution" was arguably not broad enough to cover enforcement of a mortgage foreclosure decree, *i.e.*, a judgment for the sale of real property. See Review of 1955 Code Legislation 101 (Cal. Cont. Ed. Bar 1955). Section 692 (sale on execution) seems on its face to apply only to the enforcement of money judgments, although it has been held that foreclosure sales of real and personal property should be made in the same manner as in a sale under a money judgment. See *Podrat v. Oberndorff*, 207 Cal. 457, 459-60, 278 P. 1035 (1929) (personal property); *Johnson v. Tyrrell*, 77 Cal. App. 179, 182, 246 P. 140 (1926).

<sup>558</sup> See E. Jackson, *California Debt Collection Practice* § 17.39 (Cal. Cont. Ed. Bar 1968). It may also be called a writ for delivery of the possession of property. *Id.*, at 391.

<sup>559</sup> See Sections 682, subd. 4, 684. The form approved by the Judicial Council is entitled "writ of execution" and boxes are to be checked to indicate that it applies to possession of personal property.

termed a writ of possession,<sup>560</sup> a writ of restitution,<sup>561</sup> a writ of execution,<sup>562</sup> a writ of assistance,<sup>563</sup> or a writ of enforcement.<sup>564</sup> The process used to enforce a judgment for the sale of property has been termed a writ of enforcement<sup>565</sup> or an order of sale.<sup>566</sup> Under the proposed law, a money judgment is enforceable by a writ of execution, a judgment for the possession of property is enforceable by a writ of possession, and a judgment for the sale of property is enforceable by a writ of sale.

### Uniform Procedures

Under the proposed law, provisions concerning the time within which judgments may be enforced and other procedural provisions apply to enforcement of judgments for possession and judgments for sale, as well as to money judgments. Technical requirements concerning issuance and return of writs of execution, possession, and sale are largely the same.<sup>567</sup> The proposed law continues the substance of existing law except as noted below.

### Judgments for Possession of Personal Property

Upon entry of a judgment for possession of personal property, such as in an action for specific recovery of

<sup>560</sup> See Section 1166a.

<sup>561</sup> See Section 1174(d).

<sup>562</sup> See Sections 682, subd. 4, 684. The form approved by the Judicial Council is entitled "writ of execution" and boxes are to be checked to indicate that it authorizes taking possession of real property.

<sup>563</sup> See *Rafferty v. Kirkpatrick*, 29 Cal. App.2d 503, 505, 85 P.2d 147 (1938). The writ of assistance has been used to put the purchaser at a foreclosure sale of real property into possession where the defendant refuses to surrender possession. The writ of assistance derives from equity practice. See 1 A. Freeman, *Law of Executions* § 37d, at 155 (3d ed. 1900); Dinkelspiel, *Enforcement of Judgments*, in *California Remedies for Unsecured Creditors* § 16, at 140 (Cal. Cont. Ed. Bar 1957).

<sup>564</sup> See *Hamilton v. Waters*, 93 Cal. App.2d 866, 868, 210 P.2d 67 (1949).

<sup>565</sup> See *Laubisch v. Roberdo*, 43 Cal.2d 702, 712, 277 P.2d 9 (1954). Section 684 refers to a writ used to enforce a judgment for sale as a "writ reciting such judgment."

<sup>566</sup> *Id.* In *Knapp v. Rose*, 32 Cal.2d 530, 534, 197 P.2d 7 (1948), the court said that it was immaterial whether the writ used to sell real property on foreclosure was entitled a writ of enforcement, writ of execution, or order of sale, if it was sufficient in substance. See also Gov't Code § 26829 (fee for issuing order of sale).

<sup>567</sup> See the discussion in the text under "Issuance and Return of Writ of Execution" beginning at note 121 *supra*. Under existing law, it has been held that a writ of restitution remains in force beyond the 60-day period provided by Section 683 insofar as the writ directs the restitution of the premises although it had expired insofar as it directed the levying officer to levy on property to satisfy damages awarded in the judgment. See *Magnaud v. Traeger*, 66 Cal. App. 326, 530-31, 226 P. 990 (1924).

personal property,<sup>568</sup> the judgment creditor may obtain a writ of possession of personal property if the property has not already been delivered to the judgment creditor under a prejudgment writ of possession.<sup>569</sup> The levying officer, pursuant to the judgment creditor's instructions, attempts to take possession of the property in the manner provided for levy of execution where the property is in the judgment debtor's possession.<sup>570</sup> Property may be seized only if it is in the possession of the judgment debtor or an agent of the judgment debtor.<sup>571</sup>

If property cannot be taken into custody, whether it is lost, destroyed, hidden, or in the hands of a third person, the judgment creditor is entitled to satisfy the judgment out of the property of the judgment debtor that is not exempt from execution for the value of the property as determined in the judgment for possession.<sup>572</sup> For this purpose, the writ of possession is treated as a writ of execution. Whether or not the property awarded the judgment creditor can be found, the writ of possession is treated as a writ of execution for the purpose of satisfying costs and damages awarded in the judgment and costs and interest accruing thereafter.<sup>573</sup> The proposed law also makes clear that the judgment creditor is entitled to resort to all of the remedies available for the enforcement of a money judgment, such as an examination proceeding, a creditor's suit, or an assignment order,<sup>574</sup> for the purpose of collecting costs, interest, damages, and the value of the property if possession cannot be obtained.

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<sup>568</sup> See generally 3 B. Witkin, *California Procedure Pleading* §§ 554-63, at 2194-203 (2d ed. 1971). The action for specific recovery is frequently referred to as a claim and delivery action, and a distinction is sometimes made between replevin (where the original taking was wrongful) and detinue (where the original taking was lawful). *Id.* § 554, at 2195-96.

<sup>569</sup> Possession may be obtained prior to judgment by way of the provisional remedy of claim and delivery. See Sections 511.010-516.050.

<sup>570</sup> See the discussion in the text under "Methods of Levy on Particular Types of Property" beginning at note 159 *supra*.

<sup>571</sup> See Section 514.010.

<sup>572</sup> See Sections 627, 667, 682, subd. 4, 682.2. It is not necessary to determine the value of the property if it has already been taken into the custody of the levying officer pursuant to claim and delivery proceedings. See Section 627; *Webster v. Mountain Monarch Gold Mining Co.*, 6 Cal. App.2d 450, 454-55, 44 P.2d 646 (1935).

<sup>573</sup> See Section 682, subd. 4.

<sup>574</sup> See the discussion in the text under "Miscellaneous Creditors' Remedies" beginning at note 425 *supra*.

The proposed law permits the judgment creditor to seek an order, enforceable by the power to punish for contempt, requiring the judgment debtor to turn the property over to the judgment creditor directly. This order is the same as that available in claim and delivery proceedings prior to judgment.<sup>575</sup>

The proposed law also permits the appointment of a receiver to enforce the judgment in an appropriate case.<sup>576</sup>

### Judgments for Possession of Real Property

Upon entry of a judgment for possession of real property, such as in an action for unlawful detainer, forceable entry, ejectment, or quiet title,<sup>577</sup> the judgment creditor is entitled to a writ of possession of real property. Under the proposed law, the levying officer executes the writ of possession of real property in the manner provided by existing law for enforcement in unlawful detainer cases.<sup>578</sup>

Like the writ of possession of personal property, the writ of possession of real property may be treated as a writ of execution for the purpose of levying on other property of the judgment debtor in order to satisfy costs, interest, and damages awarded in the judgment and costs and interest accruing thereafter.<sup>579</sup> The proposed law makes clear that the judgment creditor is entitled to resort to other remedies for collection of a money judgment in order to satisfy any monetary liability.<sup>580</sup>

The proposed law would also permit the appointment of a receiver to enforce a judgment for possession of real property in an appropriate case.<sup>581</sup>

<sup>575</sup> See Section 512.070.

<sup>576</sup> Existing law does not specifically authorize appointment of a receiver to enforce a judgment for possession of personal property although Section 564, para. 3, authorizes appointment of a receiver "[a]fter judgment, to carry the judgment into effect." See the discussion in the text under "Receivers" beginning at note 489 *supra*.

<sup>577</sup> See generally 3 B. Witkin, *California Procedure Pleading* §§ 506-16, at 2164-70 (unlawful detainer), §§ 517-21, at 2170-72 (forcible entry), §§ 522-34, at 2173-83 (ejectment and quiet title) (2d ed. 1971).

<sup>578</sup> See Section 1174(c)-(d). The proposed law also incorporates the procedure for disposition of personal property remaining on the premises provided by Section 1174(e)-(m).

<sup>579</sup> See Section 682, subd. 4, 682.2.

<sup>580</sup> See text at note 574 *supra*.

<sup>581</sup> Existing law does not specifically authorize appointment of a receiver to enforce a judgment for possession of real property, although Section 564, subd. 3, authorizes appointment of a receiver "[a]fter judgment, to carry the judgment into effect." See the discussion in the text under "Receivers" beginning at note 489 *supra*.

## Judgments for Sale of Real or Personal Property

Upon entry of a judgment for the sale of real or personal property, such as in an action to foreclose a mortgage or other lien or to enforce a security interest,<sup>582</sup> the judgment creditor is entitled to issuance of a writ of sale. The proposed law requires that a levy be made in the same manner as under execution, whereas existing law permits sale under an order of sale issued by the court and does not require an actual levy.<sup>583</sup> The proposed law provides that the property is to be sold in the same manner as under execution,<sup>584</sup> but the proceeds would be distributed in the manner provided in the judgment.<sup>585</sup>

The writ of sale may be treated under the proposed law as a writ of execution for the purpose of collecting costs, interest, and damages, but the judgment creditor may be limited by the judgment to resort to proceeds of the property if it is designated as security for such amounts.<sup>586</sup>

The proposed law permits the judgment creditor to obtain an order, enforceable by the power to punish for contempt, requiring the judgment debtor to transfer to the levying officer property to be sold and documentary evidence of title to the property. This order is similar to the turnover order which would be available under the proposed law for the enforcement of a money judgment.

The proposed law also permits the appointment of a receiver to enforce a judgment for sale of real or personal property.<sup>587</sup>

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<sup>582</sup> See generally 3 B. Witkin, *California Procedure Pleading* §§ 539-42, at 2185-88 (2d ed. 1971); Code Civ. Proc. § 726 (mortgage foreclosure); Com. Code § 9501(1) (foreclosure of security interest).

<sup>583</sup> See, e.g., *Knapp v. Rose*, 32 Cal.2d 530, 534, 197 P.2d 7 (1948); *Southern Cal. Lumber Co. v. Ocean Beach Hotel Co.*, 94 Cal. 217, 222-24, 26 P. 627 (1892).

<sup>584</sup> This continues a principle of existing law. See *Johnson v. Tyrrell*, 77 Cal. App. 179, 182, 246 P. 140 (1926) (foreclosure sale of real property); *Podrat v. Oberndorff*, 207 Cal. 457, 459-60, 278 P. 1035 (1929) (foreclosure sale of personal property). It should be noted that the proposed law revises the sale provisions, as discussed in the text under "Sale Procedure" beginning at note 367 *supra*.

<sup>585</sup> This continues existing law. See Sections 684, 726, 727.

<sup>586</sup> This continues existing law. See Section 726.

<sup>587</sup> Existing law does not specifically authorize appointment of a receiver to enforce a judgment for sale of property, although Section 564, para. 3, authorizes appointment of a receiver "[a]fter judgment, to carry the judgment into effect." See the discussion in the text under "Receivers" beginning at note 489 *supra*. A receiver may be appointed at the commencement of a foreclosure action and continued in possession until sale of the property. See *Boyd v. Benneyan*, 204 Cal. 23, 25, 266 P. 278 (1928).

### Other Types of Judgments

Under the proposed law, as under existing law, judgments requiring a person to perform some other act or to refrain from performing an act,<sup>588</sup> are enforceable by the power to punish for contempt.<sup>589</sup> A court may exercise its contempt power when the person against whom the judgment was rendered has notice or knowledge of the judgment and has the ability to comply but wilfully refuses to do so.<sup>590</sup> The proposed law, like existing law, provides for personal service of a certified copy of the judgment on the person required to obey as a basis for invoking the contempt power.

### SATISFACTION OF JUDGMENT

When a judgment is satisfied, the satisfaction needs to be brought to the attention of the court so that it can be noted in the court records. If the satisfaction is pursuant to a writ, the levying officer reports the satisfaction to the court when the writ is returned.<sup>591</sup> If the satisfaction is obtained other than pursuant to a writ,<sup>592</sup> the judgment creditor must file an acknowledgment of satisfaction with the court.<sup>593</sup> The proposed law continues this scheme.

In some cases an abstract of a money judgment will have been recorded with the county recorder to create a judgment lien on the judgment debtor's real property.<sup>594</sup> When the judgment is satisfied, the satisfaction needs to be

<sup>588</sup> Many types of judgments are self-executing and do not require enforcement, such as, for example, declaratory judgments, marital dissolutions, and corporate dissolutions.

<sup>589</sup> See Sections 684, 1209-1222.

<sup>590</sup> See *Phillips v. Superior Court*, 22 Cal.2d 256, 257-58, 137 P.2d 838 (1943) (person must have notice, actual knowledge, or have been present in court); *Mossman v. Superior Court*, 22 Cal. App.3d 706, 711-12, 99 Cal. Rptr. 638 (1972) (knowledge of attorney imputable to contemner); *In re Moulton*, 100 Cal. App.2d 559, 563, 224 P.2d 76 (1950) (inability to comply).

<sup>591</sup> See Sections 675(a), 683. The proposed law adds a provision for the issuance by the court clerk of a certificate of satisfaction of judgment when the satisfaction has been entered in the court records. This certificate may be recorded where a judgment lien exists on the satisfied judgment with the same effect as an acknowledgment of satisfaction of judgment.

<sup>592</sup> The judgment may be satisfied, for example, through some other enforcement procedure, by full payment, or by acceptance of partial payment in full satisfaction.

<sup>593</sup> Section 675(a).

<sup>594</sup> Section 674. A certified copy of certain types of money judgments payable in installments may be recorded with the county recorder to create a judgment lien on real property. See Sections 674.5, 674.7. See the discussion in the text beginning at note 71 *supra*.

made a matter of record with the county recorder in order to eliminate the cloud on title created by the judgment lien. For this reason, if an abstract of judgment has been recorded, existing law requires the judgment creditor to file with the court and deliver to the judgment debtor an acknowledgment of satisfaction within 30 days after satisfaction.<sup>595</sup> The acknowledgment lists the counties where an abstract has been recorded and advises the judgment debtor that the acknowledgment must be recorded in these counties in order to release the judgment lien.<sup>596</sup> The proposed law continues these provisions but requires the judgment creditor to file and deliver the acknowledgment immediately upon satisfaction rather than within 30 days.<sup>597</sup>

The existing law also includes a procedure that may be used where the judgment creditor fails or refuses to file or deliver an acknowledgment of satisfaction as required under the provisions outlined above.<sup>598</sup> Within 15 days after actual receipt of a demand from the judgment debtor or the owner of property upon which the judgment has become a lien, the judgment creditor must deliver an acknowledgment of satisfaction to the person making the demand.<sup>599</sup> The proposed law continues this provision and expands it to permit a demand that the judgment creditor file an acknowledgment of satisfaction with the court.

Existing law imposes a statutory sanction if the judgment creditor fails to comply with the demand within the 15 days allowed. The judgment creditor is liable to the person making the demand for all damages sustained by reason of the failure and also forfeits one hundred dollars to such

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<sup>595</sup> Section 675(b).

<sup>596</sup> Section 675(b).

<sup>597</sup> This change is consistent with the comparable provision of the small claims court law. Section 117.9 ("Immediately upon receipt of payment of the judgment, the judgment creditor or his assignee shall file with the court an acknowledgment of satisfaction of judgment.").

<sup>598</sup> The procedure may also be used where the judgment is satisfied pursuant to a writ. Existing law also permits the judgment debtor to apply to the court on noticed motion for an order requiring the judgment creditor to give an acknowledgment of satisfaction or requiring the court clerk to enter satisfaction without an acknowledgment. See Section 675(a). The proposed law permits such a motion only after failure of the judgment creditor to comply with a demand for the delivering or filing of an acknowledgment.

<sup>599</sup> Section 675(c).



person.<sup>600</sup> The same sanction also applies if the judgment creditor fails to file and deliver an acknowledgment of satisfaction as required in cases where an abstract of judgment has been recorded.<sup>601</sup> The proposed law limits the statutory sanction to the case where the judgment creditor fails to file or deliver the acknowledgment within 15 days after actual receipt of a demand in writing. The requirement that the judgment creditor must have failed to comply with a demand before the sanction is imposed is consistent with the comparable provision of the small claims court law<sup>602</sup> and will protect against imposition of the sanction where the judgment creditor inadvertently fails to file or deliver the acknowledgment. The proposed law contains a provision to make clear that the elimination of the statutory sanction where no demand has been made does not affect the right to recover any damages or penalty the injured person is entitled to recover under other provisions of law.<sup>603</sup> The proposed law also adds a new requirement that the demand for an acknowledgment of satisfaction contain a warning of the consequences of failure to comply with the demand.<sup>604</sup>

The proposed law adds a new provision permitting service of a demand for delivery of an acknowledgment of partial satisfaction of judgment and includes a procedure for obtaining a court determination of the issue if necessary. The new provisions will be useful where there is uncertainty or a dispute as to the amount remaining unpaid on the judgment. The proposed law also includes similar provisions that make clear that the judgment debtor may obtain an acknowledgment that all payments that have

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<sup>600</sup> Section 675(c).

<sup>601</sup> Section 675(b). No statutory sanction is imposed under existing law for failure to file an acknowledgment of satisfaction with the court clerk as required by Section 675(a) in a case where no abstract of judgment has been recorded.

<sup>602</sup> Section 117.9.

<sup>603</sup> This provision is drawn from Section 675(g). The proposed law also continues the provision of Section 675(f) that the prevailing party is entitled to recover reasonable attorney's fees in a court proceeding brought to enforce the statutory requirements.

<sup>604</sup> This warning will advise the judgment creditor that the law requires compliance with the demand within 15 days of receipt, that the judgment creditor will be required to pay the reasonable attorney's fees of the person making the demand if a court proceeding is necessary to compel compliance with the demand, and that the judgment creditor will be liable for all damages sustained by reason of the failure to comply and will also forfeit one hundred dollars if the judgment creditor fails without just cause to comply with the demand within the 15 days allowed.

become payable on an installment judgment have been paid.<sup>605</sup> Existing statutory law contains no provision for an acknowledgment of partial satisfaction, but there is some recognition in case law of the right of the judgment debtor to obtain an acknowledgment of partial satisfaction.<sup>606</sup>

The provisions of the proposed law relating to satisfaction of judgment have been drafted to reflect the introduction in the proposed law of the new judgment lien on personal property. For example, the proposed law requires that an acknowledgment of satisfaction of judgment indicate whether a notice of judgment lien was filed in the office of the Secretary of State to create a judgment lien on personal property. This information will permit the judgment debtor to terminate the lien on personal property if it has not already been terminated.

The proposed law does not continue the provisions of the existing statute dealing with judgments discharged in bankruptcy.<sup>607</sup> These provisions are unnecessary in view of the provisions of the federal Bankruptcy Code.<sup>608</sup>

### **EFFECT ON ENFORCEMENT LIENS OF STAY OF ENFORCEMENT OF MONEY JUDGMENT**

The proposed law includes provisions concerning the effect of a stay of enforcement of a money judgment on the creation and continuance of enforcement liens. If an appeal is taken from the trial court judgment and a sufficient undertaking is provided, any property levied upon must be released since the execution lien terminates when enforcement is stayed, and no execution or other enforcement lien may thereafter be created or continued while the appeal is pending. These rules continue existing California law.<sup>609</sup>

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<sup>605</sup> Acknowledgment of satisfaction of matured installments will permit the judgment debtor to transfer real property free of the judgment lien created by the recording of a certified copy of certain types of installment judgments, such as a support judgment payable in installments, where the lien extends to matured installments but not to unmatured installments. See the discussion in the text at note 81 *supra*.

<sup>606</sup> See *Campbell v. Southern Pacific Co.*, 22 Cal.3d 51, 583 P.2d 121, 148 Cal. Rptr. 596 (1978); *Kaplan v. Hacker*, 113 Cal. App.2d 571, 248 P.2d 464 (1952). See also Partial Satisfaction form for Municipal Court, Los Angeles County.

<sup>607</sup> See Sections 675b, 675c.

<sup>608</sup> See 11 U.S.C. § 514.

<sup>609</sup> See Sections 674, 916.

The proposed law also provides rules concerning enforcement liens when enforcement of a money judgment is stayed by the trial court. The proposed law makes clear that the trial court has authority to grant a stay for a limited time ending not later than 10 days after the last date on which a notice of appeal could be filed.<sup>610</sup> Such a stay may be granted, for example, to allow time to perfect the appeal if one is to be taken or to give the judgment debtor time to arrange for the payment of the judgment. Unless the court otherwise expressly orders, the trial court's stay will not affect the creation or continuance of a judgment lien on real or personal property; but, unless the court otherwise expressly orders, no other enforcement liens may be continued or created during the period of the stay of enforcement. These rules are consistent with existing law under which a judgment lien may be created on real property during the period of a trial court stay.<sup>611</sup>

Where a California judgment has been entered on the basis of a sister state judgment upon application of the judgment creditor, existing law permits the California court to stay the California judgment on such terms and conditions as are just.<sup>612</sup> The proposed law makes clear the effect of the stay on an enforcement lien by providing that an enforcement lien may be created or remain in effect during the stay only if the court expressly so orders. The proposed law applies the same rule to a registered foreign support order.<sup>613</sup>

The proposed law also codifies the judicially developed rule permitting the court, in its discretion, to stay the enforcement of a judgment where the judgment debtor has another action pending on a disputed claim against the judgment creditor.<sup>614</sup> If the enforcement of the judgment is not stayed, the judgment debtor may be deprived of the

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<sup>610</sup> See Section 918. See also Section 681a which prescribes limitations inconsistent with later enacted Section 918.

<sup>611</sup> See *Industrial Indem. Co. v. Levine*, 49 Cal. App.3d 698, 122 Cal. Rptr. 712 (1975) (granting of stay by trial court under Section 681a and pursuant to stipulation does not prevent the recording of an abstract of judgment to create judgment lien on real property).

<sup>612</sup> See Section 1710.50.

<sup>613</sup> See Section 1699.

<sup>614</sup> See *Erlich v. Superior Court*, 63 Cal.2d 551, 407 P.2d 649, 47 Cal. Rptr. 473 (1965); *Airfloor Co. v. Regents of the Univ. of Cal.* 97 Cal. App.3d 739, 158 Cal. Rptr. 856 (1979).

right of offset and, with a judgment-proof creditor, of the right to recover anything at all.

## ASSIGNMENT OF JUDGMENTS

### Existing Law

Existing law concerning the manner and the consequences of an assignment of a judgment is unclear. The existing statute requires an "assignee of record" to give an acknowledgment of satisfaction if the judgment is satisfied,<sup>615</sup> but the procedure for becoming an "assignee of record" is not covered by statute. The Commission has been advised that an assignee cannot obtain a writ of execution unless the assignment is a matter of court record, but existing statutes are silent on this matter and provide no procedure for making the assignment a matter of court record. Finally, priorities between conflicting assignments to bona fide assignees for value "without notice" depend on which assignee first notifies the judgment debtor in writing of the assignment.<sup>616</sup>

### Proposed Law

The proposed law clarifies and improves the law relating to assignments of judgments as follows:

(1) An assignee of a judgment may become an "assignee of record" by filing an acknowledgment of assignment of the judgment with the clerk of the court where the judgment is entered.<sup>617</sup> The contents and manner of execution of the acknowledgment of assignment is prescribed by the proposed law.<sup>618</sup> This fills a gap in existing law, but does not limit any other method by which an assignee may become an "assignee of record."

(2) As between conflicting assignments made to bona fide assignees for value without notice, the assignee first

<sup>615</sup> Section 675.

<sup>616</sup> Civil Code § 955.1.

<sup>617</sup> This clarifies the duty of an assignee to give an acknowledgment of satisfaction of a judgment if the judgment has been satisfied. See the discussion in the text under "Satisfaction of Judgment" beginning at note 591 *supra*.

<sup>618</sup> A new Section 673 is added to the Code of Civil Procedure to prescribe the contents and manner of execution of an acknowledgement of assignment of judgment. This new provision is consistent with the provision of the proposed law prescribing the contents and manner of execution of an acknowledgment of satisfaction of judgment.

filing an acknowledgment of assignment with the court clerk or otherwise becoming an assignee of record has priority.<sup>619</sup> This changes the rule under existing law that gives such an assignee of a judgment priority if the assignee first gives notice of the assignment in writing to the judgment debtor.<sup>620</sup>

(3) An assignee of a judgment can obtain a writ of execution or use other remedies to enforce the judgment only if the acknowledgment of assignment has been filed with the court clerk or the assignee has otherwise become an assignee of record.<sup>621</sup>

(4) Notwithstanding the filing of the acknowledgment of assignment with the court, a judgment debtor who makes payment to the judgment creditor without notice of the assignment is protected. The filing is not, of itself, notice to the judgment debtor so as to invalidate any payments made by the judgment debtor. This provision is consistent with existing law.<sup>622</sup>

The proposed law does not require the filing of an acknowledgment of assignment with the court clerk in order to accomplish the transfer of the assigned interest as between the parties to the assignment.

## SERVICE OF WRITS, NOTICES, AND OTHER PAPERS

Existing law provides a variety of methods for serving writs, notices, and other papers in connection with the enforcement of a judgment.<sup>623</sup> Some provisions permit use

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<sup>619</sup> A new Section 954.5 is added to the Civil Code to deal with the manner of transferring a right represented by a judgment, to make clear the priorities among bona fide assignees of the same right without notice, and to protect the judgment debtor on the assigned judgment who pays without notice of the assignment.

<sup>620</sup> See Civil Code § 955.1.

<sup>621</sup> This codifies existing practice.

<sup>622</sup> Civil Code § 955.1.

<sup>623</sup> Notice provisions vary under existing law. See, e.g., Sections 11 (certified mail complies with registered mail requirement), 682a (bank notice to holder of joint account levied upon sent by registered mail), 682.1 (copy of writ of execution mailed to judgment debtor after levy), 688(b) (service of writ of execution on judgment debtor by personal delivery or by mail), 689 (demand for undertaking sent to judgment creditor by registered or certified mail), 689b(3) (demand for undertaking or deposit sent to judgment creditor by registered or certified mail), 690.2(d) (notification by levying officer to judgment debtor of multiple vehicle registration), 690.30(b)(2) (notification by levying officer to judgment creditor of nature of account into which social security payments are directly deposited), 690.31(1)

of ordinary mail, some require certified or registered mail, and others permit service by personal delivery or ordinary mail.

In each case where service of a writ, notice, or other paper is required under the proposed law, the proposed law prescribes the type of service required. A particular provision may require personal service or service by mail or may permit either personal or mail service. The proposed law contains general provisions that prescribe the manner of personal service and mail service. These general provisions apply unless a particular provision otherwise provides. Where mail service is permitted, the proposed law provides the general rule that service may be made by first-class mail, postage prepaid. First-class mail is preferable to certified or registered mail because it is cheaper and more likely to be received expeditiously.

The proposed law requires service on the attorney for the judgment creditor (rather than on the judgment creditor) if the judgment creditor has an attorney of record in the action or proceeding and the attorney still represents the judgment creditor. When some action is required within a short time to protect the judgment creditor's interests, serving the attorney directly will give the attorney more time to take the necessary action.

The proposed law permits the judgment debtor to file a request in the action that service be made on the judgment debtor's attorney rather than on the judgment debtor. This provision is also designed to give the attorney more time to take any action needed to protect the interests of the judgment debtor.

The wage garnishment statute under existing law includes a provision that permits the judgment debtor or the judgment debtor's agent to personally deliver a notice or document that otherwise would be served by the levying officer.<sup>624</sup> This is permitted only if the notice or document runs in the judgment debtor's favor and the permission of

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(copies of papers in dwelling exemption proceedings sent to judgment debtor and certain third persons by first-class mail), 692, para. 2 (notice of personal property sale mailed or delivered to judgment debtor), 692, para. 3 (notice of real property sale sent by certified mail or delivered to judgment debtor), 692a (notice of sale mailed to persons requesting notice), 710(d) (notice mailed by court clerk to parties interested in condemnation award).

<sup>624</sup> Section 723.101(c).

the levying officer is obtained. The proposed law generalizes this provision to cover an order, notice, or other paper (other than a writ or notice of levy) and extends the provision to cover personal delivery by the judgment creditor or the judgment creditor's agent. Permission of the levying officer must be obtained. The cost of service is not a recoverable cost, but this would not affect the right to recover the cost of service by a registered process server to the extent otherwise permitted.<sup>625</sup>

Whenever the proposed law requires service of notice of a court hearing, proof of service must be made at or before the hearing to the satisfaction of the court.<sup>626</sup> This general requirement supersedes comparable provisions of existing law applicable to particular notices.<sup>627</sup>

The proposed law requires the judgment creditor to include in the instructions to the levying officer the correct name and address of any person who is required to be given notice by the levying officer. The judgment creditor is required to use reasonable diligence to ascertain the correct name and address of the person. The levying officer may rely on the instructions unless the levying officer has actual knowledge that the name or address included in the instructions is incorrect.

### PROTECTION OF LEVYING OFFICER AGAINST LIABILITY

Existing law contains various provisions that give the levying officer protection against liability for actions taken in connection with the enforcement of a judgment.<sup>628</sup> The proposed law replaces these provisions with a general provision that the levying officer is not liable for actions taken in conformance with the statutes. The immunity under the proposed law extends to actions taken in reliance on information contained in the written instructions of the

<sup>625</sup> See the discussion in the text at notes 144 and 145 *supra*.

<sup>626</sup> The proposed law specifies methods for proof of service consistent with existing law.

<sup>627</sup> See, e.g., Section 723.105(e) (hearing on claim of exemption from wage garnishment).

<sup>628</sup> See Sections 262 (judgment creditor's instructions must be in writing to discharge levying officer from liability), 262.1 (levying officer required to execute all process regular on its face and issued by competent authority), 689 (levying officer not liable to third person for levy, etc., if no third-party claim delivered or if provisions of Section 689 followed), 689b(9) (levying officer not liable for levy, etc., if undertaking given), 697 (levying officer not liable for more than amount bid by subsequent purchaser where first bidder fails or refuses to pay amount bid at execution sale).

judgment creditor except to the extent the levying officer has actual knowledge that the information is incorrect. This immunity does not limit any liability the judgment creditor may have for incorrect information given in the instructions.<sup>629</sup>

The Attachment Law protects the levying officer from liability for loss by fire, theft, injury, or damage to personal property while in the possession of the levying officer either in a warehouse or in the custody of a keeper or in transit to or from a warehouse unless the levying officer is negligent in the care or handling of the property.<sup>630</sup> A levying officer acting under the proposed law is given the same protection.

## RULES OF PRACTICE AND FORMS

The proposed law gives the Judicial Council authority to make rules for practice and procedure under the law and to prescribe forms for applications, notices, orders, writs, and other documents.<sup>631</sup> The proposed law provides forms for writs and some other important notices and documents, but the Judicial Council is given the authority to supersede and supplement the statutory forms.

## GENERAL PROCEDURAL PROVISIONS CONTINUED WITHOUT SUBSTANTIAL CHANGE

Provisions concerning enforcement of judgments after the death of the judgment debtor or the judgment creditor,<sup>632</sup> contribution among judgment debtors,<sup>633</sup> entry

<sup>629</sup> The proposed law imposes on the judgment creditor a duty to provide the levying officer with adequate instructions and to use reasonable diligence to ascertain the correct name and address of any person required to be given notice and to include that information in the written instructions given to the levying officer.

<sup>630</sup> Section 488.060(b).

<sup>631</sup> Under existing law, the Judicial Council has issued approved forms for the general writ of execution (covering money judgments and judgments for the possession of property) and for the writ of execution against a dwelling house. A statutory form of the writ of execution on a money judgment is provided by Section 682.1 and a statutory form for notice of proposed levy on a dwelling is provided by Section 690.31.

<sup>632</sup> See Code Civ. Proc. §§ 686.010, 686.020; Prob. Code § 732.

<sup>633</sup> See Section 709. The proposed law makes clear, however, that the right to contribution is to be determined at a hearing on noticed motion and that the Title 9 procedures do not apply to the determination of the right to contribution among joint tortfeasors governed by Title 11 (commencing with Section 875).



of costs on writs,<sup>634</sup> execution of commercial paper by the levying officer,<sup>635</sup> judgment creditor's instructions to the levying officer,<sup>636</sup> the manner of custody of property levied upon,<sup>637</sup> and the deposit of fees prior to performance of a duty by the levying officer<sup>638</sup> are continued in the proposed law without substantial change.

### ADDITIONAL ASPECTS OF CREDITORS' REMEDIES UNDER STUDY

The proposed law contains carefully drawn provisions dealing with the manner of levy under a writ of execution. The existing provisions of the Attachment Law are not consistent with the levy provisions of the proposed law. The Commission plans to study the levy provisions of the Attachment Law and to submit a separate recommendation in 1982 to conform the Attachment Law provisions to the levy provisions of the proposed law and to make any other conforming revisions that are needed in the Attachment Law.

The Commission is now engaged in a study of the liability of marital property when satisfaction of an obligation of one or both spouses is sought from the community property or the separate property of one or both spouses. The Commission prepared a tentative recommendation on this subject and distributed it to interested persons and organizations for review and comment. The Commission has concluded that the tentative recommendation needs further study and revision and plans to continue its study and to submit a recommendation for legislative consideration at a future session of the Legislature.

<sup>634</sup> See Section 682.2. The proposed law also provides for the entry of costs on a writ of sale, whereas existing law applies only to writs of execution—apparently referring only to writs employed to enforce money judgments and judgments for the possession of property. *Cf.* Section 684 (writ of execution used to enforce judgments for money or possession).

<sup>635</sup> See Section 688(g) (incorporating Section 488.520). The proposed law permits execution of commercial paper regardless of the type of writ under which it comes into the levying officers' hands.

<sup>636</sup> See Sections 262, 488.010(a) (incorporated by Section 688(b)), 692, subds. 2, 3.

<sup>637</sup> See Section 688(c). The proposed law extends this provision to custody under any writ, not only a writ of execution.

<sup>638</sup> See Code Civ. Proc. § 488.050 (incorporated by Section 688(b)); Gov't Code §§ 6100, 24350.5. The proposed law permits the levying officer to make an oral demand for advance of additional costs whereas Section 488.050 requires a written demand.

# **PROPOSED ENFORCEMENT OF JUDGMENTS LAW**

## **TITLE 9. ENFORCEMENT OF JUDGMENTS**

### **DIVISION 1. DEFINITIONS AND GENERAL PROVISIONS**

#### **CHAPTER 1. SHORT TITLE AND DEFINITIONS**

- § 680.010. Short title
- § 680.110. Application of definitions
- § 680.120. Account debtor
- § 680.130. Account receivable
- § 680.140. Chattel paper
- § 680.150. Costs
- § 680.160. Court
- § 680.170. Deposit account
- § 680.180. Document of title
- § 680.190. Equity
- § 680.200. Financial institution
- § 680.210. General intangibles
- § 680.220. Instrument
- § 680.230. Judgment
- § 680.240. Judgment creditor
- § 680.250. Judgment debtor
- § 680.260. Levying officer
- § 680.270. Money judgment
- § 680.280. Person
- § 680.290. Personal property
- § 680.300. Principal amount of the judgment
- § 680.310. Property
- § 680.320. Real property
- § 680.330. Registered process server
- § 680.340. Secured party
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- § 680.360. Security interest
- § 680.370. Tangible personal property
- § 680.380. Writ

#### **CHAPTER 2. GENERAL PROVISIONS**

- § 681.010. Provisions for enforcing judgments
- § 681.020. Enforcement by assignee
- § 681.030. Rules for practice and procedure; forms

#### **CHAPTER 3. PERIOD FOR ENFORCEMENT AND RENEWAL OF JUDGMENTS**

##### **Article 1. Period for Enforcement of Judgments**

- § 683.010. Judgment enforceable upon entry
- § 683.020. Ten-year period for enforcement of judgment

- § 683.030. Time for enforcement of installment judgment
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- § 683.050. Right of action on judgment preserved

#### **Article 2. Renewal of Judgments**

- § 683.110. Renewal of judgment authorized
- § 683.120. Judgment renewed upon filing of application; effect of renewal
- § 683.130. Time for filing application
- § 683.140. Contents of application
- § 683.150. Entry of renewal by court clerk
- § 683.160. Service of notice of renewal
- § 683.170. Vacation or modification of renewal
- § 683.180. Renewal of judgment lien on real property
- § 683.190. Continuation of other liens
- § 683.200. Continuation of enforcement proceedings
- § 683.210. Renewal during stay of enforcement
- § 683.220. Limitation period for action on renewed judgment

#### **Article 3. Application of Chapter**

- § 683.310. Judgments under Family Law Act
- § 683.320. Judgments against public entities

### **CHAPTER 4. MANNER OF SERVICE OF WRITS, NOTICES AND OTHER PAPERS**

#### **Article 1. Service on Attorney of Creditor or Debtor**

- § 684.010. Service on attorney of judgment creditor
- § 684.020. Service on attorney designated by judgment debtor
- § 684.030. When service on party instead of attorney required
- § 684.040. Manner of service on attorney
- § 684.050. Effect of service on attorney

#### **Article 2. Manner of Service Generally**

- § 684.110. Manner of personal service
- § 684.120. Manner of service by mail; extension of time for exercising right or performing act
- § 684.125. Time for giving notice of court hearing
- § 684.130. Name and address supplied by judgment creditor
- § 684.140. Service by person authorized by levying officer to make service

#### **Article 3. Proof of Service**

- § 684.210. Proof of service of notice of court hearing
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#### **Article 4. Application of Chapter**

- § 684.310. Provisions not applicable to wage garnishment

### **CHAPTER 5. INTEREST AND COSTS**

- § 685.010. Rate of interest on judgment
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- § 685.060. Motion to tax costs collected by levying officer
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- § 687.010. Instructions to levying officer
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## **CHAPTER 8. ENFORCEMENT OF STATE TAX LIABILITY**

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- § 688.010. Jurisdiction
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- § 688.040. Meaning of terms used elsewhere for purpose of this article

### **Article 2. Enforcement of Judgment for Taxes**

- § 688.110. Enforcement of judgment for taxes

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- § 693.010. Form of writ of execution, possession, and sale
- § 693.020. Form of notice of levy
- § 693.030. Form of garnishee's memorandum
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- § 694.010. Definitions
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- § 697.310. Creation and duration of judgment lien on real property generally
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- § 697.340. Interests subject to judgment lien on real property
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- § 697.370. Release or subordination of judgment lien
- § 697.380. Priority of judgment liens generally
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- § 697.510. Creation and duration of judgment lien on personal property
- § 697.520. Use of other procedures
- § 697.530. Property subject to judgment lien
- § 697.540. Amount of judgment lien on personal property
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- § 697.560. Notice to judgment debtor

- § 697.570. Filing, marking, and indexing of notice of judgment lien
- § 697.580. Certificate showing liens on file; copies of notices
- § 697.590. Priority of judgment lien against security interests
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- § 697.720. Lien on real property remains after transfer or encumbrance
- § 697.730. Effect on lien of transfer or encumbrance of tangible personal property in custody of levying officer
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- § 700.030. Tangible personal property in possession of judgment debtor

- § 700.040. Tangible personal property in possession of third person
- § 700.050. Personal property in custody of levying officer
- § 700.060. Bailed goods not covered by negotiable document of title
- § 700.070. Tangible personal property of going business
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- § 701.555. Judgment creditor and judgment debtor may advertise sale
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- § 701.810. Distribution of proceeds of sale or collection
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- § 704.050. Health aids
- § 704.060. Personal property used in trade, business, or profession
- § 704.070. Deposit accounts and money
- § 704.080. Deposit account in which social security payments are directly deposited
- § 704.090. Inmate's trust account
- § 704.100. Life insurance, endowment, annuity policies
- § 704.110. Public retirement and related benefits and contributions
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- § 704.115. Private retirement and related benefits and contributions
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- § 704.720. Homestead exemption
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- § 704.740. Court order for sale and determination of homestead exemption
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- § 706.021. Levy of execution; service of earnings withholding order
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- § 706.050. Exemption from levy; amount of earnings
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- § 706.151. Exemption of state from earnings garnishment provisions of Consumer Credit Protection Act of 1968
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- § 708.110. Examination of judgment debtor
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- § 708.130. Witnesses; privilege of spouse of judgment debtor
- § 708.140. Powers and qualifications of referee
- § 708.150. Appearance at examination by representatives of organizations
- § 708.160. Proper court for examination; examination outside county where judgment entered
- § 708.170. Failure to appear for examination; penalty for unjustified arrest
- § 708.180. Determination of third person's adverse claim

- § 708.190. Intervention
- § 708.200. Protective order
- § 708.205. Order applying property to satisfaction of judgment

#### Article 3. Creditor's Suit

- § 708.210. Creditor's suit
- § 708.220. Joinder of judgment debtor
- § 708.230. Time for bringing creditor's suit
- § 708.240. Order forbidding transfer of property or payment of debt
- § 708.250. Lien of creditor's suit
- § 708.260. Judgment debtor's claim of exemption
- § 708.270. No right to jury trial
- § 708.280. Judgment in creditor's suit
- § 708.290. Costs

#### Article 4. Charging Orders

- § 708.310. Enforcement by charging order
- § 708.320. Lien of charging order

#### Article 5. Lien in Pending Action or Proceeding

- § 708.410. Judgment creditor's lien in pending action or proceeding
- § 708.420. Contents of notice of lien
- § 708.430. Intervention; judgment creditor deemed a party for certain purposes
- § 708.440. Enforcement, compromise, dismissal, settlement, satisfaction
- § 708.450. Judgment debtor's claim of exemption
- § 708.460. Endorsement of lien on judgment and abstract
- § 708.470. Orders in action or special proceeding to enforce lien
- § 708.480. Enforcement of lien after final judgment

#### Article 6. Assignment Order

- § 708.510. Order to assign right to payment
- § 708.520. Restraining assignment or other disposition
- § 708.530. Effect and priority of assignment
- § 708.540. Rights of person obligated
- § 708.550. Exemption procedure
- § 708.560. Modification or setting aside assignment order

#### Article 7. Receiver to Enforce Judgment

- § 708.610. Application of general provisions
- § 708.620. Appointment of receiver
- § 708.630. Receiver to transfer alcoholic beverage license

#### Article 8. Collection of Judgment Where Judgment Debtor Is Creditor of Public Entity

- § 708.710. Definitions
- § 708.720. Exclusive procedures
- § 708.730. Filing and notice generally
- § 708.740. Collection where judgment debtor is creditor of state agency
- § 708.750. Collection where judgment debtor is creditor of public entity other than state agency
- § 708.760. Collection where judgment debtor is contractor on public work; subordination to claims of laborers
- § 708.770. Notice of deposit with court; exemption claim
- § 708.775. Distribution of money
- § 708.780. Lien

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- § 708.910. Franchise defined
- § 708.920. Court order for enforcement
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- § 709.010. Trusts
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- § 712.010. Issuance of writ
- § 712.020. Contents of writ
- § 712.030. Delivery and execution of writ
- § 712.040. Collection of money amounts
- § 712.050. Return of writ
- § 712.060. Receiver
- § 712.070. Enforcement against public entity

### CHAPTER 2. JUDGMENT FOR POSSESSION OF PERSONAL PROPERTY

- § 714.010. Writ of possession of personal property
- § 714.020. Execution of writ of possession of personal property
- § 714.030. Turnover order

### CHAPTER 3. JUDGMENT FOR POSSESSION OF REAL PROPERTY

- § 715.010. Writ of possession of real property
- § 715.020. Execution of writ of possession of real property
- § 715.030. Disposition of personal property

### CHAPTER 4. JUDGMENT FOR SALE OF PROPERTY

- § 716.010. Writ of sale
- § 716.020. Execution of writ of sale
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**CHAPTER 5. OTHER JUDGMENTS**

§ 717.010. Enforcement of other judgments

**DIVISION 4. THIRD-PARTY CLAIMS AND RELATED PROCEDURES****CHAPTER 1. DEFINITIONS**

- § 720.010. Application of definitions
- § 720.020. Creditor
- § 720.030. Debtor

**CHAPTER 2. THIRD-PARTY CLAIMS OF OWNERSHIP AND POSSESSION**

- § 720.110. Application of chapter
- § 720.120. Time and manner of making third-party claim
- § 720.130. Contents of claim
- § 720.140. Service of notice and copy of claim
- § 720.150. Effect of filing or not filing third-party claim
- § 720.160. Effect and contents of creditor's undertaking
- § 720.170. Release for creditor's failure to file undertaking

**CHAPTER 3. THIRD-PARTY CLAIM OF SECURITY INTEREST OR LIEN**

- § 720.210. Application of chapter
- § 720.220. Time and manner of making third-party claim
- § 720.230. Contents of claim
- § 720.240. Service on creditor and debtor of notice and copy of claim
- § 720.250. Effect of filing or not filing third-party claim
- § 720.260. Effect of undertaking or deposit; contents of undertaking
- § 720.270. Release for creditor's failure to make deposit or file undertaking and statement
- § 720.280. Statement concerning security interest
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**CHAPTER 4. HEARING ON THIRD-PARTY CLAIM**

- § 720.310. Application for hearing
- § 720.320. Notice of hearing
- § 720.330. Papers filed by levying officer
- § 720.340. Filing and service of statement in opposition to claim of secured party
- § 720.350. Pleadings
- § 720.360. Burden of Proof
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- § 720.380. Stay of sale during pendency of proceedings
- § 720.390. Determination of claim; disposition of property
- § 720.400. Findings
- § 720.410. No right to jury trial
- § 720.420. Appeal
- § 720.430. Satisfaction from released property

#### **CHAPTER 5. CREDITOR'S DEMAND FOR THIRD-PARTY CLAIM BY SECURED PARTY OR LIENHOLDER**

- § 720.510. Creditor's right to demand third-party claim
- § 720.520. Demand for claim
- § 720.530. Contents of demand for claim
- § 720.540. Prohibition of release, sale, or other disposition
- § 720.550. Effect of failure to make third-party claim

#### **CHAPTER 6. THIRD-PARTY UNDERTAKING TO RELEASE PROPERTY**

- § 720.610. Application of chapter
- § 720.620. Filing of undertaking to release property
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- § 720.640. Service of undertaking to release property
- § 720.650. Effective date of undertaking
- § 720.660. Release of property pursuant to undertaking

#### **CHAPTER 7. UNDERTAKINGS**

- § 720.710. Application of chapter
- § 720.720. Definitions
- § 720.730. Number of sureties
- § 720.740. Estimate of value of property
- § 720.750. Undertaking effective upon filing
- § 720.760. Beneficiary's objection to undertaking
- § 720.770. Hearing on objection
- § 720.780. Acceptance of beneficiary's estimate of value
- § 720.790. Liability of surety
- § 720.800. Undertaking filed in action

### **DIVISION 5. SATISFACTION OF JUDGMENT**

#### **CHAPTER 1. SATISFACTION OF JUDGMENT**

- § 724.010. Satisfaction of money judgment
- § 724.020. Entry of satisfaction of money judgment
- § 724.030. Judgment creditor or assignee to file acknowledgment of satisfaction of judgment
- § 724.040. Judgment creditor's or assignee's duty where abstract of judgment recorded

- § 724.050. Demand for filing or delivery of acknowledgment of satisfaction of judgment
- § 724.060. Contents and manner of execution of acknowledgment of satisfaction of judgment
- § 724.070. Liability for requiring additional performance or payment
- § 724.080. Attorney's fees
- § 724.090. Other remedies preserved
- § 724.100. Certificate of satisfaction of judgment

## **CHAPTER 2. ACKNOWLEDGMENT OF PARTIAL SATISFACTION OF JUDGMENT**

- § 724.110. Demand for delivery of acknowledgment of partial satisfaction of judgment
- § 724.120. Contents and manner of execution of acknowledgment of partial satisfaction of judgment

## **CHAPTER 3. ACKNOWLEDGMENT OF SATISFACTION OF MATURED INSTALLMENTS UNDER INSTALLMENT JUDGMENT**

- § 724.210. Definitions
- § 724.220. Demand for delivery of acknowledgment of satisfaction of matured installments
- § 724.230. Proceeding to compel compliance with demand
- § 724.240. Damages and penalty for failure to comply with demand
- § 724.250. Contents and manner of execution of acknowledgment of satisfaction of matured installments
- § 724.260. Attorney's fees

An act to add Title 9 (commencing with Section 680.010) to, and to repeal Title 9 (commencing with Section 681) of, Part 2 of the Code of Civil Procedure, relating to enforcement of judgments.

*The people of the State of California do enact as follows:*

**Code of Civil Procedure §§ 681-724e (repealed)**

**SECTION 1.** Title 9 (commencing with Section 681) of Part 2 of the Code of Civil Procedure is repealed.

**Comment.** Former Title 9 is replaced by new Title 9 (Enforcement of Judgments Law). The disposition of each repealed section of the former law is indicated in the Comment to the repealed section. See Appendix to *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980).

**Code of Civil Procedure §§ 680.010-724.260 (added). Enforcement of judgments**

**SEC. 2.** Title 9 (commencing with Section 680.010) is added to Part 2 of the Code of Civil Procedure, to read:

**TITLE 9. ENFORCEMENT OF JUDGMENTS**

**DIVISION 1. DEFINITIONS AND  
GENERAL PROVISIONS**

**CHAPTER 1. SHORT TITLE AND DEFINITIONS**

**§ 680.010. Short title**

**680.010.** This title shall be known and may be cited as the Enforcement of Judgments Law.

**Comment.** Section 680.010 is new and provides a convenient means of referring to this title. See also Section 706.010 (Wage Garnishment Law).



### § 680.110. Application of definitions

680.110. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this title.

**Comment.** Section 680.110 is a standard provision found in the definitional portion of several California codes and laws. *E.g.*, Code Civ. Proc. §§ 481.010, 1235.110; Evid. Code § 100; Veh. Code § 100.

### § 680.120. Account debtor

680.120. “Account debtor” means “account debtor” as defined in Section 9105 of the Commercial Code.

**Comment.** Section 680.120 is new.

**Note.** The term “account debtor” is used in Sections 700.100, 700.170, and 701.050.

### § 680.130. Account receivable

680.130. “Account receivable” means “account” as defined in Section 9106 of the Commercial Code.

**Comment.** Section 680.130 incorporates the Commercial Code definition of “account.” The term “account receivable” is used in this title because it is more descriptive than “account” and because it avoids confusion with the term “deposit account.” See Section 680.170 (“deposit account” defined).

**Note.** The term “account receivable” is used in Sections 697.530, 699.080, 700.170, 701.050, and 701.520.

### § 680.140. Chattel paper

680.140. “Chattel paper” means “chattel paper” as defined in Section 9105 of the Commercial Code.

**Comment.** Section 680.140 is new.

**Note.** The term “chattel paper” is used in Sections 680.370, 697.530, 697.610, 697.740, 700.100, 701.050, and 701.520.

### § 680.150. Costs

680.150. “Costs” means costs and disbursements, including but not limited to, statutory fees, charges, commissions, and expenses.

**Comment.** Section 680.150 defines costs broadly to include all types of expenditures in the collection process. This permits use of the term “costs” throughout the title in place of such terms as fees, charges, commissions, expenses, and the like. Section

680.150 does not determine the extent to which an expenditure of a particular type is recoverable. See Sections 685.040-685.090. As used in this title, the term may in some cases be limited, such as in Section 685.100 (costs of levying officer). Attorney's fees incurred in enforcing a judgment are not included in costs collectible under this title unless otherwise provided by law. See Section 685.040.

### § 680.160. Court

680.160. "Court" means the court where the judgment sought to be enforced was entered.

**Comment.** The definition of "court" in Section 680.160 may in some cases be inapplicable. See, *e.g.*, Section 708.160 (court of similar jurisdiction in another county). See also Section 680.110 (application of definitions).

### § 680.170. Deposit account

680.170. "Deposit account" means "deposit account" as defined in Section 9105 of the Commercial Code.

**Comment.** Section 680.170 is new.

**Note.** The term "deposit account" is used in Sections 684.110, 697.620, 699.080, 700.140, 700.160, 703.080, 704.070, and 704.080.

### § 680.180. Document of title

680.180. "Document of title" means "document" as defined in Section 9105 of the Commercial Code. A document of title is negotiable if it is negotiable within the meaning of Section 7104 of the Commercial Code.

**Comment.** Section 680.180 is new.

**Note.** The term "document of title" is used in Sections 680.370, 697.530, 697.610, 697.740, 700.040, 700.060, and 700.120.

### § 680.190. Equity

680.190. "Equity" means the fair market value of the interest of the judgment debtor in property, or in the case of community property the fair market value of the interest of the judgment debtor and the spouse of the judgment debtor in the property, over and above all liens and encumbrances on the interest superior to the judgment creditor's lien.

**Comment.** Section 680.190 is intended to simplify drafting. It makes clear that the judgment creditor's lien and junior liens are

excluded in a determination of “equity” for purposes of applying certain exemptions. See, *e.g.*, Sections 703.560, 704.030, and 704.060. See also Section 704.010 (use of used price guides in determining value of motor vehicle).

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

### § 680.200. Financial institution

680.200. “Financial institution” means a state or federal bank, savings and loan association, credit union, or like organization, and includes a corporation engaged in a safe deposit business.

**Comment.** Section 680.200 is new.

**Note.** The term “financial institution” is used in Sections 684.110, 687.020, 700.140, 700.150, 700.160, 704.070, and 704.080.

### § 680.210. General intangibles

680.210. “General intangibles” means “general intangibles” as defined in Section 9106 of the Commercial Code.

**Comment.** Section 680.210 is new.

**Note.** The term “general intangibles” is used in Sections 699.080, 700.170, 701.050, and 701.520.

### § 680.220. Instrument

680.220. “Instrument” means “instrument” as defined in Section 9105 of the Commercial Code.

**Comment.** Section 680.220 is new. In some cases, the term “instrument” may be used with a more limited meaning. See Section 687.020 (endorsement and collection by levying officer). See also Section 680.110 (application of definitions).

**Note.** The term “instrument” is used in Sections 680.370, 697.740, 700.110, 701.060, and 701.520.

### § 680.230. Judgment

680.230. “Judgment” means a judgment, order, or decree entered in a court of this state.

**Comment.** Section 680.230 is new and it continues the effect of former Section 1007 (order enforceable as judgment). For a discussion of the requirement that the judgment be entered “in

a court of this state,” see the Comment to Section 681.010. A judgment is not effectual for any purpose until entered. See Sections 664, 683.010.

**§ 680.240. Judgment creditor**

**680.240.** “Judgment creditor” means the person in whose favor a judgment is rendered or, if there is an assignee of record, means the assignee of record. Unless the context otherwise requires, the term also includes the guardian or conservator of the estate, personal representative, or other successor in interest of the judgment creditor or assignee of record.

**Comment.** “Judgment creditor,” as defined by Section 680.240, includes the person in whose favor the following types of judgments are rendered: money judgments, judgments for the possession of personal property, judgments for the possession of real property, and judgments for the sale of real or personal property. For special provisions on enforcement by an assignee or successor in interest, see Sections 681.020 (assignee), 686.010 (death of judgment creditor).

CROSS-REFERENCES

Assignment of judgment § 673  
 Defined terms  
 Judgment § 680.230  
 Person § 680.280

**§ 680.250. Judgment debtor**

**680.250.** “Judgment debtor” means the person against whom a judgment is rendered.

**Comment.** “Judgment debtor,” as defined by Section 680.250, includes persons against whom the following types of judgments are rendered: money judgments, judgments for the possession of personal property, judgments for the possession of real property, and judgments for the sale of real or personal property.

CROSS-REFERENCES

Defined terms  
 Judgment § 680.230  
 Person § 680.280

**§ 680.260. Levying officer**

**680.260.** “Levying officer” means the sheriff, marshal, or constable.

**Comment.** Section 680.260 is new. In certain situations, other persons are authorized to perform the duties of a levying officer. See, e.g., Code Civ. Proc. §§ 262.8-262.10 (elisor to perform certain duties when sheriff and coroner are parties to action), 699.080 (levy by registered process server); Gov't Code § 27469 (coroner to discharge duties of sheriff where sheriff is party to action or proceeding). See also Section 706.101 (service of earnings withholding order by registered process server).

### § 680.270. Money judgment

**680.270.** “Money judgment” means that part of a judgment that requires the payment of money.

**Comment.** Section 680.270 is drawn from Section 1710.10 (“sister state judgment” defined). See also Section 577.5 (amount of judgment shall be computed and stated in dollars and cents); 65 Harv. L. Rev. 887 (1952) (obligation payable in foreign currency is converted into dollars by judgment in court in United States).

#### CROSS-REFERENCES

Defined terms

Judgment § 680.230

Enforcement of money judgments § 695.010 *et seq.*

Enforcement of money judgments included in judgments for possession or sale § 712.040

### § 680.280. Person

**680.280.** “Person” includes a natural person, a corporation, a partnership or other unincorporated association, and a public entity.

**Comment.** Section 680.280 is new. See also Section 708.710 (“public entity” defined for purposes of collection of money judgment where judgment debtor is creditor of public entity).

### § 680.290. Personal property

**680.290.** “Personal property” includes both tangible and intangible personal property.

**Comment.** Section 680.290 is new.

#### CROSS-REFERENCES

Defined terms

Tangible personal property § 680.370

### § 680.300. Principal amount of the judgment

**680.300.** “Principal amount of the judgment” means the total amount of the judgment as entered or as last

renewed, together with the costs thereafter added to the judgment pursuant to Section 685.090, reduced by any partial satisfactions of such amount and costs and by any amounts no longer enforceable.

**Comment.** Section 680.300 is a new provision that recognizes that costs are a part of the principal amount of the judgment (Section 685.090) when the defined phrase is used in this title.

CROSS-REFERENCES

Amount required to satisfy judgment § 695.210

Defined terms

Costs § 680.150

Judgment § 680.230

§ 680.310. **Property**

680.310. “Property” includes real and personal property and any interest therein.

**Comment.** Section 680.310 is new.

CROSS-REFERENCES

Defined terms

Personal property § 680.290

Real property § 680.320

§ 680.320. **Real property**

680.320. “Real property” includes any right in real property, including but not limited to, a leasehold interest in real property.

**Comment.** Section 680.320 is new. Under prior law, a leasehold interest in real property was treated as personal property in some instances. See the Comment to Section 700.015. Under this title, a leasehold interest is treated as real property. See, *e.g.*, Section 700.015 and Comment thereto (method of levy on real property). For some purposes, however, leases having unexpired terms of less than two years are treated differently from other leases. See, *e.g.*, Sections 701.545 (notice of sale of real property) and 704.740 (homestead exemption).

§ 680.330. **Registered process server**

680.330. “Registered process server” means a person registered as a process server pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code.

**Comment.** Section 680.330 is drawn from subdivision (b) of former Section 687 and from subdivision (e) of former Section 723.101.

**Note.** The term “registered process server” is used in Sections 684.140, 699.080, 699.510, 706.101, and 708.170.

**§ 680.340. Secured party**

**680.340.** “Secured party” means “secured party” as defined in Section 9105 of the Commercial Code.

**Comment.** Section 680.340 is new.

**§ 680.350. Security agreement**

**680.350.** “Security agreement” means “security agreement” as defined in Section 9105 of the Commercial Code.

**Comment.** Section 680.350 is new.

**Note.** The term “security agreement” is used in Sections 700.100, 700.170, and 720.230.

**§ 680.360. Security interest**

**680.360.** “Security interest” means “security interest” as defined in Section 1201 of the Commercial Code.

**Comment.** Section 680.360 is new.

**Note.** The term “security interest” is used in Sections 697.530, 697.590, 697.610, 697.620, 697.740, 700.060, 720.210, 720.230, 720.250, 720.280, 720.360, 720.530, 720.550, and 720.610.

**§ 680.370. Tangible personal property**

**680.370.** “Tangible personal property” includes chattel paper, documents of title, instruments, and money.

**Comment.** Section 680.370 is a new provision that makes clear that tangible personal property includes chattel paper, documents of title, instruments, and money.

CROSS-REFERENCES

Defined terms

Chattel paper § 680.140

Document of title § 680.180

Instrument § 680.220

**§ 680.380. Writ**

**680.380.** “Writ” includes a writ of execution, a writ of possession of personal property, a writ of possession of real property, and a writ of sale.

**Comment.** Section 680.380 defines “writ” for the purpose of general provisions pertaining to all writs issuable under this title. See also Section 680.110 (application of definitions).

## CHAPTER 2. GENERAL PROVISIONS

### § 681.010. Provisions for enforcing judgments

681.010. Except as otherwise provided by statute:

(a) A money judgment is enforceable as provided in Division 2 (commencing with Section 695.010).

(b) A judgment for possession of personal property is enforceable as provided in Chapter 2 (commencing with Section 714.010) of Division 3.

(c) A judgment for possession of real property is enforceable as provided in Chapter 3 (commencing with Section 715.010) of Division 3.

(d) A judgment for sale of real or personal property is enforceable as provided in Chapter 4 (commencing with Section 716.010) of Division 3.

(e) A judgment requiring performance of an act not described in subdivisions (a) to (d), inclusive, or requiring forbearance from performing an act, is enforceable as provided in Chapter 5 (commencing with Section 717.010) of Division 3.

**Comment.** Section 681.010 supersedes former Section 684. It refers to the provisions of this title that provide the means available for the enforcement of a judgment entered in this state. The introductory clause recognizes that this title does not provide the exclusive means for enforcing all judgments entered in this state. See, *e.g.*, Civil Code §§ 4380 (enforcement of judgment, order, or decree under Family Law Act), 4701 (payment of child support enforceable by order for wage assignment), 4801.6 (payment of spousal support enforceable by order for wage assignment). See also Section 117.7 (enforcement of small claims court judgment); Section 695.050 and Gov’t Code §§ 942, 965.6, 965.7, 965.8, 965.9, 970.1, 970.2 (enforcement of money judgments against public entities).

A money judgment entered in another state is not enforceable pursuant to this title until a California judgment has been entered based on the sister state money judgment. See Sections 1710.10(c) (“sister state judgment” defined), 1710.25 (entry of California judgment), 1710.35 (enforcement), 1710.60 (action on judgment). A support order issued in another state is enforceable



in the same manner as a support order rendered in this state after it has been registered in California. See Sections 1698 (registration of foreign support order), 1699 (enforcement). A federal district court judgment entered or registered in this state is enforceable in the manner provided by federal law which to some extent incorporates state enforcement procedures. See Fed. R. Civ. P. 69(a) (enforcement of district court money judgment); 28 U.S.C. § 1963 (1976) (registration of judgment of one district court in another district). A money judgment of a court of a foreign nation is enforceable pursuant to Section 1713.3.

#### CROSS-REFERENCES

##### Defined terms

Judgment § 680.230

Money judgment § 680.270

Personal property § 680.290

Real property § 680.320

Period of enforceability §§ 683.010-683.220

### § 681.020. Enforcement by assignee

681.020. An assignee of a judgment is not entitled to enforce the judgment under this title unless an acknowledgment of assignment of judgment to that assignee has been filed under Section 673.

**Comment.** Section 681.020 is a new provision that codifies a requirement of former practice. The Commission has been advised that as a matter of practice under the former law an assignee of a judgment was not permitted to obtain a writ of execution unless the assignment was made a matter of record.

#### CROSS-REFERENCES

##### Defined terms

Judgment § 680.230

### § 681.030. Rules for practice and procedure; forms

681.030. (a) The Judicial Council may provide by rule for the practice and procedure in proceedings under this title.

(b) The Judicial Council may prescribe the form of the applications, notices, orders, writs, and other papers under this title. A form prescribed by the Judicial Council under this section is deemed to comply with this title and supersedes any corresponding form provided in this title. The Judicial Council may prescribe forms in languages other than English.

**Comment.** Section 681.030 authorizes the Judicial Council to provide for practice and procedure under this title and to adopt and revise forms authorized or required by this title. The forms adopted are deemed to comply with this title and may contain additional information not specified in this title and may omit information otherwise required by a relevant provision of this title. The Judicial Council may adopt forms that supersede those provided in Chapter 19 (commencing with Section 693.010). The first sentence of subdivision (b) is comparable to Section 706.120 (wage garnishment). The last two sentences of subdivision (b) are drawn from comparable provisions contained in former Section 723.120 (wage garnishment). See also Section 697.670 (certain forms prepared by Secretary of State), 706.081 (forms relating to withholding for taxes under Wage Garnishment Law), 706.100 (rules for practice and procedure under Wage Garnishment Law).

## CHAPTER 3. PERIOD FOR ENFORCEMENT AND RENEWAL OF JUDGMENTS

### Article 1. Period for Enforcement of Judgments

#### § 683.010. Judgment enforceable upon entry

683.010. Except as otherwise provided by statute or in the judgment, a judgment is enforceable under this title upon entry.

**Comment.** Section 683.010 continues the substance of a portion of former Section 681. Nothing in Section 683.010 limits the authority of the court to stay enforcement of a judgment under any other applicable statutory provisions, such as Sections 916-923. See also Sections 117.7 (automatic stay of small claims court judgment), 1174(c) (delay of enforcement of certain unlawful detainer judgments). Section 683.010 does not apply to judgments under the Family Law Act (Section 683.310) or to a money judgment against a public entity (Section 683.320).

#### CROSS-REFERENCES

Defined terms

Judgment § 680.230

#### § 683.020. Ten-year period for enforcement of judgment

683.020. Except as otherwise provided by statute, upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property:

- (a) The judgment may not be enforced.
- (b) All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease.
- (c) Any lien created by an enforcement procedure pursuant to the judgment is extinguished.

**Comment.** Section 683.020 supersedes the first sentence of former Section 681 (which provided a 10-year enforcement period). Unless the judgment is renewed by action (see Section 683.050) or pursuant to Article 2 (commencing with Section 683.110), a judgment is enforceable only for 10 years; at the end of this period, enforcement of the judgment is barred and any liens created by the enforcement process are extinguished. No further action, including levy, sale, collection, or delivery pursuant to the judgment, or pursuant to a writ or order issued to enforce the judgment, may take place. The rule announced in *Alonso Inv. Corp. v. Doff*, 17 Cal.3d 539, 541-43, 551 P.2d 1243, 131 Cal. Rptr. 411 (1976), permitting the enforcement of a writ of execution after the expiration of the 10-year period if the writ had been timely issued, is not continued, subject to an exception where the judgment is renewed. See Section 683.200 (continuation of enforcement procedures upon renewal).

Section 683.020 applies only to money judgments and judgments for the possession or sale of property. Accordingly, other judgments—such as those governed by Section 717.010—are not subject to the 10-year rule of Section 683.020. Section 683.030 provides a special rule applicable to money judgments payable in installments. See also Sections 683.310 (judgments under Family Law Act excluded from this chapter), 683.320 (money judgment against public entity excluded from this chapter). As to judgments entered prior to the operative date of this section, see Section 694.030.

Unlike former Section 681, the 10-year period provided by Section 683.020 is not extended because enforcement of the judgment has been stayed or enjoined by court order or by operation of law. Nor is the 10-year period tolled for any reason. The statement in *Nutt v. Nutt*, 247 Cal. App.2d 166, 168, 55 Cal. Rptr. 380 (1966)—that the absence from the state of the judgment debtor and the debtor's property tolls the running of the time to seek a writ of execution under former Section 681—does not apply to this chapter. However, a judgment may be used as an offset after the expiration of the 10-year period if the claim of the judgment debtor (against which the judgment is offset) existed during the 10-year period during which the

judgment was enforceable. See Section 431.70 and the Comment thereto. The judgment creditor may also be able to bring an action on the judgment after the 10-year enforcement period of this section has expired if the statute of limitations provided by Section 337.5 has not yet run. See Section 683.050 and the Comment thereto.

#### CROSS-REFERENCES

##### Defined terms

Judgment § 680.230

Money judgment § 680.270

Writ § 680.380

### § 683.030. Time for enforcement of installment judgment

**683.030.** If a money judgment is payable in installments, the 10-year period of enforceability prescribed by Section 683.020 runs as to each installment from the date the installment becomes due and runs as to costs from the date the costs are added to the judgment pursuant to Section 685.090.

**Comment.** Section 683.030 codifies case law concerning the time within which installment judgments may be enforced. *Cf.* *Wolfe v. Wolfe*, 30 Cal.2d 1, 4, 180 P.2d 345 (1947) (installment judgment for support). For provisions authorizing installment judgments, see Civil Code § 3347 (installment payment of damages caused by slayer in a duel); Code Civ. Proc. §§ 85 (installment payment of municipal or justice court money judgment), 117 (time of payment of small claims court money judgment), 667.7 (periodic payment of certain future damages); Labor Code §§ 5801, 5806 (installment payment of workers' compensation award); Penal Code § 1205 (installment payment of fine); Veh. Code § 16380 (installment payment of vehicle accident damage judgment). Some installment judgments are not governed by this chapter. See Sections 683.310 (spousal or child support), 683.320 (money judgment against public entity). As to judgments entered prior to the operative date of this section, see Section 694.030.

#### CROSS-REFERENCES

##### Defined terms

Money judgment § 680.270

### § 683.040. Application for writ more than 10 years after entry of judgment

**683.040.** If the judgment creditor applies for a writ for the enforcement of a judgment and the application is

made more than 10 years after the date the judgment was entered or renewed, the application shall be accompanied by an affidavit of a person having knowledge of the facts stating facts showing that the issuance of the writ sought in the application is not barred under this chapter. A copy of the affidavit shall be attached to the writ when issued.

**Comment.** Section 683.040 establishes a new requirement designed to provide information to the court clerk and levying officer when a writ of execution, possession, or sale is sought more than 10 years after the judgment was entered or renewed. Where the judgment is a money judgment payable in installments, the affidavit will be sufficient if it states that the 10-year limitation period (Section 683.030) has not run as to the installment or installments covered by the application for the writ. Section 683.040 does not apply to a judgment for child or spousal support; Civil Code Section 4380 requires the creditor to obtain a court order to enforce support obligations that are more than 10 years overdue. See Section 683.310. See also Civil Code Section 4383. As to the period of enforcement of a money judgment against a public entity, see Section 683.320 and Gov't Code §§ 965.5, 970.1.

#### CROSS-REFERENCES

##### Defined terms

Judgment § 680.230

Judgment creditor § 680.240

Writ § 680.380

### § 683.050. Right of action on judgment preserved

**683.050.** Nothing in this chapter limits any right the judgment creditor may have to bring an action on a judgment, but any such action shall be commenced within the period prescribed by Section 337.5.

**Comment.** Section 683.050 makes clear that the 10-year period of enforcement prescribed by Section 683.020 and the renewal procedure provided by Article 2 (commencing with Section 683.110) do not affect the right to bring an action on a judgment. The limitation period for commencing the action is prescribed by Section 337.5. The 10-year period provided by Section 683.020 and the 10-year statute of limitations provided by Section 337.5 are not coterminous. The period prescribed in Section 683.020 commences on the date of entry and is not tolled for any reason. The statute of limitations commences to run when the judgment is final (see *Turner v. Donovan*, 52 Cal. App.2d 236,

126 P.2d 187 (1942)) and may be tolled such as by the debtor's absence from the state (see Section 351). See also Section 683.220 (action on renewed judgment).

#### CROSS-REFERENCES

Defined terms

Judgment § 680.230

Judgment creditor § 680.240

## Article 2. Renewal of Judgments

### § 683.110. Renewal of judgment authorized

683.110. (a) The period of enforceability of a money judgment or a judgment for possession or sale of property may be extended by renewal of the judgment as provided in this article.

(b) A judgment shall not be renewed under this article if the application for renewal is filed within five years from the time the judgment was previously renewed under this article.

**Comment.** Sections 683.110-683.220 provide a new procedure for renewing judgments. This procedure is drawn from the procedure for enforcing sister state money judgments (Sections 1710.10-1710.65). Renewal under this article permits enforcement of a judgment beyond the 10-year period prescribed by Section 683.020. This procedure supersedes the procedure under former Section 685 pursuant to which a judgment could be enforced upon noticed motion after the expiration of 10 years in the discretion of the court upon a showing of the reasons for failure to enforce the judgment during the first 10 years. This article does not require the judgment creditor to demonstrate diligence in enforcing the judgment, but if renewal is not accomplished within 10 years after entry of the judgment, the judgment becomes unenforceable. See Sections 683.020, 683.130(a). See also Section 683.050 (right of action on judgment preserved). This article does not apply to a judgment under the Family Law Act (Section 683.310) or to a money judgment against a public entity (Section 683.320).

By preventing the renewal of a judgment more often than once every five years, subdivision (b) of Section 683.110 prevents the judgment creditor from renewing a judgment more frequently merely to compound the interest on the judgment. Renewal has the effect of compounding the interest on the judgment, since interest accrues on the total amount of the judgment as renewed (Sections 680.300, 685.010(a), 695.210) and

the judgment as renewed includes accrued interest on the date of filing the application for renewal (Sections 683.150(b), 685.010(a), 695.210).

#### CROSS-REFERENCES

Defined terms

Judgment § 680.230

Money judgment § 680.270

Judgments for possession, personal property § 714.010 *et seq.*

Judgments for possession, real property § 715.010 *et seq.*

Judgments for sale § 716.010 *et seq.*

Period of enforceability §§ 683.010-683.030

### § 683.120. Judgment renewed upon filing of application; effect of renewal

683.120. (a) The judgment creditor may renew a judgment by filing an application for renewal of the judgment with the court in which the judgment was entered.

(b) Except as otherwise provided in this article, the filing of the application renews the judgment in the amount determined under Section 683.150 and extends the period of enforceability of the judgment as renewed for a period of 10 years from the date the application is filed.

(c) In the case of a money judgment payable in installments, for the purposes of enforcement and of any later renewal, the amount of the judgment as renewed shall be treated as a lump-sum money judgment entered on the date the application is filed.

**Comment.** Under Section 683.120 the enforceability of the judgment is extended until 10 years from the date the application for renewal is filed. Renewal under this article does not result in entry of a new judgment as would be the case where an action is brought on a California or sister state judgment or where a California judgment is entered on the basis of a sister state judgment. See Sections 683.050 (right of action on judgment preserved), 1710.25, 1710.35 (entry of California judgment on basis of sister state judgment).

Subdivision (c) makes clear that the application for renewal of an installment judgment reduces past due amounts of principal (including allowed costs) and interest (see Section 683.150) to a lump sum enforceable for an additional 10 years. Only those past due amounts that are not barred by the 10-year period of enforceability may be renewed. See Sections 683.030, 683.130(b),

683.150(c), (d). Future installments continue to accrue under the judgment as originally entered or as modified according to its terms.

This renewal procedure does not apply to the enforcement of judgments for support. See Section 683.310. See also Civil Code §§ 4380, 4384.

#### CROSS-REFERENCES

##### Defined terms

Judgment § 680.230

Judgment creditor § 680.240

Money judgment § 680.270

### § 683.130. Time for filing application

683.130. (a) In the case of a lump-sum money judgment or a judgment for possession or sale of property, the application for renewal of the judgment may be filed at any time before the expiration of the 10-year period of enforceability provided by Section 683.020 or, if the judgment is a renewed judgment, at any time before the expiration of the 10-year period of enforceability of the renewed judgment provided by Section 683.120.

(b) In the case of a money judgment payable in installments, the application for renewal of the judgment may be filed:

(1) If the judgment has not previously been renewed, at any time as to past due amounts that at the time of filing are not barred by the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

(2) If the judgment has previously been renewed, within the time specified by subdivision (a) as to the amount of the judgment as previously renewed and, as to any past due amounts that became due and payable after the previous renewal, at any time before the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

**Comment.** Subdivision (a) of Section 683.130 prescribes the general rule that renewal may be accomplished at any time when the judgment is still enforceable. See also Section 683.210 (renewal permitted during stay of enforcement). Renewal may take place during the initial 10-year period of enforcement (see Section 683.020) or during any subsequent renewal period (see



subdivision (b) of Section 683.120). There is no limit on the number of renewals.

Subdivision (b) states a special application of the general rule to installment judgments. Renewal as to any installment must take place within 10 years after the installment becomes due. See Section 683.030 (time for enforcement of installment judgment). Subdivision (b) governs the type of installment judgments listed in the Comment to Section 683.030. When an installment judgment is renewed as to past due amounts, the renewed judgment is a lump-sum judgment (see subdivision (c) of Section 683.120) which thereafter is governed by subdivision (a) of Section 683.130 as to the amount of the renewed judgment. See also Section 683.150. Costs are included in the principal amount of the renewed judgment only if added to the judgment within the 10-year period. See Section 683.030.

This section does not apply to the enforcement of judgments for support. See Section 683.310. See also Civil Code §§ 4380, 4384. As to the renewal of judgments entered prior to the operative date of this section, see Section 694.030.

#### CROSS-REFERENCES

Defined terms

Judgment § 680.230

Money judgment § 680.270

### § 683.140. Contents of application

683.140. The application for renewal of the judgment shall be executed under oath and shall include all of the following:

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

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

(c) The name and address of the judgment creditor and the name and last-known address of the judgment debtor.

(d) In the case of a money judgment, the information necessary to compute the amount of the judgment as renewed. In the case of a judgment for possession or sale of property, a description of the performance remaining due.

**Comment.** Section 683.140 sets forth the contents of the application for renewal of a judgment. It is drawn in part from

Section 1710.15 (application for entry of judgment based on sister state judgment). As to the amount of the judgment as renewed, see Section 683.150.

CROSS-REFERENCES

Declaration under penalty of perjury § 2015.5

Defined terms

Judgment § 680.230

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Judicial Council may prescribe form § 681.030

**§ 683.150. Entry of renewal by court clerk**

**683.150.** (a) Upon the filing of the application, the court clerk shall enter the renewal of the judgment in the court records.

(b) In the case of a money judgment, the entry of renewal shall show the amount of the judgment as renewed. Except as provided in subdivisions (c) and (d), this amount is the amount required to satisfy the judgment on the date of the filing of the application for renewal and includes the fee for the filing of the application for renewal.

(c) In the case of a money judgment payable in installments not previously renewed, the amount of the judgment as renewed is the total of the past due installments, the costs added to the judgment pursuant to Section 685.090, and the accrued interest, which remains unsatisfied and is enforceable on the date of the filing of the application for renewal and includes the fee for the filing of the application for renewal.

(d) In the case of a money judgment payable in installments previously renewed, the amount of the judgment as renewed under the latest renewal is the total of the following which remains unsatisfied and is enforceable on the date of the filing of the application for the latest renewal:

(1) The amount of the judgment as renewed under the previous renewal.

(2) The past due installments that became due and payable after the previous renewal.

(3) The costs that have been added to the judgment pursuant to Section 685.090 after the previous renewal.

(4) The interest that has accrued on the amounts described in paragraphs (1), (2), and (3) since the last renewal.

(5) The fee for filing the application for renewal.

(d) In the case of a judgment for possession or sale of property, the entry of renewal shall describe the performance remaining due.

**Comment.** Section 683.150 requires that the court clerk enter the renewal of the judgment based on the application. The entry of the renewal by the court clerk is a ministerial act. In the case of a money judgment payable in installments, past due installments and costs that are not enforceable on the date of filing the application for renewal may not be renewed. See Section 683.030 (period of enforceability).

#### CROSS-REFERENCES

Amount required to satisfy the judgment § 695.210

Costs, addition to principal of judgment § 685.090

Defined terms

Costs § 680.150

Judgment § 680.230

Money judgment § 680.270

Interest, accrual on amount of money judgment remaining unsatisfied § 685.010

### § 683.160. Service of notice of renewal

683.160. (a) The judgment creditor shall serve a notice of renewal of the judgment on the judgment debtor. Service shall be made personally and proof of service shall be filed with the court clerk. The notice shall be in a form prescribed by Section 693.040 and shall inform the judgment debtor that the judgment debtor has 30 days within which to make a motion to vacate or modify the renewal.

(b) Until proof of service is filed pursuant to subdivision (a), no writ may be issued, nor may any enforcement proceedings be commenced to enforce the judgment, except to the extent that the judgment would be enforceable had it not been renewed.

**Comment.** Subdivision (a) of Section 683.160 is derived from subdivision (a) of Section 1710.30 and a portion of subdivision (b) of Section 1710.40 pertaining to sister state judgments. Under Section 683.150, the entry and filing of the renewal is a ministerial act. The judgment debtor is protected, however, by the provisions for notice under Section 683.160 and the opportunity

to seek an order vacating or modifying the renewal pursuant to Section 683.170.

Subdivision (b) is designed to prevent enforcement after the 10-year period in a case where the judgment creditor has failed to serve notice of renewal on the judgment debtor. See also Section 683.040 (application for writ after 10 years). The notice of renewal may be served after the 10-year period has expired if the application for renewal is timely filed, and the judgment is enforceable after proof of service of the notice of renewal is filed unless the renewal is vacated.

#### CROSS-REFERENCES

##### Defined terms

Judgment § 680.230

Judgment creditor § 680.240

Judgment debtor § 680.250

Writ § 680.380

Judicial Council may prescribe form § 681.030

Personal service § 684.110

Proof of service, means of § 684.220

Service on attorney of judgment debtor §§ 684.020, 684.050

### § 683.170. Vacation or modification of renewal

683.170. (a) The renewal of a judgment pursuant to this article may be vacated on any ground that would be a defense to an action on the judgment, including the ground that the amount of the renewed judgment as entered pursuant to this article is incorrect, and shall be vacated if the application for renewal was filed within five years from the time the judgment was previously renewed under this article.

(b) Not later than 30 days after service of the notice of renewal pursuant to Section 683.160, the judgment debtor may apply by noticed motion under this section for an order of the court vacating the renewal of the judgment. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail.

(c) Upon the hearing of the motion, the renewal may be ordered vacated upon any ground provided in subdivision (a), and another and different renewal may be entered, including, but not limited to, the renewal of the judgment in a different amount if the decision of the court is that the judgment creditor is entitled to renewal in a different amount.

**Comment.** Section 683.170 is derived from Section 1710.40 pertaining to sister state judgments. If it is determined at the hearing that the amount of the judgment as renewed (Section 683.150) is not correct, the court may order renewal in the correct amount pursuant to subdivision (c). On the other hand, if the court determines that the judgment has been fully satisfied or offset, the renewal should be vacated. If a motion to vacate is not made within the time stated in subdivision (b), the judgment remains enforceable in the amount stated in the entry of renewal. See Section 683.150. But nothing in this section affects or limits any remedies otherwise available to the judgment debtor after the time for making a motion to vacate has expired.

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Judgment § 680.230

Judgment creditor § 680.240

Judgment debtor § 680.250

Principal amount of the judgment § 680.300

Manner of service § 684.010 *et seq.*

Proof of service §§ 684.210, 684.220

Service on attorney for judgment creditor §§ 684.010, 684.050

### § 683.180. Renewal of judgment lien on real property

683.180. (a) If a judgment lien on an interest in real property has been created pursuant to a money judgment and the judgment is renewed pursuant to this article, the duration of the judgment lien is extended until 10 years from the date of the filing of the application for renewal if, before the expiration of the judgment lien, a certified copy of the application for renewal is recorded with the county recorder of the county where the real property subject to the judgment lien is located.

(b) A judgment lien on an interest in real property that has been transferred subject to the lien is not extended pursuant to subdivision (a) if the transfer was recorded before the application for renewal was filed unless both of the following requirements are satisfied:

(1) A copy of the application for renewal is personally served on the transferee.

(2) Proof of such service is filed with the court clerk within 30 days after the filing of the application for renewal.

**Comment.** Section 683.180 provides a special procedure for extending the duration of a judgment lien on an interest in real property. See generally Article 2 (commencing with Section 697.310) of Chapter 2 of Division 2 (judgment liens on interests in real property). As to renewal of a judgment lien on real property under a judgment for support or against a health care provider, see Section 697.320. Section 683.180 does not apply to judgment liens under judgments for support. See Section 683.310. See also Civil Code §§ 4380, 4384.

Extension of the judgment lien for an additional 10 years under this section is analogous to the result obtained where a judgment in an action on a money judgment is recorded while a judgment lien under the original judgment is still in effect. See *Provisor v. Nelson*, 234 Cal. App.2d Supp. 876, 44 Cal. Rptr. 894 (1965). The priority of the judgment lien on an interest in real property remains the same, but the extension adds 10 years to the life of the lien dating from the time the application for renewal is filed. See also Section 697.030 (duration of liens). The judgment lien is extended only if the certified copy of the application for renewal is recorded while the judgment lien is still in effect. If the judgment lien is not so extended, the judgment creditor may record an abstract of the renewed judgment to obtain a new judgment lien dating from the recording of such abstract. As provided in subdivision (b), if the interest in real property has been transferred subject to the lien and the transfer has been recorded, an extension pursuant to this section extends the lien on the property in the hands of the transferee only if the transferee is served notice of the renewal and proof of service is filed within the prescribed time.

#### CROSS-REFERENCES

##### Defined terms

Money judgment § 680.270

Real property § 680.320

Judgment lien on real property § 697.310 *et seq.*

Manner of service § 684.010 *et seq.*

Proof of service, means of § 684.220

#### § 683.190. Continuation of other liens

683.190. If a lien, other than a judgment lien on an interest in real property, has been created by an enforcement procedure pursuant to a judgment and the judgment is renewed pursuant to this article, the duration of the lien is extended, subject to any other limitations on its duration under this title, until 10 years from the date of the filing of the application for renewal

of the judgment if, before the expiration of the lien, a certified copy of the application for renewal is served on or filed or recorded with the same person and in the same manner as the writ, notice, or order that created the lien.

**Comment.** Section 683.190 permits the continuation of liens, except for judgment liens on interests in real property and execution liens, both of which are governed by other provisions. Under Section 683.190, however, a lien of limited duration, such as a judgment lien on personal property (five years), is not increased in duration but is permitted to continue past the 10-year period specified in Section 683.020. See Section 697.510 (duration of judgment lien on personal property). A judgment lien on real property is continued by recording a certified copy of the application for renewal as provided in Section 683.180. An execution lien is continued by filing with the levying officer under Section 683.200. However, other liens governed by the general rule that the lien exists as long as the judgment is enforceable (see Section 697.030) are increased in duration pursuant to Section 683.190.

#### **§ 683.200. Continuation of enforcement proceedings**

**683.200.** If a judgment is renewed pursuant to this article, any enforcement proceeding previously commenced pursuant to the judgment or to a writ or order issued pursuant to the judgment that would have ceased pursuant to Section 683.020 had the judgment not been renewed may be continued, subject to any other limitations provided in this title, if, before the expiration of the prior 10-year period of enforceability, a certified copy of the application for renewal of the judgment is filed with the levying officer, receiver, or other officer acting pursuant to such writ or order or, in other cases, is filed in the enforcement proceeding.

**Comment.** Section 683.200 permits the continuation of enforcement proceedings under this title that would otherwise have ceased because of the expiration of the period of enforceability. See Section 683.020. For example, a sale of real property pursuant to a writ of execution may proceed after the expiration of 10 years from the date of entry of the judgment if the judgment is renewed within the time allowed and a certified copy of the application for renewal is filed with the levying officer in charge of the sale before the expiration of the 10-year period. Likewise, an examination proceeding may continue if the

certified copy of the application for renewal is filed with the court that is to conduct the examination.

CROSS-REFERENCES

Defined terms

Judgment § 680.230

Levying officer § 680.260

Writ § 680.380

Receivers § 708.610

**§ 683.210. Renewal during stay of enforcement**

**683.210.** A judgment may be renewed notwithstanding any stay of enforcement of the judgment, but the renewal of the judgment does not affect the stay of enforcement.

**Comment.** Section 683.210 permits the judgment creditor to obtain an extension of the enforceability of a judgment even though a stay of enforcement is in effect. Renewal may be necessary if a judgment is temporarily stayed during the time that the 10-year enforcement period prescribed by Section 683.020 is running out. Renewal during a stay of enforcement does not affect the stay, but merely prevents the termination of the period of enforceability.

CROSS-REFERENCES

Defined terms

Judgment § 680.230

Stay of enforcement §§ 916, 918, 1268.160, 1710.50

**§ 683.220. Limitation period for action on renewed judgment**

**683.220.** If a judgment is renewed pursuant to this article, the date of the filing of the application for renewal shall be deemed to be the date that the period for commencing an action on the renewed judgment commences to run under Section 337.5.

**Comment.** Section 683.220 gives the judgment creditor a right to bring an action on a renewed judgment comparable to that which would have existed had the judgment creditor earlier resorted to an action on the judgment instead of the renewal procedure provided by this article. See Section 683.050 (right of action on judgment preserved).



### Article 3. Application of Chapter

#### § 683.310. Judgments under Family Law Act

683.310. This chapter does not apply to judgments made or entered pursuant to the Family Law Act, Part 5 (commencing with Section 4000) of Division 4 of the Civil Code.

**Comment.** Section 683.310 excludes judgments under the Family Law Act from the coverage of this chapter. See Civil Code § 4384. See also Section 697.320 (judgment lien on real property under installment judgment for support).

#### CROSS-REFERENCES

Defined terms

Judgment § 680.230

#### § 683.320. Judgments against public entities

683.320. This chapter does not apply to a money judgment against a public entity that is subject to Section 965.5 or 970.1 of the Government Code.

**Comment.** Section 683.320 recognizes that the period of enforceability of a money judgment against the state or a local public entity is governed by provisions of the Government Code. But see Gov't Code § 965.9 (judgment against the Regents of the University of California). The period of enforceability of a money judgment against a public entity may not be extended using the renewal procedure under Sections 683.110-683.220. This does not, however, affect the right to bring an action on the judgment. See Sections 337.5 and 683.050. See also Sections 695.050 (enforcement of money judgment against public entity), 712.070 (enforcement of nonmoney judgment against public entity).

#### CROSS-REFERENCES

Defined terms

Money judgment § 680.270

## CHAPTER 4. MANNER OF SERVICE OF WRITS, NOTICES AND OTHER PAPERS

### Article 1. Service on Attorney of Creditor or Debtor

#### § 684.010. Service on attorney of judgment creditor

684.010. Subject to Chapter 1 (commencing with Section 283) of Title 5 of Part 1 of this code and Section

4809 of the Civil Code, when a notice, order, or other paper is required to be served under this title on the judgment creditor, it shall be served on the judgment creditor's attorney of record rather than on the judgment creditor if the judgment creditor has an attorney of record.

**Comment.** Section 684.010 is drawn from the second and third sentences of Section 1015. The introductory clause recognizes (1) that, if the applicable procedure is followed, an attorney of record may withdraw from the case, be discharged, or be replaced by another attorney, and (2) that service must be made on the party rather than the attorney in certain Family Law Act matters after entry of final judgment.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Effect of service on attorney § 684.050

Manner of service on attorney § 684.040

### § 684.020. Service on attorney designated by judgment debtor

684.020. (a) Except as provided in subdivision (b), when a writ, notice, order, or other paper is required to be served under this title on the judgment debtor, it shall be served on the judgment debtor instead of the attorney for the judgment debtor.

(b) The writ, notice, order, or other paper shall be served on the attorney specified by the judgment debtor rather than on the judgment debtor if all of the following requirements are satisfied:

(1) The judgment debtor has filed with the court and served on the judgment creditor a request that service on the judgment debtor under this title be made by serving the attorney specified in the request. The request shall include a consent, signed by the attorney, to receive service under this title on behalf of the judgment debtor.

(2) The request has not been revoked by the judgment debtor.

(3) The consent to receive service has not been revoked by the attorney.

(c) A request or consent under subdivision (b) may be revoked by filing with the court a notice revoking the request or consent. A copy of the notice revoking the

request or consent shall be served on the judgment creditor. Service shall be made personally or by mail. The judgment creditor is not bound by the revocation until the judgment creditor has received a copy of the notice revoking the request or consent.

**Comment.** Section 684.020 is a new provision that gives the judgment debtor the option to have papers served either on the judgment debtor or, with the consent of the attorney, on the attorney designated by the judgment debtor.

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Writ § 680.380

Effect of service on attorney § 684.050

Manner of service on attorney § 684.040

Service on attorney for judgment creditor §§ 684.010, 684.050

#### § 684.030. When service on party instead of attorney required

684.030. Sections 684.010 and 684.020 do not apply to either of the following:

(a) A subpoena or other process to require the attendance of a party.

(b) A paper to bring a party into contempt.

**Comment.** Section 684.030 is drawn from a provision of Section 1015.

#### § 684.040. Manner of service on attorney

684.040. If service on an attorney is required under this article, service on the attorney shall be made in any of the following ways:

(a) By personal delivery to the attorney.

(b) By service in the manner provided in subdivision (1) of Section 1011.

(c) By mail in the manner provided in Section 684.120.

**Comment.** Subdivisions (a) and (b) of Section 684.040 are comparable to the relevant portions of Section 1011. Subdivision (c) refers to a provision that is comparable to a portion of the first sentence of Section 1013(a).

#### § 684.050. Effect of service on attorney

684.050. Service on the attorney for the judgment creditor or the judgment debtor pursuant to the

provisions of this article constitutes service on the judgment creditor or judgment debtor for the purposes of this title.

**Comment.** Section 684.050 makes clear that, subject to Section 684.040, service on the attorney pursuant to this article satisfies any requirement of this title that the judgment creditor or judgment debtor be served.

## **Article 2. Manner of Service Generally**

### **§ 684.110. Manner of personal service**

684.110. (a) Subject to subdivisions (b), (c), and (d), if a writ, notice, order, or other paper is required to be personally served under this title, service shall be made in the same manner as a summons is served under Chapter 4 (commencing with Section 413.10) of Title 5.

(b) If the paper is required to be personally served under this title and service on an attorney is required under Article 1 (commencing with Section 684.010), service shall be made on the attorney in the manner provided in Section 684.040.

(c) If the service is on (1) a financial institution, (2) a title insurer (as defined in Section 12340.4 of the Insurance Code) or underwritten title company (as defined in Section 12340.5 of the Insurance Code), or (3) an industrial loan company (as defined in Section 18003 of the Financial Code), service shall be made at the office or branch that has actual possession of the property levied upon or at which a deposit account levied upon is carried and shall be made upon the officer, manager, or other person in charge of the office or branch at the time of service.

(d) Subject to subdivision (c), if a levy is made by personally serving a copy of the writ and notice of levy on a third person, service on the third person shall be made in the same manner as a summons may be served under Section 415.10 or 415.20.

**Comment.** Subdivision (a) of Section 684.110 adopts by reference the manner for service of summons. Subdivision (b) makes clear that when personal service is required on the judgment debtor or judgment creditor, service on the attorney in the manner provided in Section 684.040 is required in cases

where service is required on the attorney instead of on the judgment debtor or judgment creditor (Sections 684.010 and 684.020). Subdivision (c) is the same in substance as Section 488.040(a) (prejudgment attachment). Subdivision (d) limits the manner in which service of a copy of the writ and notice of levy shall be made on a third party by requiring that service be made in the manner provided in Section 415.10 (personal delivery) or 415.20 (substituted service). Various levy procedures require service on a third party. See, *e.g.*, Sections 700.040 (goods and money in possession of third person), 700.060 (bailed goods not covered by negotiable document), 700.100 (chattel paper in possession of third person), 700.110 (instrument in possession of third person), 700.120 (negotiable document in possession of third person), 700.140 (deposit account), 700.150 (safe deposit box), 700.190(c) (final money judgment). Specific sections may provide for the manner of service on a third person. See *e.g.*, Section 700.015 (service on occupant of real property).

#### CROSS-REFERENCES

##### Defined terms

Deposit account § 680.170

Financial institution § 680.200

#### § 684.120. Manner of service by mail; extension of time for exercising right or performing act

684.120. (a) Except as otherwise provided in this title, if a writ, notice, order, or other paper is to be served by mail under this title, it shall be sent by first-class mail (unless some other type of mail is specifically required) and shall be deposited in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed as follows:

(1) If an attorney is being served in place of the judgment creditor or judgment debtor as provided in Section 684.010 or 684.020, to the attorney at the last address given by the attorney on any paper filed in the proceeding and served on the party making the service.

(2) If any other person is being served, to such person at the person's current mailing address if known or, if unknown, at the address last given by the person on any paper filed in the proceeding and served on the party making the service.

(3) If the mailing cannot be made as provided in paragraph (1) or (2), to the person at the person's last known address.

(b) Subject to subdivision (c) and Section 684.125, service by mail is complete at the time of the deposit.

(c) If within a given number of days after service by mail a right may be exercised or an act is to be done by the person served, the time within which the right may be exercised or the act may be done is extended:

(1) Five days if the place of address is within the State of California.

(2) Ten days if the place of address is outside the State of California but within the United States.

(3) Twenty days if the place of address is outside the United States.

(d) The writ, notice, order, or other paper served by mail under this section shall bear a notation of the date and place of mailing or be accompanied by an unsigned copy of the affidavit or certificate of mailing. This subdivision is directory only.

**Comment.** Section 684.120 is drawn in part from Section 1013. The manner of computing time under subdivision (c) is the same as under the comparable portion of Section 1013. As to notice of a court hearing, see Section 684.125.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Writ § 680.380

Name and address supplied by judgment creditor § 684.130

#### § 684.125. Time for giving notice of court hearing

684.125. (a) Unless the court prescribes a shorter time, when a written notice of a court hearing is required under this title, the notice shall be given at least the prescribed number of days before the time appointed for the hearing, except that if the notice is served by mail the required period of notice shall be increased by:

(1) Five days if the place of address is within the State of California.

(2) Ten days if the place of address is outside the State of California but within the United States.

(3) Twenty days if the place of address is outside the United States.

(b) The provisions of subdivision (c) of Section 684.120, extending the time within which a right may be exercised or an act may be done, do not apply to a notice governed by this section.

**Comment.** Section 684.125 is drawn from Section 1005.

#### CROSS-REFERENCES

Proof of service required § 684.210

### § 684.130. Name and address supplied by judgment creditor

684.130. (a) If the levying officer is required by any provision of this title to serve any writ, order, notice, or other paper on any person, the judgment creditor shall include in the instructions to the levying officer the correct name and address of the person. The judgment creditor shall use reasonable diligence to ascertain the correct name and address of the person.

(b) Unless the levying officer has actual knowledge that the name or address included in the instructions is incorrect, the levying officer shall rely on the instructions in serving the writ, order, notice, or other paper on the person.

**Comment.** Section 684.130 is a specific application of Section 687.010 (instructions to levying officer). The address to be supplied by the judgment creditor varies in particular provisions of this title. See, *e.g.*, Sections 684.120 (address for service), 700.015(b), 700.020(b) (address shown by the records of tax assessor). See also Section 687.040 (liability of levying officer for action taken in reliance on information supplied by judgment creditor).

#### CROSS-REFERENCES

Defined terms

Judgment creditor § 680.240

Levying officer § 680.260

Writ § 680.380

### § 684.140. Service by person authorized by levying officer to make service

684.140. If a provision of this title provides for service by the levying officer of an order, notice, or other paper

that runs in favor of a particular person, personal service of the paper may be made by the person or the person's agent if the levying officer gives permission. The levying officer's permission shall be evidenced by a certificate signed by the levying officer. This section does not authorize the levying officer to give permission to serve a writ or notice of levy. If service is made by a person or the person's agent pursuant to this section, the cost of the service is not a recoverable cost. Nothing in this section limits the authority of a registered process server under Section 699.080.

**Comment.** Section 684.140 is derived from a sentence contained in former Section 723.101(c) (personal service of notice or document by wage garnishment debtor). The second to last sentence of Section 684.140 is new, but does not affect the right to recover cost of service by a registered process server to the extent otherwise permitted. See Section 699.080.

#### CROSS-REFERENCES

##### Defined terms

Levying officer § 680.260

Registered process server § 680.330

Writ § 680.380

### Article 3. Proof of Service

#### § 684.210. Proof of service of notice of court hearing

684.210. If service of notice of a court hearing is required under this title, proof of service of the notice shall be made at or before the hearing to the satisfaction of the court.

**Comment.** Section 684.210 is a new provision that establishes a general requirement that supersedes comparable requirements of former law, such as that of former Section 723.105(e). As to the manner of making proof of service, see Section 684.220. As to the time for giving notice by mail, see Section 684.125.

#### § 684.220. Proof of service, posting, or publication

684.220. Proof of service or of posting or publication under this title may be made by, but is not limited to, the following means:

(a) If service is made in the same manner as a summons is served under Chapter 4 (commencing with



Section 413.10) of Title 5, proof of service may be made in the manner provided in Article 5 (commencing with Section 417.10) of that chapter.

(b) If service is made in the same manner as a summons is served under Section 415.10 or 415.20, proof of service may be made by affidavit of the person making the service showing the time, place, and manner of service and the facts showing that the service was made in accordance with the applicable statutory provisions. The affidavit shall recite or in other manner show the name of the person to whom the papers served were delivered and, if appropriate, the title of the person or the capacity in which the person was served.

(c) Proof of service by mail as provided in Section 684.120 may be made in the manner prescribed in Section 1013a.

(d) Proof of posting may be made by the affidavit of the person who posted the notice, showing the time and place of posting.

(e) Proof of publication may be made by the affidavit of the publisher or printer, or the foreman or principal clerk of the publisher or printer, showing the time and place of publication.

(f) Proof of service may be made by the written admission of the person served.

(g) Proof of service however made, or of posting or publication, may be made by testimonial evidence.

**Comment.** Section 684.220 provides methods for proof of service or of posting or publication. Subdivision (a) incorporates the proof of service provisions applicable to service of summons and applies when this title requires service in the manner provided for service of a summons. See, *e.g.*, Section 684.110(a). Subdivision (b) is drawn from Section 417.10 and applies when this title requires service in the manner provided for service of a summons under Sections 415.10 and 415.20. See, *e.g.*, Section 684.110(d). Subdivision (c) applies where service by mail is made pursuant to Section 684.120. The remainder of Section 684.220 is consistent with civil practice generally. Subdivision (g) is an alternative to the other methods of proof provided in this section and permits proof to be made by testimonial evidence without regard to how the service was made.

#### Article 4. Application of Chapter

##### § 684.310. Provisions not applicable to wage garnishment

684.310. Except for Sections 684.130 and 684.140, the provisions of Article 1 (commencing with Section 684.010) and Article 2 (commencing with Section 684.110) do not apply to service under Chapter 5 (commencing with Section 706.010) of Division 2 (wage garnishment).

**Comment.** Section 684.310 makes certain service provisions of this chapter not applicable to wage garnishments. The Wage Garnishment Law contains special provisions governing service under that law. See, *e.g.*, Sections 706.021, 706.101, and 706.104.

#### CHAPTER 5. INTEREST AND COSTS

##### § 685.010. Rate of interest on judgment

685.010. (a) Interest accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied.

(b) The Legislature reserves the right to change the rate of interest provided in subdivision (a) at any time to a rate of less than 10 percent per annum, regardless of the date of entry of the judgment or the date any obligation upon which the judgment is based was incurred. A change in the rate of interest may be made applicable only to the interest that accrues after the operative date of the statute that changes the rate.

**Comment.** Section 685.010 is new. Subdivision (a) sets the legal rate of interest on judgments at 10 percent as permitted by Section 1 of Article 15 of the California Constitution. Subdivision (b) states the reserved power of the state to alter the interest rate as to both past and future judgments at any time. The rate change may apply only to interest that accrues after the operative date of an act that changes the rate.

#### CROSS-REFERENCES

Defined terms

Principal amount of the judgment § 680.300

##### § 685.020. Commencement of interest

685.020. (a) Except as provided in subdivision (b), interest commences to accrue on a money judgment on the date of entry of the judgment.

(b) Unless the judgment otherwise provides, if a money judgment is payable in installments, interest commences to accrue as to each installment on the date the installment becomes due.

**Comment.** Subdivision (a) of Section 685.020 continues the general rule as to the time postjudgment interest commences to run. See former Section 682.2; *Dixon Mobile Homes, Inc. v. Walters*, 48 Cal. App.3d 964, 122 Cal. Rptr. 202 (1975); Section 1033. See also Section 724.010 (amount to satisfy a judgment).

Subdivision (b) codifies the rule concerning accrual of interest on support judgments payable in installments and extends the rule to other judgments payable in installments. See, *e.g.*, *Huellmantel v. Huellmantel*, 124 Cal. 583, 589-90, 57 P. 582 (1899); *In re Marriage of Hoffee*, 60 Cal. App.3d 337, 131 Cal. Rptr. 637 (1976). The introductory clause of subdivision (b) also recognizes that in certain circumstances the court may have the authority to order that interest accrues from the date of entry of a judgment rendered in an amount certain but payable in installments. See Sections 85 (municipal or justice court may fix terms and conditions of payment of money judgment), 117 (small claims court may fix terms and conditions of payment).

#### CROSS-REFERENCES

Defined terms

Money judgment § 680.270

Interest rate § 685.010

### § 685.030. Cessation of interest

685.030. (a) If a money judgment is satisfied in full pursuant to a writ under this title, interest ceases to accrue on the judgment on the date the proceeds of sale or collection are actually received by the levying officer.

(b) If a money judgment is satisfied in full other than pursuant to a writ under this title, interest ceases to accrue on the date the judgment is satisfied in full.

(c) If a money judgment is partially satisfied pursuant to a writ under this title or is otherwise partially satisfied, interest ceases to accrue as to the part satisfied on the date the part is satisfied.

(d) For the purposes of subdivisions (b) and (c), the date a money judgment is satisfied in full or in part is the earliest of the following times:

(1) The date satisfaction is actually received by the judgment creditor.

(2) The date satisfaction is tendered to the judgment creditor or deposited in court for the judgment creditor.

(3) The date of any other performance that has the effect of satisfaction.

**Comment.** Section 685.030 supersedes portions of former Sections 682.1 and 682.2 (interest to date of levy). In order to facilitate full satisfaction in cases where enforcement is by a levying officer pursuant to a writ, subdivision (a) cuts off interest as of the date proceeds are received by the levying officer.

Subdivisions (b) and (c) implement statements in the cases that interest runs until a judgment is paid. See *State v. Day*, 76 Cal. App.2d 536, 556, 173 P.2d 399 (1946); *City of Los Angeles v. Aitken*, 32 Cal. App.2d 524, 531-32, 90 P.2d 377 (1939). Hence, if the judgment debtor voluntarily pays the judgment, the judgment creditor is entitled to interest to the date of satisfaction, as provided in subdivision (b). Similarly, if the judgment is partially satisfied, whether pursuant to a writ or otherwise, subdivision (c) makes clear that interest runs on the part satisfied until the date the satisfaction is made.

Subdivision (d) recognizes that a judgment may be satisfied other than by a writ or voluntary payment to the judgment creditor. See, *e.g.*, *Beeler v. American Trust Co.*, 28 Cal.2d 435, 170 P.2d 439 (1946) (tender of amount due); *Pinecrest Prods., Inc. v. RKO Teleradio Pictures, Inc.*, 14 Cal. App.3d 6, 92 Cal. Rptr. 44 (1970) (deposit with court). See also Section 724.010 (judgment deemed satisfied if judgment creditor accepts a lesser sum in full satisfaction). For additional discussion concerning methods of satisfying a money judgment, see the Comment to Section 724.010.

For provisions governing the distribution of proceeds and the allocation of proceeds between interest and principal, see Sections 695.220, 701.810-701.830.

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Judgment creditor § 680.240

Levying officer § 680.260

Money judgment § 680.270

Writ § 680.380

#### § 685.040. Right to costs of enforcing judgment

685.040. The judgment creditor is entitled to the reasonable and necessary costs of enforcing a judgment.

Attorney's fees incurred in enforcing a judgment are not included in costs collectible under this title unless otherwise provided by law.

**Comment.** Section 685.040 supersedes former Section 1032.6. The reference to superior, municipal, and justice courts in former Section 1032.6 is not continued because it is unnecessary. Recoverable costs may be limited by statute or may be subject to procedural restrictions. See, *e.g.*, Sections 685.070 (memorandum of costs incurred must be filed within specified period), 699.080 and 706.101(e) (cost of registered process server). The second sentence of Section 685.040 makes clear that attorney's fees are not collectible under the section. Specific provisions may prevent recovery of costs in some circumstances. See, *e.g.*, Sections 703.090, 704.840, 708.290.

#### CROSS-REFERENCES

##### Defined terms

Costs § 680.150

Court § 680.160

Judgment § 680.230

Judgment creditor § 680.240

#### § 685.050. Costs and interest under writ

**685.050.** (a) If a writ is issued pursuant to this title to enforce a judgment, the costs and interest to be satisfied in a levy under the writ are the following:

(1) The statutory fee for issuance of the writ.

(2) The amount of interest that has accrued from the date of entry or renewal of the judgment to the date of issuance of the writ, as adjusted for partial satisfactions, if the judgment creditor has filed an affidavit with the court clerk stating such amount.

(3) The amount of interest that accrues on the principal amount of the judgment remaining unsatisfied from the date of issuance of the writ until the date interest ceases to accrue.

(4) The levying officer's statutory costs for performing the duties under the writ.

(b) In a levy under the writ, the levying officer shall do all of the following:

(1) Collect the amount of costs and interest entered on the writ pursuant to paragraphs (1) and (2) of subdivision (a).

(2) Compute and collect the amount of additional interest required to be collected by paragraph (3) of subdivision (a) by reference to the daily interest entered on the writ.

(3) Determine and collect the amount of additional costs pursuant to paragraph (4) of subdivision (a).

**Comment.** Section 685.050 supersedes former Section 682.2 and a portion of former Section 1033.7. In addition to the costs collected pursuant to this section, the levying officer will also collect previously allowed costs that have been added to the judgment and are included in the principal amount of the judgment remaining unsatisfied. See Section 685.090. This section applies not only to writs of execution but also to writs of possession and of sale. See Section 712.040 (collection of money amounts included in judgment for possession or sale). For provisions applicable to earnings withholding orders, see Section 706.010 *et seq.*

#### CROSS-REFERENCES

Contents of writ of execution § 699.520

Date interest ceases to accrue § 685.030

Defined terms

Costs § 680.150

Court § 680.160

Judgment § 680.230

Judgment creditor § 680.240

Levying officer § 680.260

Principal amount of the judgment § 680.300

Writ § 680.380

### § 685.060. Motion to tax costs collected by levying officer

685.060. (a) Within six months after a writ is returned, the judgment debtor may apply to the court on noticed motion to have the costs collected by the levying officer pursuant to Section 685.050 taxed by the court. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail.

(b) The court shall make an order allowing or disallowing the costs collected to the extent justified under the circumstances of the case. The judgment debtor has the burden of showing that the costs collected were not reasonable or were not necessary.

(c) If costs collected are disallowed, the court shall order the amount of disallowed costs to be offset against any amount of the judgment against the judgment debtor

remaining unsatisfied and, to the extent the amount of disallowed costs cannot be so offset, order the entry of judgment against the judgment creditor in the amount of disallowed costs.

**Comment.** Section 685.060 is a new provision intended to provide a remedy for the judgment debtor in a case where costs are collected by the levying officer pursuant to Section 685.050. If the costs of issuing a writ and the levying officer's costs are not collected under the writ, the judgment creditor must resort to the memorandum procedure provided by Section 685.070 and the objections of the judgment debtor may be asserted by way of a motion to tax pursuant to Section 685.070(c).

#### CROSS-REFERENCES

##### Defined terms

Costs § 680.150

Court § 680.160

Judgment § 680.230

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Writ § 680.380

Manner of service § 684.010 *et seq.*

Proof of service required § 684.210

Service on judgment creditor's attorney §§ 684.010, 684.050

### § 685.070. Memorandum of costs of enforcing judgment

**685.070.** (a) The judgment creditor may claim under this section the following costs of enforcing a judgment:

(1) Statutory fees for preparing and issuing, and recording and indexing, an abstract of judgment.

(2) Statutory fees for filing a notice of judgment lien on personal property.

(3) Statutory fees for issuing a writ for the enforcement of the judgment to the extent that the fees are not satisfied pursuant to Section 685.050.

(4) Statutory costs of the levying officer for performing the duties under a writ to the extent that the costs are not satisfied pursuant to Section 685.050 and the statutory fee of the levying officer for performing the duties under the Wage Garnishment Law to the extent that the fee has not been satisfied pursuant to the wage garnishment.

(5) Costs incurred in connection with any proceeding under Chapter 6 (commencing with Section 708.010) of

Division 2 that have been approved as to amount, reasonableness, and necessity by the judge or referee conducting the proceeding.

(b) Before the judgment is fully satisfied but not later than six months after the costs have been incurred, the judgment creditor claiming costs under this section shall file a memorandum of costs with the court clerk and serve a copy on the judgment debtor. Service shall be made personally or by mail. The memorandum of costs shall be executed under oath by a person who has knowledge of the facts and shall state that to the person's best knowledge and belief the costs are correct, are reasonable and necessary, and have not been satisfied.

(c) Within 10 days after the memorandum of costs is served on the judgment debtor, the judgment debtor may apply to the court on noticed motion to have the costs taxed by the court. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. The court shall make an order allowing or disallowing the costs to the extent justified under the circumstances of the case.

(d) If no motion to tax costs is made within the time provided in subdivision (c), the costs claimed in the memorandum are allowed.

**Comment.** Section 685.070 continues the substance of the first paragraph of former Section 1033.7, with the exception of the references in former law to the fee for issuance of a writ of prohibition. Subdivision (d) is consistent with the last paragraph of former Section 1033.7. A motion under this section may be determined at chambers. See Section 166.

The fee for issuance of a writ and the levying officer's costs are automatically added to the amount to be collected under the writ as provided by Section 685.050. The fee of the levying officer for serving an earnings withholding order is automatically added to the amount to be collected under the wage garnishment. See Section 706.125(e). If the amount collected under the writ or wage garnishment is insufficient to satisfy the accrued costs, the judgment creditor must resort to the memorandum of costs procedure in this section in order to have the unsatisfied costs added to the judgment. See Section 685.090 (addition of costs to judgment).



## CROSS-REFERENCES

Declaration under penalty of perjury in lieu of oath § 2015.5

Defined terms

Costs § 680.150

Court § 680.160

Judgment § 680.230

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Writ § 680.380<sup>3</sup>

Extension of time where service by mail § 684.120

Manner of service § 684.010 *et seq.*

Proof of service required § 684.210

Service on judgment creditor's attorney §§ 684.010, 684.050

Service on judgment debtor's attorney §§ 684.020, 684.050

### § 685.080. Motion for costs of enforcing judgment

**685.080. (a)** The judgment creditor may claim costs authorized by Section 685.040 by noticed motion. The motion shall be made before the judgment is satisfied in full, but not later than six months after the costs have been incurred. The costs claimed under this section may include, but are not limited to, costs that may be claimed under Section 685.070 and costs incurred but not approved by the court or referee in a proceeding under Chapter 6 (commencing with Section 708.010) of Division 2.

**(b)** The notice of motion shall describe the costs claimed, shall state their amount, and shall be supported by an affidavit of a person who has knowledge of the facts stating that to the person's best knowledge and belief the costs are correct, are reasonable and necessary, and have not been satisfied. The notice of motion shall be served on the judgment debtor. Service shall be made personally or by mail.

**(c)** The court shall make an order allowing or disallowing the costs to the extent justified under the circumstances of the case.

**Comment.** Section 685.080 continues the substance of the second paragraph of former Section 1033.7 but also permits the judgment creditor by motion to claim costs that could have been claimed pursuant to the memorandum procedure set forth in Section 685.070.

## CROSS-REFERENCES

Defined terms

Costs § 680.150

Court § 680.160

Judgment § 680.230

Judgment creditor § 680.240

Judgment debtor § 680.250

Manner of service § 684.010 *et seq.*

Proof of service required § 684.210

Service on judgment debtor's attorney §§ 684.020, 684.050

### § 685.090. Addition of costs to judgment

**685.090.** (a) Costs are added to and become a part of the judgment:

(1) Upon the filing of an order allowing the costs pursuant to this chapter.

(2) If a memorandum of costs is filed pursuant to Section 685.070 and no motion to tax is made, upon the expiration of the time for making the motion.

(b) The costs added to the judgment pursuant to this section are included in the principal amount of the judgment remaining unsatisfied.

**Comment.** Section 685.090 supersedes the last paragraph of former Section 1033.7.

## CROSS-REFERENCES

Defined terms

Costs § 680.150

Judgment § 680.230

Principal amount of the judgment § 680.300

### § 685.100. Deposit of levying officer's costs

**685.100.** (a) Except as otherwise provided by law:

(1) As a prerequisite to the performance by the levying officer of a duty under this title, the judgment creditor shall deposit a sum of money with the levying officer sufficient to pay the costs of performing the duty.

(2) As a prerequisite to the taking of property into custody by the levying officer, whether by keeper or otherwise, the judgment creditor shall deposit with the levying officer a sum of money sufficient to pay the costs of taking the property and keeping it safely for a period not to exceed 15 days. If continuation of the custody of the property is required, the levying officer shall, from time to time, demand orally or in writing that the judgment creditor deposit additional amounts to cover estimated

costs for periods not to exceed 30 days each. A written demand may be mailed or delivered to the judgment creditor. The judgment creditor has not less than three business days after receipt of the demand within which to comply with the demand. If the amount demanded is not paid within the time specified in the oral or written demand, the levying officer shall release the property.

(b) The levying officer is not liable for failure to take or hold property unless the judgment creditor has complied with the provisions of this section.

**Comment.** Subdivision (a) (1) of Section 685.100 makes more specific the requirement that costs of the levying officer be paid in advance. See Gov't Code §§ 6100, 24350.5. Subdivision (a) (2) is comparable to Section 488.050 (expenses in attachment) and recognizes the practice under former law of making an oral demand for costs.

The introductory clause of subdivision (a) recognizes that there are exceptions to the general rule stated in Section 685.100, such as where certain governmental agencies are judgment creditors. See, *e.g.*, Labor Code § 101 (Labor Commissioner). Similarly, certain creditors may not be required to prepay costs. See Section 1677 (collection of support payments under Uniform Reciprocal Enforcement of Support Act); *Martin v. Superior Court*, 176 Cal. 289, 296-97, 168 P. 135 (1917) (actions in forma pauperis).

Subdivision (b) is comparable to Section 488.060(a) (attachment).

#### CROSS-REFERENCES

##### Defined terms

Costs § 680.150

Judgment creditor § 680.240

Levying officer § 680.260

Release of property § 699.060

Wage garnishment costs § 706.101(d)

## CHAPTER 6. ENFORCEMENT AFTER DEATH OF JUDGMENT CREDITOR OR JUDGMENT DEBTOR

### § 686.010. Enforcement after death of judgment creditor

686.010. After the death of the judgment creditor, the judgment may be enforced as provided in this title by the judgment creditor's executor or administrator or successor in interest.

**Comment.** Section 686.010 continues former Section 686.010. The judgment is enforceable by the executor or administrator or successor in interest in the same manner as by a judgment creditor.

## CROSS-REFERENCES

Defined terms

Judgment § 680.230

Judgment creditor § 680.240

§ **686.020.** **Enforcement after death of judgment debtor**  
686.020. After the death of the judgment debtor, enforcement of a judgment against the judgment debtor is governed by the Probate Code.

**Comment.** Section 686.020 continues former Section 686.020 and makes clear that, although various provisions of the Probate Code permit use of enforcement procedures provided in this title, the enforcement of a judgment against the judgment debtor after the death of the judgment debtor is governed by the Probate Code. See, *e.g.*, Prob. Code §§ 716, 730, 732, 950.

## CROSS-REFERENCES

Defined terms

Judgment § 680.230

Judgment debtor § 680.250

## CHAPTER 7. LEVYING OFFICERS

§ **687.010.** **Instructions to levying officer**

687.010. (a) The judgment creditor shall give the levying officer instructions in writing, signed by the judgment creditor or the judgment creditor's attorney, containing the information needed or requested by the levying officer to comply with the provisions of this title, including but not limited to:

(1) An adequate description of any property to be levied upon.

(2) A statement whether the property is a dwelling.

(3) If the property is a dwelling, whether it is real or personal property.

(b) Subject to subdivision (c), the levying officer shall act in accordance with the written instructions to the extent the actions are taken in conformance with the provisions of this title.

(c) Except to the extent the levying officer has actual knowledge that the information is incorrect, the levying officer may rely on any information contained in the written instructions.

**Comment.** Subdivision (a) of Section 687.010 is based on Section 488.010(a) (attachment) and on parts of subdivisions 2 and 3 of former Section 692 (sale of property). See also Sections 684.130 (address for notices), 699.530 (instructions for execution), 712.030 (instructions for writ of possession or sale).

Subdivisions (b) and (c) are consistent with Sections 262 (signed written instructions as excuse) and 687.040 (liability of levying officer). See also Section 684.130 (reliance on name and address given in instructions).

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Levying officer § 680.260

Liability for levy based on record ownership § 699.090

#### § 687.020. Endorsement and collection of certain instruments by levying officer

687.020. (a) As used in this section, “instrument” means a check, draft, money order, or other order for the withdrawal of money from a financial institution, the United States, any state, or any public entity within any state.

(b) If an instrument is payable to the judgment debtor on demand and comes into the possession of a levying officer pursuant to this title, the levying officer shall promptly endorse and present the instrument for payment.

(c) The levying officer shall endorse the instrument by writing on the instrument (1) the name of the judgment debtor, (2) the name and official title of the levying officer, (3) the title of the court where the judgment is entered, and (4) the date of entry of the judgment and where entered in the records of the court. The endorsement is as valid as if the instrument were endorsed by the judgment debtor. No financial institution or public entity on which the instrument is drawn is liable to any person for payment of the instrument to the levying officer rather than to the

judgment debtor by reason of the endorsement. No levying officer is liable by reason of endorsing, presenting, and obtaining payment of the instrument.

(d) If it appears from the face of the instrument that it has been tendered to the judgment debtor in satisfaction of a claim or demand and that endorsement of the instrument is considered a release and satisfaction by the judgment debtor of the claim or demand, the levying officer shall not endorse the instrument unless the judgment debtor has first endorsed it to the levying officer. If the judgment debtor does not endorse the instrument to the levying officer, the levying officer shall hold the instrument for 30 days and is not liable to the judgment debtor or to any other person for delay in presenting it for payment. At the end of the 30-day holding period, the levying officer shall return the instrument to the maker.

**Comment.** Section 687.020 continues the substance of former Section 688(g) (which incorporated Section 488.520 in the Attachment Law by reference) except that (1) the former provision was limited to situations where an instrument comes into the possession of a levying officer or a receiver pursuant to a writ of execution whereas Section 687.020 is not so limited and (2) Section 687.020 adds a new provision in subdivision (d) for the return of the instrument to the maker after 30 days in certain cases.

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160  
Financial institution § 680.200  
Judgment debtor § 680.250  
Levying officer § 680.260  
Writ § 680.380

### § 687.030. Manner of custody

687.030. Except as otherwise provided by statute, where the method of levy upon property requires that the property be taken into custody or where the levying officer is otherwise directed to take property into custody, the levying officer may do so by any of the following methods:

(a) Removing the property to a place of safekeeping.

(b) Installing a keeper.

(c) Otherwise obtaining possession or control of the property.

**Comment.** Section 687.030 continues the substance of the second sentence of former Section 688(c) except that Section 687.030 is not limited to custody under a writ of execution. The introductory clause recognizes exceptions to this general rule. See Sections 700.070 (keeper for tangible personal property of a going business), 700.080 (keeper for personal property used as dwelling).

Subdivision (c) is new and is intended to provide levying officers with a degree of flexibility in determining efficient and economical means of securing custody of personal property levied upon. Under this subdivision use of a keeper is not required in cases where the property is not moved to a place of safekeeping, but the custody obtained must be sufficient to prevent removal of the property. Such custody will be useful where property such as large construction equipment is levied upon.

#### CROSS-REFERENCES

Defined terms

Levying officer § 680.260

Methods of levy § 700.010 *et seq.*

### § 687.040. Liability of levying officer

**687.040.** (a) The levying officer is not liable for actions taken in conformance with the provisions of this title, including actions taken in conformance with the provisions of this title in reliance on information contained in the written instructions of the judgment creditor except to the extent the levying officer has actual knowledge that the information is incorrect. Nothing in this subdivision limits any liability the judgment creditor may have if the levying officer acts on the basis of incorrect information given in the written instructions.

(b) Unless the levying officer is negligent in the care or handling of the property, the levying officer is not liable to either the judgment debtor or the judgment creditor for loss by fire, theft, injury, or damage of any kind to personal property while (1) in the possession of the levying officer either in a warehouse or in the custody of a keeper or (2) in transit to or from a warehouse.

**Comment.** Subdivision (a) of Section 687.040 supersedes the second sentence of the sixth paragraph of former Section 689, the third paragraph of former Section 689b(9), former Section 697, and the second sentence of Section 488.370(b) (attachment of accounts receivable and choses in action) insofar as it was incorporated by former Section 688(b). For other provisions concerning the levying officer's liability, see Sections 685.100 (failure to advance costs), 687.020 (endorsement and collection of instruments), 699.060 (release), 699.070 (quick sale of perishable property), 699.090 (levy based on record ownership), 700.070 (payment by money equivalent in keeper levy on going business), 701.560 (sale without notice), 701.570 (manner of sale), 701.680 (irregular sale). Subdivision (b) is comparable to Section 488.060(b) (attachment).

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Instructions to levying officer § 687.010

## CHAPTER 8. ENFORCEMENT OF STATE TAX LIABILITY

### Article 1. Enforcement Pursuant to Warrant or Notice of Levy

#### § 688.010. Jurisdiction

688.010. For the purpose of the remedies provided under this article, jurisdiction is conferred upon any of the following courts:

(a) The superior court, regardless whether the municipal or justice court also has jurisdiction under subdivision (b).

(b) The municipal or justice court if (1) the amount of liability sought to be collected does not exceed the jurisdictional amount of the court and (2) the legality of the liability being enforced is not contested by the person against whom enforcement is sought.

**Comment.** Section 688.010 supersedes a portion of former Section 689d, a portion of the second sentence of former Section 690.51, and a portion of the second sentence of former Section 722.5. Under former law, jurisdiction was in the superior court exclusively.



**§ 688.020. Remedies of state when warrant may be issued**

**688.020. (a)** Except as otherwise provided by statute, whenever a warrant may properly be issued by the state, or by a department or agency of the state, pursuant to any provision of the Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code, and the warrant may be levied with the same effect as a levy pursuant to a writ of execution, the state or the department or agency of the state authorized to issue the warrant may use any of the remedies available to a judgment creditor, including but not limited to, those provided in Chapter 6 (commencing with Section 708.010) of Division 2.

(b) The proper court for the enforcement of such remedies is a court of any of the following counties:

(1) The county where the debtor resides.

(2) The county where the property against which enforcement is sought is located.

(3) If the debtor does not reside in this state, any county of this state.

**Comment.** Subdivision (a) of Section 688.020 continues the substance of the first sentence of former Section 722.5, except that the requirement that the tax statute provide that the warrant may be levied with the same effect as a levy pursuant to a writ of execution is new. For examples of statutes authorizing the issuance of a warrant and giving the levy pursuant to the warrant the same effect as a levy pursuant to a writ of execution, see Pub. Res. Code §§ 3423.2, 3772.2; Rev. & Tax. Code §§ 3202, 6776, 7881-7882, 9001, 16071, 18906-18907, 26191, 30341, 32365, 38541, 40161, 41125; Unemp. Ins. Code § 1785. For special provisions relating to wage garnishment for the collection of state taxes, see Sections 706.070-706.084.

Former Section 722.5 applied to nine enumerated sections giving authority to issue warrants. By applying to any provision of the Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code, Section 688.020 expands former law to apply to Sections 3423.2 (oil and gas conservation charges) and 3772.2 (geothermal resources charges) of the Public Resources Code and Sections 3201-3202 (postponed property taxes), 16071 (gift tax), 38541 (timber yield tax), 40161 (energy resources surcharge), and 41125 (emergency telephone surcharge) of the Revenue and Taxation Code, and to any comparable provisions added later.

Under subdivision (a), the miscellaneous remedies available to judgment creditors (such as interrogatories, examination proceedings, creditor's suits, charging orders, liens in pending actions) are given to the state if a warrant may properly be issued, whether or not the warrant is actually issued.

Subdivision (b) continues the substance of the venue provisions of the second sentence of former Section 722.5. See also Section 688.010 (jurisdiction).

### § 688.030. Exemptions and third-party claims

**688.030.** (a) Whenever pursuant to any provision of the Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code, 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 for the collection of a liability:

(1) If the debtor is a natural person, the debtor is entitled to the same exemptions to which a judgment debtor is entitled. Except as provided in subdivisions (b) and (c), the claim of exemption shall be made, heard, and determined as provided in Chapter 4 (commencing with Section 703.010) of Division 2 in the same manner as if the property were levied upon under a writ of execution.

(2) A third person may claim ownership or the right to possession of the property. Except as provided in subdivisions (b) and (c) or as otherwise provided by statute, the third-party claim shall be made, heard, and determined as provided in Division 4 (commencing with Section 720.010) in the same manner as if the property were levied upon under a writ of execution.

(b) In the case of a levy pursuant to a notice of levy:

(1) The claim of exemption or the third-party claim shall be filed with the state department or agency that issued the notice of levy.

(2) The state department or agency that issued the notice of levy shall perform the duties of the levying officer, except that the state department or agency need not give itself the notices that the levying officer is required to serve on a judgment creditor or creditor or the notices that a judgment creditor or creditor is required to give to the levying officer.

(c) A claim of exemption or a third-party claim pursuant to this section shall be heard and determined in the court specified in Section 688.010 in the county where the property levied upon is located.

**Comment.** Section 688.030 supersedes former Sections 689d (third-party claims) and 690.51 (exemptions). Subdivision (a) continues former law by permitting exemption claims and third-party claims when a notice of levy is issued pursuant to Section 1755 of the Unemployment Insurance Code or a warrant is issued pursuant to Section 1785 of the Unemployment Insurance Code or Section 6776, 7881, 9001, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code. By applying to all warrant and notice of levy provisions of the Public Resources Code, Revenue and Taxation Code, and Unemployment Insurance Code, subdivision (a) includes warrants issued pursuant to the provisions referred to in the Comment to Section 688.020.

Subdivision (b) makes the procedural adjustments required by the fact that a levying officer is not used in the case of a notice of levy. See Unemp. Ins. Code § 1755.

Subdivision (c) continues the venue provisions of former Sections 689d and 690.51 and picks up the new jurisdictional rules of Section 688.010.

#### CROSS-REFERENCES

Levying officer § 680.260

### § 688.040. Meaning of terms used elsewhere for purpose of this article

688.040. For the purpose of this article, as used in this title:

(a) “Judgment creditor” or “creditor” means the state or the department or agency of the state seeking to collect the liability.

(b) “Judgment debtor” or “debtor” means the debtor from whom the liability is sought to be collected.

**Comment.** Section 688.040 is new and is to make clear the meaning of the defined terms when applied in the context of this article.

## Article 2. Enforcement of Judgment for Taxes

### § 688.110. Enforcement of judgment for taxes

688.110. Except as otherwise provided by statute, if a judgment is entered on a claim for taxes by a public entity, the judgment is enforceable pursuant to this title in the same manner as any other money judgment.

**Comment.** Section 688.110 is new and is consistent with Sections 3106, 6739, 14323, 14672, 16081, 16421, 18865, 32362, and 38524 of the Revenue and Taxation Code. For special provisions relating to wage garnishment for the collection of state taxes, see Sections 706.070-706.084.

#### CROSS-REFERENCES

Defined terms

Money judgment § 680.270

## CHAPTER 19. FORMS

### § 693.010. Form of writ of execution, possession, and sale

693.010. Until superseded by a form prepared by the Judicial Council, a writ of execution, writ of possession of personal property, writ of possession of real property, and writ of sale shall be in substantially the following form:

NAME AND ADDRESS OF ATTORNEY: _____ TELEPHONE: _____		FOR COURT USE ONLY
ATTORNEY FOR _____		
Begin name of court, judicial district or branch court, if any, and post office and street address:		CASE NUMBER:
PLAINTIFF _____		
DEFENDANT _____		FOR RECORDER'S USE ONLY
WRIT OF: <input type="checkbox"/> EXECUTION (JUDICIAL JUDGMENT) <input type="checkbox"/> JOINT DEBTOR <input type="checkbox"/> POSSESSION OR <input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> SALE <input type="checkbox"/> REAL PROPERTY		

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 (CCP 693.080).

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

(SEAL)

Dated: \_\_\_\_\_ Clerk, By \_\_\_\_\_, Deputy

NOTICE TO PERSON SERVED: SEE REVERSE FOR IMPORTANT INFORMATION

(Continued on reverse)

Continued items:

4  Additional judgment debtor (name and address):


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


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:


e.  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.
- 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.

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.

**Comment.** This chapter provides the forms that are to be used until such time as the Judicial Council issues superseding forms pursuant to Section 681.030. Section 577.5 requires that the amount be computed in dollars and cents, rejecting fractions.

§ 693.020. Form of notice of levy

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

NAME AND ADDRESS OF ATTORNEY: TELEPHONE:		FOR COURT USE ONLY
ATTORNEY FOR: Insert name of court, judicial district or branch court, if any, and post office and street address:		
PLAINTIFF		CASE NUMBER:
DEFENDANT		FOR RECORDER'S USE ONLY
NOTICE OF LEVY under: WRIT OF: <input type="checkbox"/> EXECUTION (MONEY JUDGMENT) <input type="checkbox"/> JOINT DEBTOR  <input type="checkbox"/> SALE		

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, and 7.
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. Exemptions in limited amounts are provided for a dwelling, an automobile, household goods, personal belongings, tools of a trade, bank accounts, and certain other property. 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:
- |  |                                     |
|--|-------------------------------------|
| <input type="checkbox"/> Tangible personal property in general | <input type="checkbox"/> Money      |
| <input type="checkbox"/> Negotiable document                   | <input type="checkbox"/> Instrument |
| <input type="checkbox"/> 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:
- |   |   |
|---|---|
| <input type="checkbox"/> Person in possession | <input type="checkbox"/> Holder in escrow |
| <input type="checkbox"/> 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.

\_\_\_\_\_  
(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. Form of garnishee's memorandum

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

MEMORANDUM OF GARNISHEE

Notice to person served with writ and notice of levy: This memorandum must be completed and returned to the levying officer within 10 days after service 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 is to be mailed or delivered to:

(name of levying officer)

(address of levying officer)

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)

<p>If you need more space to provide the information required by this memorandum, you may attach additional pages. Total number of pages attached: _____.</p>
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## § 693.040. Notice of renewal of judgment

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:

NAME AND ADDRESS OF ATTORNEY:	TELEPHONE:	FOR COURT USE ONLY
ATTORNEY FOR: Insert name of court, judicial district or branch court, if any, and post office and street address:		
PLAINTIFF		
DEFENDANT		
NOTICE OF RENEWAL OF JUDGMENT		CASE NUMBER:

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 (Conservatee)  
 CCP 416.40 (Association or Partnership)     CCP 416.90 (Individual)  
 Other:

## § 693.050. Notice of hearing for order for sale of dwelling

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 DEBERIA 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."

**Comment.** Section 693.050 supersedes former Civil Code Section 1246 and former Code of Civil Procedure Section 690.31(d) and (o).

**§ 693.060. Notice of order for sale upon default**

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:

"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.

.....(Cut Out and 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 the clerk of the court will notify me 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 DE USTEDES.

2. Su ausencia de 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 of 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.

.....(Corte y 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 de 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), actualmente residimos en esta propiedad y deseo una audiencia adicional para reclamar mi exención de las ganancias de la venta de mi casa. Entiendo que el oficial de la corte me notificará 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 return portion of the Spanish language form has the same force and effect as timely completion and return of the English language form.

**Comment.** Section 693.060 continues the substance of former Civil Code Section 1251 and former Code of Civil Procedure Section 690.31(g) and (p).

## CHAPTER 20. TRANSITIONAL PROVISIONS

### § 694.010. Definitions

694.010. As used in this chapter:

(a) "Operative date" means January 1, 1983.

(b) "Prior law" means the applicable law in effect on December 31, 1982.

**Comment.** Section 694.010 is drafted on the assumption that the Enforcement of Judgments Law will become effective on January 1, 1982, and will become operative on January 1, 1983.

### § 694.020. General rule concerning application of title

694.020. Except as otherwise provided in this chapter, this title on and after its operative date applies to all proceedings commenced prior thereto unless in the opinion of the court application of a particular provision of this title would substantially interfere with the effective conduct of the proceedings or the rights of the

parties or other interested persons, in which case the particular provision of this title does not apply and prior law applies.

**Comment.** Section 694.020 states the general rule governing the application of the Enforcement of Judgments Law to pending matters.

### § 694.030. Period for enforcement of judgments

**694.030. (a)** Except as provided in subdivision (b), the period for enforcement of a money judgment or a judgment for possession or sale of property entered prior to the operative date is governed on and after the operative date by Chapter 3 (commencing with Section 683.010).

**(b)** If a judgment entered prior to the operative date is not renewable pursuant to Chapter 3 (commencing with Section 683.010), whether by an action on the judgment or by filing an application for renewal, the judgment may be renewed under Chapter 3 (commencing with Section 683.010) for a period of two years after the operative date if the court which entered the judgment determines, on noticed motion, that authority to enforce the judgment after the 10-year period provided in former Section 681 would have been granted if a motion had been made under former Section 685 and the court, in its discretion, makes an order authorizing the renewal of the judgment. The notice of motion shall be served personally or by mail on the judgment creditor.

**Comment.** Subdivision (a) applies the 10 year renewable period of enforcement of this title to judgments entered before or after the operative date. Subdivision (b) provides an exception to this general rule permitting a dormant judgment (one more than 10 years old on the operative date) to be renewed during a two-year grace period if the court so orders. See also Sections 683.050 (action on judgment), 683.120 (application for renewal). For special rules applicable to judgments under the Family Law Act, see Civil Code Section 4384.

## CROSS-REFERENCES

## Defined terms

Judgment § 680.230

Money judgment § 680.270

Operative date § 694.010(a)

Prior law § 694.010(b)

Manner of service § 684.010 *et seq.*

Proof of service required § 684.210

Service on judgment creditor's attorney §§ 684.010, 684.050

**§ 694.040. Execution and return of writs and orders**

**694.040.** (a) Except as provided in subdivision (c), property levied upon or otherwise subjected to process for enforcement of a money judgment or a judgment for possession or sale of property prior to the operative date is subject to prior law relating to sale and delivery.

(b) The duties to be performed in the execution of a writ or order for the enforcement of a money judgment or a judgment for possession or sale of property that is served prior to the operative date are governed by prior law.

(c) The manner of payment at a sale of property pursuant to a writ or order after the operative date is governed by Section 701.590.

**Comment.** Subdivisions (a) and (b) of Section 694.040 make clear that writs and orders served prior to the operative date are governed by prior law rather than this title, except that any sale is subject to the credit transaction provision of Section 701.590.

## CROSS-REFERENCES

## Defined terms

Money judgment § 680.270

Operative date § 694.010(a)

Prior law § 694.010(b)

**§ 694.050. Redemption rights**

**694.050.** (a) Except as provided in subdivision (b), property levied upon prior to the operative date that would have been sold subject to the right of redemption under prior law shall be sold subject to the right of redemption and may be redeemed as provided by prior law.

(b) If the judgment creditor and judgment debtor agree in writing, property described in subdivision (a) may be sold as provided in this title rather than subject to the right of redemption.

**Comment.** Section 694.050 preserves the right of redemption from execution sales where property has been levied upon prior to the operative date unless the parties agree in writing to application of the provisions of this title. See Sections 701.545 (delayed sale), 701.680 (sales absolute).

CROSS-REFERENCES

Defined terms

Judgment creditor § 680.240  
 Judgment debtor § 680.250  
 Operative date § 694.010(a)  
 Prior law § 694.010(b)

§ 694.060. **Creditor's suit**

694.060. Notwithstanding Section 708.230, an action may be commenced pursuant to Section 708.210 within one year after the operative date if the action could have been commenced under prior law on the day before the operative date.

**Comment.** Section 694.060 provides a one-year grace period for bringing a creditor's suit that would otherwise be barred by Section 708.230.

CROSS-REFERENCES

Creditor's suit § 708.210 *et seq.*  
 Defined terms  
 Operative date § 694.010(a)  
 Prior law § 694.010(b)

§ 694.070. **Third-party proceedings**

694.070. (a) A third-party claim filed prior to the operative date is governed by prior law.

(b) A demand for a third-party claim served on a secured party prior to the operative date is governed by prior law.

**Comment.** Section 694.070 provides exceptions to the general rule governing application of this title provided by Section 694.020.

CROSS-REFERENCES

Defined terms

Operative date § 694.010(a)  
 Prior law § 694.010(b)  
 Secured party § 680.340  
 Third-party claims § 720.010 *et seq.*

**§ 694.080. Exemptions**

694.080. The exemptions from enforcement of a money judgment provided by this title do not apply to property levied upon or otherwise subjected to a lien prior to the operative date. Whether such property is exempt is determined by the exemptions provided by law at the time the lien was created.

**Comment.** Section 694.080 facilitates the early application of Section 703.050 (exemptions in effect at time of lien govern). See Sections 703.050 and 703.060 and the Comments thereto.

## CROSS-REFERENCES

## Defined terms

Money judgment § 690.270

Operative date § 694.010(a)

Prior law § 694.010(b)

Exemptions § 703.010 *et seq.***§ 694.090. Effect of homestead declaration**

694.090. On and after the operative date, a declaration of homestead made under prior law pursuant to Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code is ineffective for any purpose.

**Comment.** Section 694.090 makes clear that a homestead declaration recorded pursuant to former Civil Code Sections 1237-1304 is ineffective as an exemption from creditors or as a restriction on conveyance. See the Comment to the repeal of former Civil Code Sections 1237-1304.

## CROSS-REFERENCES

## Defined terms

Operative date § 694.010(a)

Prior law § 694.010(b)

Homestead exemption § 704.710 *et seq.*

## DIVISION 2. ENFORCEMENT OF MONEY JUDGMENTS

### CHAPTER 1. GENERAL PROVISIONS

#### Article 1. Property Subject to Enforcement of Money Judgment

##### § 695.010. Property subject to enforcement of money judgment

695.010. Except as otherwise provided by law, all property of the judgment debtor is subject to enforcement of a money judgment.

**Comment.** Section 695.010 supersedes the first portion of subdivision (a) of former Section 688. The reference in former law to “any interest” in property and the enumeration of types of property subject to enforcement is not continued; all property of the judgment debtor, regardless of type or interest, is subject to enforcement of a money judgment unless an exception is provided by law. See also Civil Code §§ 1390.3, 1390.4 (enforcement against property subject to general power of appointment).

Some property that is not the judgment debtor’s may also be subject to enforcement of a money judgment against the judgment debtor. See Section 695.020 (community property). For provisions governing liens on property that is transferred, see Sections 697.390 (judgment lien on real property), 697.610 (judgment lien on personal property), 697.720-697.750 (execution lien). The introductory clause of Section 695.010 recognizes that some property of the judgment debtor is by law not subject to enforcement of a money judgment despite the general rule stated in Section 695.010. Property that is exempt by statute without the need to make an exemption claim is not subject to enforcement of a money judgment unless a particular exemption provision otherwise provides. See Section 703.030 (b) (general rule). See also Sections 704.110(c) (public retirement plan benefits), 704.113 (public vacation credit), 704.115(c) (private retirement plan benefits), 706.052 (wage garnishment). Property of a public entity is not subject to enforcement of a money judgment under this division. See Section 695.050; Gov’t Code §§ 965.5, 970.1. Property that is not transferable is generally not subject to enforcement. See Section 695.030. Certain property held in a fiduciary capacity may not be subject to

enforcement. See, *e.g.*, Civil Code § 986(a) (6) (amounts held for payment of artists); Educ. Code § 21116 (educational endowment property); Health & Saf. Code § 32508 (hospital endowment property); Labor Code § 270.5 (property held by logging employer as fund for wages). Specific property may be made not subject to enforcement by other statutes. See, *e.g.*, Civil Code § 765 (estate at will); Health & Saf. Code § 7925 (cemetery funds); Labor Code § 4901 (workers' compensation). Federal law protects certain property from enforcement. See, *e.g.*, 42 U.S.C. § 407 (social security).

Property of the judgment debtor that is by law not subject to enforcement of a money judgment may not be reached by any enforcement process, whether execution or otherwise. Certain property of the judgment debtor may be subject to enforcement by some, but not all, enforcement procedures. See, *e.g.*, Section 699.720 (property not subject to execution but subject to other enforcement procedures).

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Money judgment § 680.270

Property § 680.310

### § 695.020. Community property

695.020. (a) Community property is subject to enforcement of a money judgment as provided in Title 8 (commencing with Section 5100) of Part 5 of Division 4 of the Civil Code.

(b) Unless the provision or context otherwise requires, if community property that is subject to enforcement of a money judgment is sought to be applied to the satisfaction of a money judgment:

(1) Any provision of this division that applies to the property of the judgment debtor or to obligations owed to the judgment debtor also applies to the community property interest of the spouse of the judgment debtor and to obligations owed to the community.

(2) Any provision of this division that applies to property in the possession or under the control of the judgment debtor also applies to community property in the possession or under the control of the spouse of the judgment debtor.



**Comment.** Section 695.020 recognizes the rule that community property, including the interest of a nondebtor spouse, is generally subject to enforcement of a money judgment. For exceptions to this rule, see Civil Code Section 5100 *et seq.*

#### CROSS-REFERENCES

Defined terms

Judgment debtor § 680.250

Money judgment § 680.270

Property § 680.310

### § 695.030. Property not subject to enforcement of money judgment

695.030. (a) Property of the judgment debtor that is not assignable or transferable is not subject to enforcement of a money judgment.

(b) Notwithstanding subdivision (a), the following property is subject to enforcement of a money judgment:

(1) A leasehold subject to a provision precluding assignment or transfer.

(2) An interest in a spendthrift trust, to the extent provided by law.

(3) A cause of action for money or property that is the subject of a pending action or special proceeding.

**Comment.** Subdivision (a) of Section 695.030 states the general rule that property is not subject to enforcement unless it is assignable or transferable. See, *e.g.*, 1 A. Freeman, *Law of Executions* § 119 (3d ed. 1900); *Murphy v. Allstate Ins. Co.*, 17 Cal.3d 937, 553 P.2d 584, 132 Cal. Rptr. 424 (1976) (chase in action founded upon tort subject to creditor's suit only if assignable by the law of the state).

Paragraphs (1) and (2) of subdivision (b) codify existing case law. See, *e.g.*, *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 87 P.2d 830 (1939) (spendthrift trust); *Farnum v. Hefner*, 79 Cal. 575, 21 P. 955 (1889) (lease). See also 7 B. Witkin, *Summary of California Law Trusts* §§ 94-99, at 5452-60 (8th ed. 1974). As to the method of enforcement against a judgment debtor's interest as a beneficiary of a trust, see Section 709.010 and Civil Code Section 859. Paragraph (3) continues a principle inherent in former Section 688.1. This provision recognizes that a nonassignable cause of action, such as for negligently caused personal injury, may be subject to a lien pursuant to Article 5 (commencing with Section 708.410) of Chapter 6, if it is the subject of a pending action.

Property that is exempt by statute without the need to claim the exemption is not subject to any procedure for enforcement of a money judgment unless a particular exemption provision otherwise provides. See Section 703.030(b) and the Comment to that section.

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Money judgment § 680.270

Property § 680.310

### § 695.040. Release of property not subject to enforcement

**695.040.** Property that is not subject to enforcement of a money judgment may not be levied upon or in any other manner applied to the satisfaction of a money judgment. If property that is not subject to enforcement of a judgment has been levied upon, the property may be released pursuant to the claim of exemption procedure provided in Article 2 (commencing with Section 703.510) of Chapter 4.

**Comment.** Section 695.040 is comparable to Section 703.510(b) (release of property exempt without making a claim).

#### CROSS-REFERENCES

##### Defined terms

Money judgment § 680.270

Property § 680.310

### § 695.050. Enforcement against public entity

**695.050.** A money judgment against a public entity is not enforceable under this division if the money judgment is subject to Chapter 1 (commencing with Section 965) of, or Article 1 (commencing with Section 970) of Chapter 2 of, Part 5 of Division 3.6 of Title 1 of the Government Code.

**Comment.** Section 695.050 continues existing law. See Government Code Sections 965.5(b) (state) and 970.1(b) (local public entities). See also Sections 683.320 and Comment to that section (period for enforcement of judgment), 712.070 (nonmoney judgments).

## Article 2. Amount to Satisfy Money Judgment

### § 695.210. Amount required to satisfy judgment

695.210. The amount required to satisfy a money judgment is the total amount of the judgment as entered or renewed, plus the costs thereafter added to the judgment pursuant to Section 685.090 and the interest that thereafter accrued as it accrues, reduced by any partial satisfactions and by any amounts no longer enforceable.

**Comment.** Section 695.210 is new. For a related provision, see Section 680.300 (“principal amount of the judgment” defined). See also Section 577.5 (amount to be computed and stated in dollars and cents, rejecting fractions).

#### CROSS-REFERENCES

##### Defined terms

Money judgment § 680.270

### § 695.220. Order of application of money received

695.220. Money received in satisfaction of a money judgment is to be credited as follows:

(a) The money is first to be credited against the amounts described in subdivision (b) of Section 685.050 that are collected by the levying officer.

(b) Any remaining money is next to be credited against the accrued interest that remains unsatisfied.

(c) Any remaining money is to be credited against the principal amount of the judgment remaining unsatisfied. If the judgment is payable in installments, the remaining money is to be credited against the matured installments in the order in which they matured.

**Comment.** Section 695.220 is drawn from a portion of former Section 682.1 (writ of execution issued on money judgment), but Section 695.220 applies to any money received in satisfaction of the judgment, not just that received pursuant to a levy of execution. See also the Comment to Section 724.010.

#### CROSS-REFERENCES

##### Defined terms

Levying officer § 680.260

Principal amount of the judgment § 680.300

## CHAPTER 2. LIENS

### Article 1. General Provisions

#### § 697.010. Amount of lien generally

697.010. Except as otherwise provided by statute, a lien created under this division or under Title 6.5 (commencing with Section 481.010) (attachment) is a lien for the amount required to satisfy the judgment.

**Comment.** Section 697.010 makes clear that a lien is for the amount required to satisfy the judgment. See Section 695.210. For special rules as to the amount of the lien in the case of particular liens, see, *e.g.*, Sections 697.350 (judgment lien on real property), 697.540 (judgment lien on personal property), 706.029 (lien created by wage garnishment). These special rules prevail over Section 697.010 where applicable.

#### § 697.020. Relation back of liens

697.020. (a) If a lien is created on property pursuant to Title 6.5 (commencing with Section 481.010) (attachment) and after judgment in the action a lien is created pursuant to this division on the same property under the same claim while the earlier lien is in effect, the priority of the later lien relates back to the date the earlier lien was created.

(b) If a lien is created on property pursuant to this division and a later lien of the same or a different type is created pursuant to this division on the same property under the same judgment while the earlier lien is in effect, the priority of the later lien relates back to the date the earlier lien was created.

(c) Nothing in this section affects priorities or rights of third persons established while the earlier lien was in effect under the law governing the earlier lien.

**Comment.** Section 697.020 states the general rule regarding the relation back of liens to preserve the judgment creditor's priority as of the time of the creation of the first in a series of overlapping liens on the same property. This principle is consistent with case law. See *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242 (1909); *Riley v. Nance*, 97 Cal. 203, 205, 31 P. 1126 (1893); *Bagley v. Ward*, 37 Cal. 121, 131 (1869)

(dictum); *Durkin v. Durkin*, 133 Cal. App.2d 283, 294, 284 P.2d 185 (1955); *Balzano v. Traeger*, 93 Cal. App. 640, 643-44, 270 P. 249 (1928).

Attachment liens, which may exist for as long as eight years, are governed by Sections 488.500 and 488.510. The lien of a temporary protective order served in an attachment proceeding is governed by Section 486.110. An attachment lien relates back to the effective date of the lien of a temporary protective order pursuant to Section 488.500(i).

Various liens are provided by this title. See Sections 697.310 (judgment lien on real property), 697.510 (judgment lien on personal property), 697.710 (execution lien), 706.029 (lien of earnings withholding order), 708.205 (lien of order in examination proceedings), 708.250 (lien of creditor's suit), 708.320 (lien of charging order), 708.410 (lien in pending action or proceeding), 708.780 (lien on money owed judgment debtor by public entity).

Subdivision (c) of Section 697.020 makes clear that the relation back doctrine does not affect the priority or rights of a third person established while the earlier lien was in effect. Thus, for example, if an earlier judgment lien on personal property was subject to the priority of a later purchase money security interest (see Section 697.590), a later execution lien on the same property will be subject to the earlier established priority. Likewise, if the earlier judgment lien on personal property is no longer in existence at the time of execution because it was terminated by the transfer of the property subject to the judgment lien to a buyer in the ordinary course of business (see Section 697.610), the relation back doctrine of Section 697.020 has no application. Similarly, a transfer by a defendant in violation of a temporary protective order under the Attachment Law to a good faith purchaser will terminate the lien created by the temporary protective order and the relation back doctrine will not apply.

General provisions concerning the priority of liens appear in Civil Code Sections 2897-2899. Note that a lien on after-acquired property arises as of the time when the property is acquired by the person whose property is subject to the lien. Civil Code § 2883. Special rules may, however, be applicable in such case. See Sections 697.380(g) (judgment lien on real property), 697.590(b), 697.600(b) (judgment lien on personal property).

#### CROSS-REFERENCES

##### Defined terms

Judgment § 680.230

Property § 680.310

**§ 697.030. Duration of liens generally**

697.030. Subject to Section 697.040, except where a shorter period is provided by statute, a lien created pursuant to this title is effective during the period of enforceability of the judgment.

**Comment.** Section 697.030 is new. It makes clear that a lien terminates when the period of enforceability of the judgment expires. For the period of enforceability of a judgment, see Chapter 3 (commencing with Section 683.010) of Division 1. See also Sections 683.180-683.200 (extension of lien under renewed judgment). The section includes language which recognizes that a particular lien may be more limited in duration. See Sections 697.510(b) (five-year judgment lien on personal property), 697.710 (one-year lien of execution).

A lien may also be extinguished in connection with an order staying enforcement of the judgment as provided in Section 697.040.

**§ 697.040. Effect of stay of enforcement of judgment**

697.040. (a) If enforcement of the judgment is stayed on appeal by the giving of a sufficient undertaking under Chapter 2 (commencing with Section 916) of Title 13:

(1) Existing liens created under this division are extinguished.

(2) New liens may not be created under this division during the period of the stay.

(b) Unless the court otherwise expressly orders, a stay of enforcement of the judgment under Section 918 does not extinguish or prevent the creation of a lien under this division.

(c) Unless the court expressly orders otherwise, if enforcement of the judgment is stayed pursuant to Section 1699 or 1710.50:

(1) Existing liens created under this division are extinguished.

(2) New liens may not be created under this division during the period of the stay.

**Comment.** Subdivisions (a) and (c) of Section 697.040 supersede and generalize provisions formerly found in Section 674. Subdivision (a) and Section 697.050 also supersede former subdivision (b) of Section 916. Section 1710.50, which is referred

to in subdivision (c), relates to enforcement of sister state money judgments. Section 1699, also referred to in subdivision (c), relates to enforcement of sister state support orders.

Subdivision (b) is a new provision that applies to the situation where the trial court stays enforcement of a judgment under Section 918 (stay for a limited time which cannot extend more than 10 days after the last date on which a notice of appeal could be filed). Subdivision (b) makes clear that, unless the court otherwise expressly orders, the granting of a stay under Section 918 does not affect the creation or continuance of a judgment lien on real or personal property but no other enforcement lien may be created or continued during the period of the stay. These rules are consistent with prior law. See *Industrial Indem. Co. v. Levine*, 49 Cal. App.3d 698, 122 Cal. Rptr. 712 (1975) (granting of stay by trial court under former Section 681a and pursuant to stipulation did not prevent the recording of an abstract of judgment to create a judgment lien on real property). The subdivision, however, authorizes the court to make an order expressly providing another rule appropriate to the circumstances of the particular case. Such an order might provide, for example, that the stay of enforcement shall prevent the creation of a judgment lien, that a judgment lien in existence shall terminate, that property levied on shall continue to be subject to the levy lien but that further proceedings under the levy shall be deferred during the period of the stay, or that specific property may be levied on despite the stay. See also Section 1268.160 (excess withdrawal of deposit in eminent domain proceeding).

#### CROSS-REFERENCES

Defined terms

Court § 680.160

Judgment § 680.230

### § 697.050. Effect of extinction of lien

697.050. If a lien created pursuant to this division is extinguished, property held subject to the lien shall be released unless the property is to be held under another lien or the property is ordered by the court to be held pending resolution of a dispute concerning its proper disposition.

**Comment.** Section 697.050 is new and supersedes former subdivision (b) of Section 916. Section 697.050 requires the release of property when the lien is extinguished, except if it is

subject to another lien (such as an execution lien in favor of another creditor) or if the court has ordered property to be retained (such as in proceedings on a third-party claim). See also Article 5 (commencing with Section 701.010) of Chapter 3 (duties and liabilities of third persons). If the property was levied upon by a levying officer, release is governed by Section 699.060.

#### CROSS-REFERENCES

Defined terms

Court § 680.160

Property § 680.310

## Article 2. Judgment Lien on Real Property

### § 697.310. Creation and duration of judgment lien on real property generally

697.310. (a) Except as otherwise provided by statute, a judgment lien on real property is created under this section by recording an abstract of a money judgment with the county recorder.

(b) Unless the money judgment is satisfied or the judgment lien is released, subject to Section 683.180 (renewal of judgment), a judgment lien created under this section continues until 10 years from the date of entry of the judgment.

(c) The creation and duration of a judgment lien under a money judgment entered pursuant to Section 85 or 117 of this code or Section 16380 of the Vehicle Code or under a similar judgment is governed by this section, notwithstanding that the judgment may be payable in installments.

**Comment.** Subdivisions (a) and (b) of Section 697.310 supersede provisions formerly found in Section 674(a). However, unlike the former provision, the 10-year period under subdivision (b) of Section 697.310 is not extended in certain cases where the enforcement of the judgment is stayed. The lien does not continue after the expiration of the period of enforceability of the judgment. See Section 697.030.

Section 697.310 applies to lump-sum money judgments, including certain lump-sum judgments payable in installments. See subdivision (c) (municipal, justice, and small claims court judgments payable in installments and certain vehicle accident judgments payable in installments) and Section 697.330 (judgments entered on workers' compensation awards in a lump



sum). Only lump-sum judgments payable in installments like those listed in subdivision (c) are included under subdivision (c). As to support judgments and certain other judgments requiring periodic payments, see Sections 697.320 and 697.330. See also *Welf. & Inst. Code* § 908 (order for support of ward or dependent child deemed judgment for purposes of this article). As to the procedure for extending the duration of the judgment lien when the judgment is renewed, see Section 683.180.

#### CROSS-REFERENCES

Abstract of judgment § 674

Amount of lien § 697.350

Defined terms

Money judgment § 680.270

Interests subject to lien § 697.340

Priorities §§ 697.380, 697.390

Release of lien § 697.370

Satisfaction of judgments § 724.010 *et seq.*

### § 697.320. Judgment lien for installments under support judgment or judgment against health care provider

697.320. (a) A judgment lien on real property is created under this section by recording a certified copy of any of the following money judgments with the county recorder:

(1) A judgment for spousal or child support payable in installments.

(2) A judgment entered pursuant to Section 667.7 (judgment against health care provider requiring periodic payments).

(b) Unless the money judgment is satisfied or the judgment lien is released, a judgment lien created under this section continues for a period of 10 years from the date of its creation. The duration of a judgment lien created under this section may be extended any number of times by recording during the time the judgment lien is in existence a certified copy of the judgment in the manner provided in this section for the initial recording. Such rerecording has the effect of extending the duration of the judgment lien created under this section until 10 years from the date of such rerecording.

**Comment.** Section 697.320 supersedes portions of former Sections 674.5 (support judgment) and 674.7 (judgment against health care provider). This section also applies to a judgment requiring installment payment of workers' compensation. See

Section 697.330(a)(2). The amount of a judgment lien created under this section is determined pursuant to Section 697.350(c). If the judgment lien is not extended by rerecording within the time prescribed in subdivision (b), this does not prevent the creation of a new judgment lien by recording under subdivision (a), but the new lien does not cover any amounts of the judgment that are not enforceable at the time the new lien is created. The lien does not continue after the expiration of the period of enforceability of the judgment. See Section 697.030.

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Money judgment § 680.270

Release of lien § 697.370

Satisfaction of judgments § 724.010 *et seq.*

### § 697.330. Judgment lien for workers' compensation award

697.330. (a) In the case of a money judgment entered on an order, decision, or award made under Division 4 (commencing with Section 3200) of the Labor Code (workers' compensation):

(1) If the judgment is for a lump sum, a judgment lien on real property is created by recording an abstract of the judgment as provided in Section 697.310 and, except as otherwise provided in Division 4 (commencing with Section 3200) of the Labor Code, the judgment lien is governed by the provisions applicable to a judgment lien created under Section 697.310.

(2) If the judgment is for the payment of money in installments, a judgment lien on real property is created by recording a certified copy of the judgment as provided in Section 697.320 and, except as otherwise provided in Division 4 (commencing with Section 3200) of the Labor Code, the lien is governed by the provisions applicable to a judgment lien created under Section 697.320.

(b) Nothing in this section limits or affects any provision of Division 4 (commencing with Section 3200) of the Labor Code.

**Comment.** Section 697.330 is a new provision intended to make clear the effect of a judgment lien where the judgment is entered on a workers' compensation award. No cases have been found where a judgment lien (as distinguished from an execution

lien) was sought to be created pursuant to a workers' compensation award. However, subdivision (a) (1) of Section 697.330 states the result that would appear to have been reached under former law, since an abstract of a lump-sum money judgment could be recorded to create a judgment lien under a provision formerly found in Section 674 and there was no exclusion of lump-sum judgments entered on workers' compensation awards. Subdivision (a) (2) treats an installment judgment entered on a workers' compensation award the same as an installment judgment for support.

Subdivision (a) is subject to the provisions of Division 4 of the Labor Code which provide the manner of enforcement of an order, decision, or award made under that division. See, *e.g.*, Labor Code §§ 5300 (exclusive jurisdiction of appeals board for enforcement of award), 5808 (stay of execution of judgment entered upon an order, decision, or award), 5809 (order for entry of satisfaction of the judgment). See also Labor Code §§ 5600-5603 (issuance of writs of attachment upon order of appeals board), 5800 (interest on awards), 5806 (entry of judgment on award), 5955-6002 (stay of enforcement by court). It should be noted that the appeals board has authority to commute a workers' compensation award payable in installments to a lump sum. Labor Code §§ 5100-5106. If this authority is exercised, a judgment lien can then be created as provided in subdivision (a) (1) of Section 697.330.

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Money judgment § 680.270

Satisfaction of judgments § 724.010 *et seq.*

### § 697.340. Interests subject to judgment lien on real property

697.340. (a) A judgment lien on real property attaches to all interests in real property in the county where the lien is created (whether present or future, vested or contingent, legal or equitable) that are subject to enforcement of the money judgment against the judgment debtor pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 at the time the lien was created, but does not reach a right to rents or a leasehold estate with an unexpired term of less than two years.

(b) If any interest in real property in the county on which a judgment lien could be created under subdivision (a) is acquired after the judgment lien was created, the judgment lien attaches to such interest at the time it is acquired.

**Comment.** Subdivision (a) of Section 697.340 expands the class of interests covered under former law by a judgment lien. Under a provision formerly found in Section 674, the judgment lien reached only vested legal ownership interests. See, *e.g.*, *Summerville v. Stockton Milling Co.*, 142 Cal. 529, 537-39, 76 P. 243 (1904); *Lang v. Klinger*, 34 Cal. App.3d 987, 991, 110 Cal. Rptr. 532 (1973); *Belieu v. Power*, 54 Cal. App. 244, 201 P. 620 (1921); *Shirran v. Dallas*, 21 Cal. App. 405, 418-21, 132 P. 454 (1913). Under subdivision (a), the judgment lien will reach any interest in real property that is subject to enforcement of a money judgment (see Sections 695.010-695.030), but will not reach a right to rents or a leasehold interest with less than two years to run. As to the procedure for reaching rents, see Sections 700.170 (garnishment of rents), 708.510 (assignment of right to rents). Hence, contingent remainders and equitable interests, such as that of a purchaser under a land sale contract, are subject to the judgment lien. Subdivision (a) also recognizes that a judgment lien reaches the community property interest of the judgment debtor's spouse by reference to the provisions concerning property subject to enforcement of a money judgment. See Section 695.020. The judgment lien also attaches to real property used as a dwelling, even though it may later be found to be totally or partially exempt. See also Health & Saf. Code § 18551 (mobilehome installed on foundation system deemed a fixture and a real property improvement). Under the former law, a prior homestead declaration precluded attachment of the judgment lien to the dwelling. See former Civil Code § 1241; former Code Civ. Proc. § 674(c); *Boggs v. Dunn*, 160 Cal. 283, 285-87, 116 P. 743 (1911). As to real property subject to a general power of appointment, see Civil Code §§ 1390.1-1390.4.

Subdivision (b) continues former law as to the time a judgment lien arises on after-acquired property. See former subdivision (a) of Section 674; *Hertweck v. Fearon*, 180 Cal. 71, 179 P. 190 (1919). The priority of a lien on after-acquired property is determined pursuant to Section 697.380(g).

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Money judgment § 680.270

Real property § 680.320

**§ 697.350. Amount of judgment lien on real property**

**697.350. (a)** Except as otherwise provided by statute, a judgment lien on real property is a lien for the amount required to satisfy the judgment.

**(b)** A judgment lien on real property created under a money judgment payable in installments pursuant to Section 85 or 117 of this code or Section 16380 of the Vehicle Code or under a similar judgment is in the full amount required to satisfy the judgment, but the judgment lien may not be enforced for the amount of unmatured installments unless the court so orders.

**(c)** A judgment lien created pursuant to Section 697.320 is a lien for the amount of the installments as they mature under the terms of the judgment, plus accrued interest and the costs as they are added to the judgment pursuant to Chapter 5 (commencing with Section 685.010) of Division 1, and less the amount of any partial satisfactions, but does not become a lien for any installment until it becomes due and payable under the terms of the judgment.

**Comment.** Subdivision (a) of Section 697.350 provides the general rule governing the amount of judgment liens on real property. The lien is for the amount required to satisfy the judgment (Section 695.210).

Subdivision (b) makes clear that liens under three types of installment judgments are for the full amount required to satisfy the judgment (Section 695.210). This provision protects the judgment lienholder's priority over subsequent transferees and encumbrancers. See Section 697.390. However, as provided in subdivision (b), only the matured installments are enforceable in the absence of a court order. This will preclude enforcement of the judgment lien for amounts not yet due where such enforcement would defeat the purpose of permitting installment payments.

Subdivision (c) continues the substance of portions of former Sections 674.5 (support judgments) and 674.7 (installment judgment against health care provider) and provides the same rule for workers' compensation judgments payable in installments (Section 697.330). As to the duration of the lien, see Section 697.320(b) and the Comment to that section.

## CROSS-REFERENCES

## Defined terms

Costs § 680.150

Court § 680.160

Money judgment § 680.270

Priorities §§ 697.380, 697.390

**§ 697.360. Effect of modification of judgment**

**697.360.** (a) If a judgment lien on real property has been created under a money judgment that is thereafter modified as to its amount, an abstract of the modified judgment or a certified copy of the order modifying the judgment may be recorded in the same manner as an abstract of judgment or a certified copy of the judgment is recorded to create a judgment lien.

(b) If a judgment lien on real property has been created under a money judgment that is thereafter modified to reduce its amount, the judgment lien continues under the terms of the judgment as modified, whether or not the modification is recorded as provided in subdivision (a).

(c) If a judgment lien on real property has been created under a money judgment that is thereafter modified to increase its amount, the judgment lien continues under the terms of the original judgment until such time as the modification is recorded as provided in subdivision (a). Upon such recording, the judgment lien extends to the judgment as modified, but the priority for the additional amount under the judgment as modified dates from the time the modification is recorded.

**Comment.** Section 697.360 governs the amount of the judgment lien in a case where the judgment is modified in amount. The most common application of the section will be a case where a support order requiring periodic payments is modified to change the amount of the periodic payment. Under subdivision (a) the abstract of the modified judgment or the certified copy of the order modifying the judgment may be recorded and has the effect of conforming the terms of the judgment lien with the modified judgment.

Under subdivision (b), a new recording is not required if the amount of the judgment has been reduced; the judgment lien may be enforced only for the judgment as so modified. However, subdivision (c) makes clear that, prior to recording, a

modification that increases the amount of the judgment does not affect a judgment lien and that the priority as to the additional amounts dates from the time of recording; the priority as to the original amounts is not affected, whether or not the modification is recorded.

#### CROSS-REFERENCES

Creation of lien §§ 697.310-697.330

Defined terms

Money judgment § 680.270

Real property § 680.320

### § 697.370. Release or subordination of judgment lien

**697.370.** (a) The judgment creditor may do either of the following:

(1) Release from the judgment lien all or a part of the real property subject to the lien.

(2) Subordinate to another lien or encumbrance the judgment lien on all or a part of the real property subject to the judgment lien.

(b) A release or subordination is sufficient if it is executed by the judgment creditor in the same manner as an acknowledgment of satisfaction of judgment and contains all of the following:

(1) A description of the real property being released or on which the lien is being subordinated. If the judgment debtor does not have an interest of record in the real property, the release or subordination shall show the name of the record owner.

(2) The date the judgment lien was created and where in the records of the county the abstract of judgment or certified copy of the judgment was recorded to create the lien.

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

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

(5) The name and address of the judgment creditor and the judgment debtor.

(c) A release or subordination substantially complying with the requirements of this section is effective even though it contains minor errors that are not seriously misleading.

**Comment.** Section 697.370 is a new provision that recognizes the practice of releasing all or a part of the property from a judgment lien on real property or subordinating a judgment lien on real property to another lien or encumbrance. The provision excusing minor errors that are not seriously misleading is drawn from Commercial Code Section 9402(5), (7) (contents of financing statement). As to the date a judgment lien on real property is created, see Sections 697.310 and 697.320.

#### CROSS-REFERENCES

Acknowledgment of satisfaction of judgment § 724.060

Assignment of judgment § 673

Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Real property § 680.320

### § 697.380. Priority of judgment liens generally

**697.380.** (a) As used in this section:

(1) “Installment judgment lien” means a judgment lien created under Section 697.320.

(2) “Lump-sum judgment lien” means a judgment lien created under Section 697.310.

(b) Except as otherwise provided by law, the rules stated in this section govern the priorities of judgment liens on real property.

(c) A lump-sum judgment lien has priority over any other lump-sum judgment lien thereafter created.

(d) A lump-sum judgment lien has priority over an installment judgment lien as to all of the following:

(1) Installments that mature on the installment judgment after the lump-sum judgment lien is created.

(2) Interest that accrues on the installment judgment after the lump-sum judgment lien is created.

(3) Costs that are added to the installment judgment after the lump-sum judgment lien is created.

(e) An installment judgment lien has priority over a lump-sum judgment lien as to all of the following:

(1) Installments that have matured on the installment judgment before the lump-sum judgment lien is created.

(2) Interest that has accrued on the installment judgment before the lump-sum judgment lien is created.

(3) Costs that have been added to the installment judgment before the lump-sum judgment lien is created.



(f) If an installment judgment lien has been created and another installment judgment lien is thereafter created, the first installment judgment lien has priority over the second installment judgment lien as to the installments that have matured on the judgment at the time the second installment judgment lien is created, the interest that has accrued prior to that time on the judgment, and the costs that have been added prior to that time to the judgment pursuant to Chapter 5 (commencing with Section 685.010) of Division 1. Thereafter, priorities are determined by the time at which each installment matures on a judgment, the time the interest accrues on a judgment, and the time costs are added to a judgment pursuant to Chapter 5 (commencing with Section 685.010) of Division 1.

(g) For the purposes of this section, if two judgment liens attach to the same property at the same time under subdivision (b) of Section 697.340 (after-acquired property), the judgment lien that was first created has priority as to all amounts that are due and payable on that judgment at the time the property is acquired.

**Comment.** Section 697.380 provides general rules that determine priorities of judgment liens created under this article.

Subdivision (b) makes clear that the rules set out in this section are subject to specific rules provided by other sections. See, *e.g.*, Section 697.020 (judgment lien dates back to effective date of prior lien).

Subdivision (c) gives a lien created by recording an abstract of a lump-sum money judgment priority over later lump-sum judgment liens unless the later lien relates back to an earlier time (as where the judgment lien is on property attached in the action in which the second judgment is obtained). See subdivision (b) (rules in this section subject to rules otherwise provided by law).

Subdivisions (d) and (e) set out the rules governing priorities where there is a competing lump-sum judgment lien and an installment judgment lien. Since the installment judgment lien is only a lien for installments as they mature (see subdivision (c) of Section 697.350), a lump-sum judgment lien is given priority over unmatured installments but not over matured installments. Subdivision (f) sets out the rules governing priorities where there are two competing installment judgment liens. In this case, the matured installments under each installment judgment have

priority over later maturing installments under the other judgment. Prior law provided no rules for determining priority in these situations.

Subdivision (g) changes the former rule under which judgment liens on after-acquired property of the debtor in a county where two or more abstracts of judgments had been recorded were granted the same priority, but the creditor who acted first by levying upon the property under execution was given priority over the other judgment liens. See *Hertweck v. Fearon*, 180 Cal. 71, 75, 179 P. 190 (1919).

#### CROSS-REFERENCES

Defined terms

Costs § 680.150

### § 697.390. Effect of transfer or encumbrance of interest subject to judgment lien

**697.390.** If an interest in real property that is subject to a judgment lien is transferred or encumbered without satisfying the judgment lien:

(a) The interest transferred or encumbered remains subject to a judgment lien created pursuant to Section 697.310 in the same amount as if the interest had not been transferred or encumbered.

(b) The interest transferred or encumbered remains subject to a judgment lien created pursuant to Section 697.320 in the amount of the lien at the time of transfer or encumbrance plus interest thereafter accruing on such amount.

**Comment.** Section 697.390 states rules governing judgment liens on interests in real property that have been transferred (sold, exchanged, or otherwise transferred) or encumbered. As to the continuation of the lien on transferred property after renewal of the judgment, see Section 683.180(b).

Under subdivision (a), the lien on the property interest transferred remains a lien in the same amount as is provided by subdivision (a) or (b) of Section 697.350 and includes interest that accrues and costs that are added to the judgment after the transfer. Under subdivision (a), the judgment lien has priority over any subsequent encumbrance in the same amount as is provided by subdivision (a) or (b) of Section 697.350 and this priority extends to interest that accrues and costs that are added to the judgment after the encumbrance of the interest.

Subdivision (a) is consistent with prior case law. See, *e.g.*, *Kinney v. Vallentyne*, 15 Cal.3d 475, 479, 541 P.2d 537, 124 Cal. Rptr. 897 (1975).

Subdivision (b) provides a special rule derived from portions of former Sections 674.5 and 674.7 applicable to the transfer of property subject to certain installment judgment liens. Subdivision (b) makes clear that interest accrues on the judgment lien for matured but unsatisfied installments after property is transferred or encumbered subject to the judgment lien. However, unmatured installments that fall due after the transfer or encumbrance, interest that accrues on such unmatured installments, and additional costs added to the judgment after the transfer or encumbrance are not added to the amount of the judgment lien on the property transferred or to the amount of the judgment lien given priority over the encumbrance.

Section 697.390 deals only with the situation where the transfer or encumbrance is made after the judgment lien is created. However, if the transfer is in fraud of the creditor, the creditor may follow the property into the hands of the transferee even if the transfer took place before the judgment lien attached. See, *e.g.*, *McGee v. Allen*, 7 Cal.2d 468, 473, 60 P.2d 1026 (1936); *Liuzza v. Bell*, 40 Cal. App.2d 417, 429, 104 P.2d 1095 (1940). The same reasoning would require that preference be given to the judgment lien where an earlier encumbrance was in fraud of the creditor.

#### CROSS-REFERENCES

Defined terms

Real property § 680.320

### § 697.400. Recording of documents extinguishing or subordinating judgment lien on real property

**697.400.** (a) The judgment creditor, judgment debtor, or owner of real property subject to a judgment lien on real property created under Section 697.310, may record in the office of the county recorder 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 recording, the judgment lien created under the judgment that has been satisfied is extinguished as a matter of record.

(b) The judgment creditor, judgment debtor, or owner of real property subject to a judgment lien on real property created under Section 697.320, may record in the office of the county recorder an acknowledgment of satisfaction of matured installments under an installment judgment if the acknowledgment is executed as provided in Section 724.250. Upon such recording, the judgment lien is extinguished as a matter of record to the extent of the satisfied installments described in the acknowledgment of satisfaction.

(c) The judgment creditor, the judgment debtor, or the owner of real property subject to a judgment lien, including a property owner described in Section 697.410, may record in the office of the county recorder a release or subordination of a judgment lien on real property if the release or subordination is executed as provided in Section 697.370.

**Comment.** Section 697.400 is a new provision for recording the satisfaction of a judgment to extinguish as a matter of record the judgment lien on real property and for recording other documents affecting a judgment lien on real property.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Real property § 680.320

Release or subordination of lien §§ 697.370, 697.410

Satisfaction of judgments § 724.010 *et seq.*

### § 697.410. Release of erroneous judgment lien on real property

697.410. (a) If a recorded abstract of a money judgment or certified copy of a money judgment appears to create a judgment lien on real property of a person who is not the judgment debtor because the name of the property owner is the same as or similar to that of the judgment debtor, the erroneously identified property owner may deliver to the judgment creditor a written demand for a recordable document releasing the lien. The demand shall be accompanied by proof to the satisfaction of the judgment creditor that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment against the judgment debtor.

(b) Within 15 days after receipt of the property owner's demand and proof satisfactory to the judgment creditor that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment, the judgment creditor shall deliver to the property owner a recordable document releasing the lien on the property of such owner. If the judgment creditor improperly fails to deliver a recordable document releasing the lien within the time allowed, the judgment creditor is liable to the property owner for all damages sustained by reason of such failure and shall also forfeit one hundred dollars (\$100) to the property owner.

(c) If the judgment creditor does not deliver a recordable document pursuant to subdivision (b), the property owner may apply to the court on noticed motion for an order releasing the judgment lien on the property of such owner. Notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. Upon presentation of evidence to the satisfaction of the court that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment, the court shall order the judgment creditor to prepare and deliver a recordable document releasing the lien or shall itself order the release of the judgment lien on the property of such owner. The court order may be recorded in the office of the county recorder with the same effect as the recordable document demanded by the property owner.

(d) The court shall award reasonable attorney's fees to the prevailing party in any proceeding maintained pursuant to this section.

(e) The damages provided by this section are not in derogation of any other damages or penalties to which an aggrieved person may be entitled by law.

**Comment.** Section 697.410 is drawn from subdivisions (e), (f), and (g) of former Section 675. The phrase "and that the property is not subject to the enforcement of the judgment" has been added in subdivision (a) to make clear that Section 697.410 does not permit a spouse who is not a judgment debtor to use this procedure to release a lien on community property that is subject to enforcement of a judgment obtained against the other spouse.

## CROSS-REFERENCES

Abstract of judgment § 674

Assignment of judgment § 673

Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Real property § 680.320

Manner of service § 684.010 *et seq.*

Proof of service required § 684.210

Service on judgment creditor's attorney §§ 684.010, 684.050

### Article 3. Judgment Lien on Personal Property

**Comment.** Article 3 (Sections 697.510-697.670) provides a new procedure for obtaining a judgment lien on certain personal property (see Section 697.530) in a manner analogous to the procedure in the Commercial Code for perfecting a security interest by filing with the Secretary of State. As Section 697.520 makes clear, this procedure may be used in conjunction with other enforcement procedures (such as levy of execution or examination proceedings) or may be used alone as a means of establishing a priority over other creditors.

In certain cases, a judgment creditor will attempt to enforce a judgment through a procedure such as an examination proceeding (Sections 708.110-708.205) or a creditor's suit (Sections 708.210-708.290). In such a case, the judgment creditor will obtain a lien that can be defeated by the transfer of the property to a bona fide purchaser. See Section 697.920. However, use of the procedure provided in this article will in certain cases enable the judgment creditor to preclude transfer to a bona fide purchaser; the notice of judgment lien filed under this article is constructive notice to certain transferees. Section 697.610. See also Sections 697.590, 697.600 (priorities). Although the judgment lien will not protect against a transfer to a person described in Section 697.610, it may give the judgment creditor a priority over other creditors with respect to the identifiable cash proceeds (Section 697.620) or specified kinds of after-acquired property to which the judgment lien will automatically attach (Sections 697.530(b), 697.590(b), and 697.600(b)).

The judgment creditor may use the procedure provided in this article in order to establish a priority dating from the creation of the lien by filing with the Secretary of State. Although levy of execution creates an execution lien, a levy may be significantly delayed because of the time required to obtain a writ of execution and the time required by the levying officer to levy on property under the writ. Moreover, if the property is subject to

a perfected security interest of a third person, the judgment creditor may not desire to levy upon the property because if the property is levied upon the judgment creditor may have to deal with a claim under the third-party claims procedure. See Section 720.010 *et seq.* The use of the procedure under this article gives the judgment creditor a priority over other unsecured creditors but avoids the need to levy on the property and thus avoids the possibility of the third-party claim by the secured party having priority.

If the lien on personal property is not voluntarily satisfied, it is anticipated that the normal remedy for enforcing the lien will be by levy of execution. See Chapter 3 (commencing with Section 699.010). In certain circumstances, the judgment creditor may need to use the remedies provided by Chapter 6 (commencing with Section 708.010). An action to foreclose the judgment lien on personal property may be necessary in certain circumstances, such as where the judgment debtor dies before the judgment is satisfied. See Section 686.020. In this sense the judgment lien on personal property is analogous to the judgment lien on real property which is normally enforced by execution and infrequently by foreclosure. However, absent the consent of the judgment debtor, the judgment creditor is not entitled to the other remedies provided in Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code, such as self-help repossession or private sale.

General provisions concerning liens are set forth in Article 1 (commencing with Section 697.010).

#### **§ 697.510. Creation and duration of judgment lien on personal property**

**697.510.** (a) A judgment lien on personal property described in Section 697.530 is created by filing a notice of judgment lien in the office of the Secretary of State pursuant to this article. Except as provided in subdivision (b) of Section 697.540, a judgment lien may not be created under this article if the money judgment is payable in installments unless all of the installments under the judgment have become due and payable at the time the notice of judgment lien is filed.

(b) Unless the money judgment is satisfied or the judgment lien is terminated or released, the judgment lien continues for five years from the date of filing.

(c) Notwithstanding Section 697.020, the priority of a judgment lien created under this article does not relate back to the date an earlier judgment lien was created under this article.

**Comment.** Subdivision (a) of Section 697.510 provides for the creation of a judgment lien on personal property by filing pursuant to this article. The property that becomes subject to the lien is described in Section 697.530. The second sentence of subdivision (a) permits the creation of a judgment lien under this article only where the money judgment is a lump-sum money judgment. Because of the disruptive effect of a judgment lien on the business of the judgment debtor, a lien cannot be created under this article pursuant to an installment judgment if there are unmaturing installments at the time of filing. Compare Section 697.320 (judgment lien on real property).

Subdivision (b) makes the duration of the judgment lien on personal property the same as the effective period of a filed financing statement under Commercial Code Section 9403(2). Unlike the financing statement, however, the judgment lien on personal property may not be extended beyond the five-year period. The five-year period is sufficient to permit the judgment creditor to apply the property to the satisfaction of the judgment by execution or otherwise. If the judgment creditor files a second notice of judgment lien on the same property, the second filing does not affect the first lien nor extend the five-year period of its duration. Subdivision (c) makes clear that the priority and duration of the second lien is based on its date of filing and does not relate back to the date of the filing of the notice of the first lien. However, if a judgment lien is created under this article, it may relate back to an earlier attachment lien. See Section 697.020 and the Comment to that section.

#### CROSS-REFERENCES

Amount of lien § 697.540

Defined terms

Money judgment § 680.270

Priorities §§ 697.590-697.610

Property subject to lien § 697.530

Satisfaction of judgments § 724.010 *et seq.*

Termination or release of lien §§ 697.640, 697.650

#### § 697.520. Use of other procedures

**697.520.** A judgment lien on personal property may be created pursuant to this article as an alternative or in addition to a lien created by levy under a writ of



execution pursuant to Chapter 3 (commencing with Section 699.010) or by use of an enforcement procedure provided by Chapter 6 (commencing with Section 708.010).

**Comment.** Section 697.520 makes clear that the lien procedure under this article may be used in connection with other enforcement procedures (such as levy of execution or examination proceedings) or may be used alone as a means of establishing a priority over other creditors as to certain property. See the Comment to this article.

**§ 697.530. Property subject to judgment lien**

**697.530. (a)** A judgment lien on personal property is a lien on all interests in the following personal property that are subject to enforcement of the money judgment against the judgment debtor pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 at the time the lien is created if a security interest in the property could be perfected under the Commercial Code by filing a financing statement at that time with the Secretary of State:

- (1) Accounts receivable.
- (2) Chattel paper.
- (3) Equipment.
- (4) Farm products.
- (5) Inventory.
- (6) Negotiable documents of title.

(b) If any interest in personal property on which a judgment lien could be created under subdivision (a) is acquired after the judgment lien was created, the judgment lien attaches to the interest at the time it is acquired.

(c) To the extent provided by Section 697.620, a judgment lien on personal property continues on the proceeds received upon the sale, collection, or other disposition of the property subject to the judgment lien.

(d) Notwithstanding any other provision of this section, the judgment lien does not attach to a vehicle or boat required to be registered with the Department of Motor Vehicles or a mobilehome or commercial coach required to be registered pursuant to the Health and Safety Code.

**Comment.** Section 697.530 specifies the types of personal property that are subject to a judgment lien. Under subdivision (a), the property subject to a judgment lien must be property of the described kind in which a security interest could be perfected by filing a financial statement with the Secretary of State. Thus, for example, money, instruments and securities that do not constitute part of chattel paper, and letters and advices of credit are omitted from subdivision (a) because under the Commercial Code security interests in such collateral are generally perfected by taking possession. See Com. Code §§ 5116, 9304, 9305. If possession of a type of property would be required for perfection of a security interest under the Commercial Code, the judgment creditor will generally find it necessary to take possession by means of a levy of execution if the property is in the possession of the judgment debtor. See, *e.g.*, Sections 700.030 (levy on tangible personal property in possession of judgment debtor), 700.110 (levy on instruments), 700.130 (levy on securities).

If the property would be included within one of the types listed in subdivision (a), a judgment lien cannot be created under this article if a security interest in the property would be perfected by a filing in a place other than in the office of the Secretary of State. Thus, a judgment lien cannot be created under this article on consumer goods (Com. Code § 9109), growing crops, or timber to be cut because the filing under the Commercial Code is made in the office of the county recorder rather than in the office of the Secretary of State. See Com. Code § 9401 (place of filing under Commercial Code).

Under subdivision (b), the judgment lien on personal property is a lien on after-acquired property of a type described in subdivision (a). This lien on after-acquired property is analogous to the one provided by Commercial Code Section 9204. As to the priorities in the case of after-acquired property, see Sections 697.590(b), 697.600(b).

Despite the unavailability of a judgment lien on money, checks, and deposit accounts by filing under this article, Section 697.620 provides for the continuation of the judgment lien in identifiable cash proceeds of a transfer of property that is subject to a judgment lien. This provision for a lien on proceeds is consistent with but more limited than Commercial Code Section 9306. See the Comment to Section 697.620.

Subdivision (d) precludes creation of a judgment lien on a vehicle or boat required to be registered with the Department

of Motor Vehicles, or on a mobilehome or commercial coach required to be registered with the Department of Housing and Community Development. Filing is not available to perfect a security interest in a vehicle or boat. See Com. Code § 9302(3).

#### CROSS-REFERENCES

##### Defined terms

- Accounts receivable § 680.130
- Chattel paper § 680.140
- Document of title § 680.180
- Judgment debtor § 680.250
- Money judgment § 680.270
- Security interest § 680.360

### § 697.540. Amount of judgment lien on personal property

**697.540.** (a) Except as otherwise provided by statute, a judgment lien on personal property is a lien for the amount required to satisfy the judgment.

(b) A judgment lien on personal property created under a money judgment payable in installments pursuant to Section 85 or 117 of this code or pursuant to Section 16380 of the Vehicle Code is in the full amount required to satisfy the judgment, but the judgment lien may not be enforced for the amount of unmatured installments unless the court so orders.

**Comment.** Section 697.540 states the amount of the judgment lien. See Section 695.210 (amount required to satisfy the judgment). Section 697.540 is consistent with the treatment given lump-sum judgments under Section 697.350 (judgment lien on real property). Except as provided in subdivision (b) of this section, a judgment lien may not be created on personal property pursuant to an installment judgment if there are unmatured installments at the time of filing. See Section 697.510(a).

#### CROSS-REFERENCES

##### Defined terms

- Court § 680.160
- Money judgment § 680.270
- Priorities §§ 697.590-697.610

### § 697.550. Contents of notice of judgment lien on personal property

**697.550.** The notice of judgment lien on personal property shall be executed under oath and shall contain the following information:

(a) The name and mailing address of the judgment creditor.

(b) The name and last-known mailing address of the judgment debtor.

(c) A statement that: "All property subject to enforcement of a money judgment against the judgment debtor to which a judgment lien on personal property may attach under Section 697.530 of the Code of Civil Procedure is subject to this judgment lien."

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

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

(f) The amount required to satisfy the judgment at the time of filing.

**Comment.** Section 697.550, which lists the contents of the notice of judgment lien, is subject to Section 697.670 which gives the Secretary of State authority to prepare a form of notice.

#### CROSS-REFERENCES

Declaration under penalty of perjury in lieu of oath § 2015.5

Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Forms § 697.670

Property subject to lien § 697.530

### § 697.560. Notice to judgment debtor

**697.560.** At the time of filing the notice of judgment lien on personal property or promptly thereafter, the judgment creditor shall serve a copy of the notice of judgment lien on the judgment debtor. Service shall be made personally or by mail. The failure to comply with this requirement does not affect the validity of the judgment lien.

**Comment.** Section 697.560 is analogous to provisions of this title concerning service of notice of levy on the judgment debtor. See Sections 699.550, 700.010. The last sentence applies only to the validity of the lien; it does not affect any liability the judgment creditor may have to the judgment debtor for failure to give the notice. This is consistent with the notice of levy provisions which provide that the levy is valid notwithstanding the failure to serve the required notice of levy on the judgment debtor.

## CROSS-REFERENCES

Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Manner of service § 684.010 *et seq.*

Service on judgment debtor's attorney §§ 684.020, 684.050

**§ 697.570. Filing, marking, and indexing of notice of judgment lien**

**697.570.** Upon presentation of a notice of judgment lien on personal property for filing and tender of the filing fee to the office of the Secretary of State, the notice of judgment lien shall be filed, marked, and indexed in the same manner as a financing statement. The fee for filing in the office of the Secretary of State is the same as the fee for filing a financing statement in the standard form.

**Comment.** Section 697.570 is adapted from Section 9403 of the Commercial Code.

## CROSS-REFERENCES

Fee for filing financing statement, see Com. Code § 9403(5)

**§ 697.580. Certificate showing liens on file; copies of notices**

**697.580.** (a) Upon the request of any person, the Secretary of State shall issue a certificate showing whether there is on file in that office on the date and hour stated therein any notice of judgment lien on personal property filed against the property of a particular person named in the request. If a notice of judgment lien is on file, the certificate shall state the date and hour of filing of each such notice and the name and address of the judgment creditor. The fee for a certificate issued pursuant to this subdivision is the same as the fee for a certificate issued pursuant to Section 9407 of the Commercial Code.

(b) Upon request, the Secretary of State shall furnish a copy of any notice of judgment lien or notice affecting a notice of judgment lien for the fee for a copy prescribed by subdivision (2) of Section 9407 of the Commercial Code.

**Comment.** Section 697.580 is based on portions of Sections 488.340 and 488.360 and of Commercial Code Section 9407. See also Com. Code § 9409 (combined certificate issued by Secretary of State).

## CROSS-REFERENCES

## Defined terms

Judgment creditor § 680.240

## Notices

Statement of release § 697.650

Termination statement § 697.640

**§ 697.590. Priority of judgment lien against security interests**

**697.590.** (a) As against a security interest, upon the creation of a judgment lien on personal property, the judgment creditor has the priority of a lien creditor to the extent provided in Section 9301 of the Commercial Code.

(b) For the purpose of this section, a judgment lien on personal property under subdivision (b) of Section 697.530 (after-acquired property) has priority over a security interest in the property if the security interest was perfected after the judgment lien was created by the filing of the notice of judgment lien under this article unless the secured party files a financing statement with respect to a purchase money security interest (Section 9107 of the Commercial Code) in the property subject to the judgment lien before or within 10 days after the debtor receives possession of the property.

**Comment.** Subdivision (a) of Section 697.590 makes clear that Commercial Code Section 9301 applies to judgment liens on personal property. The general rule in subdivision (b) is consistent with Commercial Code Section 9312. The last portion of subdivision (b) is drawn from Commercial Code Section 9301(2).

## CROSS-REFERENCES

## Defined terms

Judgment creditor § 680.240

Secured party § 680.340

Security interest § 680.360

**§ 697.600. Priority of judgment lien against other judgment liens**

**697.600.** (a) A judgment lien on personal property has priority over any other judgment lien thereafter created on the property.

(b) For the purpose of this section, if two or more judgment liens attach to after-acquired property at the same time under subdivision (b) of Section 697.530, the judgment lien first filed has priority.

**Comment.** Section 697.600 establishes the rules of priority between competing judgment liens. Subdivision (b) governs the priority of liens on after-acquired property and is consistent with subdivision (g) of Section 697.380 (judgment lien on real property). See the Comment to Section 697.380.

**§ 697.610. Effect of transfer of property upon which judgment lien exists**

**697.610.** A judgment lien on personal property continues notwithstanding the sale, exchange, or other disposition of the property, unless the person receiving the property is one of the following:

(a) A buyer in the ordinary course of business (as defined in Section 1201 of the Commercial Code) who, under Section 9307 of the Commercial Code, would take free of a security interest created by the seller.

(b) A holder to whom a negotiable document of title has been duly negotiated within the meaning of Section 7501 of the Commercial Code.

(c) A purchaser of chattel paper who gives new value and takes possession of the chattel paper in the ordinary course of business.

**Comment.** Section 697.610 specifies the effect of a judgment lien on personal property if the property is transferred.

Section 697.610 has no effect on the rights of transferees or assignees of persons other than the judgment debtor in the property subject to the lien. An assignee of a security interest that has priority over the judgment creditor's lien may enforce the security interest under the terms of the Commercial Code and is not restricted in any way by this section. See, *e.g.*, Com. Code § 9318.

## CROSS-REFERENCES

## Defined terms

- Chattel paper § 680.140
- Document of title § 680.180
- Judgment debtor § 680.250
- Security interest § 680.360

**§ 697.620. Lien on identifiable cash proceeds of transferred property**

**697.620.** (a) As used in this section:

(1) “Cash proceeds” means money, checks, deposit accounts, and the like.

(2) “Proceeds” means identifiable cash proceeds received upon the sale, exchange, collection, or other disposition of property subject to a judgment lien on personal property.

(b) Except as provided in subdivision (c), the judgment lien on personal property continues in the proceeds.

(c) In the event of insolvency proceedings instituted by or against the judgment debtor, the judgment lien continues under subdivision (b) only in the following proceeds:

(1) Proceeds in a separate deposit account containing only proceeds.

(2) Proceeds in the form of money which are neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings.

(3) Proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings.

**Comment.** Section 697.620 provides for the continuation of the judgment lien on identifiable cash proceeds of an interest in property subject to a judgment lien. For example, a judgment lien on inventory sold for identifiable cash proceeds continues on the proceeds. This is consistent with Commercial Code Section 9306(3)(b). The lien extends to the proceeds only if the lien of a perfected security interest would extend to the proceeds. As to proceeds not in the form of identifiable cash proceeds, the judgment lien will attach to the proceeds only if the proceeds are a type of property (such as inventory) that is subject to a judgment lien under this article. See Section 697.530(a). In this case, the lien will attach to the property as after-acquired



property under subdivision (b) of Section 697.530. The lien will not attach if the proceeds are neither property of a type to which a judgment lien under this article would attach nor identifiable cash proceeds, since the lien will not attach under the after-acquired property provision of subdivision (b) of Section 697.530 nor under the identifiable cash proceeds provision of this section.

#### CROSS-REFERENCES

##### Defined terms

Deposit account § 680.170

Security interest § 680.360

### § 697.640. Termination statement

**697.640.** (a) If the money judgment is satisfied, the judgment debtor or the owner of personal property subject to a judgment lien created under the judgment may serve on the judgment creditor a demand in writing that the judgment creditor mail or deliver to the person making the demand a statement that the judgment creditor no longer claims a judgment lien under the notice of judgment lien filed in the office of the Secretary of State. Service shall be made personally or by mail. The termination statement shall identify the notice of judgment lien by date, file number, and the names of the judgment creditor and judgment debtor.

(b) The demand of the judgment debtor under subdivision (a) shall include the following statement: "Important warning. If this judgment has been satisfied, the law requires that you comply with this demand within 10 days after you receive it. If a court proceeding is necessary to compel you to comply with this demand, you will be required to pay my reasonable attorney's fees in the proceeding if the court determines that the judgment has been satisfied and that you failed to comply with the demand. In addition, if the court determines that you failed without just cause to comply with this demand within the time allowed, you will be liable for all damages I sustain by reason of such failure and will also forfeit one hundred dollars (\$100) to me."

(c) If the judgment is satisfied, the judgment creditor shall comply with the demand within 10 days after actual receipt of the demand. If the judgment creditor fails to

mail or deliver the termination statement within the time allowed, the judgment debtor's demand shall be treated as a demand for an acknowledgment of satisfaction of judgment and the judgment debtor may immediately proceed to enforce the demand as provided in Sections 724.050 to 724.090, inclusive.

(d) Upon payment of the fee for filing a termination statement, the judgment debtor or owner of property subject to the judgment lien may file a termination statement, an acknowledgment of satisfaction of judgment, or a court clerk's certificate of satisfaction of judgment in the office of the Secretary of State. The fee for filing the termination statement, acknowledgment of satisfaction, or court clerk's certificate under this subdivision is the same as that provided in Section 9404 of the Commercial Code.

(e) The filing officer shall treat a termination statement, acknowledgment of satisfaction of judgment, or court clerk's certificate of satisfaction of judgment, filed pursuant to this section in the same manner as a termination statement filed pursuant to Section 9404 of the Commercial Code.

(f) Nothing in this section requires that a demand be made under this section, and the judgment debtor or owner of property subject to the judgment lien may make a demand for an acknowledgment of satisfaction under Section 724.050 rather than for a termination statement under this section.

**Comment.** Section 697.640 provides a procedure for obtaining and filing a statement terminating a judgment lien on personal property. The 10-day period for complying with the demand is the same as that in Commercial Code Section 9404 for the sake of uniformity. The Secretary of State may provide a form for the termination statement. See Section 697.670. Subdivision (b) is comparable to subdivision (b) of Section 724.050 (demand for filing or delivery of acknowledgment of satisfaction of judgment). Subdivision (c) makes applicable the procedure provided in Sections 724.050-724.090 for obtaining an acknowledgment of satisfaction of judgment. Subdivision (d) permits the judgment debtor to file a satisfaction of the judgment to release the lien if the judgment creditor has neglected to do

so. See also Sections 724.060 (acknowledgment of satisfaction), 724.100 (clerk's certificate).

Section 697.640 does not preclude the judgment debtor from demanding the filing or delivery or both of an acknowledgment of satisfaction of judgment under Section 720.050. See Section 697.640 (f). The judgment lien on personal property may then be terminated by filing under Section 697.640 the acknowledgment or clerk's certificate to terminate the judgment lien.

#### CROSS-REFERENCES

Acknowledgment of satisfaction § 724.060

Clerk's certificate of satisfaction § 724.100

Defined terms

    Judgment creditor § 680.240

    Judgment debtor § 680.250

Fee for filing termination statement, see Com. Code § 9404(3)

Forms § 697.670

Manner of service § 684.010 *et seq.*

Service on judgment creditor's attorney §§ 684.010, 684.050

### § 697.650. Release or subordination of judgment lien on personal property

697.650. (a) The judgment creditor may by a writing do either of the following:

(1) Release the judgment lien on all or a part of the personal property subject to the lien.

(2) Subordinate to a security interest or other lien or encumbrance the judgment lien on all or a part of the personal property subject to the judgment lien.

(b) A statement of release or subordination is sufficient if it is signed by the judgment creditor, contains a description of the property being released or on which the lien is being subordinated, the name and address of the judgment debtor, and the file number of the notice of judgment lien.

(c) The filing officer shall treat a statement of release or subordination filed pursuant to this section in the same manner as a statement of release filed pursuant to Section 9405 of the Commercial Code. The fee for filing the statement is the same as that provided in Section 9405 of the Commercial Code.

**Comment.** Section 697.650 is drawn from Commercial Code Section 9405 for the sake of uniformity and provides a procedure for the release or subordination of the judgment lien on all or a part of the property subject to the judgment lien. The Secretary

of State may provide a form for the statement of release or subordination. See Section 697.670. See also Section 697.660 (release of erroneous judgment lien).

## CROSS-REFERENCES

## Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Forms § 697.670

**§ 697.660. Release of erroneous judgment lien on personal property**

**697.660.** (a) If a notice of judgment lien on personal property filed in the office of the Secretary of State appears to create a judgment lien on personal property of a person who is not the judgment debtor because the name of the property owner is the same as or similar to that of the judgment debtor, the erroneously identified property owner may deliver to the judgment creditor a written demand that the judgment creditor file in the office of the Secretary of State a statement releasing the lien as to the property of such owner. The demand shall be accompanied by proof to the satisfaction of the judgment creditor that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment against the judgment debtor.

(b) Within 15 days after receipt of the property owner's demand and proof satisfactory to the judgment creditor that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment, the judgment creditor shall file in the office of the Secretary of State a statement releasing the lien on the property of such owner. If the judgment creditor improperly fails to file the statement of release within the time allowed, the judgment creditor is liable to the property owner for all damages sustained by reason of such failure and shall also forfeit one hundred dollars (\$100) to the property owner.

(c) If the judgment creditor does not file a statement of release pursuant to subdivision (b), the property owner may apply to the court on noticed motion for an order releasing the judgment lien on the property of such

owner. Notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. Upon presentation of evidence to the satisfaction of the court that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment, the court shall order the judgment creditor to prepare and file the statement of release or shall itself order the release of the judgment lien on the property of such owner. The court order may be filed in the office of the Secretary of State with the same effect as the statement of release demanded by the property owner.

(d) The court shall award reasonable attorney's fees to the prevailing party in any action or proceeding maintained pursuant to this section.

(e) The damages provided by this section are not in derogation of any other damages or penalties to which an aggrieved person may be entitled by law.

(f) The fee for filing a statement of release or court order under this section is the same as that provided in Section 9405 of the Commercial Code.

**Comment.** Section 697.660 is comparable to Section 697.410. See the Comment to Section 697.410.

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

##### Forms § 697.670

Manner of service § 684.010 *et seq.*

Proof of service required § 684.210

Service on judgment creditor's attorney §§ 684.010, 684.050

### § 697.670. Forms prepared by Secretary of State

**697.670.** The Secretary of State may prepare the forms for the notice of judgment lien on personal property, the termination statement, and the statement of release or subordination provided for in this article. A form prepared pursuant to this section is deemed to comply with the requirements of this article.

**Comment.** Section 697.670 is an exception to the general provision (Section 681.030) giving the Judicial Council authority to prescribe forms. The Secretary of State is authorized to

prepare similar forms under the Attachment Law. See, *e.g.*, Sections 488.340(a) (notice of attachment of equipment) and 488.360(c) (notice of attachment of farm products or inventory).

#### Article 4. Execution Lien

##### § 697.710. Creation and duration of execution lien

697.710. A levy on property under a writ of execution creates an execution lien on the property from the time of levy until the expiration of one year after the date of issuance of the writ unless the judgment is sooner satisfied.

**Comment.** Section 697.710 continues the substance of a portion of the first sentence of former Section 688(e). The running of the lien is not tolled during a stay of enforcement and the lien may in some cases be extinguished under Section 697.040 (effect of stay of enforcement of judgment). Property is not affected by issuance of a writ or the delivery of a writ to the levying officer and no execution lien attaches to the property until levy. For general provisions governing liens, see Article 1 (commencing with Section 697.010). For a special provision applicable to an execution lien on an interest in personal property in the estate of a decedent, see Section 700.200(d). Failure to post, serve, or mail a copy of the writ and notice of levy does not affect an execution lien created by levy of execution. See Section 699.550.

#### CROSS-REFERENCES

Defined terms

Judgment debtor § 680.250

Property § 680.310

Methods of levy § 700.010 *et seq.*

Writ of execution §§ 699.510, 699.520

##### § 697.720. Lien on real property remains after transfer or encumbrance

697.720. Subject to Section 701.630, if an interest in real property subject to an execution lien is transferred or encumbered, the interest transferred or encumbered remains subject to the lien after the transfer or encumbrance.

**Comment.** Section 697.720 is a new provision that is consistent with case law. See, *e.g.*, *Kinney v. Vallentyne*, 15 Cal.3d 475, 479, 541 P.2d 537, 124 Cal. Rptr. 897 (1975). See also

Section 697.390 (effect of judgment lien on real property where property transferred or encumbered).

**§ 697.730. Effect on lien of transfer or encumbrance of tangible personal property in custody of levying officer**

697.730. Subject to Section 701.630, if tangible personal property subject to an execution lien is in the custody of a levying officer and is transferred or encumbered, the property remains subject to the lien after the transfer or encumbrance.

**Comment.** Section 697.730 is based on the principle that a potential transferee or encumbrancer of tangible personal property has a duty to determine whether the person attempting to transfer the property has possession of it and can deliver possession. *Cf.* Civil Code § 3440 (transfer without delivery conclusively presumed fraudulent). This principle applies where the property is in the levying officer's custody pursuant to execution. Compare Section 697.740 (effect of transfer or encumbrance where property not in custody of levying officer). See also Section 701.630 (extinction of lien upon execution sale).

CROSS-REFERENCES

Defined terms

Levying officer § 680.260

Personal property § 680.290

**§ 697.740. Effect on lien of transfer or encumbrance of property not in custody of levying officer**

697.740. Subject to Section 701.630, if personal property subject to an execution lien is not in the custody of a levying officer and the property is transferred or encumbered, the property remains subject to the lien after the transfer or encumbrance except where the transfer or encumbrance is made to one of the following persons:

(a) A person who acquires an interest in the property under the law of this state for fair consideration without knowledge of the lien.

(b) A buyer in ordinary course of business (as defined in Section 1201 of the Commercial Code) who, under Section 9307 of the Commercial Code, would take free of a security interest created by the seller or encumbrancer.

(c) A holder in due course (as defined in Section 3302 of the Commercial Code) of a negotiable instrument within the meaning of Section 3104 of the Commercial Code.

(d) A holder to whom a negotiable document of title has been duly negotiated within the meaning of Section 7501 of the Commercial Code.

(e) A bona fide purchaser (as defined in Section 8302 of the Commercial Code) of a security (Section 8102 of the Commercial Code).

(f) A purchaser of chattel paper or an instrument who gives new value and takes possession of the chattel paper or instrument in the ordinary course of business.

(g) A holder of a purchase money security interest (as defined in Section 9107 of the Commercial Code).

(h) A collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Commercial Code.

(i) A person who acquires any right or interest in letters of credit, advices of credit, or money.

(j) A person who acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of the security interest.

**Comment.** Section 697.740 is drawn from Government Code Section 7170(c) (state tax liens). Section 697.740 covers tangible personal property not covered by Section 697.730 and intangible personal property such as accounts receivable and general intangibles. See also Civil Code §§ 955, 955.1 (transfer of accounts and general intangibles). Although the section is based on the provision relating to state tax liens, it is also consistent with case law governing the effect of equitable liens. See *Jud Whitehead Heater Co. v. Obler*, 111 Cal. App.2d 861, 872-74, 245 P.2d 608, 616 (1952); *Wagner v. Sariotti*, 56 Cal. App.2d 693, 698, 133 P.2d 430, 433 (1943); *cf. Taylor v. S & M Lamp Co.*, 190 Cal. App.2d 700, 711-13, 12 Cal. Rptr. 323 (1961). It should be noted that even if the transferee gives fair consideration and has no notice of the existence of a lien on the property, the transfer may in certain circumstances be attacked as a fraudulent conveyance. See Civil Code §§ 3439-3440.



## CROSS-REFERENCES

## Defined terms

- Chattel paper § 680.140
- Document of title § 680.180
- Instrument § 680.220
- Judgment debtor § 680.250
- Levying officer § 680.260
- Person § 680.280
- Personal property § 680.290
- Security interest § 680.360

**§ 697.750. Effect on lien of transfer or encumbrance of growing crops, timber to be cut, or minerals to be extracted**

697.750. Notwithstanding Section 697.740, subject to Section 701.630, if (1) growing crops, (2) timber to be cut, or (3) minerals or the like (including oil or gas) to be extracted or accounts receivable resulting from the sale thereof at wellhead or minehead are subject to an execution lien and are transferred or encumbered, the property remains subject to the execution lien after the transfer or encumbrance.

*Comment.* Section 697.750 provides an exception to Section 697.740. Since a levy on growing crops, timber to be cut, or minerals to be extracted is accomplished by recording a copy of the writ and a notice of levy with the county recorder (Section 700.020), constructive notice is thereby given to any potential transferee or person taking an encumbrance of the property. *Cf.* Section 697.390 (effect of judgment lien on real property where property transferred or encumbered).

**Article 5. Other Liens Created by Enforcement Process**

**§ 697.910. Application of article**

697.910. This article applies to liens created by any of the following:

- (a) An examination proceeding as provided in Section 708.110, 708.120, or 708.205.
- (b) A creditor's suit as provided in Section 708.250.
- (c) A charging order as provided in Section 708.320.

*Comment.* Section 697.910 limits the scope of this chapter to the liens listed in the section. The effect of liens not covered by this article or other statutory provisions is determined, as under former law, by judicial decisions applicable to the particular

provision. See also Sections 708.440 (effect of lien in pending action or proceeding), 708.530 (effect of assignment ordered by court).

### § 697.920. Effect of lien

697.920. Subject to Section 701.630, a lien described in Section 697.910 continues on property subject to the lien, notwithstanding the transfer or encumbrance of the property subject to the lien, unless the person receiving the property is a person listed in Section 697.740.

**Comment.** Section 697.920 gives a lien under this article the same effect as is given an execution lien where the property is not in custody of a levying officer, except that Section 697.920 applies to all property, real and personal, subject to the lien. As to the procedure for extending the duration of the lien when the judgment is renewed, see Section 683.190.

## CHAPTER 3. EXECUTION

### Article 1. General Provisions

#### § 699.010. Application of chapter

699.010. Except as otherwise provided by statute, this chapter governs enforcement of a money judgment by a writ of execution.

**Comment.** Section 699.010 makes clear that this chapter governs the procedure under a writ of execution. For provisions applicable to a wage garnishment, see Sections 706.010-706.154. For provisions applicable to property levied upon or otherwise subjected to process for enforcement prior to the operative date of this chapter, see Sections 694.040, 694.050.

#### § 699.020. Payment by debtor of judgment debtor

699.020. At any time after delivery of a writ of execution to a levying officer and before its return, a person indebted to the judgment debtor may pay to the levying officer the amount of the debt or so much thereof as is necessary to satisfy the money judgment. The levying officer shall give a receipt for the amount paid and such receipt is a discharge for the amount paid.

**Comment.** Section 699.020 continues the substance of former Section 716.

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Levying officer § 680.260

Money judgment § 680.270

Person § 680.280

Writ of execution §§ 699.510, 699.520

### § 699.030. Levy on property in private place

**699.030.** If personal property sought to be levied upon is located in a private place of the judgment debtor:

(a) The levying officer making the levy shall demand delivery of the property by the judgment debtor and shall advise the judgment debtor that the judgment debtor may be liable for costs and attorney's fees incurred in any further proceedings to obtain delivery of the property. If the judgment debtor does not deliver the property, the levying officer shall make no further effort to obtain custody of the property and shall promptly notify the judgment creditor of the failure to obtain custody of the property.

(b) The judgment creditor may apply to the court ex parte, or on noticed motion if the court so directs or a court rule so requires, for an order directing the levying officer to seize the property in the private place. The application may be made whether or not a writ has been issued and whether or not demand has been made pursuant to subdivision (a). The application for the order shall describe with particularity both the property sought to be levied upon, and the place where it is to be found, according to the best knowledge, information, and belief of the judgment creditor. The court may not issue the order unless the judgment creditor establishes that there is probable cause to believe that property sought to be levied upon is located in the place described. The levying officer making the levy, at the time delivery of the property pursuant to the order is demanded, shall announce his or her identity, purpose, and authority. If the property is not voluntarily delivered, the levying officer may cause the building or enclosure where the

property is believed to be located to be broken open in such manner as the levying officer reasonably believes will cause the least damage, but if the levying officer reasonably believes that entry and seizure of the property will involve a substantial risk of death or serious bodily harm to any person, the levying officer shall refrain from entering and shall promptly make a return to the court setting forth the reasons for believing that the risk exists. In such a case, the court shall make such orders as may be appropriate.

**Comment.** Subdivision (a) of Section 699.030 states the limit of a levying officer's authority to obtain property in a private place without further court authorization. Whether the judgment debtor who fails to deliver property is liable for costs of obtaining further court authorization depends on the circumstances of the case. See Sections 685.040 (reasonable and necessary costs) and 685.080 (motion for costs).

Subdivision (b) is based on comparable provisions relating to claim and delivery. See Sections 512.010, 512.060, 512.080, 514.010, and Comments thereto. If the levying officer gains entrance into a private place pursuant to an order issued under this section, the levying officer's authority to levy upon property is restricted by the terms of the order.

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Personal property § 680.290

Service on judgment debtor's attorney §§ 684.020, 684.050

#### § 699.040. Turnover order in aid of execution

699.040. (a) If a writ of execution is issued, the judgment creditor may apply to the court *ex parte*, or on noticed motion if the court so directs or a court rule so requires, for an order directing the judgment debtor to transfer to the levying officer either or both of the following:

(1) Possession of the property sought to be levied upon if the prescribed method of levy is by taking the property into custody.

(2) Possession of documentary evidence of title to property of or a debt owed to the judgment debtor that

is sought to be levied upon. An order pursuant to this paragraph may be served when the property or debt is levied upon or thereafter.

(b) The court may issue an order pursuant to this section upon a showing of need for the order.

(c) The order shall be personally served on the judgment debtor and shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court.

**Comment.** Section 699.040 is analogous to Section 482.080 (providing for turnover order when a writ of attachment is issued). See also Section 512.070 (providing for turnover order when writ of possession issued under claim and delivery statute). As to duty of a third person to execute and deliver any documents necessary to effect the transfer of property levied upon, see Section 701.010.

#### CROSS-REFERENCES

Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Manner of service § 684.010 *et seq.*

### § 699.050. Satisfaction from or release of attached property

699.050. If property of the judgment debtor is subject to an attachment lien in favor of the judgment creditor, no additional property of the judgment debtor may be levied upon under a writ of execution in favor of the judgment creditor until one of the following has occurred with respect to the property:

(a) The attached property either has been levied upon under a writ of execution or has been otherwise applied to the satisfaction of the money judgment.

(b) The attached property has been released.

(c) If the attached property is real property, a judgment lien on the attached property has been created.

**Comment.** Section 699.050 supersedes former Section 684.2, which appeared to make the levying officer responsible for applying attached property to the satisfaction of the judgment upon delivery of a writ of execution. This division requires a new

levy appropriate to the type of property held under an attachment lien. See, *e.g.*, Sections 700.015 (real property), 700.050 (tangible personal property in custody of levying officer), 700.170 (accounts receivable and general intangibles). Release is governed by Section 699.060. A lien of attachment continues after judgment until it expires by its own terms or is merged in a judgment lien, execution lien, or the lien of some other postjudgment enforcement procedure. See Sections 488.510 (duration of attachment lien), 697.020 (relation back of liens); *Bagley v. Ward*, 37 Cal. 121, 131 (1869); *Balzano v. Traeger*, 93 Cal. App. 640, 643-44, 270 P. 249 (1928).

Section 699.050 requires that the judgment creditor take some further action with respect to attached property before levying on other property of the judgment debtor that was not attached. Levy on property that was not attached is not permitted unless either the attached property has been released, levied upon under a writ of execution, or otherwise applied to the satisfaction of the judgment or (in case of attached real property) a judgment lien has been created on the real property. Although the judgment creditor may, of course, levy under a writ of execution on attached real property, Section 699.050 is satisfied if the judgment creditor merely records an abstract of judgment to create a judgment lien. Creation of a judgment lien is sufficient because levy on real property under a writ of execution may result in considerable delay and expense. Execution on other unattached property may be more expeditious and inexpensive.

#### CROSS-REFERENCES

Attachment lien § 488.500

Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Miscellaneous creditors' remedies § 708.010 *et seq.*

Release of property § 699.060

### § 699.060. Release of property from lien and custody

699.060. (a) The levying officer shall release property levied upon as provided in this section when the levying officer receives a written direction from the judgment creditor or a certified copy of a court order for release or when otherwise required to release the property. The release extinguishes any execution lien or attachment lien in favor of the judgment creditor on the property released.

(b) If the property to be released has been taken into custody under the levy, it shall be released to the person from whom it was taken unless otherwise ordered by the court. If the person does not claim the property to be released, the levying officer shall retain custody of the property and shall serve on such person a notice of where possession of the property may be obtained. Service shall be made personally or by mail. If the person does not claim the property within 30 days after the notice is served, the levying officer shall sell the property (other than cash or its equivalent) in the manner provided by Article 6 (commencing with Section 701.510). The levying officer shall deposit the proceeds of sale and cash or its equivalent, after first deducting the levying officer's costs, with the county treasurer of the county where the property is located, payable to the order of the person.

(c) If the property to be released has not been taken into custody under the levy, the levying officer shall release the property by issuing a written notice of release and serving it on the person who was served with a copy of the writ and a notice of levy to create the lien. Service shall be made personally or by mail.

(d) If the property to be released was levied upon by recording or filing a copy of the writ and a notice of levy, the levying officer shall record or file a written notice of release in the same office.

(e) The levying officer is not liable for releasing property in accordance with this section nor is any other person liable for acting in conformity with the release.

**Comment.** Section 699.060 supersedes the portion of subdivision (b) of former Section 688 that incorporated the manner of release of attachment. Section 699.060 is generally similar to Section 488.560 (release of attachment). Subdivision (b), however, provides for property to be sold and the proceeds deposited in the county treasury if the person to whom property is to be released does not appear. See also Gov't Code §§ 50050-50055 (disposition of unclaimed money in county treasury).

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Judgment creditor § 680.240

Levying officer § 680.260

Extension of time where service by mail § 684.120

Manner of service § 684.010 *et seq.*

Service on judgment debtor's attorney §§ 684.020, 684.050

**§ 699.070. Appointment of receiver, sale, or other action to preserve value of property**

699.070. (a) The court may appoint a receiver or order the levying officer to take any action the court orders that is necessary to preserve the value of property levied upon, including but not limited to, selling the property, if the court determines that the property is perishable or will greatly deteriorate or greatly depreciate in value or that for some other reason the interests of the parties will be best served by the order. An order may be made under this subdivision upon application of the judgment creditor, the judgment debtor, or a person who has filed a third-party claim pursuant to Division 4 (commencing with Section 720.010). The application shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, the application may be made *ex parte*.

(b) If the levying officer determines that property levied upon is extremely perishable or will greatly deteriorate or greatly depreciate in value before a court order pursuant to subdivision (a) could be obtained, the levying officer may take any action necessary to preserve the value of the property or may sell the property. The levying officer is not liable for a determination made in good faith under this subdivision.

(c) Except as otherwise provided by order of the court, a sale of property pursuant to this section shall be made in the manner provided by Article 6 (commencing with Section 701.510) and the proceeds shall be applied to the satisfaction of the money judgment in the manner provided by Article 7 (commencing with Section 701.810). Notwithstanding subdivisions (b) and (d) of Section 701.530, notice of sale shall be posted and served at a reasonable time before the sale, considering the character and condition of the property.

(d) If a receiver is appointed, the court shall fix the daily fee of the receiver and may order the judgment



creditor to pay the fees and expenses of the receiver in advance or may direct that the whole or any part of the fees and expenses be paid from the proceeds of any sale of the property. Except as otherwise provided in this section, the provisions of Chapter 5 (commencing with Section 564) and Chapter 5a (commencing with Section 571) of Title 7 govern the appointment, qualifications, powers, rights, and duties of a receiver appointed under this section.

**Comment.** Section 699.070 is analogous to Section 488.530 (attachment) and supersedes provisions relating to disposition of perishable property in former Sections 689 (third-party claims proceedings) and 690.50(g) (exemption proceedings). See also Section 703.610 (disposition of property pending exemption proceedings). The second sentence of subdivision (c) continues the substance of subdivision 1 of former Section 692. As to the appointment of a receiver to enforce the judgment, see Sections 708.610-708.630.

#### CROSS-REFERENCES

##### Defined terms

- Court § 680.160
- Judgment creditor § 680.240
- Judgment debtor § 680.250
- Levying officer § 680.260
- Money judgment § 680.270

#### § 699.080. Levy by registered process server

**699.080.** (a) A registered process server may levy under a writ of execution on the following types of property:

- (1) Real property, pursuant to Section 700.015.
- (2) Growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead, pursuant to Section 700.020.
- (3) Personal property used as a dwelling, pursuant to subdivision (a) of Section 700.080.
- (4) Deposit accounts, pursuant to Section 700.140 or 700.160.
- (5) Accounts receivable or general intangibles, pursuant to Section 700.170.
- (6) Final money judgments, pursuant to Section 700.190.

(b) If a registered process server levies on property pursuant to subdivision (a), the registered process server shall do all of the following:

(1) Comply with the applicable levy, posting, and service provisions of Article 4 (commencing with Section 700.010).

(2) Deliver any undertaking required by Section 700.160.

(3) Request any third person served to give a garnishee's memorandum to the levying officer in compliance with Section 701.030.

(c) At the time of levy under this section or promptly thereafter, all of the following shall be filed with the levying officer:

(1) The writ of execution.

(2) An affidavit of the registered process server stating the manner of levy performed.

(3) Proof of service of the writ and notice of levy on other persons as required by Article 4 (commencing with Section 700.010).

(d) Upon receipt of the fee provided by Section 26721 of the Government Code, the levying officer shall perform all other duties under the writ as if the levying officer had levied under the writ and shall return the writ to the court.

(e) The recovery of the fee for services of a registered process server under this section is governed by Section 1032b.

**Comment.** Section 699.080 supersedes subdivisions (b) and (c) of former Section 687. This section expands and clarifies the role of the registered process server in levying on property pursuant to a writ of execution.

Subdivision (a) of Section 699.080 continues the principle of former law that a registered process server may levy where the property levied upon is not in the possession of the judgment debtor and is not to be sold by, delivered to, or taken into custody by the person serving the writ. Subdivision (a) goes beyond former law by permitting levies by registered process servers on real property and on growing crops, timber to be cut, and minerals to be extracted and the like, since these types of property are levied upon by recording a writ and notice of levy

with the county recorder (see Sections 700.015 and 700.020), and on personal property used as a dwelling where levy is accomplished by service or posting rather than taking custody (see Section 700.080(a)).

Subdivision (b) makes clear that the registered process server is required to perform certain duties ancillary to the levy that would normally be performed by the levying officer at the time of levy or promptly thereafter. Subdivision (c) requires that the levying officer be provided with the information necessary to perform the remaining duties under the writ and to make a return on the writ. Subdivision (d) continues the substance of former Section 687(c). Subdivision (e) incorporates the general standard for recovery of the costs of employing a registered process server. For a limitation of this provision, see Section 706.101(e) (earnings withholding order).

#### CROSS-REFERENCES

##### Defined terms

- Account receivable § 680.130
- Court § 680.160
- Deposit account § 680.170
- General intangible § 680.210
- Levying officer § 680.260
- Registered process server § 680.330
- Earnings withholding order, service by registered process server § 706.101
- Notice of levy § 699.540
- Order requiring appearance for examination, service by registered process server § 708.170
- Proof of service § 684.220
- Writ of execution §§ 699.510, 699.520

### § 699.090. Liability for levy based on record ownership

699.090. If property that is required by law to be registered or recorded in the name of the owner is levied upon under a writ of execution and it appears at the time of the levy that the judgment debtor was the registered or record owner of the property and the judgment creditor caused the levy to be made and the lien maintained in good faith and in reliance upon such registered or recorded ownership, neither the judgment creditor, the levying officer, nor the sureties on an undertaking given by the judgment creditor pursuant to Chapter 2 (commencing with Section 720.110) or Chapter 3 (commencing with Section 720.210) of Division 4 is liable to a third person for the levy itself.

**Comment.** Section 699.090 continues the substance of a portion of the second paragraph of former Section 689. See also Section 700.090 (notice to legal owner of vehicle, boat, mobilehome, or commercial coach for which certificate of ownership issued).

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

## Article 2. Writ of Execution and Notice of Levy

### § 699.510. Issuance of writ of execution

699.510. (a) Subject to subdivision (b), after entry of a money judgment, a writ of execution shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the levy is to be made and to any registered process server. A separate writ shall be issued for each county where a levy is to be made. Writs may be issued successively until the money judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 90 days after the issuance of a prior writ for that county unless the prior writ is first returned.

(b) If the judgment creditor seeks a writ of execution to enforce a judgment made or entered pursuant to the Family Law Act, Part 5 (commencing with Section 4000) of Division 4 of the Civil Code, in addition to the requirements of this article the judgment creditor shall satisfy the requirements of Section 4383 of the Civil Code.

**Comment.** Subdivision (a) of Section 699.510 supersedes portions of the first sentences of former Sections 681 and 682 pertaining to issuance of writs of execution, and continues the substance of the first and last sentences of subdivision (a) of former Section 687. The time during which a writ of execution may be issued is determined pursuant to Chapter 3 (commencing with Section 683.010) of Division 1. Where writs of execution are issued for two or more counties, the judgment creditor has a duty to see that an excessive levy is not made. *Cf.* *White Lighting Co. v. Wolfson*, 68 Cal.2d 336, 347-50, 438 P.2d 345, 66 Cal. Rptr. 697 (1968) (excessive attachment as abuse of process). The same duty to avoid an excessive levy would exist,

for example, where one writ is retained after the 90-day period for the purpose of completing a sale or continuing a collection and the judgment creditor obtains another writ to reach other property in the same county. As to levy by a registered process server, see Section 699.080. See also Section 706.101(e) (wage garnishment).

Subdivision (a) also supersedes prior law under which no more than one writ could be outstanding in one county for the enforcement of the same judgment. See subdivision (b) of former Section 683. See also 32 Ops. Cal. Att'y Gen. 22 (1958). Subdivision (a) permits the issuance of a writ of execution for a particular county once every 90 days (unless the prior writ is earlier returned) and Section 699.530 provides a 90-day period during which property may be levied upon under the writ. During the 90-day period, any number of levies are permitted on the same writ. Hence, only one writ at a time provides authority for levy in a given county although several writs might be outstanding since Section 699.560 permits a writ to be retained for the completion of sale or collection until one year after the writ was issued. This arrangement provides the judgment creditor with needed flexibility; one writ may be retained by the levying officer for the purpose of completing a sale or continuing collection while another writ may be issued in the same county to reach newly discovered property after the 90-day period for levy under the first writ has expired.

Subdivision (b) makes clear that a judgment creditor seeking to enforce a support judgment is required to comply with Civil Code Section 4383 which permits enforcement of installments not more than 10 years overdue by execution without the need for prior court approval. As to installments more than 10 years overdue, see Civil Code Sections 4380 and 4384.

The provisions of this section are subject to limitations provided elsewhere. See, *e.g.*, Sections 683.010-683.220 (time for enforcement), 686.020 (enforcement after death of judgment debtor), 916-923 (stay of enforcement).

#### CROSS-REFERENCES

Attached property, satisfaction from or release § 699.050

Defined terms

Court § 680.160

Judgment creditor § 680.240

Levying officer § 680.260

Money judgment § 680.270

Registered process server § 680.330

Return of writ § 699.560

Turnover order in aid of execution § 699.040

**§ 699.520. Contents of writ of execution**

699.520. The writ of execution shall require the levying officer to whom it is directed to enforce the money judgment and shall include the following information:

- (a) The date of issuance of the writ.
- (b) The title of the court where the judgment is entered and the cause and number of the action.
- (c) The name and address of the judgment creditor and the name and last known address of the judgment debtor.
- (d) The date of the entry of the judgment and of any subsequent renewals and where entered in the records of the court.
- (e) The total amount of the money judgment as entered or renewed, together with costs thereafter added to the judgment pursuant to Section 685.090 and the accrued interest on the judgment from the date of entry or renewal of the judgment to the date of issuance of the writ, reduced by any partial satisfactions and by any amounts no longer enforceable.
- (f) The amount required to satisfy the judgment on the date the writ is issued.
- (g) The amount of interest accruing daily on the principal amount of the judgment from the date the writ is issued.
- (h) Whether any person has requested notice of sale under the judgment and, if so, the name and mailing address of such person.

**Comment.** Section 699.520 prescribes the essential elements of a writ of execution. It supersedes a portion of the introductory paragraph and subdivision 1 of former Section 682, former Section 682.1, and portions of former Sections 682.2 and 692a. See also Section 699.530 (execution of writ). For the statutory form of the writ, see Section 693.010. The writ of execution is directed to the levying officer and provides the basis for the levying officer's authority under this chapter. Some duties under the writ may be performed by a registered process server. See Section 699.080. See also Section 706.101(e) (wage garnishment).

Subdivision (g) provides for the computation of daily interest on the principal amount of the judgment (defined in Section 680.300). Under former Section 682.2, it appears that daily

interest was computed on the total amount of the judgment remaining unpaid, including accrued interest. The change made by subdivision (g) avoids compounding of interest.

CROSS-REFERENCES

Costs § 685.050

Defined terms

Costs § 680.150

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Money judgment § 680.270

Principal amount of the judgment § 680.300

Forms

Judicial Council authority § 681.030

Writ of execution § 693.010

Interest §§ 685.010-685.030, 685.050

Request for notice of sale § 701.550

Writ directed to registered process server § 699.510

**§ 699.530. Delivery and execution of writ; limitation on time for levy**

699.530. (a) Upon delivery of the writ of execution to the levying officer to whom the writ is directed, together with the written instructions of the judgment creditor, the levying officer shall execute the writ in the manner prescribed by law.

(b) The levying officer may not levy upon any property under the writ after the expiration of 90 days from the date the writ was issued.

**Comment.** Subdivision (a) of Section 699.530 continues the practice under former law that the levying officer will not act until the judgment creditor delivers the writ of execution and written instructions to levy upon specific property. See Sections 262 (instructions of a party or the party's attorney not an excuse from liability unless in writing), 687.010 (instructions to levying officer). Subdivision (a) also supersedes the first portion of the first sentence of former Section 691. The mandatory order of levy provided in subdivision 1 of former Section 682 is not continued, but the judgment creditor's instructions may designate the order of levy. As to a restriction on levy on other property where property has been attached, see Section 699.050. See also Sections 685.050 (costs and interest under writ), 685.090 (addition of costs to judgment), 685.100 (deposit of costs), 699.080 (levy by registered process server), 699.710 (property subject to levy of execution).

Subdivision (b) prescribes the time within which property may be levied upon under a writ of execution. The 90-day period runs from the date of issuance of the writ, whereas under subdivision (a) of former Section 683 the writ was to be returned within 60 days after its receipt by the levying officer.

CROSS-REFERENCES

Attached property, satisfaction from or release § 699.050

Defined terms

Judgment creditor § 680.240

Levying officer § 680.260

Levy on property in private place § 699.030

Liability of levying officer §§ 701.560, 701.680

Methods of taking property into custody § 687.030

Protection of levying officer from liability §§ 687.040, 699.060, 699.070, 699.090, 701.570

Turnover order in aid of execution § 699.040

Writ directed to registered process server § 699.510

**§ 699.540. Contents of notice of levy**

**699.540.** The notice of levy required by Article 4 (commencing with Section 700.010) shall inform the person notified of all of the following:

(a) The capacity in which the person is notified.

(b) The property that is levied upon.

(c) The person's rights under the levy, including the right to claim an exemption pursuant to Chapter 4 (commencing with Section 703.010) and the right to make a third-party claim pursuant to Division 4 (commencing with Section 720.010).

(d) The person's duties under the levy.

**Comment.** Section 699.540 prescribes the contents of the notice of levy. A statutory form is provided in Section 693.020. The Judicial Council has authority to supersede the statutory form. See Section 681.030. The notice of levy of execution is similar to the notice of attachment provided by Section 488.020. Under prior law, the notice of levy was recognized by Section 688(b), but there was no provision for an official form of the notice. Instead, the form of the notice of levy was determined by the levying officers. See, *e.g.*, Marshal's Manual of Procedure §§ 302.1, 344.1 (rev. 1980); Cal. State Sheriffs' Ass'n, Civil Procedural Manual 4.10, 4.10.4, 4.19-4.20, 4.23-4.24 (rev. 1980). The notice of levy is directed to the person being notified whereas the writ of execution is directed to the levying officer or a registered process server. See Sections 699.510 (issuance of writ) and 699.520 (contents of writ of execution). The judgment creditor must supply written instructions to the levying officer



which provide sufficient information to complete the notice of levy. See Sections 687.010 (instructions to levying officer), 699.530 (delivery of instructions to levying officer).

**§ 699.550. Effect of failure to give notice of levy**

699.550. In any case where property has been levied upon and, pursuant to a levy, a copy of the writ of execution and a notice of levy are required by statute to be posted or to be served on or mailed to the judgment debtor or other person, failure to post, serve, or mail the copy of the writ and the notice does not affect the execution lien created by the levy.

**Comment.** Section 699.550 is analogous to portions of Sections 488.310-488.430 (method of levy in attachment) which were incorporated by former Section 688. This section is intended to preserve the validity of a levy in a case where additional postings, service, or mailings have been omitted. For example, an instrument in the hands of a third person is levied upon at the time the third person is served. See Section 700.110(a)(2). The levy is effective to create a lien even though no notice is given the judgment debtor (as required by Section 700.010) or the obligor under the instrument (as provided by Section 700.110(b)), but the rights of the obligor are not affected until the obligor knows or has reason to know of the levy (see Sections 701.010, 701.060). As to failure to give notice of a sale, see Section 701.560.

CROSS-REFERENCES

Defined terms

Judgment debtor § 680.250

Execution lien § 697.710

Methods of levy §§ 700.010-700.200

Notice of levy § 699.540

**§ 699.560. Return of writ of execution**

699.560. (a) Except as provided in subdivision (b), the levying officer to whom the writ of execution is delivered shall return the writ to the court, together with a report of the levying officer's actions and an accounting of amounts collected and costs incurred, at the earliest of the following times:

- (1) One year from the date of issuance of the writ.
- (2) Promptly after all of the duties under the writ are performed.

(3) When return is requested in writing by the judgment creditor.

(4) If no levy takes place under the writ within 90 days after its issuance, promptly after the expiration of the 90-day period.

(5) Upon expiration of the time for enforcement of the money judgment.

(b) If a levy has been made under Section 700.200 upon an interest of an heir, devisee, or legatee in personal property in the estate of a decedent, the writ shall be returned within the time prescribed in Section 700.200.

**Comment.** Subdivision (a) of Section 699.560 supersedes subdivisions (a), (c), and (d) of former Section 683. Under subdivision (a), the period at the end of which the writ must be returned runs from the date of issuance of the writ rather than from the date the writ was received by the levying officer. The provision of former Section 683 that the writ could not be returned before the expiration of 10 days is not continued. If a levy takes place under the writ, any sale of property or collection of a debt under the writ must be completed before the expiration of a year from the date of issuance of the writ under which levy took place (except in the case of an interest in a decedent's estate governed by Section 700.200). Ultimately, return must be made at the expiration of the period of enforceability of a judgment provided by Chapter 3 (commencing with Section 683.010) of Division 1. Redelivery of the writ, alias writs, and alias returns are not authorized as they were under former Sections 683 and 688(e).

Subdivision (b) recognizes that a special rule is provided in subdivision (e) of Section 700.200.

The provisions of this section are incorporated for the purpose of returns of writs of possession and writs of sale. See Section 712.050.

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Judgment creditor § 680.240

Levying officer § 680.260

Money judgment § 680.270

Personal property § 680.290

### Article 3. Property Subject to Execution

#### § 699.710. Property subject to execution

699.710. Except as otherwise provided by law, all property that is subject to enforcement of a money judgment pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 is subject to levy under a writ of execution to satisfy a money judgment.

**Comment.** Section 699.710 supersedes provisions of former law that purported to prescribe the property subject to execution. See subdivision 1 of former Section 682 (personal property, real property, and real property subject to judgment lien) and former Section 688(a) (“All goods, chattels, moneys or other property, both real and personal, or any interest therein, of the judgment debtor, not exempt by law, and all property and rights of property levied upon under attachment in the action, are subject to execution.”). The type of property that may be reached by levy under a writ of execution is limited by the general principles determining the classes of property that may be applied toward the satisfaction of a money judgment through any procedure. See Sections 695.010-695.030 and the Comments thereto. Section 699.710 also recognizes that certain types of property that are subject to enforcement of a money judgment are not subject to levy under a writ of execution unless the particular exemption specifically otherwise provides. See Section 699.720 (property not subject to execution).

#### CROSS-REFERENCES

Defined terms

Money judgment § 680.270

Property § 680.310

Methods of levy §§ 700.010-700.200

Writ of execution §§ 699.510, 699.520

#### § 699.720. Property not subject to execution

699.720. (a) The following types of property are not subject to execution:

(1) An alcoholic beverage license that is transferable under Article 5 (commencing with Section 24070) of Chapter 6 of Division 9 of the Business and Professions Code.

(2) The interest of a partner in a partnership where the partnership is not a judgment debtor.

(3) A cause of action that is the subject of a pending action or special proceeding.

(4) A judgment in favor of the judgment debtor prior to the expiration of the time for appeal from such judgment or, if an appeal is filed, prior to the final determination of the appeal.

(5) A debt (other than earnings) owing and unpaid by a public entity.

(6) The loan value of an unmaturing life insurance, endowment, or annuity policy.

(7) A franchise granted by a public entity and all the rights and privileges thereof.

(8) The interest of a trust beneficiary.

(9) A contingent remainder, executory interest, or other interest in property that is not vested.

(10) Property in a guardianship or conservatorship estate.

(b) Nothing in subdivision (a) affects or limits the right of the judgment creditor to apply property to the satisfaction of a money judgment pursuant to any applicable procedure other than execution.

**Comment.** Subdivision (a) of Section 699.720 describes certain types of property that are not subject to levy of execution. Subdivision (b) recognizes, however, that such property may be subject to enforcement of a money judgment through some other procedure in Chapter 6: See Article 4 (commencing with Section 708.310) (charging orders against interest of partner in partnership property), Article 5 (commencing with Section 708.410) (lien in pending action or proceeding), Article 6 (commencing with Section 708.510) (assignment order reaching such payments as payments and wages due from the federal government, rents, commissions, royalties, payments due from patent or copyright), Section 708.630 (receiver to transfer alcoholic beverage license), Article 8 (commencing with Section 708.710) (money, other than wages, owing and unpaid by a public entity to the judgment debtor), Section 708.920 (enforcement against franchise), Article 10 (commencing with Section 709.010) (interest as a beneficiary of a trust, interest in property that is not a vested interest, property in guardianship or conservatorship estate).

Subdivision (a)(6) recognizes that life insurance loan values are not subject to execution. See *Equico Lessors, Inc. v. Metropolitan Life Ins. Co.*, 88 Cal. App.3d Supp. 6, 7-10, 151 Cal. Rptr. 618 (1978). As to the procedure for reaching the loan value,

see the discussion in the Comment to Section 704.100. The cash surrender value is not subject to enforcement of a money judgment. See Sections 703.030(b), 704.100(a).

Subdivision (a)(7) supersedes former Section 724a which subjected franchises to levy and sale under execution. A franchise may be applied to the satisfaction of a money judgment pursuant to Article 9 (commencing with Section 708.910) of Chapter 6 (miscellaneous creditors' remedies).

Property that is exempt by statute without the need to make an exemption claim is not subject to any procedure for the enforcement of a money judgment. See Section 703.030(b).

#### CROSS-REFERENCES

##### Defined terms

Judgment § 680.230

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Property § 680.310

## Article 4. Methods of Levy

### § 700.010. Service of writ and notice of levy on judgment debtor

**700.010.** At the time of levy pursuant to this article or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on the judgment debtor. Service shall be made personally or by mail.

**Comment.** Section 700.010 continues the requirement of former Section 682.1 and of the second sentence of subdivision (b) of former Section 688 that a copy of the writ be served on the judgment debtor and adds the requirement that a notice of levy also be served on the judgment debtor. The judgment creditor has the responsibility of furnishing the levying officer with the information necessary to comply with this provision. See Section 687.010 (instructions to levying officer). See also Section 699.080 (levy by registered process server). Failure to comply with Section 700.010 does not affect the validity of the execution lien created by the levy. See Section 699.550.

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Levying officer § 680.260

Effect of failure to give notice of levy § 699.550

Manner of service § 684.010 *et seq.*

Notice of levy § 699.540

Service on judgment debtor's attorney §§ 684.020, 684.050

Writ of execution § 699.520

### § 700.015. Real property

**700.015.** (a) To levy upon real property, the levying officer shall record with the recorder of the county where the real property is located a copy of the writ of execution and a notice of levy that describes the property levied upon and states that the described property has been levied upon. If the real property stands upon the records of the county in the name of a person other than the judgment debtor, the notice of levy shall identify the third person and the recorder shall index the copy of the writ and notice of levy in the names of both the judgment debtor and the third person.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy on any third person in whose name the real property stands upon the records of the county. Service shall be made personally or by mail. If service on the third person is by mail, it shall be sent to the address shown by the records of the office of the tax assessor of the county where the real property is located.

(c) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy on one occupant of the real property. Service on the occupant shall be made by leaving the copy of the writ and a notice of levy with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found upon the real property when service is attempted who is either an employee or agent of the occupant or a member of the occupant's household. If unable to serve such an occupant at the time service is attempted, the levying officer shall post the copy of the writ and the notice of levy in a conspicuous place on the real property. If the real property described in the notice of levy consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lies with relation to any of the

others so as to form one or more continuous, unbroken tracts, only one service or posting need be made under this subdivision as to each continuous, unbroken tract.

**Comment.** Section 700.015 is comparable to Section 488.310 (levy upon interests in real property pursuant to the Attachment Law) which was incorporated by former Section 688(b). Any legal or equitable interest in land that is subject to the enforcement of a money judgment is subject to execution unless another exclusive method of enforcement is specified, such as, for example, a partner's interest in partnership real property (where the partner and not the partnership is a judgment debtor) which may be reached by a charging order pursuant to Section 708.310. See Sections 695.010 (property subject to enforcement of money judgment), 699.710 (property subject to execution); *Lynch v. Cunningham*, 131 Cal. App. 164, 173-75, 21 P.2d 154, 21 P.2d 973 (1933).

Leasehold interests are subject to levy as real property under Section 700.015. See Section 680.320 ("real property" defined). It was the practice under former law to treat some leases as personal property and some as real property for purposes of levy. See *Marshal's Manual of Procedure* § 300.3 (rev. 1977).

Former law did not require recordation of the writ and notice of levy if there was an existing judgment lien on the property. See *Lehnhardt v. Jennings*, 119 Cal. 192, 195-97, 48 P. 56, 51 P. 195 (1897) (no levy required where judgment is lien). However, the practice has been to levy in every case. See *Marshal's Manual of Procedure* § 303.2 (rev. 1980); *Cal. State Sheriffs' Ass'n, Civil Procedural Manual* 4.10.1 (rev. 1980). Section 700.015 continues existing practice by requiring a complete levy to be made regardless of whether there is a prior judgment lien or attachment lien on the property in favor of the judgment creditor.

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Levying officer § 680.260

Real property § 680.320

Manner of service § 684.010 *et seq.*

##### Notice of levy

Contents § 699.540

Effect of failure to serve § 699.550

Service of writ and notice on judgment debtor § 700.010

Third-party claims § 720.010 *et seq.*

**§ 700.020. Growing crops, timber to be cut, minerals to be extracted**

700.020. (a) To levy upon (1) growing crops, (2) timber to be cut, or (3) minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead, the levying officer shall record with the recorder of the county where such crops, timber, or minerals or the like are located a copy of the writ of execution and a notice of levy that describes the property levied upon and states that the described property has been levied upon. If the crops, timber, minerals or the like, or the real property where the crops, timber, or minerals or the like are located, stands upon the records of the county in the name of a person other than the judgment debtor, the notice of levy shall identify the third person and the recorder shall index the copy of the writ and notice of levy in the names of both the judgment debtor and the third person.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy personally or by mail on the following persons:

(1) Any third person in whose name the crops, timber, minerals or the like, or real property, stands upon the records of the county. If service on the third person is by mail, it shall be sent to the address shown by the records of the office of the tax assessor of the county where the real property is located.

(2) Any secured party who has filed a financing statement with respect to the crops, timber, or minerals or the like or the accounts receivable, prior to the date of levy on the property.

(c) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy on one occupant of the real property where the crops, timber, or minerals or the like are located. Service on the occupant shall be made by leaving the copy of the writ and a notice of levy with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found upon the real property when service is attempted who is either an employee or agent



of the occupant or a member of the occupant's household. If unable to serve such an occupant at the time service is attempted, the levying officer shall post the copy of the writ and the notice of levy in a conspicuous place on the real property. If the real property described in the notice of levy consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lies with relation to any of the others so as to form one or more continuous, unbroken tracts, only one service or posting need be made under this subdivision as to each continuous, unbroken tract.

**Comment.** Section 700.020 is derived from a portion of Section 488.360(c) (attachment of growing crops and timber to be cut) which was incorporated by former Section 688(b), and from paragraphs 1a and 2a of former Section 542 (repealed by 1974 Cal. Stats. ch. 1516, § 12, operative January 1, 1977). The provision concerning levy on minerals or the like and accounts receivable resulting from the sale of minerals is drawn from Commercial Code Sections 9103(5) and 9401(1)(b). Once the crops are harvested, the timber is cut, or the minerals or the like are extracted, the property may be levied upon in the manner provided for levy upon tangible personal property. See Sections 700.030-700.060. The levying officer or a receiver may cultivate, care for, harvest, pack, and sell the property levied upon, if necessary, pursuant to court order under Section 699.070. Subdivision (b)(2) is new. As to the place of filing financing statement concerning growing crops, timber to be cut, and minerals or the like, see Com. Code § 9401(1)(b). For a provision governing the effect of the execution lien upon transfer of the property, see Section 697.740.

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Levying officer § 680.260

Real property § 680.320

Manner of service § 684.010 *et seq.*

##### Notice of levy

Contents § 699.540

Effect of failure to serve § 699.550

Service of writ and notice on judgment debtor § 700.010

Third-party claims § 720.010 *et seq.*

**§ 700.030. Tangible personal property in possession of judgment debtor**

**700.030.** Unless another method of levy is provided by this article, to levy upon tangible personal property in the possession or under the control of the judgment debtor, the levying officer shall take the property into custody.

**Comment.** Section 700.030 continues the substance of the first sentence of subdivision (c) of former Section 688. For the manner of taking custody, see Section 687.030. The introductory clause of Section 700.030 recognizes that the general rule does not apply where another section of this article is applicable to a particular type of property. See Sections 700.070 (tangible personal property of going business) and 700.080 (personal property used as dwelling).

**CROSS-REFERENCES****Defined terms**

Judgment debtor § 680.250

Levying officer § 680.260

Tangible personal property § 680.370

Manner of custody § 687.030

Service of writ and notice on judgment debtor § 700.010

**§ 700.040. Tangible personal property in possession of third person**

**700.040.** (a) Unless another method of levy is provided by this article, to levy upon tangible personal property in the possession or under the control of a third person, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the third person.

(b) If goods are in the possession of a bailee who has issued a negotiable document of title therefor, the goods may not be levied upon but the negotiable document of title may be levied upon in the manner provided by Section 700.120. If goods are in the possession of a bailee other than one who has issued a negotiable document of title therefor, the goods may be levied upon in the manner provided by Section 700.060. As used in this subdivision, "bailee" means "bailee" as defined in Section 7102 of the Commercial Code.

**Comment.** Subdivision (a) of Section 700.040 continues the substance of a portion of the last sentence of subdivision (b) of former Section 688. The introductory portion of subdivision (a)

recognizes that the general rule is subject to exceptions, such as that provided in subdivision (b). See also Sections 700.050 (property in custody of levying officer), 700.060 (bailed goods not covered by negotiable document), 700.150-700.160 (safe deposit boxes).

Subdivision (b) corresponds to subdivision (d) of Section 488.330 (attachment) which was incorporated by former Section 688(b).

#### CROSS-REFERENCES

##### Defined terms

Document of title § 680.180

Levying officer § 680.260

Tangible personal property § 680.370

Duty of garnishee §§ 701.010-701.030

Manner of service § 684.010 *et seq.*

Notice of levy § 699.540

Service of writ and notice on judgment debtor § 700.010

Third-party claims § 720.010 *et seq.*

### § 700.050. Personal property in custody of levying officer

**700.050.** (a) To levy upon personal property in the custody of a levying officer:

(1) If the writ of execution is directed to the levying officer having custody of the property, the judgment creditor shall deliver the writ to the levying officer.

(2) If the writ of execution is directed to a levying officer other than the levying officer having custody of the property, the levying officer to whom the writ is directed shall serve a copy of the writ and a notice of levy on the levying officer having custody. Service shall be made personally or by mail.

(b) The levying officer having custody of the property shall comply with the writs in the order they are received and is not subject to the provisions of Article 5 (commencing with Section 701.010) (duties and liabilities of third persons after levy).

**Comment.** Section 700.050 is restricted to cases where the property levied upon is already in the custody of a levying officer. Paragraph (1) of subdivision (a) is based on case law concerning a “paper levy” involving only one levying officer. See, *e.g.*, *O’Connor v. Blake*, 29 Cal. 312, 315 (1865); *Colver v. W.B. Scarborough Co.*, 73 Cal. App. 441, 443, 238 P. 1104 (1925). Under paragraph (1), the execution lien under Section 700.050 arises at the time the writ is delivered to the levying officer. See Section 697.710 (execution lien). Paragraph (1) applies in cases where

the judgment creditor has previously attached the property as well as in cases where another judgment creditor has had the property taken into custody on attachment or execution. Paragraph (2) governs levies involving two levying officers, such as where property already levied upon and in the custody of a sheriff is sought to be levied upon under a writ directed to a marshal.

Subdivision (b) clarifies the effect of a paper levy. See also Section 701.810(e) (distribution of excess proceeds under paper levies).

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Levying officer § 680.260

Personal property § 680.290

Manner of custody § 687.030

Manner of service § 684.010 *et seq.*

Service of writ and notice on judgment debtor § 700.010

### § 700.060. Bailed goods not covered by negotiable document of title

700.060. (a) To levy upon goods in the possession of a bailee (as defined in Section 7102 of the Commercial Code) other than one who has issued a negotiable document of title therefor, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the bailee.

(b) If the goods described in subdivision (a) are subject to a security interest, the levying officer shall, if so instructed by the judgment creditor, serve a copy of the writ of execution and a notice of levy on the secured party. Service shall be made personally or by mail.

**Comment.** Section 700.060 is a new provision that changes the rule in *Crow v. Yosemite Creek Co.*, 149 Cal. App.2d 188, 308 P.2d 421 (1957). Although levy establishes the judgment creditor's lien, it does not affect any superior rights the holder of a perfected security interest may have. See Section 701.040. A levy on goods subject to a security interest pursuant to this section reaches both the judgment debtor's interest in any surplus remaining after satisfaction of the interest of the secured party and the judgment debtor's right to redeem the property from the security interest. See Civil Code § 2903; Com. Code §§ 9504, 9506. If a negotiable document of title has been issued, it may be levied upon pursuant to Section 700.120.

## CROSS-REFERENCES

## Defined terms

Document of title § 680.180

Levying officer § 680.260

Security interest § 680.360

Duty of garnishee §§ 701.010-701.030

Manner of service § 684.010 *et seq.*

Notice of levy § 699.540

Service of writ and notice on judgment debtor § 700.010

**§ 700.070. Tangible personal property of going business**

700.070. To levy upon tangible personal property of a going business, the levying officer shall comply with Section 700.030, unless the judgment creditor instructs that levy be made in the following manner:

(a) Subject to subdivision (b), the levying officer shall place a keeper in charge of the business for the period requested by the judgment creditor. During the period, the business may continue to operate in the ordinary course of business provided that all sales are final and are for cash or its equivalent. For the purpose of this subdivision, a check is the equivalent of cash. The levying officer is not liable for accepting payment in the form of a cash equivalent. The keeper shall take custody of the proceeds from all sales unless otherwise directed by the judgment creditor.

(b) The levying officer shall take the tangible personal property into exclusive custody at the earliest of the following times:

(1) At any time the judgment debtor objects to placement of a keeper in charge of the business.

(2) At any time when requested by the judgment creditor.

**Comment.** Section 700.070 supersedes the fifth through the tenth sentences of former Section 688(c) which required a keeper levy for at least two days on the tangible personal property of a going business if the judgment debtor consented. Under this section the keeper levy is optional; unless the judgment creditor elects this option, the tangible personal property of a going business is levied upon as tangible personal property generally pursuant to Section 700.030. Article 3 (commencing with Section 697.510) of Chapter 2 provides an alternative procedure for obtaining a lien on certain property of a going business.

Subdivision (b)(1) makes clear that, despite the judgment creditor's election to use the procedure provided by Section 700.070, the judgment debtor may prevent the placement of a keeper in the business, in which case the levying officer must take exclusive possession of the property. This continues an aspect of former Section 688(c). The judgment creditor may instruct the levying officer to release the property rather than to take exclusive custody. See Section 699.060 (release).

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Manner of custody § 687.030

Manner of service § 684.010 *et seq.*

Service of writ and notice on judgment debtor § 700.010

### § 700.080. Personal property used as dwelling

700.080. (a) To levy upon personal property used as a dwelling, such as a house trailer, mobilehome, or boat, the levying officer shall serve a copy of the writ of execution and a notice of levy on one occupant of the property. Service on the occupant shall be made by leaving the copy of the writ and the notice of levy with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found at the property when service is attempted who is a member of the occupant's family or household. If unable to serve such an occupant at the time service is attempted, the levying officer shall make the levy by posting the copy of the writ and the notice of levy in a conspicuous place on the property.

(b) If the judgment creditor so instructs, the levying officer shall place a keeper in charge of the property for a period requested by the judgment creditor.

(c) The judgment creditor may apply to the court on noticed motion for an order directing the levying officer to remove the occupants. The notice of motion shall be served on any legal owner who was served pursuant to Section 700.090, on the occupant, and, if the judgment debtor is not the occupant, on the judgment debtor. Service shall be made personally or by mail. At the hearing on the motion the court shall determine the

occupant's right to possession and shall make an order including such terms and conditions as are appropriate under the circumstances of the case.

**Comment.** Section 700.080 supersedes the third and fourth sentences of former Section 688(c). Levy is accomplished by notice to the occupant under subdivision (a) or, if such service cannot be made, by posting; but if the judgment creditor desires greater security, a keeper may be used pursuant to subdivision (b). Subdivision (c) supersedes the fourth sentence of former Section 688(c) which required the keeper to take exclusive custody of the property at the end of two days or a longer period agreed upon by the parties. This subdivision recognizes the right of the occupant to have a judicial determination of the occupant's right of possession (including any claim to a dwelling exemption). See also Section 700.090 (notice to legal owner of vehicle, boat, mobilehome, or commercial coach where certificate of ownership has been issued).

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Manner of service § 684.010 *et seq.*

Notice of levy § 699.540

Service of writ and notice on judgment debtor § 700.010

#### § 700.090. Vehicle, boat, mobilehome, or commercial coach for which certificate of ownership is issued

700.090. If a vehicle or boat for which a certificate of ownership has been issued by the Department of Motor Vehicles, or a mobilehome or commercial coach for which a certificate of title has been issued by the Department of Housing and Community Development, is levied upon, the levying officer shall determine from the appropriate department the name and address of the legal owner of the property. If the legal owner is not the judgment debtor and is not in possession of the vehicle, boat, mobilehome, or commercial coach, the levying officer shall at the time of levy or promptly thereafter serve a copy of the writ of execution and a notice of levy on the legal owner. Service shall be made personally or by mail.

**Comment.** Section 700.090 supersedes subdivision (1) of former Section 689b. The provision for determining the legal owner of a mobilehome or commercial coach is new. See generally Health & Saf. Code §§ 18075-18077.4 (registration and titling of mobilehomes). Former law required notice to be given the legal owner if different from the registered owner. This section is worded so as to avoid duplicate notice in any case where the legal owner has already received notice in the course of the levy.

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Levying officer § 680.260

Manner of service § 684.010 *et seq.*

##### Notice of levy

Contents § 699.540

Effect of failure to serve § 699.550

### § 700.100. Chattel paper

**700.100.** (a) To levy upon chattel paper, the levying officer shall:

(1) If the chattel paper is in the possession of the judgment debtor, take the chattel paper into custody.

(2) If the chattel paper is in the possession of a third person, personally serve a copy of the writ of execution and a notice of levy on the third person.

(b) If the levying officer obtains custody of the chattel paper or if pursuant to a security agreement the judgment debtor has liberty to collect or compromise the chattel paper or to accept the return of goods or make repossessions, the levying officer shall, if so instructed by the judgment creditor, serve a copy of the writ of execution and a notice of levy on the account debtor. Service shall be made personally or by mail.

(c) In addition to any other rights created by a levy on chattel paper, the levy creates a lien on the judgment debtor's rights in specific goods subject to the chattel paper.

**Comment.** Section 700.100 is derived from Section 488.380 (attachment of chattel paper) which was incorporated by former Section 688(b). For duties and liabilities of garnishees, see Sections 701.010-701.030. For duties and liabilities of account debtors, see Section 701.050. Article 3 (commencing with Section



697.510) of Chapter 2 provides an alternate method for obtaining a lien on chattel paper.

The method of levy on chattel paper is not affected by the fact that the chattel paper may be subject to a perfected security interest:

(1) If the chattel paper is in the possession of a third person who claims to be a secured party, the third person may protect his or her rights by delivering the chattel paper to the levying officer and obtaining a determination of priority through the third-party claims procedure (Division 4 (commencing with Section 720.010)) or by refusing to deliver the chattel paper to the levying officer. See Section 701.010 (duty of garnishee in general). If the third person refuses to deliver and the security interest claimed is subordinate to the rights of the judgment creditor under the levy (see Com. Code § 9301), the third person is liable to the judgment creditor. See Section 701.020.

(2) If the chattel paper is in the possession of the judgment debtor, and a secured party has left the liberty in the judgment debtor to collect the chattel paper or to enforce or accept the return of property under the chattel paper (see Com. Code § 9205), the judgment creditor may disregard the security interest and seize the chattel paper; the secured party's remedy is by way of a third-party claim. If the secured party has possession of the chattel paper in such a case, the account debtor may be served with a copy of the writ and a notice of levy to guard against payment or the return of property to the judgment debtor, whether or not possession of the chattel paper is obtained by the levying officer.

Subdivision (c) makes clear that a levy on chattel paper reaches all the judgment debtor's rights in the property, the security interest in which or the lease of which resulted in the chattel paper. For example, the judgment debtor may have a reversionary right as a lessor. This enables a creditor who levies on chattel paper to have priority over another creditor who later levies on the property.

#### CROSS-REFERENCES

##### Defined terms

- Account debtor § 680.120
- Chattel paper § 680.140
- Judgment creditor § 680.240
- Judgment debtor § 680.250
- Levying officer § 680.260
- Duty of account debtor § 701.050
- Manner of custody § 687.030
- Manner of service § 684.010 *et seq.*

Notice of levy

Contents § 699.540

Effect of failure to serve § 699.550

Service of writ and notice on judgment debtor § 700.010

## § 700.110. Instruments

700.110. (a) To levy upon an instrument, the levying officer shall:

(1) If the instrument is in the possession of the judgment debtor, take the instrument into custody.

(2) If the instrument is in the possession of a third person, personally serve a copy of the writ of execution and a notice of levy on the third person.

(b) If the levying officer obtains custody of the instrument, the levying officer shall, if the judgment creditor so instructs, serve a copy of the writ of execution and a notice of levy on the obligor. Service shall be made personally or by mail.

**Comment.** Section 700.110 is derived from a portion of Section 488.400 (attachment of negotiable instruments) which was incorporated by former Section 688(b). The coverage of this section is broader than former law because it is not restricted to negotiable instruments. See Section 680.220 (“instrument” defined).

Subdivision (b) provides a new restriction on giving notice to the obligor under the instrument: such notice may be given only if the levying officer has obtained possession of the instrument. This limitation is intended to prevent interference with the rights of secured parties and holders in due course. As to the duties and liabilities of garnishees, see Sections 701.010-701.030. As to the duties and liabilities of obligors, see Section 701.060. As to the duty of the levying officer to endorse and present an instrument for payment, see Section 687.020.

### CROSS-REFERENCES

Defined terms

Instrument § 680.220

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Manner of service § 684.010 *et seq.*

Notice of levy

Contents § 699.540

Effect of failure to serve § 699.550

Service of writ and notice on judgment debtor § 700.010

Third-party claims § 720.010 *et seq.*

### § 700.120. Negotiable documents of title

700.120. To levy upon a negotiable document of title, the levying officer shall:

(a) If the negotiable document of title is in the possession of the judgment debtor, take the negotiable document of title into custody.

(b) If the negotiable document of title is in the possession of a third person, personally serve a copy of the writ of execution and a notice of levy on the third person.

**Comment.** Section 700.120 continues the substance of a portion of Section 488.400 (attachment of negotiable documents) which was incorporated by former Section 688(b). Section 700.040(b) precludes levy on goods in the possession of a third person that are covered by a negotiable document of title. See also Com. Code §§ 1201(15), 7602. Article 3 (commencing with Section 697.510) of Chapter 2 provides an alternate method of obtaining a lien on a negotiable document of title.

#### CROSS-REFERENCES

##### Defined terms

Document of title § 680.180

Judgment debtor § 680.250

Levying officer § 680.260

Duty of garnishee §§ 701.010-701.030

Manner of service § 684.010 *et seq.*

Notice of levy § 699.540

Service of writ and notice on judgment debtor § 700.010

Third-party claims § 720.010 *et seq.*

### § 700.130. Securities

700.130. To levy upon a security (as defined in Section 8102 of the Commercial Code), the levying officer shall comply with Section 8317 of the Commercial Code.

**Comment.** Section 700.130 supersedes Section 488.410 (attachment of securities) insofar as it was incorporated by former Section 688(b) for the purposes of execution.

#### CROSS-REFERENCES

##### Defined terms

Levying officer § 680.260

Manner of service § 684.010 *et seq.*

Service of writ and notice on judgment debtor § 700.010

### § 700.140. Deposit accounts

700.140. (a) To levy upon a deposit account, the levying officer shall personally serve a copy of the writ of

execution and a notice of levy on the financial institution with which the deposit account is maintained.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on any third person in whose name the deposit account stands. Service shall be made personally or by mail.

(c) Subject to Section 700.160, during the time the execution lien is in effect, the financial institution shall not honor a check or other order for the payment of money drawn against, and shall not pay a withdrawal from, the deposit account that would reduce the deposit account to an amount less than the amount levied upon.

(d) During the time the execution lien is in effect, the financial institution is not liable to any person for any of the following:

(1) Performance of the duties of a garnishee under the levy.

(2) Nonpayment of a check or other order for the payment of money drawn or presented against the deposit account where such nonpayment is pursuant to the requirements of subdivision (c).

(3) Refusal to pay a withdrawal from the deposit account where such refusal is pursuant to the requirements of subdivision (c).

**Comment.** Section 700.140 is analogous to Section 488.390 (attachment of deposit accounts), which was incorporated by former Section 688(b). Withdrawals made after the time of levy reduce any applicable exemption. See Section 704.070(f). For provisions governing levy on a deposit account standing in the name of a person other than the judgment debtor, see Section 700.160.

#### CROSS-REFERENCES

##### Defined terms

- Deposit account § 680.170
- Financial institution § 680.200
- Judgment debtor § 680.250
- Levying officer § 680.260
- Duty of garnishee §§ 701.010-701.030
- Execution lien § 697.710
- Exemption § 704.070
- Joint account levy § 700.160
- Manner of service § 684.010 *et seq.*

Service of writ and notice on judgment debtor § 700.010  
Service on financial institution § 684.110(c)  
Social security account exemption § 704.080  
Third-party claims § 720.010 *et seq.*

### § 700.150. Safe deposit boxes

700.150. (a) To levy upon property in a safe deposit box, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the financial institution with which the safe deposit box is maintained.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on any third person in whose name the safe deposit box stands. Service shall be made personally or by mail.

(c) Subject to Section 700.160, during the time the execution lien is in effect, the financial institution shall not permit the removal of any of the contents of the safe deposit box except pursuant to the levy.

(d) The financial institution shall first give the person in whose name the safe deposit box stands an opportunity to open the safe deposit box to permit the removal pursuant to the levy of the property levied upon. If the person fails or refuses to do so, the financial institution may refuse to permit the removal of the property levied upon unless the judgment creditor pays in advance the cost of forcibly opening the safe deposit box and of repairing any damage caused thereby.

(e) During the time the execution lien is in effect, the financial institution is not liable to any person for any of the following:

(1) Performance of the duties of a garnishee under the levy.

(2) Refusal to permit access to the safe deposit box by the person in whose name it stands.

(3) Removal of any of the contents of the safe deposit box pursuant to the levy.

**Comment.** Section 700.150 is new. Subdivisions (a), (b), and (e) are analogous to Section 488.390 (attachment of deposit accounts). Subdivision (c) is drawn from a portion of the fourth sentence of former Section 682a. Subdivision (d) is drawn from the last sentence of former Section 682a. If the judgment creditor is required to pay the costs of forcibly opening a safe deposit box

pursuant to subdivision (d), the costs may be later recovered from the judgment debtor. See Section 685.040. For provisions governing levy on a safe deposit box standing in the name of a person other than the judgment debtor, see Section 700.160.

#### CROSS-REFERENCES

##### Defined terms

- Financial institution § 680.200
- Judgment creditor § 680.240
- Judgment debtor § 680.250
- Levying officer § 680.260
- Duty of garnishee §§ 701.010-701.030
- Execution lien § 697.710
- Manner of service § 684.010 *et seq.*
- Notice of levy
  - Contents § 699.540
  - Effect of failure to serve § 699.550
- Service of writ and notice on judgment debtor § 700.010
- Service on financial institution § 684.110(c)
- Third-party claims § 720.010 *et seq.*

### **§ 700.160. Deposit accounts and safe deposit boxes not exclusively in name of judgment debtor**

**700.160.** (a) The provisions of this section apply in addition to the provisions of Sections 700.140 and 700.150 if any of the following property is levied upon:

(1) A deposit account standing in the name of a third person or in the names of both the judgment debtor and a third person.

(2) Property in a safe deposit box standing in the name of a third person or in the names of both the judgment debtor and a third person.

(b) The judgment creditor shall provide, and the levying officer shall deliver to the financial institution at the time of levy, an undertaking given by a corporate surety authorized to execute the undertaking by Section 1056. The undertaking shall be for not less than twice the amount of the judgment or, if a lesser amount in a deposit account is sought to be levied upon, not less than twice the lesser amount. The undertaking shall indemnify any third person rightfully entitled to the property against actual damage by reason of the levy on the property and shall assure to the third person the return of the property upon proof of the person's right thereto. The undertaking need not name the third person specifically but may refer to the third person generally in the same manner as in

this subdivision. If the provisions of this subdivision are not satisfied, the levy is ineffective and the financial institution shall not comply with the requirements of this section or with the levy.

(c) Upon delivery of the undertaking to the financial institution, the financial institution shall immediately mail or deliver a notice of the delivery of the undertaking to the third person in whose name the deposit account or safe deposit box stands. If mailed, the notice shall be sent by registered or certified mail addressed to the person's last address known to the financial institution. The financial institution shall deliver the undertaking as directed by the third person.

(d) Notwithstanding Article 5 (commencing with Section 701.010), from the time of levy and the delivery of the undertaking to the financial institution until 15 days after the notice is mailed or delivered under subdivision (c), if no objection to the undertaking is made or, if such objection is made, until the court determines that the undertaking is sufficient, the financial institution shall not do any of the following:

(1) Honor a check or other order for the payment of money drawn against, or pay a withdrawal from, the deposit account that would reduce the deposit account to less than the amount levied upon.

(2) Permit the removal of any of the contents of the safe deposit box except pursuant to the writ.

(e) The financial institution is not liable to any person for any of the following during the period prescribed in subdivision (d):

(1) Nonpayment of a check or other order for the payment of money drawn or presented against the deposit account where such nonpayment is pursuant to the requirements of subdivision (d).

(2) Refusal to pay a withdrawal from the deposit account where such refusal is pursuant to the requirements of subdivision (d).

(3) Refusal to permit access to the safe deposit box by the person in whose name it stands.

(4) Removal of any of the contents of the safe deposit box pursuant to the levy.

(f) An objection to the undertaking may be made by any person claiming to be rightfully entitled to the property levied upon. The objection shall be made in the manner provided by Chapter 7 (commencing with Section 720.710) of Division 4.

(g) Upon the expiration of the period prescribed in subdivision (d), the financial institution shall comply with the levy and Sections 700.140 and 700.150 apply.

**Comment.** Subdivision (a) of Section 700.160 continues the substance of the first portion of the first sentence of former Section 682a. Subdivision (b) continues the substance of the last portion of the first sentence and the second sentence of former Section 682a. Subdivision (c) continues the third and eighth sentences of former Section 682a. Subdivision (d) continues the substance of the fourth sentence and a portion of the fifth sentence of former Section 682a, except that subdivision (d) recognizes the practice of holding only so much of the account as is necessary to satisfy the levy. Subdivision (e) continues the substance of a portion of the fifth sentence of former Section 682a. Subdivision (f) continues the substance of the sixth and seventh sentences of former Section 682a, except that under subdivision (b) the undertaking must be issued by a corporate surety. Subdivision (g) continues the substance of a portion of the fifth sentence of former Section 682a.

#### CROSS-REFERENCES

##### Defined terms

Deposit account § 680.170

Financial institution § 680.200

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Exemption § 704.070

Justification of corporate surety §§ 1057a-1057b

Manner of service § 684.010 *et seq.*

Release of property from lien and custody § 699.060

Social security account exemption § 704.080

Third-party claims § 720.010 *et seq.*

### § 700.170. Accounts receivable and general intangibles

700.170. (a) Unless another method of levy is provided by this article, to levy upon an account receivable or general intangible, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the account debtor.



(b) If a levy is made under subdivision (a) and payments on the account receivable or general intangible are made to a person other than the judgment debtor (whether pursuant to a security agreement, assignment for collection, or otherwise), the levying officer shall, if so instructed by the judgment creditor, personally serve a copy of the writ of execution and a notice of levy on such third person. Service of the copy of the writ and notice of levy on such third person is a levy on any amounts owed to the judgment debtor by such third person.

**Comment.** Section 700.170 supersedes a portion of the last sentence of former Section 688(b) and Section 488.370 (attachment of accounts receivable and choses in action) to the extent it was incorporated by former Section 688(b). The introductory portion of subdivision (a) recognizes that a different method of levy may be provided for some types of property. See, *e.g.*, Sections 700.020 (account receivable resulting from sale of minerals, oil, or gas at wellhead or minehead), 700.140 (deposit accounts).

Subdivision (b) is a new provision that recognizes the need for special provisions if the account receivable or general intangible is subject to collection by a third person, such as pursuant to a security interest or assignment for collection. In such a situation, the levy by service on the account debtor establishes the judgment creditor's priority. The account debtor continues payment to the third person pending resolution of any disputes. See Section 701.050 (duty of account debtor). See also Division 4 (commencing with Section 720.010) (third-party claims); Com. Code § 9301 (lien creditor has priority over unperfected security interest). Service of notice of levy on the third person operates as a levy on any amounts owed to the judgment debtor by the third person. This protects the rights of the judgment creditor, for example, to any surplus payments remaining after satisfaction of a security interest or to payments in the hands of a collecting agent. This preserves the rule in such cases as *Axe v. Commercial Credit Corp.*, 227 Cal. App.2d 216, 38 Cal. Rptr. 558 (1964) (surplus payments under pledged accounts receivable), and *Puissegur v. Yarbrough*, 29 Cal.2d 409, 175 P.2d 830 (1946) (note held for collection). See also Section 701.040 (duty of secured party upon levy). Article 3 (commencing with Section 697.510) of Chapter 2 provides an alternate method for obtaining a lien on accounts receivable and general intangibles.

## CROSS-REFERENCES

## Defined terms

- Account debtor § 680.120
- Account receivable § 680.130
- General intangibles § 680.210
- Levying officer § 680.260
- Security agreement § 680.350
- Duty of account debtor § 701.050
- Manner of service § 684.010 *et seq.*
- Notice of levy
  - Contents § 699.540
  - Effect of failure to serve § 699.550
- Service of writ and notice on judgment debtor § 700.010
- Third-party claims § 720.010 *et seq.*

**§ 700.180. Levy on property that is subject of pending action or proceeding**

700.180. (a) Real property or tangible personal property in possession of the judgment debtor may be levied upon pursuant to this article notwithstanding that the property levied upon is the subject of a pending action or special proceeding.

(b) A levy on property that is the subject of an action or special proceeding pending at the time of the levy is not effective if the property is any of the following:

(1) Tangible personal property not in the possession of the judgment debtor.

(2) Intangible personal property.

(c) If a levy is attempted but is ineffective under subdivision (b) and the levying officer has requested a garnishee's memorandum under Section 701.030 in connection with the ineffective levy, the garnishee's memorandum shall include the following information in addition to that required by Section 701.030:

(1) A statement that the levy on the property is not effective because the property is the subject of a pending action or special proceeding.

(2) The title of the court, cause, and number of the pending action or proceeding.

(d) For the purpose of this section, an action or proceeding is pending from the time the action or proceeding is commenced until judgment has been entered and the time for appeal has expired or, if an appeal is filed, until the appeal has been finally determined.

(e) Nothing in this section affects or limits the right of the judgment creditor to obtain a lien pursuant to Article 5 (commencing with Section 708.410) of Chapter 6.

**Comment.** Section 700.180 deals with the effect of a levy on property that is the subject of a pending action or special proceeding. Subdivision (a) makes clear that tangible personal property in the possession of the judgment debtor and real property may be levied upon regardless of whether the property is the subject of a pending action or proceeding. The property is levied upon just as if there were no pending action or proceeding, and the levying officer serves the notice of levy upon the same persons and in the same manner as is required in connection with any other levy on such property. Subdivision (e) makes clear that the judgment creditor may also obtain a lien in the pending action or proceeding under Article 5 (commencing with Section 708.410) of Chapter 6. If a lien is obtained by the judgment creditor under Article 5, the judgment debtor cannot settle the action or proceeding without either satisfying the judgment of the judgment creditor or obtaining the written consent of the judgment creditor or court approval. See Section 708.440. See also Section 708.480 (enforcement of judgment creditor's lien after final judgment in action or proceeding). In addition, if a lien under Article 5 is obtained, the judgment debtor's right to enforce the judgment obtained in the action or proceeding is subject to the same limitations as the judgment debtor's right to settle the action or proceeding. See Section 708.440.

Subdivision (b) makes ineffective a levy upon tangible personal property not in the possession of the judgment debtor or a levy upon intangible personal property (such as a debt owed the judgment debtor) if the property is the subject of a pending action or proceeding. In such case, subdivision (e) makes clear that the judgment creditor can obtain a lien on the property that is the subject of the pending action or proceeding by filing as required under Article 5 (commencing with Section 708.410) of Chapter 6. This protects the rights of the judgment creditor and, at the same time, permits the third person to await the outcome of the pending litigation before making a decision concerning whether to deliver the property or to pay the debt that is the subject of the litigation.

Subdivision (c) requires that the garnishee's memorandum contain the information necessary so that a judgment creditor who has made an ineffective levy upon property that is the subject of a pending action or proceeding (see subdivision (b) of

this section) may file the necessary documents in the pending action or proceeding to obtain a lien under Article 5 (commencing with Section 708.410) of Chapter 6. The fact that the levy is ineffective does not avoid the duty to provide a garnishee's memorandum if requested by the levying officer. See Section 701.030(a).

Subdivision (d) clarifies the meaning of "pending action or special proceeding" as used in this section.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Personal property § 680.290

Property § 680.310

Real property § 680.320

Tangible personal property § 680.370

### § 700.190. Final money judgment

**700.190.** (a) As used in this section, "final money judgment" means a money judgment after the time for appeal from the judgment has expired or, if an appeal is filed, after the appeal has been finally determined.

(b) To levy upon a final money judgment, the levying officer shall file a copy of the writ of execution and a notice of levy with the clerk of the court that entered the final money judgment. The court clerk shall endorse upon the judgment a statement of the existence of the execution lien and the time it was created. If an abstract of the judgment is issued, it shall include a statement of the execution lien in favor of the judgment creditor.

(c) At the time of levy or promptly thereafter, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the judgment debtor obligated to pay the final money judgment levied upon. The filing with the court clerk pursuant to subdivision (b) is not, of itself, notice to the judgment debtor obligated to pay the judgment levied upon so as to invalidate any payments made by him or her that would otherwise be applied to the satisfaction of the judgment levied upon.

**Comment.** Section 700.190, which establishes the manner and effect of a levy upon a final money judgment, is drawn in part from Section 488.420 (attachment). Where a final judgment is

not a money judgment, Section 700.190 has no effect on the manner of levy. A levy is made on tangible property just as if there were no final judgment relating to that property. The effect of the final judgment in such a case is its relevance as a determination of the judgment debtor's ownership of or other interest in the property. As to levy on property that is the subject of a pending action or proceeding, see Section 700.180 and Comment thereto. See also Article 5 (commencing with Section 708.410) of Chapter 6 (lien in a pending action or proceeding).

Subdivision (b) of former Section 688 provided that the manner of levy of execution was the same as in attachment, and the Attachment Law (Section 488.420) provides for the attachment of a final judgment. Section 700.190, like Section 488.420, requires the filing of a copy of the writ and notice of levy in the court in which the judgment levied upon was entered. However, unlike Section 488.420, Section 700.190 does not require service of a copy of the writ and notice on the judgment debtor obligated to pay the judgment levied upon as an essential element of the levy. Although Section 700.190 requires the levying officer to serve a copy of the writ and notice on that judgment debtor, service is not a requisite for a valid levy under Section 700.190. See Section 699.550. However, subdivision (c) protects the judgment debtor obligated to pay the judgment levied upon who pays the judgment creditor under that judgment without notice of the levy. In this respect, Section 700.190 is consistent with Civil Code Section 954.5 (payment where acknowledgment of assignment of judgment is filed).

#### CROSS-REFERENCES

Abstract of judgment § 674

Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Money judgment § 680.270

Execution lien § 697.710

Manner of service § 684.010 *et seq.*

Notice of levy

Contents § 699.540

Effect of failure to serve § 699.550

Service of writ and notice on judgment debtor § 700.010

Service on judgment debtor's attorney §§ 684.020, 684.050

### § 700.200. Interest in personal property of estate of decedent

700.200. (a) To levy upon the interest of an heir, devisee, or legatee in personal property in the estate of a decedent, the levying officer shall personally serve a

copy of the writ and a notice of levy on the personal representative of the decedent. The levy does not impair the powers of the representative over the property for the purposes of administration.

(b) The personal representative shall report the levy to the court in which the estate is being administered when any petition for distribution is filed. If a decree orders distribution to the judgment debtor, the court making the decree shall order the property levied upon to be delivered to the levying officer. The property may not be delivered to the levying officer until the decree distributing the property has become final. To the extent the property delivered to the levying officer is not necessary to satisfy the money judgment, it shall be released to the judgment debtor.

(c) Promptly after the property is delivered to the levying officer pursuant to subdivision (b), the levying officer shall serve a notice describing the property on the judgment debtor. Service shall be made personally or by mail. Notwithstanding Section 703.520, a claim of exemption for the property described in the notice may be made within 10 days after the notice was served on the judgment debtor.

(d) Notwithstanding Section 697.710, an execution lien created by a levy pursuant to this section continues for a period of one year after the decree distributing the interest has become final unless the judgment is sooner satisfied.

(e) A writ under which a levy is made pursuant to this section need not be returned within one year after its date of issuance but may be returned one year after the date the decree distributing the interest has become final.

**Comment.** Subdivisions (a) and (b) of Section 700.200 provide a method of levy analogous to Section 488.430 (attachment of an interest in personal property of a decedent's estate) which was incorporated by former Section 688(b). Subdivision (c) affords the judgment debtor an opportunity to claim any available exemption for the property once it is delivered to the levying officer. The time for claiming the exemption is extended if service is by mail. See Section 684.120.

Subdivision (d) supersedes a portion of the first sentence of former Section 688(e) and extends the period the execution lien is effective beyond the period set by Section 697.710 for execution liens generally. Subdivision (e) provides an exception to the general rules governing return of a writ of execution.

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Levying officer § 680.260

Money judgment § 680.270

Manner of service § 684.010 *et seq.*

Service of writ and notice on judgment debtor § 700.010

### Article 5. Duties and Liabilities of Third Persons After Levy

#### § 701.010. Duty of garnishee

701.010. (a) Except as otherwise provided by statute, when a levy is made by service of a copy of the writ of execution and a notice of levy on a third person, the third person at the time of levy or promptly thereafter shall comply with this section.

(b) Unless the third person has good cause for failure or refusal to do so:

(1) The third person shall deliver to the levying officer any of the property levied upon that is in the possession or under the control of the third person at the time of levy unless the third person claims the right to possession of the property.

(2) To the extent that the third person does not deny an obligation levied upon, or claim a priority over the judgment creditor's lien, the third person shall pay to the levying officer both of the following:

(A) The amount that is due and payable to the judgment debtor at the time of levy.

(B) Amounts that become due and payable to the judgment debtor during the period of the execution lien.

(3) If the third person makes a delivery or payment to the levying officer pursuant to this section, the third person shall execute and deliver any documents necessary to effect the transfer of the property.

(c) For the purposes of this section, "good cause" includes, but is not limited to, a showing that the third

person did not know or have reason to know of the levy from all the facts and circumstances known to the third person.

**Comment.** Section 701.010 is new. Service of the copy of the writ of execution and a notice of levy on the third person creates a lien on any personal property or obligation that is subject to levy of execution even if the garnishee refuses to turn the property over or to pay the obligation to the levying officer. See Section 697.710 (execution lien); *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212, 100 P. 242 (1909). See also Section 701.020 (liability of third person).

The introductory portion of subdivision (a) recognizes exceptions to the duty of the garnishee. See, *e.g.*, Sections 700.160 (delay by a financial institution), 700.050 (paper levy on a levying officer), 700.200 (power of personal representative over property in estate of a decedent), and 701.050 (duty of account debtor).

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Levying officer § 680.260

Execution lien § 697.710 *et seq.*

Third-party claims § 720.010 *et seq.*

### § 701.020. Liability of third person for noncompliance with levy

701.020. (a) If a third person is required by this article to deliver property to the levying officer or to make payments to the levying officer and the third person fails or refuses without good cause to do so, the third person is liable to the judgment creditor for whichever of the following is the lesser amount:

(1) The value of the judgment debtor's interest in the property or the amount of the payments required to be made.

(2) The amount required to satisfy the judgment pursuant to which the levy is made.

(b) The third person's liability continues until the earliest of the following times:

(1) The time when the property levied upon is delivered to the levying officer or the payments are made to the levying officer.

(2) The time when the property levied upon is released pursuant to Section 699.060.



(3) The time when the judgment is satisfied or discharged.

(c) If the third person's liability is established, the court that determines the liability may, in its discretion, require the third person to pay the costs and reasonable attorney's fees incurred by the judgment creditor in establishing the liability.

**Comment.** Section 701.020 is new and is comparable to Section 488.550 (attachment). The judgment creditor may seek to enforce compliance with the levy under Section 701.020 or to impose liability on the third person pursuant to Article 2 (commencing with Section 708.110) (examination proceedings) or Article 3 (commencing with Section 708.210) (creditor's suit) of Chapter 6. See also Section 697.710 (execution lien).

#### CROSS-REFERENCES

Amount required to satisfy judgment § 695.210

Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Third-party claims § 720.010 *et seq.*

### § 701.030. Garnishee's memorandum

701.030. (a) At the time of service of a copy of the writ of execution and a notice of levy on a third person, the levying officer shall request the third person to give the levying officer a garnishee's memorandum containing the information required by this section. Within 10 days after the request is made, the third person shall mail or deliver the garnishee's memorandum to the levying officer whether or not the levy is effective.

(b) The garnishee's memorandum shall be executed under oath and shall contain the following information:

(1) A description of any property of the judgment debtor sought to be levied upon that is not delivered to the levying officer and the reason for not delivering the property.

(2) A description of any property of the judgment debtor not sought to be levied upon that is in the possession or under the control of the third person at the time of levy.

(3) A statement of the amount and terms of any obligation to the judgment debtor sought to be levied

upon that is due and payable and is not paid to the levying officer, and the reason for not paying the obligation.

(4) A statement of the amount and terms of any obligation to the judgment debtor sought to be levied upon that is not due and payable at the time of levy.

(5) A statement of the amount and terms of any obligation to the judgment debtor at the time of levy not sought to be levied upon.

(6) A description of claims and rights of other persons to the property or obligation levied upon that are known to the third person and the names and addresses of such other persons.

(c) If a garnishee's memorandum is received from the third person, the levying officer shall promptly mail or deliver a copy of the memorandum to the judgment creditor and attach the original to the writ when it is returned to the court clerk. If a garnishee's memorandum is not received from the third person, the levying officer shall so state in the return.

(d) Except as provided in subdivision (e), if a third person does not give the levying officer a garnishee's memorandum within the time provided in subdivision (a) or does not provide complete information, the third person may, in the court's discretion, be required to pay the costs and reasonable attorney's fees incurred in any proceedings to obtain the information required in the garnishee's memorandum.

(e) Notwithstanding subdivision (a), when the levy is made upon a deposit account or upon property in a safe deposit box, the financial institution need not give a garnishee's memorandum to the levying officer if the financial institution fully complies with the levy.

(f) Notwithstanding subdivision (a), the third person need not give a garnishee's memorandum to the levying officer if both of the following conditions are satisfied:

(1) The third party has delivered to the levying officer all of the property sought to be levied upon.

(2) The third party has paid to the levying officer the amount due at the time of levy on any obligation to the judgment debtor that was levied upon and there is no

additional amount that thereafter will become payable on the obligation levied upon.

**Comment.** Section 701.030 is derived from Section 488.080(b) but requires the garnishee to provide a broader range of information. The garnishee's memorandum may serve as an inexpensive alternative to an examination proceeding under Section 708.120. Subdivision (a) makes clear that the third person has a duty to give a memorandum even though the levy is ineffective. See, e.g., Section 700.180 (levy on certain personal property ineffective where the property is the subject of a pending action or proceeding). Additional information may be required by another provision (see Section 700.180) where a levy is ineffective.

#### CROSS-REFERENCES

Declaration under penalty of perjury § 2015.5

Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Property § 680.310

### § 701.040. Rights and duties of secured party

**701.040.** (a) Except as otherwise ordered by the court, if property levied upon is subject to a security interest created prior to levy, the property or obligation is subject to enforcement of the security interest without regard to the levy unless the property is in the custody of the levying officer; but, if the execution lien has priority over the security interest, the secured party is liable to the judgment creditor for any proceeds received by the secured party from the property to the extent of the execution lien.

(b) After the security interest is satisfied, the secured party shall deliver any excess property, and pay any excess payments or proceeds of property, remaining in the possession of the secured party to the levying officer for the purposes of the levy unless otherwise ordered by the court or directed by the levying officer.

**Comment.** Section 701.040 reflects the principle that where practicable an execution levy should not affect the right of a prior secured party to resort to collateral and should not disrupt ongoing business relations between account debtors and secured parties in the absence of a determination or an admission that the

judgment creditor's lien has priority. See also Com. Code § 9203 (attachment of security interest). The levy is generally intended to appropriate the rights of the judgment debtor to any excess remaining after satisfaction of the security interest. See subdivision (b). See also Com. Code § 9311 (permissibility of involuntary alienation of debtor's rights in collateral). As recognized by the introductory clause of subdivision (a), this right of the secured party is subject to an exception where a court order determining that the judgment creditor has priority is obtained. See Com. Code § 9301(1)(b) (lien creditor has priority over unperfected security interest). Of course, the secured party may voluntarily release the collateral if the secured party recognizes that the judgment creditor has a clear priority.

Under subdivision (a), the secured party may enforce the security interest without interference from the levy only if the property or obligation levied upon is not in the custody of the levying officer. See also Section 701.050 (duty of account debtor).

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Levying officer § 680.260

Property § 680.310

Secured party § 680.340

Security interest § 680.360

Third-party claims § 720.010 *et seq.*

### § 701.050. Duty of account debtor

**701.050.** After service of a copy of the writ of execution and a notice of levy on an account debtor obligated on an account receivable, chattel paper, or general intangible:

(a) If the account debtor has been making payments or is required to make payments to the judgment debtor, the account debtor shall make payments to the levying officer as they become due unless otherwise directed by court order or by the levying officer. Payments made to the judgment debtor after the account debtor has received notice of the levy do not discharge the obligation of the account debtor.

(b) If the account debtor has been making payments to a third person or is required to make payments to a third person (whether pursuant to a security agreement, assignment for collection, or otherwise), the account debtor shall continue to make such payments to the third

person notwithstanding the levy until the account debtor receives notice that the obligation to the third person is satisfied or is otherwise directed by court order or by the third person. After the account debtor receives notice that the obligation to the third person is satisfied, the account debtor shall make payments to the levying officer as they become due unless otherwise directed by court order or by the levying officer.

(c) If pursuant to a security agreement the judgment debtor has liberty to accept the return of goods or make repossessions under the account receivable or chattel paper, the account debtor shall deliver to the levying officer property returnable to the judgment debtor unless otherwise directed by court order or by the levying officer.

**Comment.** Section 701.050 sets forth the duties of an account debtor obligated on an account receivable, chattel paper, or general intangible. Like Section 701.040, this section is intended to preserve the status quo between the account debtor and a third person to whom the account debtor has been making or is required to make payments. See also the Comment to Section 701.040. Subdivisions (a) and (c) provide significant exceptions to this principle, however, in cases where the judgment debtor has the liberty to accept payments or the return of property. See Com. Code § 9205 (liberty in debtor to collect accounts and chattel paper).

#### CROSS-REFERENCES

##### Defined terms

Account debtor § 680.120  
Account receivable § 680.130  
Chattel paper § 680.140  
General intangibles § 680.210  
Judgment debtor § 680.250  
Levying officer § 680.260  
Security agreement § 680.350

#### § 701.060. Duty of obligor under instrument

**701.060.** If the levying officer obtains custody of an instrument levied upon and serves the obligor under the instrument pursuant to the levy, the obligor shall make payments to the levying officer as they become due. Payments made to a person other than the levying officer do not discharge the obligation of the obligor if the

payments are made after the obligor has received notice of the levy.

**Comment.** Section 701.060 makes clear that the obligor under an instrument has a duty to make payments to the levying officer only if the levying officer has obtained possession of the instrument. See also Section 700.110 (method of levy on instruments). This is consistent with Commercial Code Section 3301 (rights of a holder of negotiable instrument). This section also applies to instruments that are not negotiable.

#### CROSS-REFERENCES

##### Defined terms

Instrument § 680.220

Levying officer § 680.260

### Article 6. Sale and Collection

#### § 701.510. Sale of property levied upon

701.510. Subject to Sections 687.020 and 701.520, the levying officer shall sell all property that has been levied upon except:

(a) Tangible personal property may not be sold until the levying officer obtains custody of the property.

(b) Cash or its equivalent may not be sold.

**Comment.** Section 701.510 continues the general authority of the levying officer to sell property after levy. See former Section 691. If sale is not made during the period of the lien of execution, the property must be released unless the property is to be held under another lien or is to be held pending resolution of a dispute as to its disposition. Section 697.050. After sale, the proceeds are applied in the manner provided by Section 701.810. Subdivisions (a) and (b) provide exceptions to the general rule. See also Section 701.520 (sale of collectible property). As to sale of property levied upon prior to operative date of this article, see Sections 694.040, 694.050.

#### CROSS-REFERENCES

##### Defined terms

Levying officer § 680.260

Tangible personal property § 680.370

Instruments, endorsement and presentation for payment § 687.020

Manner of custody § 687.030

Methods of levy §§ 700.010-700.200

**§ 701.520. Collection; sale of collectible property**

**701.520. (a)** Except as provided in this section, any of the following property that has been levied upon shall be collected rather than sold:

- (1) Accounts receivable.
- (2) Chattel paper.
- (3) General intangibles.
- (4) Final money judgments.
- (5) Instruments that are not customarily transferred in an established market.
- (6) Instruments that represent an obligation arising out of the sale or lease of property, a license to use property, the furnishing of services, or the loan of money where the property sold or leased or licensed for use, the services furnished, or the money loaned was used by an individual primarily for personal, family, or household purposes.

(b) At the time of levy on property described in subdivision (a) or thereafter, the judgment creditor may serve a notice of intended sale of the property on the judgment debtor. Service shall be made personally or by mail. A copy of the notice of intended sale and proof of service on the judgment debtor shall be filed with the court and with the levying officer. The notice of intended sale shall describe the property and state that it will be sold at an execution sale unless, within the time allowed after service of the notice of intended sale, the judgment debtor applies to the court on noticed motion for an order that the property be collected rather than sold.

(c) Within 10 days after service of the notice of intended sale, the judgment debtor may apply to the court on noticed motion for an order that the property be collected rather than sold. The notice of motion shall be filed with the levying officer and served on the judgment creditor. Service shall be made personally or by mail. If notice of motion is not filed with the levying officer within the time allowed, the levying officer shall proceed to sell the property. If notice of motion is filed with the levying officer within the time allowed, the levying officer shall continue to collect the property until otherwise ordered by the court.

(d) At the hearing on the motion, the court may in its discretion order that the property be sold or be collected depending on the equities and circumstances of the particular case. If the court orders that the property be sold, the order may specify terms and conditions of sale. If the court orders that the property be collected, the court may condition its order on an assignment of the property by the judgment debtor to the judgment creditor pursuant to Article 6 (commencing with Section 708.510) of Chapter 6.

**Comment.** Subdivision (a) of Section 701.520 provides a degree of protection for types of property that are particularly susceptible to sacrifice and speculative sales. Former law did not contain such exceptions to the general rule that property levied upon is to be sold on execution (see Section 701.510), although former Section 691 directed the levying officer to collect *or* sell things in action. Section 701.520 clarifies the manner of applying a judgment in favor of the judgment debtor to the satisfaction of the judgment creditor's money judgment. See subdivision (a) (4). Prior law provided for the attachment of final judgments (see subdivision 5 of former Section 542, superseded by Section 488.420), but appeared to forbid levy and sale under execution (see former Section 688(f)). See also Sections 700.180 (levy on property that is subject of pending action), 700.190 (levy on final money judgment), 708.470-708.480 (enforcement of lien obtained in pending action). The effect of paragraphs (5) and (6) of subdivision (a) is to permit sale without court order of instruments that are regularly transferred on established markets so long as the instruments are not consumer paper. See Section 701.510.

Subdivisions (b)-(d) provide a procedure through which the judgment creditor may have the property sold if the judgment debtor does not object within 10 days. The time for objecting is extended if the judgment debtor is served by mail. See Section 684.120. The objection is made in the form of a motion that the property be collected rather than sold. Subdivision (d) provides the court with broad authority to determine whether a sale should take place depending, for example, on such factors as whether the obligation is currently being paid, the probable proceeds of a sale of the obligation, the costs of collection if it is not sold, and the availability of other useful remedies. If a sale is permitted, the court may set a minimum price or require court confirmation of sale. The sale may be conducted in the same



manner as other execution sales or may be conducted in some other manner, *e.g.*, as a negotiated private sale through some commercial channel.

#### CROSS-REFERENCES

##### Defined terms

- Account receivable § 680.130
- Chattel paper § 680.140
- Court § 680.160
- General intangibles § 680.210
- Instrument § 680.220
- Judgment creditor § 680.240
- Judgment debtor § 680.250
- Levying officer § 680.260
- Money judgment § 680.270
- Duties and liabilities of third persons upon levy § 701.010 *et seq.*
- Endorsement and collection of certain instruments § 687.020
- Manner of service § 684.010 *et seq.*
- Methods of levy §§ 700.010-700.200
- Proof of service §§ 684.210-684.220
- Service on judgment creditor's attorney §§ 684.010, 684.050
- Service on judgment debtor's attorney §§ 684.020, 684.050

### § 701.530. Notice of sale of personal property

701.530. (a) Notice of sale of personal property shall be in writing, shall state the date, time, and place of sale, and shall describe the property to be sold.

(b) Not less than 10 days before a sale of personal property, notice of sale shall be posted and served on the judgment debtor by the levying officer. Service shall be made personally or by mail.

(c) Posting under this section shall be in three public places in:

(1) The city in which the property is to be sold if it is to be sold in a city.

(2) The judicial district in which the property is to be sold if it is not to be sold in a city.

(d) A sale of personal property of an individual may not take place until the expiration of the time during which the judgment debtor may make a claim of exemption under subdivision (a) of Section 703.520.

**Comment.** Subdivisions (a)-(c) of Section 701.530 continue the substance of subdivision 2 of former Section 692. The 10-day period provided in subdivision (b) is not extended if service on the judgment debtor is by mail (Section 684.120 extending time when service is by mail does not apply to this situation), but the time under subdivision (d) may be extended by Section 684.120.

See the Comment to Section 703.520. Subdivision (d) is a new provision intended to afford an individual an opportunity to claim any available exemptions.

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Levying officer § 680.260

Property § 680.310

Effect of sale without required notice § 701.560

Manner of service § 684.010 *et seq.*

Sale of perishable property § 699.070

### § 701.540. Notice of sale of real property

701.540. (a) Notice of sale of an interest in real property shall be in writing, shall state the date, time, and place of sale, shall describe the interest to be sold, and shall give a legal description of the real property and its street address or other common designation, if any. If the real property has no street address or other common designation, the notice of sale shall include a statement that directions to its location may be obtained from the levying officer upon oral or written request or, in the discretion of the levying officer, the notice of sale may contain directions to its location. Directions are sufficient if information as to the location of the real property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If an accurate legal description of the real property is given, the validity of the notice and sale is not affected by the fact that the street address or other common designation, or directions to its location, are erroneous or omitted.

(b) Not less than 20 days before the date of sale, notice of sale of an interest in real property shall be served and posted by the levying officer as provided in subdivisions (c), (d), (e), (f), and (g).

(c) Notice of sale shall be personally served on the judgment debtor.

(d) Notice of sale shall be posted in the following places:

(1) One public place in the city in which the interest in the real property is to be sold if it is to be sold in a city

or, if not to be sold in a city, one public place in the judicial district in which the interest in the real property is to be sold.

(2) A conspicuous place on the real property.

(e) At the time notice is posted pursuant to paragraph (2) of subdivision (d), notice of sale shall be served or service shall be attempted on one occupant of the real property. Service on the occupant shall be made by leaving the notice with the occupant personally or, in the occupant's absence, with any person of suitable age and discretion found upon the real property at the time service is attempted who is either an employee or agent of the occupant or a member of the occupant's household.

(f) If the property described in the notice of sale consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lies with relation to any of the others so as to form a continuous tract, only one service pursuant to subdivision (e) and posting pursuant to paragraph (2) of subdivision (d) need be made as to each such continuous tract.

(g) Notice of sale shall be published pursuant to Section 6063 of the Government Code, with the first publication at least 20 days prior to the time of sale, in a newspaper of general circulation published in the city in which the real property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the judicial district in which the real property or a part thereof is situated. If no newspaper of general circulation is published in the city or judicial district, notice of sale shall be published in a newspaper of general circulation in the county in which the real property or a part thereof is situated.

(h) Not less than 20 days before the date of sale, the levying officer shall mail notice of sale to all persons having liens of record on the property at the time of service. The notice shall be addressed to the person at the address, if any, shown by the records of the office of the tax assessor of the county where the real property is located or, if no address is so shown, to the person at the

address used by the county recorder for return of the instrument creating the lien after recording.

**Comment.** Section 701.540 supersedes subdivision 3 of former Section 692. Notice of sale may not be given until the expiration of the period provided in Section 701.545. The responsibility of the levying officer under subdivision (a) to give directions to the location of property that has no street address or other common designation is derived from the provision of former Section 692 for giving directions by the beneficiary of a deed of trust. See also Section 687.010 (instructions to levying officer). Subdivision (b) continues a portion of subdivision 3 of former Section 692. Subdivision (c) requires personal service on the judgment debtor whereas subdivision 3 of former Section 692 permitted service by certified mail. Subdivisions (e) and (f) are the same as portions of Section 700.015(c) (notice of levy). Subdivisions (d) and (g) continue the substance of portions of subdivision 3 of former Section 692. Subdivision (h) requires notice not required by former law. For special provisions applicable to sale of a dwelling to enforce a money judgment, see Sections 704.770, 704.790.

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Levying officer § 680.260

Real property § 680.320

Effect of sale without required notice § 701.560

Homestead exemption § 704.710 *et seq.*

Manner of service § 684.010 *et seq.*

Method of levy on real property § 700.015

Service on judgment debtor's attorney §§ 684.020, 684.050

### § 701.545. Period that must elapse before giving notice of sale

**701.545.** Notice of sale of an interest in real property, other than a leasehold estate with an unexpired term of less than two years at the time of levy, may not be given pursuant to Section 701.540 until the expiration of 120 days after the date notice of levy on the interest in real property was served on the judgment debtor.

**Comment.** Section 701.545 delays the giving of notice of a sale of real property for at least 120 days after the notice of levy is served on the judgment debtor. This 120-day delay is provided to give the judgment debtor an opportunity to redeem the property from the judgment creditor's lien before the sale or to seek potential purchasers. The statutory right of redemption

from judicial sales of real property provided by former Sections 700a-707 is repealed. See Section 701.680 and the Comment thereto (sales absolute).

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Real property § 680.320

Method of levy on real property § 700.015

### § 701.550. Notice of sale to persons requesting notice

**701.550.** (a) In addition to the notice of sale required by this article, the levying officer shall, at the time notice of sale is posted pursuant to Section 701.530 or 701.540, mail notice of sale to any person who has requested notice of any sale at the address noted on the writ.

(b) A request for notice of sale under this section shall be in writing and shall be filed with the clerk of the court where the judgment is entered. The request shall specify the title of the court, the cause and number of the action in which the judgment was entered, and the date of entry thereof, and shall state the address to which the notice of sale is to be mailed.

**Comment.** Section 701.550 continues the substance of portions of former Section 692a. This procedure applies to sales under writs of execution and other writs. The clerk must note the request for notice on the writ. See Sections 699.520 (writ of execution), 712.020 (writs of possession and sale). Sales of property take place under writs of execution and writs of sale as a manner of course (see Sections 701.510, 716.020) and under writs of possession of personal property as an ancillary matter (see Section 714.020). Notice of sale is required to be given to the judgment debtor and lienholders of record of real property in all cases. See Section 701.540.

#### CROSS-REFERENCES

##### Defined terms

Judgment § 680.230

Levying officer § 680.260

Writ § 680.380

Effect of sale without required notice § 701.560

### § 701.555. Judgment creditor and judgment debtor may advertise sale

**701.555.** In addition to the notice of sale required by this article, the judgment creditor may advertise the sale

in the classified or other advertising section of a newspaper of general circulation or other publication and may recover reasonable costs of such advertising. The judgment debtor may also advertise the sale at the judgment debtor's own expense.

**Comment.** Advertising under Section 701.555 may be appropriate where certain types of property with a specialized market are to be sold, such as stamps, coins, or rare books. Expenses of the judgment creditor's advertising in this manner are recoverable if reasonable. Section 701.555 is permissive, not restrictive.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

#### § 701.560. Effect of sale without giving required notice

**701.560. (a)** Failure to give notice of sale as required by this article does not invalidate the sale.

**(b)** A levying officer who sells property without giving the required notice is liable to the judgment creditor and the judgment debtor for actual damages caused by failure to give notice.

**Comment.** Subdivision (a) of Section 701.560 codifies existing law. See *Smith v. Randall*, 6 Cal. 47, 50 (1856); *Hamilton v. Carpenter*, 52 Cal. App.2d 447, 448, 126 P.2d 395 (1942). Subdivision (b) continues the levying officer's liability for actual damages for failure to give proper notice of sale provided by former Section 693. Former Section 693 provided for liability to the "aggrieved party." See *Sheehy v. Graves*, 58 Cal. 449 (1881) (judgment creditor as aggrieved party); *Bellmer v. Blessington*, 136 Cal. 3, 68 P. 111 (1902) (judgment debtor as aggrieved party); *Kelley v. Desmond*, 63 Cal. 517, 518 (1883) (purchaser at execution sale not aggrieved party). The forfeiture of \$100 by the levying officer to the aggrieved party under former Section 693 is not continued.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Liability of levying officer generally § 687.040

§ 701.570. Place, time, and manner of sale

701.570. (a) A sale of property shall be held at the date, time, and place specified in the notice of sale, which shall be in the county where the property or a part thereof is situated and between the hours of nine in the morning and five in the afternoon. Subject to subdivision (d), real property consisting of one parcel, or of two or more contiguous parcels, situated in two or more counties may be sold in one county as instructed by the judgment creditor.

(b) The sale shall be made at auction to the highest bidder.

(c) If personal property capable of manual delivery is to be sold, it shall be within the view of those who attend the sale unless, upon application of the judgment creditor or the judgment debtor, the court orders otherwise.

(d) Property shall be sold separately or in such groups or lots as are likely to bring the highest price. The judgment debtor may request that the property be sold separately or together and may request that the property be sold in a particular order. If the judgment debtor is not present at the sale, the request may be made in writing and delivered to the levying officer prior to the sale. The levying officer shall honor the request if, in the opinion of the levying officer, the requested manner of sale is likely to yield an amount at least equal to any other manner of sale or the amount necessary to satisfy the judgment. The levying officer is not liable for a decision made in good faith under this subdivision.

(e) After sufficient property has been sold to yield the amount necessary to satisfy the judgment, no more shall be sold.

**Comment.** Subdivisions (a) and (b) of Section 701.570 continue the substance of the first sentence of former Section 694. Subdivision (c) supersedes a portion of the fourth sentence of former Section 694 which required personal property to be in the view of the persons attending the sale.

Subdivision (d) supersedes a portion of the fourth sentence and the fifth sentence of former Section 694. See also the last sentence of former Section 691. Although former Section 694 appeared to require that real property must be sold in separate

parcels, the cases interpreting that section suggest that sale en masse constitutes at most an irregularity and that the true test is whether separate sale would produce a higher price. See 5 B. Witkin, *California Procedure Enforcement of Judgment* § 80, at 3451 (2d ed. 1971). There may be cases where sale as a unit will produce a substantially higher price than separate sale.

Subdivision (d) permits the judgment debtor to make reasonable requests concerning the manner of sale, but the levying officer is empowered to accept or reject the request. Under former Section 694, the judgment debtor appeared to have absolute control over the order and lots in which the property was sold. The authority for the judgment debtor to make a request in writing when not present at the sale is not found in prior law.

Subdivision (e) continues the second sentence of former Section 694.

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Judgment § 680.230

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Property § 680.310

Real property § 680.320

Liability of levying officer generally § 687.040

### § 701.580. Postponement of sale

**701.580.** The judgment debtor and judgment creditor together may request in writing that a sale be postponed to an agreed day and hour. The request shall be delivered to the levying officer conducting the sale, and the levying officer shall, by public declaration at the time and place originally fixed for the sale, postpone the sale to the day and hour fixed in the request. Notice of any additional postponements shall be given by public declaration by the levying officer at the time and place last appointed for the sale. No other notice of postponed sale need be given. A postponed sale shall be held at the place originally fixed for the sale.

**Comment.** Section 701.580 continues the substance of the second paragraph of former Section 694.



## CROSS-REFERENCES

## Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

**§ 701.590. Manner of payment**

701.590. (a) Except as otherwise provided in this section, the purchaser at a sale shall pay in cash or by certified check or cashier's check.

(b) The judgment creditor may bid by giving the levying officer a written receipt crediting all or part of the amount required to satisfy the judgment, except that the levying officer's costs remaining unsatisfied and the amount of preferred labor claims, exempt proceeds, and any other superior claim that is required by statute to be satisfied, shall be paid in cash or by certified check or cashier's check.

(c) If the highest bid for an item, group, or lot of property sold exceeds five thousand dollars (\$5,000), the highest bidder may elect to treat the sale as a credit transaction. A person who makes the election shall deposit at least five thousand dollars (\$5,000) or 10 percent of the amount bid, whichever is greater, and within 20 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 amount bid from the date of sale until the date of payment. A person who makes the election is not entitled to possession of the property sold until the amount bid, plus accruing costs and interest, have been paid.

**Comment.** Subdivisions (a) and (b) of Section 701.590 codify the practice under former law. Marshal's Manual of Procedure § 423.4 (rev. 1980); Cal. State Sheriffs' Ass'n, Civil Procedural Manual 6.10-6.11, 6.20 (1978). See also *Turner v. Donovan*, 64 Cal. App. 2d 375, 148 P.2d 912 (1944); *Kelly v. Barnet*, 24 Cal. App. 119, 140 P. 605 (1914).

Under subdivision (b), if the judgment creditor bids at the auction, the judgment creditor may use the judgment as a credit to pay all or a portion of the bid instead of cash. However, the judgment creditor must pay in cash or its equivalent the costs of the officer conducting the sale, preferred labor claims, and

exempt sale proceeds. See also Section 701.810 (distribution of proceeds). Subdivision (b) recognizes that a transfer of cash back and forth between the judgment creditor and the levying officer generally can be dispensed with. Under former law, the levying officer apparently had the discretion to refuse the judgment as a credit and to require cash payment. See *Mitchell v. Alpha Hardware & Supply Co.*, 7 Cal. App.2d 52, 60-61, 45 P.2d 442 (1935); *Kelly v. Barnet*, 24 Cal. App. 119, 140 P. 605 (1914).

Subdivision (c) is derived from Revenue and Taxation Code Section 3693.1 (sales of tax deeded property to private persons). If additional costs—such as keeper or storage fees—accrue after the sale, the credit bidder must satisfy them. The credit bidder must also pay interest on the balance of the amount bid to compensate for the delay in payment. If the amount bid is not paid, Section 701.600 applies.

#### CROSS-REFERENCES

Amount required to satisfy the judgment § 695.210

Defined terms

Judgment creditor § 680.240

Levying officer § 680.260

Exempt proceeds §§ 704.010, 704.060, 704.720

Interest rate § 685.010

Levying officer's costs §§ 685.050, 685.100

### § 701.600. Defaulting bidder

**701.600.** If the highest bidder does not pay the amount bid as prescribed by Section 701.590:

(a) The levying officer shall, at the request of the judgment creditor, sell the property either immediately to the next highest bidder at the amount of the next highest bid or to the highest bidder at a new sale. The levying officer may, in the levying officer's discretion, reject any subsequent bid of the defaulting bidder.

(b) The levying officer shall apply the amount of any deposit made pursuant to subdivision (c) of Section 701.590 in the following order:

(1) To the satisfaction of costs accruing with regard to the property sold from the date of the sale until the date the property is resold, including costs of resale.

(2) To the satisfaction of interest at the rate on money judgments on the amount bid from the date of the sale until the date the property is resold.

(3) To the amount required to satisfy the judgment in the order of distribution prescribed by Section 701.810.

(c) If there is a sale to the next highest bidder or to the highest bidder at a new sale, the defaulting bidder is liable for the following amounts in an action by the judgment creditor or judgment debtor:

(1) The amount bid, less the amount obtained from the resale of the property and the amount of any deposit applied pursuant to subdivision (b). The amount recovered pursuant to this paragraph shall be distributed in the manner prescribed by Section 701.810.

(2) Any costs accruing with regard to the property sold from the date of sale until the date the property is resold, including costs of resale.

(3) Interest at the rate on money judgments on the amount bid from the date of the sale until the date the property is resold.

(4) Costs and attorney's fees incurred in the action under this subdivision.

**Comment.** The first sentence of subdivision (a) of Section 701.600 supersedes the first portion of former Section 695. See *Bell v. Redwine*, 98 Cal. App. 784, 787, 277 P. 1050 (1929) (officer must resell property). If a new sale is held, it must satisfy the requirements of notice, time, place, and manner of sale provided by this article. The second sentence of subdivision (a) continues the substance of former Section 696.

Subdivision (b) is designed to handle situations where there is a default by a bidder who elects to treat the sale as a credit transaction pursuant to Section 701.590(c).

Subdivision (c) supersedes the latter portion of former Section 695. This subdivision authorizes the judgment creditor or the judgment debtor to sue the defaulting bidder whereas former Section 695 provided that the officer could recover the amount of the loss, with costs. However, case law under former Section 695 permitted the judgment debtor to recover from the defaulting bidder. See *Meherin v. Saunders*, 131 Cal. 681, 689-91, 63 P. 1084 (1901). Paragraph (1) of subdivision (c) codifies the case law rule that the amount of the loss is the difference between the unpaid bid and a lower price obtained at a later sale. See *Johns v. Trick*, 22 Cal. 511, 513 (1863); *Meherin v. Saunders*, 131 Cal. 681, 687-88, 63 P. 1084 (1901) (*dictum*). The remaining provisions of subdivision (c) were not found in prior law.

## CROSS-REFERENCES

Amount required to satisfy the judgment § 695.210

Defined terms

Costs § 680.150

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Interest rate § 685.010

**§ 701.610. Persons ineligible to purchase**

**701.610.** The levying officer may not be a purchaser or have an interest in any purchase at a sale.

**Comment.** Section 701.610 continues the substance of the third sentence of former Section 694.

## CROSS-REFERENCES

Defined terms

Levying officer § 680.260

Officer includes deputy, see Gov't Code § 24100

**§ 701.620. Minimum bid**

**701.620.** (a) Property may not be sold unless the amount bid exceeds the total of the following amounts:

(1) The amount of all claims, liens, and other interests of third persons, that are superior to the judgment creditor's lien and are required by statute to be satisfied.

(2) If the purchaser is not the judgment creditor, the amount of any deposit made pursuant to Section 720.260 with interest thereon at the rate on money judgments from the date of the deposit to the date of the sale.

(b) Property for which a proceeds exemption is provided by Section 704.010 (motor vehicle), 704.060 (tools of trade), or 704.720 (homestead), may not be sold unless the amount bid exceeds the sum of any amount under subdivision (a) and the amount of the proceeds exemption.

(c) If a minimum bid required for the sale of property pursuant to this section is not received, the levying officer shall promptly release the property.

**Comment.** Section 701.620 is not found in prior law. As to superior interests otherwise required to be satisfied and a deposit made pursuant to Section 720.260, see Section 701.810 (distribution of proceeds of sale or collection).

## CROSS-REFERENCES

## Defined terms

Judgment creditor § 680.240

Levying officer § 680.260

Property § 680.310

Interest rate § 685.010

Release of property § 699.060

**§ 701.630. Extinction of liens upon sale**

**701.630.** If property is sold pursuant to this article, the lien under which it is sold and any liens subordinate thereto are extinguished.

**Comment.** Section 701.630 is a new provision consistent with prior law. See *Mitchell v. Alpha Hardware & Supply Co.*, 7 Cal. App.2d 52, 45 P.2d 442 (1935). See also Civil Code § 2910 (extinction of lien upon sale). Subordinate lienholders may be entitled to share in any excess proceeds of sale even though their liens are extinguished. See Section 701.810 (distribution of proceeds).

**§ 701.640. Interest acquired by purchaser**

**701.640.** The purchaser of property at an execution sale acquires any interest of the judgment debtor in the property sold held on the effective date of the lien under which the property was sold or acquired between such effective date and the date of sale.

**Comment.** Section 701.640 supersedes former Section 700 and portions of former Sections 698 and 699 and provides a single rule covering both real and personal property. It makes clear that the sale on execution conveys the interest that was liable for the satisfaction of the judgment on the date of levy or the date that the judgment became a lien on the property and any such interest in the property subject to the lien that is acquired before the date of sale, assuming that the lien has been maintained throughout such period. See Section 697.020 (relation back of liens); *Kenyon v. Quinn*, 41 Cal. 325, 329-30 (1871); *Frink v. Roe*, 70 Cal. 296, 305, 11 P. 820 (1886). If the property sold is community property, the interest of the judgment debtor's spouse also is sold. See Section 695.020. The interest of the execution sale purchaser is no longer subject to the statutory right of redemption formerly provided by Sections 700a-707. See Section 701.680 and the Comment thereto.

## CROSS-REFERENCES

## Defined terms

Judgment debtor § 680.250

Property § 680.310

**§ 701.650. Delivery of possession or of certificate of sale of personal property**

**701.650.** (a) When the purchaser of personal property pays the amount due:

(1) If the property is capable of manual delivery, the levying officer shall deliver the property to the purchaser and, if the purchaser so requests, shall execute and deliver a certificate of sale to the purchaser.

(2) If the property is not tangible personal property or if it is otherwise not capable of manual delivery, the levying officer shall execute and deliver a certificate of sale to the purchaser.

(b) If property or a certificate is delivered pursuant to subdivision (a), the levying officer shall sign or endorse any document or instrument in the levying officer's possession relating to the title to or the right to possession of the property and deliver it to the purchaser.

**Comment.** Subdivision (a) of Section 701.650 supersedes portions of former Sections 698 and 699. Subdivision (b) is new. See also Sections 699.040 (turnover order for documentary evidence of title), 701.010 (delivery by third person of documents necessary to transfer title).

CROSS-REFERENCES

Certificate of sale contents § 701.670

Defined terms

Levying officer § 680.260

Personal property § 680.290

Tangible personal property § 680.370

**§ 701.660. Deed of sale of real property**

**701.660.** When the purchaser of an interest in real property pays the amount due, the levying officer conducting the sale shall execute and deliver a deed of sale to the purchaser and record a duplicate of the deed of sale in the office of the county recorder.

**Comment.** Section 701.660 continues a portion of the third sentence of subdivision (a) of former Section 700a.

CROSS-REFERENCES

Deed of sale contents § 701.670

Defined terms

Levying officer § 680.260

Real property § 680.320

**§ 701.670. Contents of certificate or deed of sale**

**701.670.** The certificate of sale or deed of sale shall contain all of the following:

(a) The title of the court where the judgment was entered under which the sale was made and the cause and number of the action.

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

(c) The name and address of the judgment creditor and the name and last-known address of the judgment debtor.

(d) A description of the property sold.

(e) The date of sale.

**Comment.** Section 701.670 makes general the requirements for the certificate of sale provided by subdivision (a) of former Section 700a (certificate of sale of real property). The provisions of former Section 700a requiring a statement of the price of the property and a notice of the right of redemption are not continued. See Section 701.680 and the Comment thereto.

CROSS-REFERENCES

Defined terms

Court § 680.160

Judgment § 680.230

Judgment creditor § 680.240

Judgment debtor § 680.250

Property § 680.310

Sale in groups or lots § 701.570

Sale under writ of sale § 716.020

**§ 701.680. Sales absolute; liability**

**701.680.** (a) Except as provided in paragraph (1) of subdivision (c), a sale of property pursuant to this article is absolute and may not be set aside for any reason.

(b) If the judgment is discharged because it is reversed or for any other reason, the judgment debtor may recover from the judgment creditor the proceeds of a sale pursuant to the discharged judgment with interest at the rate on money judgments to the extent the proceeds were improperly applied to the satisfaction of the judgment.

(c) If the sale was improper because of irregularities in the proceedings, because the property sold was not subject to execution, or for any other reason:

(1) An action may be commenced within six months after the date of sale to set aside the sale if the purchaser at the sale is the judgment creditor.

(2) The judgment debtor may recover damages caused by the impropriety. If damages are recovered against the judgment creditor, they shall be offset against the judgment to the extent the judgment is not satisfied. If damages are recovered against the levying officer, they shall be applied to the judgment to the extent the judgment is not satisfied.

**Comment.** Section 701.680 supersedes former Section 708 which provided rights for the purchaser in case the sale is set aside. Section 701.680 does not permit the sale to be set aside unless the sale was made to the judgment creditor and an action is brought within six months after the date of sale. The judgment debtor is protected by provisions permitting a stay of enforcement pending appeal and a court determination pending sale of whether property is exempt or not subject to enforcement. See Sections 695.040 (release of property not subject to enforcement), 703.510 (determination of exemptions), 916 (stay on appeal). Proceeds of sale are held at least 10 days before distribution, during which time the judgment debtor may raise objections to their distribution. See Section 701.820.

Section 701.680 also supersedes the first sentence of subdivision (a) of former Section 700a which made absolute only sales of personal property and of leasehold estates with unexpired terms of less than two years. Section 701.680 reflects the repeal of the statutory right of redemption after execution sales. See former Sections 700a-707. Sales of interests in real property (except leasehold estates with less than two years' unexpired term at the time of levy) are delayed at least 140 days, however, in order to provide an opportunity for the judgment debtor to redeem the property from the judgment creditor's lien *before* sale, to advertise the sale and give notice to potential buyers, or to make a settlement with the judgment creditor. See Civil Code § 2903; Code Civ. Proc. § 701.545. The elimination of the statutory right to redeem after a sale pursuant to this article does not affect rights to redeem afforded by other law. See, *e.g.*, Harb. & Nav. Code § 504 (20-day redemption period after sale of vessel on lien for repairs); Rev. & Tax. Code § 4101 (redemption of tax-deeded real property); Sts. & Hwys. Code § 6530 (12-month redemption period after sale by treasurer to collect assessments under Improvement Act of 1911); I.R.C. § 6337 (120-day redemption period after sale of real property to collect federal taxes).



## CROSS-REFERENCES

## Defined terms

- Judgment § 680.230
- Judgment creditor § 680.240
- Judgment debtor § 680.250
- Levying officer § 680.260
- Property § 680.310
- Interest rate § 685.010
- Property subject to enforcement §§ 695.010-695.040
- Property subject to execution §§ 699.710, 699.720

## Article 7. Distribution of Proceeds of Sale or Collection

### § 701.810. Distribution of proceeds of sale or collection

701.810. Except as otherwise provided by statute, the levying officer shall distribute the proceeds of sale or collection in the following order:

(a) To persons having claims, liens, or other interests that are superior to the judgment creditor's lien and that are required by statute to be satisfied from the proceeds, in the amounts required to be satisfied, and, if a deposit has been made pursuant to Section 720.260 and the purchaser at the sale is not the judgment creditor, to the judgment creditor in the amount required to repay the deposit with interest thereon at the rate on money judgments from the date of the deposit, in the order of their respective priorities.

(b) To the judgment debtor in the amount of any applicable exemption of proceeds pursuant to Section 704.010 (motor vehicle), 704.060 (tools of trade), or 704.720 (homestead), except that such proceeds shall be used to satisfy any consensual liens and encumbrances or liens for labor or materials that are subordinate to the judgment creditor's lien in the order of their respective priorities.

(c) To the levying officer for the reimbursement of the levying officer's costs for which an advance has not been made.

(d) To the judgment creditor to satisfy the following:

(1) First, costs and interest accruing after issuance of the writ pursuant to which the sale or collection is conducted.

(2) Second, the amount due on the judgment with costs and interest, as entered on the writ.

(e) To any other judgment creditors who have delivered writs to the levying officer before the sale or collection, accompanied by instructions to levy upon the same property, or any other persons having a claim, lien, or other interest subordinate to the judgment creditor's lien that is extinguished by the sale and that is not otherwise satisfied pursuant to this section, in the amounts to which they are entitled in order of their respective priorities.

(f) To the judgment debtor in the amount remaining.

**Comment.** Section 701.810 supersedes former Sections 689c and 690.2(c), a portion of former Section 690.2(d), former Section 690.31(j), a portion of former Section 691, and former Civil Code Section 1255. See also former Sections 682.1 and 682.2. Section 701.810 applies to the distribution of the proceeds of a sale or collection pursuant to the enforcement of a money judgment and, by way of incorporation, to cases where levy takes place under a writ of possession for the recovery of costs and damages or the value of the property, or under a writ of sale for the recovery of costs and damages. See Sections 712.040, 714.020. The introductory portion of Section 701.810 recognizes that different schemes for the distribution of proceeds apply in some cases. See, *e.g.*, Section 726 (foreclosure of mortgage); Harb. & Nav. Code §§ 495.8, 495.9 (proceeds of sale of ship); Penal Code §§ 11231 (proceeds under Red Light Abatement Law), 11313 (proceeds of sale of gambling ship); Welf. & Inst. Code § 14124.74 (proceeds under Medi-Cal). The levying officer makes an initial determination of the manner of distribution under this section, subject to court control. See Section 701.820.

Subdivision (a) does not determine which interests are required to be satisfied; it recognizes that such interests may be required by another statute to be paid off. See, *e.g.*, Section 1206 (preferred labor claim). The provisions of former Civil Code Section 1255 and of former Code of Civil Procedure Section 690.31(j) requiring the discharge of "all liens and encumbrances" on homestead property or exempt dwellings are not continued. Subdivision (a) treats the judgment creditor as a third person with a superior interest to the extent that the judgment creditor is subrogated to the rights of a secured party pursuant to Section 720.290.

In certain circumstances, the judgment debtor will be entitled to receive a portion of the proceeds as provided by subdivision (b). The provision for satisfaction of subordinate consensual liens and encumbrances and liens for labor or materials out of exempt proceeds preserves the priority of the judgment creditor in any excess value of the property but recognizes that consensual liens and liens for labor and materials are not subject to exemptions from enforcement of money judgments. See Section 703.010(b). The judgment debtor is free to use a prospective exemption of proceeds as a fund to secure a loan or to finance improvements or repairs of the property. Consensual liens that are not satisfied under subdivision (b) (because the case is not one in which the judgment debtor is entitled to an exemption of proceeds) may be satisfied out of any surplus remaining after the satisfaction of the judgment creditor's lien as provided in subdivision (e).

As a general rule, the costs of the levying officer are required to be prepaid. See Section 685.100. However, in some instances costs are not prepaid, such as where a governmental agency is the creditor. See, *e.g.*, Labor Code § 101. Subdivision (c) provides for the reimbursement of such costs before any payments are made to the creditor.

Subdivision (d) sets forth the order in which proceeds are allocated to the judgment creditor and is based on former Sections 682.1 and 682.2. This subdivision codifies the existing practice of first satisfying new costs and interest and then the principal amount of the judgment (including previously allowed costs) as entered on the writ. The interest accruing after issuance of the writ is computed on a daily basis as provided by Section 685.050. See also Section 695.220 (manner of crediting money received in satisfaction of judgment).

Subdivision (e) is based on the rule in *Mitchell v. Alpha Hardware & Supply Co.*, 7 Cal. App.2d 52, 57, 45 P.2d 442 (1935). *Cf. Caito v. United California Bank*, 20 Cal.3d 694, 701, 576 P.2d 466, 144 Cal. Rptr. 751 (1978); *Nomellini Constr. Co. v. Modesto Sav. & Loan Ass'n*, 275 Cal. App.2d 114, 118, 79 Cal. Rptr. 717 (1969).

#### CROSS-REFERENCES

Costs and interest generally § 685.010 *et seq.*

Defined terms

Costs § 680.150

Judgment § 680.230

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Person § 680.280

Property § 680.310

Writ § 680.380

Levy on property in custody of levying officer § 700.050

### § 701.820. Schedule of proposed distribution of proceeds

701.820. (a) Promptly after a sale or collection under this title, the levying officer shall prepare a schedule of proposed distribution of proceeds which shall be available for inspection in the office of the levying officer. Notice thereof shall be served on the judgment debtor, the judgment creditor, and any other person known to the levying officer to have or claim a lien on or interest in the property. Service shall be made personally or by mail. The levying officer may accumulate proceeds received during a 30-day period before preparing a schedule of proposed distribution.

(b) Within 10 days after service of the schedule of proposed distribution of proceeds, any interested person may file exceptions thereto with the levying officer and may apply to the court on noticed motion for a determination of exceptions. The notice of motion shall be served on the judgment creditor, the judgment debtor, and any other person listed in the schedule of proposed distribution of proceeds whose share is affected by the motion. Service shall be made personally or by mail. Any person who has actual notice of the schedule of the proposed distribution of proceeds prior to expiration of the period for filing exceptions and who fails to file exceptions may not thereafter object in any court proceeding to any distributions made in accordance with the schedule.

(c) After the expiration of the time for filing exceptions pursuant to subdivision (b), the levying officer shall:

(1) If exceptions have been timely filed, file the schedule of proposed distribution of proceeds with the court and deposit the proceeds excepted to with the court.

(2) Distribute the proceeds in accordance with the schedule to the extent it is not excepted to.

(d) This section does not apply to amounts collected under the Wage Garnishment Law, Chapter 5 (commencing with Section 706.010).

**Comment.** Section 701.820 is a new provision intended to provide an orderly manner for distributing proceeds of a sale or collection under this title and for the determination of any disputes concerning the distribution. For the hearing of the disputes, see Section 701.830. Section 701.820 also provides a delay during which the debtor has an opportunity to claim any available exemptions and during which persons interested in the sale or collection can object.

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Person § 680.280

Extension of time where served by mail § 684.120

Manner of service § 684.010 *et seq.*

Proof of service of notice of motion § 684.210

Service on judgment creditor's attorney §§ 684.010, 684.050

Service on judgment debtor's attorney §§ 684.020, 684.050

Time for claiming exemptions § 703.520

### § 701.830. Hearing on exceptions

**701.830.** (a) Any interested person may request time for filing a response to the motion for determination of exceptions to the schedule of proposed distribution of proceeds, for discovery proceedings in connection with the motion, or for other preparation for the hearing on the motion, and the court shall grant a continuance for a reasonable time for any of these purposes.

(b) Except as provided in subdivision (c), at the hearing on the motion the court shall determine the exceptions and make an order for the distribution of the proceeds deposited with the court.

(c) The court shall not determine the exceptions and instead shall abate the hearing until the conclusion of the civil action in the following cases if:

(1) The court is not the proper court under any other provision of law for the trial of a civil action with respect to the subject matter of the motion and any interested

person at or prior to the hearing objects to the determination of the exception by the court.

(2) A civil action is pending with respect to the subject matter of the motion and jurisdiction has been obtained in the court in which the civil action is pending.

(3) The court determines that the matter should be determined in a civil action.

**Comment.** Section 701.830 is drawn from Probate Code Sections 2522-2526 (guardianship and conservatorship).

#### CROSS-REFERENCES

Defined terms  
Court § 680.160

## CHAPTER 4. EXEMPTIONS

### Article 1. General Provisions

#### § 703.010. Application of exemptions

703.010. (a) Except as otherwise provided by statute, the exemptions provided by this chapter or by any other statute apply to all procedures for enforcement of a money judgment.

(b) The exemptions provided by this chapter or by any other statute do not apply if the judgment to be enforced is for the foreclosure of a mortgage or other lien on the property other than a lien created pursuant to this division.

**Comment.** Subdivision (a) of Section 703.010 makes clear that exemptions apply regardless of the procedure selected for the enforcement of a money judgment. Subdivision (a) is comparable to but broader than former Section 690 in that subdivision (a) applies to exemptions prescribed by statute apart from this chapter and applies to all procedures for enforcement of a money judgment and not just execution. For exemptions not included in this chapter, see, *e.g.*, Civil Code § 986(a)(6) (artist's residual payment); Code Civ. Proc. §§ 706.050-706.052 (earnings); Health & Safety Code § 32508 (hospital endowments); 10 U.S.C. § 1035 (servicemen savings); 38 U.S.C. § 3101 (veterans benefits); 42 U.S.C. § 407 (federal OASDI benefits); 45 U.S.C. § 231m (railroad retirement pensions). The exemptions apply to the enforcement of costs and damages under nonmoney judgments. See Section 712.040.

For the application of exemptions to enforcement of support judgments, see Section 703.070. For the application of exemptions to tax obligations, see Section 688.030. As to the exemptions applicable where the property was levied upon or otherwise subjected to a lien prior to the operative date of this chapter, see Section 694.080.

Subdivision (b) continues the substance of a portion of former Section 690.52. See also former Civil Code § 1241; former Code Civ. Proc. §§ 690.28, 690.31 (b) (3). The portion of former Section 690.52 that made exemptions inapplicable in the case of a judgment for the purchase price of the property is not continued because it was unenforceable in practice and because a security interest may be obtained in such a case.

#### CROSS-REFERENCES

Defined terms

Judgment § 680.230

Money judgment § 680.270

### § 703.020. Persons entitled to exemptions

703.020. (a) The exemptions provided by this chapter apply only to property of a natural person.

(b) The exemptions provided in this chapter may be claimed by any of the following persons:

(1) In all cases, by the judgment debtor or a person acting on behalf of the judgment debtor.

(2) In the case of community property, by the spouse of the judgment debtor, whether or not the spouse is also a judgment debtor under the judgment.

**Comment.** Subdivision (a) of Section 703.020 codifies the rule of *Canal-Randolph Anaheim, Inc. v. Wilkoski*, 103 Cal. App.3d 282, 163 Cal. Rptr. 30 (1980).

The persons entitled to claim an exemption on behalf of a judgment debtor under subdivision (b) include the judgment debtor's agent and other persons acting on behalf of a judgment debtor, such as a public or private retirement plan (see Sections 704.110, 704.115). If community property is sought to be applied to the satisfaction of a judgment, either the judgment debtor or the spouse of the judgment debtor may claim exemptions for the property. *Cf. White v. Gobey*, 130 Cal. App. Supp. 789, 791, 19 P.2d 876 (1933) (nondebtor spouse permitted to claim wage garnishment exemption). See also Section 703.110 (application of exemptions to marital property) and the Comment thereto.

Section 703.020 is limited to exemptions provided by this chapter; the scope of exemptions provided by other statutes is determined by the other statutes, not by Section 703.020.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Person § 680.280

### § 703.030. Manner of claiming exemptions; effect of failure to claim

703.030. (a) An exemption for property that is described in this chapter or in any other statute as exempt may be claimed within the time and in the manner prescribed in the applicable enforcement procedure. If the exemption is not so claimed, the exemption is waived and the property is subject to enforcement of a money judgment.

(b) Property that is described in this chapter or in any other statute as exempt without making a claim is not subject to any procedure for enforcement of a money judgment.

(c) Nothing in this section limits the authority of the court pursuant to Section 473 to relieve a person upon such terms as may be just from failure to claim an exemption within the time and in the manner prescribed in the applicable enforcement procedure.

**Comment.** Subdivisions (a) and (b) of Section 703.030 continue the substance of former Section 690 but are broader in their application since they are not limited to exemptions provided in this chapter. Former law also referred to exemptions “from execution” whereas Section 703.010 makes clear that exemptions apply in all proceedings for the enforcement of a money judgment.

If property is levied upon by a levying officer, the applicable procedure for claiming an exemption is that provided in Article 2 (commencing with Section 703.510), with the exception of the homestead exemption which is governed by Article 4 (commencing with Section 704.710). The exemption procedure is also incorporated in other instances, *e.g.*, where property is attached under an *ex parte* writ of attachment (see Section 485.610) or where a warrant or notice of levy for the collection of taxes is treated as a writ of execution (see Section 688.030). If



the property is sought to be reached by a procedure other than by levy under a writ, a court hearing is required and exemption claims will be determined at such time or later upon noticed motion. See Sections 708.120 (examination proceedings), 708.260 (creditor's suit), 708.450 (lien in pending action), 708.550 (assignment orders), 708.770 (collection where public entity is debtor of judgment debtor).

Subdivision (c) recognizes the power of the court under Section 473 to relieve the claimant from the consequences of failure properly to file a claim of exemption through mistake, inadvertence, surprise, or excusable neglect.

#### CROSS-REFERENCES

Defined terms

Court § 680.160

Money judgment § 680.270

Person § 680.280

### § 703.040. Waiver of exemptions

703.040. A purported contractual or other prior waiver of the exemptions provided by this chapter or by any other statute, other than a waiver by failure to claim an exemption required to be claimed or otherwise made at the time enforcement is sought, is against public policy and void.

**Comment.** Section 703.040 codifies existing case law. See, *e.g.*, *Industrial Loan & Inv. Co. v. Superior Court*, 189 Cal. 546, 209 P. 360 (1922). Of course, exemptions do not apply if the judgment to be enforced is for the foreclosure of a mortgage or other lien not created under this division. See Section 703.010(b).

### § 703.050. Exemptions in effect at time of lien govern

703.050. (a) The determination whether property is exempt or the amount of an exemption shall be made by application of the exemption statutes in effect (1) at the time the judgment creditor's lien on the property was created or (2) if the judgment creditor's lien on the property is the latest in a series of overlapping liens created when an earlier lien on the property in favor of the judgment creditor was in effect, at the time the earliest lien in the series of overlapping liens was created.

(b) It is the intent of the Legislature that this section be applied to all judgments, whether based upon tort, contract, or other legal theory or cause of action that

arose before or after the operative date of this section, and whether the judgment was entered before or after the operative date of this section.

**Comment.** Section 703.050 applies exemptions in effect at the time a lien is created on the property. This is consistent with the holding in *San Diego White Truck Co. v. Swift*, 96 Cal. App.3d 88, 157 Cal. Rptr. 745 (1979), and *National Collection Agency, Inc. v. Fabila*, 93 Cal. App.3d Supp. 1, 155 Cal. Rptr. 356 (1979), and rejects the case law rule that the judgment debtor could take advantage only of the exemptions in effect at the time an obligation was incurred. See, *e.g., In re Rauer's Collection Co.*, 87 Cal. App.2d 248, 253-54, 196 P.2d 803 (1948); *Daylin Medical & Surgical Supply, Inc. v. Thomas*, 69 Cal. App.3d Supp. 37, 40-42, 138 Cal. Rptr. 878 (1977); *Smith v. Hume*, 29 Cal. App.2d Supp. 747, 749-51, 74 P.2d 566 (1937); *Medical Fin. Ass'n v. Wood*, 20 Cal. App.2d Supp. 749, 63 P.2d 1219 (1936). See also Comment, *The Contract Clause and the Constitutionality of Retroactive Application of Exemption Statutes: A Reconsideration*, 9 Pac. L.J. 889 (1978).

#### CROSS-REFERENCES

##### Defined terms

Judgment § 680.230

Judgment creditor § 680.240

Property § 680.310

Transitional provision § 694.080

#### § 703.060. Reserved power of state

703.060. (a) The Legislature finds and declares that generally persons who enter into contracts do not do so in reliance on an assumption that the exemptions in effect at the time of the contract will govern enforcement of any judgment based on the contract, that liens imposed on property are imposed not as a matter of right but as a matter of privilege granted by statute for purposes of priority, that no vested rights with respect to exemptions are created by the making of a contract or imposition of a lien, that application of exemptions and exemption procedures in effect at the time of enforcement of a judgment is essential to the proper balance between the rights of judgment debtors and judgment creditors and has a minimal effect on the economic stability essential for the maintenance of private and public faith in commercial matters, and that it is the policy of the state

to treat all judgment debtors equally with respect to exemptions and exemption procedures in effect at the time of enforcement of a money judgment. To this end, the Legislature reserves the right to repeal, alter, or add to the exemptions and the procedures therefor at any time and intends, unless otherwise provided by statute, that any repeals, alterations, or additions apply upon their operative date to enforcement of all money judgments, whether based upon tort, contract, or other legal theory or cause of action that arose before or after the operative date of the repeals, alterations, or additions, whether the judgment was entered before or after the operative date of the repeals, alterations, or additions.

(b) All contracts shall be deemed to have been made and all liens on property shall be deemed to have been created in recognition of the power of the state to repeal, alter, and add to statutes providing for liens and exemptions from the enforcement of money judgments.

**Comment.** Section 703.060 reserves the power of the state to change and add to existing exemptions in line with recent decisions in other jurisdictions. See, *e.g.*, *Wilkinson v. Carpenter*, 277 Or. 557, 561 P.2d 607, 610-11 (1977); *Hooter v. Wilson*, 273 So.2d 516, 521-22 (La. 1973). Section 703.060 makes clear that the Legislature may make changes in exemptions applicable to all enforcement proceedings after the operative date of the change, without regard to when the judgment was entered or when the underlying obligation or liability was created or arose.

#### CROSS-REFERENCES

Defined terms

Judgment § 680.230

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Person § 680.280

Transitional provision § 694.080

### § 703.070. Application of exemptions where judgment is for child or spousal support

703.070. Except as otherwise provided by statute:

(a) The exemptions provided by this chapter or by any other statute apply to a judgment for child or spousal support.

(b) If property is exempt without making a claim, the property is not subject to being applied to the satisfaction of a judgment for child or spousal support.

(c) Except as provided in subdivision (b), if property sought to be applied to the satisfaction of a judgment for child or spousal support is shown to be exempt under subdivision (a) in appropriate proceedings, the court shall, upon noticed motion of the judgment creditor, determine the extent to which the exempt property nevertheless shall be applied to the satisfaction of the judgment. In making this determination, the court shall take into account the needs of the judgment creditor, the needs of the judgment debtor and all the persons the judgment debtor is required to support, and all other relevant circumstances. The court shall effectuate its determination by an order specifying the extent to which the otherwise exempt property is to be applied to the satisfaction of the judgment.

**Comment.** Subdivisions (a) and (b) of Section 703.070 codify the case law rule that exemptions apply to the enforcement of support unless there is a specific exception. See, *e.g.*, *Miller v. Superior Court*, 69 Cal.2d 14, 442 P.2d 663, 69 Cal. Rptr. 583 (1968); *Ogle v. Heim*, 69 Cal.2d 7, 442 P.2d 659, 69 Cal. Rptr. 579 (1968); *Yager v. Yager*, 7 Cal.2d 213, 60 P.2d 422 (1936). Except to the extent that a particular exemption otherwise provides, property that is exempt without making a claim may not be applied to enforcement of a judgment for support. Section 703.070(b). As to property that is exempt if the exemption is claimed, subdivision (c) of Section 703.070 permits the court, when the exemption is claimed, to nevertheless make an equitable division of the otherwise exempt property based on the needs of the parties. Subdivision (c) is drawn from older case law concerning the equitable division of earnings levied upon to enforce a support judgment. See *Rankins v. Rankins*, 52 Cal. App.2d 231, 126 P.2d 125 (1942). See also Section 706.052 (equitable division of earnings). The introductory clause of Section 703.070 recognizes that other provisions may make some types of property that are exempt without making a claim subject to the enforcement of a support judgment and that other provisions may prescribe the extent to which particular types of property are subject to enforcement of a support judgment. See Sections 704.110(c) (public retirement plan benefits), 704.113

(public vacation credits), 704.115(c) (private retirement plan benefits), 706.052 (wage garnishment).

#### CROSS-REFERENCES

Defined terms

Judgment § 680.230

Judgment creditor § 680.240

Judgment debtor § 680.250

Property § 680.310

Enforcement of support, see Civil Code §§ 4383, 4384

Manner of service § 684.010 *et. seq.*

Proof of service required § 684.210

Service on judgment debtor's attorney §§ 684.020, 684.050

### § 703.080. Tracing exempt funds

**703.080.** (a) Subject to any limitation provided in the particular exemption, a fund that is exempt remains exempt to the extent that it can be traced into deposit accounts or in the form of cash or its equivalent.

(b) The exemption claimant has the burden of tracing an exempt fund.

(c) The tracing of exempt funds in a deposit account shall be by application of the lowest intermediate balance principle unless the exemption claimant or the judgment creditor shows that some other method of tracing would better serve the interests of justice and equity under the circumstances of the case.

**Comment.** Section 703.080 provides for the continuation of an exemption for amounts that can be traced into a deposit account and in the form of cash and its equivalent, such as cashier's checks, certified checks, and money orders.

Subdivision (a) is consistent with decisions under prior law. See, *e.g.*, *Kruger v. Wells Fargo Bank*, 11 Cal.3d 352, 367, 521 P.2d 441, 113 Cal. Rptr. 449 (1974) (unemployment benefits in checking account); *Holmes v. Marshall*, 145 Cal. 777, 782-83, 79 P. 534 (1905) (life insurance benefits deposited in bank account); *Bowman v. Wilkinson*, 153 Cal. App.2d 391, 395-96, 314 P.2d 574 (1957) (life insurance check converted to cashier's check and deposited in attorney's trust account). See also former Sections 690.18(a) (pension benefits exempt in debtor's possession and when deposited), 690.30 (direct deposit of social security payments); *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 416-17 (1973) (disability benefits in bank account); *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 162 (1962) (veterans' benefits in savings and loan account). This section applies to any fund that is exempt. Accordingly, the amount paid to the employee after

a wage garnishment is exempt and remains exempt so long as the requirements of Section 703.080 are satisfied. See Sections 706.050-706.052. The introductory clause of subdivision (a) recognizes that proceeds from a motor vehicle or tools or a dwelling may be traced only during the applicable period. See Sections 704.010 (90 days in case of motor vehicle), 704.060 (90 days in case of tools), 704.720 (18 months in case of homestead).

Subdivision (b) continues existing law concerning the burden of tracing exempt funds. See, *e.g.*, former Section 690.30(b) (2) (tracing Social Security payments). This is consistent with the general burden on the claimant in exemption proceedings. See Section 703.580(b).

Subdivision (c) prescribes the general rule for tracing exempt funds in deposit accounts. It rejects the rule in *California United States Bond & Mortgage Corp. v. Grodzins*, 139 Cal. App. 240, 242-43, 34 P.2d 192 (1934) (portion of life insurance benefits that exceeded exempt amount when received was earmarked for creditors even though benefits remaining at time of levy were below exempt amount). Under the lowest intermediate balance rule, the exempt fund may not exceed the lowest balance occurring at any time between the deposit of the exempt amount of money and the time of levy. New deposits do not replenish the original exempt fund although the new deposits may themselves be exempt. See *Republic Supply Co. v. Richfield Oil Co.*, 79 F.2d 375, 379 (9th Cir. 1935), concerning the determination of the lowest intermediate balance. As an example of the operation of the lowest intermediate balance principle, suppose the judgment debtor has a deposit account in which there is a balance of \$400 composed of nonexempt funds. The judgment debtor then makes a deposit of \$400 of exempt funds (leaving a balance of \$800), a withdrawal of \$600 (leaving a balance of \$200), and a deposit of \$300 of nonexempt funds (leaving a balance of \$500). The total exempt funds deposited were \$400, but under the lowest intermediate balance rule, the \$600 withdrawal reduces first the nonexempt funds and then the exempt funds, leaving \$200 of exempt funds. The final \$300 deposit does not affect the exempt funds, which remain exempt in the amount of \$200, the lowest intermediate balance, despite the final balance of \$500.

#### CROSS-REFERENCES

##### Defined terms

Deposit account § 680.170

Judgment creditor § 680.240

Persons entitled to claim exemption § 703.020

**§ 703.090. Costs in case of subsequent levy on exempt property**

**703.090.** If a judgment creditor has failed to oppose a claim of exemption within the time allowed by Section 703.550 or if property has been determined by a court to be exempt, and the judgment creditor thereafter levies upon or otherwise seeks to apply the property toward the satisfaction of the same money judgment, the judgment creditor is not entitled to recover the subsequent costs of collection unless the property is applied to satisfaction of the judgment.

**Comment.** Section 703.090 is intended to limit repeated levies on the same property by the judgment creditor. Nothing in this section affects any right the judgment debtor may have to recover damages for abuse of process. In the case of a dwelling, if a minimum bid is not received at the sale, the dwelling is released and is not thereafter subject to execution sale at the behest of the same judgment creditor for one year. See Section 704.800.

CROSS-REFERENCES

Defined terms

Judgment creditor § 680.240

Money judgment § 680.270

Property § 680.310

**§ 703.100. Time for determination of exemptions**

**703.100.** (a) Subject to subdivision (b), the determination whether property is exempt shall be made under the circumstances existing at the earliest of the following times:

(1) The time of levy on the property.

(2) The time of the commencement of court proceedings for the application of the property to the satisfaction of the money judgment.

(3) The time a lien is created under Title 6.5 (commencing with Section 481.101) (attachment) or under this title.

(b) The court, in its discretion, may take into consideration any of the following changes that have occurred between the time of levy or commencement of enforcement proceedings or creation of the lien and the time of the hearing:

(1) A change in the use of the property if the exemption is based upon the use of property and if the property was used for the exempt purpose at the time of the levy or the commencement of enforcement proceedings or the creation of the lien but is used for a nonexempt purpose at the time of the hearing.

(2) A change in the value of the property if the exemption is based upon the value of property.

(3) A change in the financial circumstances of the judgment debtor and spouse and dependents of the judgment debtor if the exemption is based upon their needs.

**Comment.** Subdivision (a) of Section 703.100 rejects the holding in *California United States Bond & Mortgage Corp. v. Grodzins*, 139 Cal. App. 240, 242-43, 34 P.2d 192 (1934) (portion of life insurance benefits that exceeded exempt amount when received was earmarked for creditors even though benefits remaining at time of levy were below exempt amount). It adopts the principle that the question of exemptions does not arise until the judgment creditor has sought to apply the judgment debtor's property toward the satisfaction of the judgment. See *Medical Fin. Ass'n v. Rambo*, 33 Cal. App.2d Supp. 756, 758-60, 86 P.2d 159 (1938). The creation of a judgment lien on real property is, for example, an event that establishes the time for determining under subdivision (a) whether the property is exempt. For a special provision relating to the homestead exemption where a dwelling is acquired after a judgment lien is created on real property, see Section 704.710(c).

Subdivision (b) gives the court discretion to adjust the rule of subdivision (a) in cases where it appears appropriate to do so in light of the purposes of the exemption. Where the exemption is based upon the use made of the property, the judgment debtor is entitled to the exemption only if the property was used for the exempt use at the time of levy or commencement of enforcement proceedings or creation of the lien, but the court may disallow the exemption of the property if it is later devoted to another use.

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Judgment debtor § 680.250

Money judgment § 680.270

Property § 680.310

Methods of levy § 700.010 *et seq.*

Transitional provision § 694.080



**§ 703.110. Application of exemptions to marital property**

**703.110.** If the judgment debtor is married:

(a) The exemptions provided by this chapter or by any other statute apply to all property that is subject to enforcement of a money judgment, including the interest of the spouse of the judgment debtor in community property. The fact that one or both spouses are judgment debtors under the judgment or that property sought to be applied to the satisfaction of the judgment is separate or community does not increase or reduce the number or amount of the exemptions.

(b) In determining an exemption based upon the needs of the judgment debtor and the spouse and dependents of the judgment debtor, the court shall take into account all property of the judgment debtor and of the spouse and dependents, including community property and separate property of the spouse, whether or not such property is subject to enforcement of the money judgment.

(c) If an exemption is required by statute to be applied first to property not before the court and then to property before the court, the application of the exemption to property not before the court shall be made to the community property and separate property of both spouses, whether or not such property is subject to enforcement of the money judgment.

(d) If the same exemption is claimed by the judgment debtor and the spouse of the judgment debtor for different property, and the property claimed by one spouse, but not both, is exempt, the exemption shall be applied as the spouses agree. If the spouses are unable to agree, the exemption shall be applied as directed by the court in its discretion.

**Comment.** Subdivision (a) of Section 703.110 is an application of the basic rule that exemptions apply to property that is liable for the satisfaction of a judgment. If the judgment debtor is married, the property liable for the satisfaction of the judgment may include the community property and the separate property of both spouses in certain situations. See generally Civil Code § 5100 *et seq.* In such situations, both spouses may claim any applicable exemptions but the exemptions are not increased for the marital unit. The fact that one or both spouses are judgment

debtors, or that community or separate property is sought to be applied to the satisfaction of the judgment, does not affect the exemptions applicable to the spouses as a marital unit.

Generally, property that is not liable for the satisfaction of a judgment does not enter into exemption determinations. Subdivision (b) creates an exception to this rule for exemptions based on the needs of the judgment debtor and the spouse and dependents of the judgment debtor. See Sections 704.010 (motor vehicle), 704.020 (household furnishings), 704.050 (health aids), 704.060 (tools of the trade), 704.100(c) (life insurance benefits), 704.140 (damages for personal injury), 704.150 (damages for wrongful death), 706.052 (earnings). In such situations, the court must take into account both nonliable and liable property in making a determination of need.

Certain exemptions are required to be applied first to property not before the court. See Sections 704.070 (deposit accounts) and 704.100(b) (life insurance policies). Subdivision (c) makes clear that in applying the exemptions to property not before the court, the court should consider marital property that would not be liable for satisfaction of the judgment as well as property that would be liable for satisfaction.

Subdivision (d) recognizes that exemptions may be claimed by both the judgment debtor and the spouse of the judgment debtor. See Section 703.020 (persons entitled to claim exemptions). See also 704.720(c) (one homestead of spouses exempt).

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Judgment § 680.230

Judgment debtor § 680.250

Money judgment § 680.270

Property § 680.310

Persons entitled to claim exemption § 703.020

Property subject to enforcement § 695.010 *et seq.*

## § 703.120. Continuing review of exemptions

703.120. (a) Five years following the operative date of this title and every five years thereafter, the California Law Revision Commission shall examine the exempt amounts provided in this chapter and in other statutes in light of changes in the Consumer Price Index or other index represented by the Bureau of Labor Statistics of the United States Department of Labor as most accurately reflecting changes in the purchasing power of the dollar

for consumers. The commission shall recommend to the Governor and the Legislature any changes in exempt amounts that appear proper.

(b) Nothing in this section precludes the commission from making recommendations concerning exempt amounts more frequently than required by subdivision (a) or from making recommendations concerning any other aspect of this title, and the commission is authorized to maintain a continuing review of and submit recommendations concerning enforcement of judgments.

**Comment.** Section 703.120 is intended to provide an institutional mechanism for periodically updating and modernizing the exemptions without mandating increases or decreases tied to the cost of living.

## **Article 2. Procedure for Claiming Exemptions After Levy**

### **§ 703.510. Application of article**

703.510. (a) Except as otherwise provided by statute, property that has been levied upon may be claimed to be exempt as provided in this article.

(b) If property that is exempt without making a claim is levied upon, it may be released pursuant to the exemption procedure provided in this article.

**Comment.** Subdivision (a) of Section 703.510 indicates the scope of this article. As recognized by the introductory clause, special exemption procedures apply in certain cases where property has been levied upon. See, *e.g.*, Sections 484.070 (attachment), 704.080 (deposit accounts consisting of Social Security benefits), 704.710-704.840 (real property homestead) 706.010-706.154 (earnings).

Subdivision (b) supersedes former Section 690(b) which provided that property for which a claim of exemption was not required was not subject to enforcement procedures. See also Section 703.030. Subdivision (b) makes clear that if such property is levied on, its release may be obtained through the exemption procedures. See also Section 695.040 (release of property not subject to enforcement of a money judgment).

#### CROSS-REFERENCES

Defined terms

Property § 680.310

**§ 703.520. Claim of exemption**

703.520. (a) The claimant may make a claim of exemption by filing with the levying officer a claim of exemption together with a copy thereof. Subject to Section 684.120 governing extension of time where notice is served by mail, the claim shall be made within 10 days after the date the notice of levy on the property claimed to be exempt was served on the judgment debtor.

(b) The claim of exemption shall be executed under oath and shall include all of the following:

(1) The name of the claimant and the mailing address where service of a notice of opposition to the claim may be made upon the claimant.

(2) The name and last known address of the judgment debtor if the claimant is not the judgment debtor.

(3) A description of the property claimed to be exempt. If an exemption is claimed pursuant to Section 704.010 or 704.060, the claimant shall describe all other property of the same type owned by the judgment debtor alone or in combination with others on the date of levy and state which items are claimed as exempt. If an exemption is claimed pursuant to Section 704.070 or subdivision (b) of Section 704.100, the claimant shall state the nature and amount of all other funds of the same type owned by the judgment debtor or the spouse of the judgment debtor alone or in combination with others on the date of levy.

(4) A financial statement if required by Section 703.530.

(5) A citation of the provision of this chapter or other statute upon which the claim is based.

(6) A statement of the facts necessary to support the claim.

**Comment.** Section 703.520 supersedes subdivision (a) of former Section 690.50. Section 703.520 contains provisions (not included in the former law) that are designed to provide information necessary to determine certain exemption claims. Where the motor vehicle exemption (Section 704.010) is claimed, paragraph (3) of subdivision (b) requires that the claimant describe not only the motor vehicle or proceeds levied upon which are claimed to be exempt but also any other motor vehicle and the proceeds of any other motor vehicle if such

motor vehicle or proceeds are claimed to be exempt. This requires that the claimant make an election as to the motor vehicle or proceeds to which the exemption is to be applied. Where the tools of the trade exemption (Section 704.060) is claimed, paragraph (3) requires the claimant to describe not only the items or proceeds levied upon which are claimed to be exempt but also any other tools of the trade and proceeds of tools of the trade if such tools or proceeds are claimed to be exempt. Here again, the claimant is required to make an election as to the tools of the trade and the proceeds to which the exemption is to be applied. It should be noted that the claimant may elect to apply the exemption to the items levied upon and to items not levied upon (to the extent that the aggregate equity in such items does not exceed the amount of the exemption). The items to which the exemption is not so applied are thereafter not exempt from levy by the same creditor. Where the deposit account or insurance exemption is claimed, the listing of other deposit accounts or other insurance is required by paragraph (3) so that the provisions of the relevant exemption provisions can be implemented by the court, since the exemption is first applied to deposit accounts and insurance not levied upon. See Sections 704.070 and subdivision (b) of Section 704.100. See also Sections 703.020 (persons entitled to exemptions); 703.030 (manner of claiming exemptions; late claims). The 10-day period under subdivision (a) of Section 703.520 is extended if the notice of levy was served by mail. See Section 684.120.

#### CROSS-REFERENCES

Declaration under penalty of perjury § 2015.5

Defined terms

Judgment debtor § 680.250

Levying officer § 680.260

Property § 680.310

Methods of levy § 700.010 *et seq.*

Notice of levy § 699.540

Persons entitled to claim exemption § 703.020

### § 703.530. Financial statement

**703.530.** (a) If property is claimed as exempt pursuant to a provision exempting property to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor, the claim of exemption shall include a financial statement.

(b) The financial statement shall include all of the following information:

(1) The name of the spouse of the judgment debtor.

(2) The name, age, and relationship of all persons dependent upon the judgment debtor or the spouse of the judgment debtor for support.

(3) All sources and the amounts of earnings and other income of the judgment debtor and the spouse and dependents of the judgment debtor.

(4) A list of the assets of the judgment debtor and the spouse and dependents of the judgment debtor and the value of such assets.

(5) All outstanding obligations of the judgment debtor and the spouse and dependents of the judgment debtor.

(c) The financial statement shall be executed under oath by the judgment debtor and, unless the spouses are living separate and apart, by the spouse of the judgment debtor.

**Comment.** Section 703.530 is drawn in part from former Section 723.124 (wage garnishment), but Section 703.530 requires a more comprehensive financial statement and requires that it be executed by the spouse of the judgment debtor (as well as by the judgment debtor) unless they are living separate and apart. An exemption based upon the need of the judgment debtor and the spouse and dependents of the judgment debtor must take into account the property of the spouse and dependents. See Section 703.110(b). Additional information is required in the financial statement in case of a wage garnishment. See Section 706.124.

#### CROSS-REFERENCES

Declaration under penalty of perjury § 2015.5

Defined terms

Judgment debtor § 680.250

Property § 680.310

Persons entitled to claim exemption § 703.020

### § 703.540. Notice of claim of exemption

703.540. Promptly after the filing of the claim of exemption, the levying officer shall serve both of the following on the judgment creditor personally or by mail:

(a) A copy of the claim of exemption.

(b) A notice of claim of exemption stating that the claim of exemption has been made and that the levying officer will release the property unless, within the time allowed as specified in the notice, both of the following are filed with the levying officer:

(1) A copy of the notice of opposition to the claim of exemption.

(2) A copy of the notice of motion for an order determining the claim of exemption.

**Comment.** Section 703.540 supersedes subdivision (b) of former Section 690.50.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Levying officer § 680.260

Property § 680.310

Manner of service § 684.010 *et seq.*

Release of property § 699.060

Service on judgment creditor's attorney §§ 684.010, 684.050

### § 703.550. **Opposition to exemption claim; release**

**703.550.** Within five days after service of the notice of claim of exemption, a judgment creditor who opposes the claim of exemption shall file with the court a notice of opposition to the claim of exemption and a notice of motion for an order determining the claim of exemption and file with the levying officer a copy of the notice of opposition and a copy of the notice of motion. Upon the filing of the copies of the notice of opposition and notice of motion, the levying officer shall promptly file the claim of exemption with the court. If copies of the notice of opposition and notice of motion are not filed with the levying officer within the time allowed, the levying officer shall immediately release the property to the extent it is claimed to be exempt.

**Comment.** The first two sentences of Section 703.550 supersede portions of subdivisions (c), (e), and (i) of former Section 690.50. Section 703.550, unlike former law, does not provide the claimant with the right to request a hearing on the claim of exemption since, if the judgment creditor does not file a notice of opposition and file a notice of motion for an order determining the claim of exemption within the time provided, the property is released pursuant to Section 699.060, making a hearing unnecessary. Consequently, the delay between the filing of the counteraffidavit and the notice of motion provided by subdivision (e) of former Section 690.50 has been eliminated. The five-day period for filing the notice of opposition and notice of motion runs from the date of service of the notice of claim of exemption. In the case of service by mail, the time is extended.

See Section 684.120 (time for performing act). The third sentence of Section 703.550 supersedes subdivisions (d) (release if no counteraffidavit served) and (f) (release if no motion) of former Section 690.50.

#### CROSS-REFERENCES

Defined terms

Court § 680.160

Judgment creditor § 680.240

Manner of service § 684.010 *et seq.*

Release of property § 699.060

### § 703.560. Contents of notice of opposition

703.560. The notice of opposition to the claim of exemption shall be executed under oath and shall include both of the following:

(a) An allegation either (1) that the property is not exempt under the provision of this chapter or other statute relied upon or (2) that the equity in the property claimed to be exempt is in excess of the amount provided in the applicable exemption.

(b) A statement of the facts necessary to support the allegation.

**Comment.** Section 703.560 supersedes a portion of subdivision (c) of former Section 690.50.

#### CROSS-REFERENCES

Declaration under penalty of perjury § 2015.5

Defined terms

Equity § 680.190

Property § 680.310

### § 703.570. Notice of hearing on motion

703.570. (a) The hearing on the motion shall be held not later than 20 days from the date the notice of motion was filed with the court unless continued by the court for good cause.

(b) Not less than 10 days prior to the hearing, the judgment creditor shall serve a notice of the hearing and a copy of the notice of opposition to the claim of exemption on the claimant and on the judgment debtor, if other than the claimant. Service shall be made personally or by mail.

**Comment.** Section 703.570 supersedes portions of subdivisions (c) and (e) of former Section 690.50. If service of the



notice of the hearing is made by mail, an additional period of notice is required. See Section 684.125.

#### CROSS-REFERENCES

Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

Manner of service § 684.010 *et seq.*

Persons entitled to claim exemption § 703.020

Proof of service §§ 684.210, 684.220

Service on judgment debtor's attorney §§ 684.020, 684.050

### § 703.580. Hearing and order

703.580. (a) The claim of exemption and notice of opposition to the claim of exemption constitute the pleadings, subject to the power of the court to permit amendments in the interest of justice.

(b) At a hearing under this section, the claimant has the burden of proof.

(c) The claim of exemption is deemed controverted by the notice of opposition to the claim of exemption and both shall be received in evidence. If no other evidence is offered, the court, if satisfied that sufficient facts are shown by the claim of exemption (including the financial statement if one is required) and the notice of opposition, may make its determination thereon. If not satisfied, the court shall order the hearing continued for the production of other evidence, oral or documentary.

(d) At the conclusion of the hearing, the court shall determine by order whether or not the property is exempt in whole or in part. Subject to Section 703.600, the order is determinative of the right of the judgment creditor to apply the property to the satisfaction of the judgment. No findings are required in a proceeding under this section.

(e) The court clerk shall promptly transmit a certified copy of the order to the levying officer. Subject to Section 703.610, the levying officer shall, in compliance with the order, release the property or apply the property to the satisfaction of the money judgment.

**Comment.** Subdivisions (a)-(d) of Section 703.580 continue the substance of a portion of subdivision (i) of former Section 690.50. Subdivision (e) continues the substance of the first sentence of subdivision (j) of former Section 690.50.

## CROSS-REFERENCES

Appeal from order § 703.600  
Claim of exemption § 703.520  
Defined terms  
  Court § 680.160  
  Judgment creditor § 680.240  
  Levying officer § 680.260  
  Money judgment § 680.270  
Financial statement § 703.530  
Notice of opposition to claim of exemption § 703.560  
Persons entitled to claim exemption § 703.020  
Release of property § 699.060

**§ 703.590. Extension of time**

703.590. If the court extends the time allowed for an act to be done under this article, written notice of the extension shall be filed with the levying officer and, unless notice is waived, shall be served on the opposing party. Service shall be made personally or by mail.

**Comment.** Section 703.590 continues the substance of a portion of former Section 690.50(*l*).

## CROSS-REFERENCES

Defined terms  
  Court § 680.160  
  Levying officer § 680.260  
Manner of service § 684.010 *et seq.*

**§ 703.600. Appeal**

703.600. An appeal lies from any order made under this article and shall be taken in the manner provided for appeals in the court in which the proceeding takes place.

**Comment.** Section 703.600 continues the substance of subdivision (m) of former Section 690.50.

**§ 703.610. Disposition of property during pendency of proceedings**

703.610. (a) Except as otherwise provided by statute, the levying officer shall not release, sell, or otherwise dispose of the property for which an exemption is claimed until the final determination of the exemption.

(b) At any time while the exemption proceedings are pending, upon motion of the judgment creditor or a claimant, or upon its own motion, the court may make such orders for disposition of the property as may be proper under the circumstances of the case. Such an

order may be modified or vacated by the court at any time during the pendency of the exemption proceedings upon such terms as are just.

(c) If an appeal of the determination of a claim of exemption is taken, notice of the appeal shall be given to the levying officer and the levying officer shall hold, release, or dispose of the property in accord with the provisions governing enforcement and stay of enforcement of money judgments pending appeal.

**Comment.** Subdivision (a) of Section 703.610 continues the substance of subdivision (h) and the second sentence of subdivision (j) of former Section 690.50. Subdivision (a) requires, as did former Section 690.50(h), that the levying officer preserve the status quo by maintaining the levy on the property. For exceptions to the general rule provided in subdivision (a), see Sections 685.100 (release for failure to pay levying officer's costs), 699.060 (release in general), 699.070 (sale to preserve value of property), 720.660 (release pursuant to third person's undertaking). Subdivision (b) continues the substance of subdivision (g) of former Section 690.50, except that orders for the disposition of perishable property are governed by Section 699.070. Subdivision (c) is new. For provisions governing enforcement and stays pending appeal, see Sections 916-923.

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Judgment creditor § 680.240

Levying officer § 680.260

Money judgment § 680.270

Property § 680.310

### Article 3. Exempt Property

#### § 704.010. Motor vehicle

704.010. (a) One motor vehicle is exempt if the equity in the motor vehicle does not exceed one thousand dollars (\$1,000). A second motor vehicle is exempt if (1) the judgment debtor is married, (2) the second motor vehicle is necessary to enable both the judgment debtor and the spouse of the judgment debtor to earn a livelihood, and (3) the equity in the second motor vehicle does not exceed one thousand dollars (\$1,000). For the purpose of determining the equity, the fair market value

of the motor vehicle shall be determined by reference to used car price guides customarily used by California automobile dealers unless the motor vehicle is not listed in such price guides.

(b) If a motor vehicle is sold on an execution sale and the judgment debtor has only that one motor vehicle, the proceeds of the execution sale of the motor vehicle are exempt without making a claim in the amount of one thousand dollars (\$1,000). The levying officer shall consult and may rely upon the records of the Department of Motor Vehicles in determining whether the judgment debtor has only one motor vehicle.

(c) If a motor vehicle sold on an execution sale would be exempt under subdivision (a) but for the fact that the equity in the motor vehicle exceeds one thousand dollars (\$1,000), the proceeds of the execution sale of the motor vehicle are exempt in the amount of one thousand dollars (\$1,000). The exemption provided by subdivision (b) is in lieu of, and not in addition to, the exemption provided by this subdivision.

(d) If a motor vehicle is sold other than on an execution sale, or if a motor vehicle has been lost, damaged, or destroyed, and if the judgment debtor thereafter does not own an interest in a motor vehicle, the proceeds of the sale or of insurance or other indemnification are exempt in the amount of one thousand dollars (\$1,000).

(e) The proceeds which are exempt under subdivision (b), (c), or (d) are exempt for a period of 90 days after:

(1) The time of the sale in case of a voluntary sale.

(2) The time the proceeds are actually received in all other cases.

**Comment.** Section 704.010 supersedes subdivisions (a), (d), and (e) of former Section 690.2.

Subdivision (a) increases the motor vehicle exemption from \$500 to \$1,000 and exempts a second motor vehicle in the case where the second is necessary so that both the judgment debtor and the spouse of the judgment debtor may work.

Subdivision (b) makes clear that the exemption of proceeds is allowed without a claim where there is only one motor vehicle. See also Section 703.030. Section 701.810 requires distribution of the exempt proceeds to the judgment debtor before any

distribution is made to the judgment creditor. See also Section 701.620 (sale price must exceed proceeds exemption). Subdivision (c) provides a proceeds exemption for other cases where a motor vehicle would qualify for the exemption under subdivision (a) except that the equity in the vehicle exceeds \$1,000.

Subdivision (d) provides an exemption for proceeds of a voluntary sale, or of insurance or other indemnification, whereas subdivision (e) of former Section 690.2 exempted "any amount representing the motor vehicle exemption." *Cf. Houghton v. Lee*, 50 Cal. 101, 103 (1875) (exemption of proceeds from insurance on homestead).

Subdivision (e) provides a 90-day period during which proceeds are exempt and makes clear this period commences to run from the receipt of the proceeds by the judgment debtor except in the case of a voluntary sale in which case the period runs from the date of sale. This principle is derived from the provisions exempting the proceeds from the sale of a homestead. See former Civil Code §§ 1256, 1265; *Chase v. Bank of America*, 227 Cal. App.2d 259, 263-64, 38 Cal. Rptr. 567 (1964).

#### CROSS-REFERENCES

Application to marital property § 703.110

Defined terms

Equity § 680.190

Judgment debtor § 680.250

Levying officer § 680.260

Exception to exemption for child or spousal support § 703.070

Execution sale § 701.510 *et seq.*

### § 704.020. Household furnishings and personal effects

704.020. Household furnishings, appliances, provisions, wearing apparel, and other personal effects, ordinarily and reasonably necessary for an average household, are exempt in the following cases:

(a) If personally used or procured for use by the judgment debtor and members of the judgment debtor's family at the judgment debtor's principal place of residence.

(b) Where the judgment debtor and the judgment debtor's spouse live separate and apart, if personally used or procured for use by the spouse and members of the spouse's family at the spouse's principal place of residence.

**Comment.** Section 704.020 supersedes the first sentence of former Section 690.1 and makes clear that the exemption applies to a second household where the spouses live separate and apart. Section 704.020 continues the ordinarily and reasonably necessary standard but limits the exemption to items that are necessary for the average household. This limitation is intended to eliminate the unfairness inherent in the “station in life” test as applied in cases such as *Independence Bank v. Heller*, 275 Cal. App.2d 84, 79 Cal. Rptr. 868 (1969), and *Newport Nat’l Bank v. Adair*, 2 Cal. App.3d 1043, 83 Cal. Rptr. 1 (1969).

CROSS-REFERENCES

Application to marital property § 703.110

Defined terms

Judgment debtor § 680.250

Exception to exemption where child or spousal support § 703.070

**§ 704.030. Materials for repair or improvement of dwelling**

**704.030.** Material that in good faith is about to be applied to the repair of a residence is exempt if the equity in the material does not exceed one thousand dollars (\$1,000) in the following cases:

(a) If purchased in good faith for use in the repair or improvement of the judgment debtor’s principal place of residence.

(b) Where the judgment debtor and the judgment debtor’s spouse live separate and apart, if purchased in good faith for use in the repair or improvement of the spouse’s principal place of residence.

**Comment.** Section 704.030 continues a portion of former Section 690.17 and makes clear that a second exemption is available where the spouses live separate and apart.

CROSS-REFERENCES

Application to marital property § 703.110

Defined terms

Equity § 680.190

Judgment debtor § 680.250

Exception to exemption where child or spousal support § 703.070

**§ 704.040. Jewelry, heirlooms, works of art**

**704.040.** An item of jewelry, an heirloom, a work of art, or other personal effect is exempt if the court determines that its reasonable sentimental or psychological value to the judgment debtor or the spouse

or a dependent of the judgment debtor outweighs the right of the judgment creditor to enforce the money judgment to such an extent that it would be clearly inequitable to subject the property to enforcement.

**Comment.** Section 704.040 supersedes portions of former Section 690.1 which provided an exemption for wearing apparel, furnishings, and works of art “of or by the debtor and his resident family.” The exemption of property under Section 704.040 depends upon a balancing of equities between the “reasonable” sentimental or psychological value of the property and the rights of the judgment creditor.

#### CROSS-REFERENCES

Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

### § 704.050. Health aids

**704.050.** Health aids reasonably necessary to enable the judgment debtor or the spouse or a dependent of the judgment debtor to work or sustain health, and prosthetic and orthopedic appliances, are exempt.

**Comment.** Section 704.050 supersedes former Section 690.5 which exempted prosthetic and orthopedic appliances used by the debtor. Section 704.050 is based on Section 5(2) of the Uniform Exemptions Act (1976). The requirement that health aids be reasonably necessary to enable the individual to work or sustain health permits the exemption of such items as a wheel chair for a person unable to walk to work or an air conditioner for a person afflicted with asthma, but does not permit the exemption of a swimming pool, sauna, bicycle, or golf clubs merely because their use is necessary to sustain good health.

#### CROSS-REFERENCES

Defined terms

Judgment debtor § 680.250

### § 704.060. Personal property used in trade, business, or profession

**704.060.** (a) Tools, implements, materials, uniforms, furnishings, books, equipment, one motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed

two thousand five hundred dollars (\$2,500) in the following cases:

(1) If reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.

(2) If reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.

(3) If reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exempt items and amounts are doubled but the exemptions provided in paragraphs (1) and (2) are not available.

(b) If an item described in subdivision (a) is sold other than on an execution sale, or if it has been lost, damaged, or destroyed, the proceeds of sale or of insurance or other indemnification are exempt for a period of 90 days after (1) the time of the sale in the case of a voluntary sale or (2) the time the proceeds are actually received in all other cases. The amount exempt under this subdivision and under subdivision (a) shall not exceed the amount specified in subdivision (a).

**Comment.** Section 704.060 continues the substance of former Section 690.4 and a portion of former Section 690.17 (building materials not exceeding \$1,000) except that Section 704.060 makes clear that an additional exemption is available to the spouse of the judgment debtor as well as to the judgment debtor.

Section 704.060 also provides an exemption for proceeds analogous to that provided by Section 704.010 (motor vehicle). See also Sections 701.620 (sale price must exceed proceeds exemption), 701.810 (distribution of proceeds of execution sale), 703.520 (contents of claim of exemption).

#### CROSS-REFERENCES

Application to marital property § 703.110

Defined terms

Equity § 680.190

Judgment debtor § 680.250

Exception to exemption where child or spousal support § 703.070

Execution sale § 701.510 *et seq.*



§ 704.070. Deposit accounts and money

704.070. (a) Any combination of deposit accounts in savings and loan associations is exempt in the maximum aggregate amount of five hundred dollars (\$500). The exemption provided by this subdivision shall be first applied to deposit accounts in savings and loan associations not before the court and then, if the exemption is not exhausted, to the deposit accounts in savings and loan associations before the court.

(b) Any combination of deposit accounts in credit unions is exempt in the maximum aggregate amount of seven hundred fifty dollars (\$750). The exemption provided by this subdivision shall be first applied to deposit accounts in credit unions not before the court and then, if the exemption is not exhausted, to the deposit accounts in credit unions before the court.

(c) Any combination of deposit accounts (other than deposit accounts described in subdivisions (a) and (b) of this section) and cash and its equivalent, is exempt in the maximum aggregate amount of two hundred fifty dollars (\$250). The exemption provided by this subdivision is reduced to the extent of any amount allowed as an exemption under subdivisions (a) and (b). The exemption provided by this subdivision shall be first applied to deposit accounts that are not before the court and then, if the exemption is not exhausted, to the deposit accounts and cash and its equivalent before the court.

(d) If the judgment debtor is married, each spouse is entitled to a separate exemption or separate exemptions under this section, or the spouses may combine their exemptions regardless of whether the deposit accounts belong to either or both spouses and regardless of whether the spouse of the judgment debtor is also a judgment debtor under the judgment.

(e) The amount of the exemptions provided by this section are reduced by the amount in the deposit account that is traceable and exempt pursuant to any other provision of this chapter or any other law providing an exemption.

(f) The exemptions provided by this section are reduced to the extent that after levy upon a deposit

account a check or other order for the payment of money drawn or presented against the deposit account is honored or a withdrawal from the deposit account is paid by the financial institution with which the deposit account is maintained.

**Comment.** Subdivision (a) of Section 704.070 supersedes former Section 690.7 (\$1,000 of savings deposits in, shares or other accounts in, or shares of stock of, savings and loan associations); it halves the amount of the exemption (except in the case of a married judgment debtor). See also Section 704.080 (exemption of deposit account into which social security payments are directly deposited).

Subdivision (b) supersedes former Financial Code Section 14864 (\$1,500 of shares or certificates in credit unions); it halves the amount of the exemption (except in the case of a married judgment debtor).

Subdivision (c) is new. Subdivision (c) affords a basic minimum exemption for liquid assets. Consequently, this exemption is not available if some other exemption protects this minimum amount.

Subdivision (d) provides for doubling of the exemptions in the case of a married judgment debtor. Each spouse may claim an exemption of property subject to enforcement of the judgment in the same account or different accounts.

Subdivisions (a), (b), and (c) require that the deposit account exemption be applied first to deposit accounts that are not levied upon. See Section 703.520 (exemption claim discloses accounts not levied upon). The amount in the account that is exempt under some other section is subtracted from the deposit account exemption under Section 704.070. See subdivision (e). Any amount paid from the deposit account after levy reduces the amount of the exemption. See subdivision (f). These rules are intended to subject the maximum nonexempt amount to the satisfaction of the judgment.

#### CROSS-REFERENCES

Application to marital property § 703.110

Defined terms

Court § 680.160

Deposit account § 680.170

Financial institution § 680.200

Judgment debtor § 680.250

Exception to exemption where child or spousal support § 703.070

**§ 704.080. Deposit account in which social security payments are directly deposited**

704.080. (a) For the purposes of this section:

(1) "Deposit account" means a deposit account in which payments authorized by the Social Security Administration are directly deposited by the United States government.

(2) "Payments authorized by the Social Security Administration" means regular retirement and survivors' benefits, supplemental security income benefits, coal miners' health benefits, and disability insurance benefits.

(b) A deposit account is exempt without making a claim in the following amount:

(1) Five hundred dollars (\$500) where one depositor is the designated payee of the directly deposited payments.

(2) Seven hundred fifty dollars (\$750) where two or more depositors are the designated payees of the directly deposited payments, unless such depositors are joint payees of directly deposited payments which represent a benefit to only one of the depositors, in which case the exempt amount is five hundred dollars (\$500).

(c) The amount of a deposit account that exceeds the exemption provided in subdivision (b) is exempt to the extent that it consists of payments authorized by the Social Security Administration.

(d) Notwithstanding Article 5 (commencing with Section 701.010) of Chapter 3, when a deposit account is levied upon or otherwise sought to be subjected to the enforcement of a money judgment, the financial institution that holds the deposit account shall either place the amount that exceeds the exemption provided in subdivision (b) in a suspense account or otherwise prohibit withdrawal of such amount pending notification of the failure of the judgment creditor to file the affidavit required by this section or the judicial determination of the exempt status of the amount. Within 10 business days after the levy, the financial institution shall provide the levying officer with a written notice stating (1) that the deposit account is one in which payments authorized by the Social Security Administration are directly deposited

by the United States Government and (2) the balance of the deposit account that exceeds the exemption provided by subdivision (b). Promptly upon receipt of the notice, the levying officer shall serve the notice on the judgment creditor. Service shall be made personally or by mail.

(e) Notwithstanding the procedure prescribed in Article 2 (commencing with Section 703.510), whether there is an amount exempt under subdivision (c) shall be determined as follows:

(1) Within five days after the levying officer serves the notice on the judgment creditor under subdivision (d), a judgment creditor who desires to claim that the amount is not exempt shall file with the court an affidavit alleging that the amount is not exempt and file a copy with the levying officer. The affidavit shall be in the form of the notice of opposition provided by Section 703.560, and a hearing shall be set and held, and notice given, as provided by Sections 703.570 and 703.580. For the purpose of this subdivision, the “notice of opposition to the claim of exemption” in Sections 703.570 and 703.580 means the affidavit under this subdivision.

(2) If the judgment creditor does not file the affidavit with the levying officer and give notice of hearing pursuant to Section 703.570 within the time provided in paragraph (1), the levying officer shall release the deposit account and shall notify the financial institution.

(3) The affidavit constitutes the pleading of the judgment creditor, subject to the power of the court to permit amendments in the interest of justice. The affidavit is deemed controverted and no counteraffidavit is required.

(4) At a hearing under this subdivision, the judgment debtor has the burden of proving that the excess amount is exempt.

(5) At the conclusion of the hearing, the court by order shall determine whether or not the amount of the deposit account is exempt pursuant to subdivision (c) in whole or in part and shall make an appropriate order for its prompt disposition. No findings are required in a proceeding under this subdivision.

(6) Upon determining that all or part of the amount of the deposit account is exempt pursuant to subdivision

(c), the clerk shall immediately transmit a certified copy of the order to the levying officer, and the levying officer shall serve the copy of the order on the financial institution. Service shall be made personally or by mail.

(f) If the judgment debtor claims that a portion of the amount is exempt other than pursuant to subdivision (c), the claim of exemption shall be made pursuant to Article 2 (commencing with Section 703.510). If the judgment debtor also opposes the judgment creditor's affidavit regarding an amount exempt pursuant to subdivision (c), both exemptions shall be determined at the same hearing, provided the judgment debtor has complied with Article 2 (commencing with Section 703.510).

**Comment.** Section 704.080 supersedes former Section 690.30. Social Security payments may be directly deposited pursuant to 31 U.S.C. § 492 (1976). Subdivision (a) continues a portion of the introductory clause and subdivision (c) of former Section 690.30. Subdivision (b) continues the substance of the first paragraph and subdivision (a) of former Section 690.30. Subdivision (c) continues the substance of the introductory paragraph of former Section 690.30(b). Subdivision (d) continues the substance of former Section 690.30(b) (1).

Subdivision (e) supersedes paragraphs (2), (3), and (4) of subdivision (b) of former Section 690.30. Subdivision (e), along with subdivision (f), clarifies the procedure applicable to claiming exemptions for excess amounts in deposit accounts described in this section and the relation between this procedure and the procedure provided by Article 2 (commencing with Section 703.510) (superseding former Section 690.50, incorporated by reference in former Section 690.30). The 5-day period under paragraph (1) is extended if the judgment creditor was served by mail. See Section 684.120. Paragraph (5) supersedes former Section 690.30(b) (3). The provision of former law for an order determining priority or dividing the property between several creditors is superseded by Section 701.810 (distribution of proceeds). Paragraph (6) continues former Section 690.30(b) (4).

Where a deposit account is not one described by subdivision (a) or where an exemption of excess funds in a deposit account described in subdivision (a) is claimed under another exemption provision, the procedure provided in Article 2 (commencing with Section 703.510) applies to the determination of the exemption. See Section 704.070 and subdivision (f) of Section 704.080.

## CROSS-REFERENCES

## Defined terms

Court § 680.160

Deposit account § 680.170

Financial institution § 680.200

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Money judgment § 680.270

Exception to exemption where child or spousal support § 703.070

Manner of service § 684.010 *et seq.*

Service on financial institution § 684.110(c)

Service on judgment creditor's attorney §§ 684.010, 684.050

**§ 704.090. Inmate's trust account**

704.090. The funds of a judgment debtor confined in a prison or facility under the jurisdiction of the Department of Corrections or the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for or to the credit of the judgment debtor, in an inmate's trust account or similar account by the state, county, or city, or any agency thereof, are exempt without making a claim in the amount of one thousand dollars (\$1,000). If the judgment debtor is married, each spouse is entitled to a separate exemption under this section or the spouses may combine their exemptions.

**Comment.** Section 704.090 supersedes former Section 690.21, which provided an exemption of \$40.

## CROSS-REFERENCES

Application to marital property § 703.110

## Defined terms

Judgment debtor § 680.250

Exception to exemption where child or spousal support § 703.070

**§ 704.100. Life insurance, endowment, annuity policies**

704.100. (a) Unmatured life insurance policies (including endowment and annuity policies), but not the loan value of such policies, are exempt without making a claim.

(b) The aggregate loan value of unmatured life insurance policies (including endowment and annuity policies) is subject to the enforcement of a money judgment but is exempt in the amount of four thousand dollars (\$4,000). If the judgment debtor is married, each

spouse is entitled to a separate exemption under this subdivision, and the exemptions of the spouses may be combined, regardless of whether the policies belong to either or both spouses and regardless of whether the spouse of the judgment debtor is also a judgment debtor under the judgment. The exemption provided by this subdivision shall be first applied to policies other than the policy before the court and then, if the exemption is not exhausted, to the policy before the court.

(c) Benefits from matured life insurance policies (including endowment and annuity policies), paid or payable to the judgment debtor or the spouse or dependents of the judgment debtor, are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

**Comment.** Section 704.100 supersedes the exemptions provided in former Sections 690.9 (life insurance represented by \$500 annual premium), 690.10 (group life insurance), and 690.14 (fraternal benefit society). Under subdivision (a), the judgment creditor is precluded from reaching an unexpired policy except for its loan value; this prevents the judgment creditor from forcing the judgment debtor to surrender a life insurance policy for its cash value.

Subdivision (b) protects a portion of the loan value of unexpired insurance policies. It provides for doubling of the exemption in the case of a married judgment debtor. Each spouse may claim an exemption of property subject to enforcement on the judgment in the same policy or different policies. The loan value is not subject to execution (see Section 699.720(a)) but may be reached by some other appropriate procedure. See Sections 708.110 (examination of judgment debtor), 708.205 (order in examination proceedings), 708.510 (assignment order). The exemption is applied first to policies that are not levied upon. See Section 703.520 (exemption claim discloses policies not levied upon).

The exemption of benefits under subdivision (c) is available to the judgment debtor regardless of whether the judgment debtor was the insured or the beneficiary under the policy. This is consistent with prior law. See *Jackson v. Fisher*, 56 Cal.2d 196, 200, 363 P.2d 479, 14 Cal. Rptr. 439 (1961). Under subdivision (c), the exemption may be asserted against creditors of the insured

or of the spouse or dependents of the insured. See *Holmes v. Marshall*, 145 Cal. 777, 779-82, 79 P. 534 (1905).

CROSS-REFERENCES

Application to marital property § 703.110

Defined terms

Court § 680.160

Judgment debtor § 680.250

Money judgment § 680.270

Exception to exemption where child or spousal support § 703.070

**§ 704.110. Public retirement and related benefits and contributions**

**704.110. (a) As used in this section:**

(1) "Public entity" means the state, or a city, city and county, county, or other political subdivision of the state, or a public trust, public corporation, or public board, or the governing body of any of them, but does not include the United States except where expressly so provided.

(2) "Public retirement benefit" means a pension or an annuity, or a retirement, disability, death, or other benefit, paid or payable by a public retirement system.

(3) "Public retirement system" means a system established pursuant to statute by a public entity for retirement, annuity, or pension purposes or payment of disability or death benefits.

(b) All amounts held, controlled, or in process of distribution by a public entity derived from contributions by the public entity or by an officer or employee of the public entity for public retirement benefit purposes, and all rights and benefits accrued or accruing to any person under a public retirement system, are exempt without making a claim.

(c) Notwithstanding subdivision (b), where money or a benefit described in subdivision (b) has become payable to a person, the amount payable is subject to an earnings withholding order for support under Chapter 5 (commencing with Section 706.011) or a wage assignment for support as defined in Section 706.011, but the amount to be withheld pursuant to the order or assignment from each payment shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052. The



paying entity may deduct from each payment made pursuant to the order or assignment a sum reflecting the actual cost of administration caused by the order or assignment up to two dollars (\$2) for each payment.

(d) All amounts received by any person, a resident of the state, as a public retirement benefit or as a return of contributions and interest thereon from the United States or a public entity or from a public retirement system are exempt.

**Comment.** Section 704.110 continues the substance of subdivisions (a) and (b) of former Section 690.18, with drafting changes for purposes of clarity and uniformity. Subdivision (c) governs the application of the exemption for payable but unpaid benefits against the enforcement of child or spousal support judgments. Subdivision (c)(1) applies the general rule governing exemptions in support cases. Subdivision (c)(2) incorporates the standard applicable to wage garnishments to enforce support judgments. See Section 706.052 and the Comment thereto. See also Civil Code §§ 4701 (wage assignment for child support), 4801.6 (wage assignment for spousal support). The one dollar fee for administrative costs provided by former Section 690.18(b) is increased to two dollars in subdivision (c)(2) of this section. The two dollar fee is the same as that formerly provided in Government Code Section 21201 (public employees' retirement).

The exemption provided in subdivision (d) applies whether the benefits are in the actual possession of the retirement benefit recipient or have been deposited. See Section 703.080 (tracing exempt funds). The general rule governing exemptions in support cases provided by Section 703.070 applies to benefits after they have been paid. For the exemption of vacation credits, see Section 704.113. For the exemption of benefits under the Unemployment Insurance Code, see Section 704.120.

### § 704.113. Public employee vacation credits

704.113. (a) As used in this section, "vacation credits" means vacation credits accumulated by a state employee pursuant to Section 18050 of the Government Code or by any other public employee pursuant to any law for the accumulation of vacation credits applicable to the employee.

(b) All vacation credits are exempt without making a claim.

(c) Amounts paid periodically or as a lump sum representing vacation credits are subject to any earnings withholding order served under Chapter 5 (commencing with Section 706.010) or any wage assignment for support as defined in Section 706.011 and are exempt to the same extent as earnings of a judgment debtor.

**Comment.** Subdivision (b) of Section 704.113 continues a portion of former Section 690.18(b) which made vacation credits exempt without making a claim. Subdivision (c) supersedes the portion of former Section 690.18(b) that made vacation credits that were payable exempt except for court-ordered child or spousal support and makes clear that vacation pay is treated the same as earnings for exemption purposes. See Sections 706.050-706.052.

#### CROSS-REFERENCES

Defined terms

Judgment debtor § 680.250

### § 704.115. Private retirement and related benefits and contributions

704.115. (a) As used in this section, “private retirement plan” means:

(1) Private retirement plans, including, but not limited to, union retirement plans.

(2) Profit-sharing plans designed and used for retirement purposes.

(3) Self-employed retirement plans and individual retirement annuities or accounts provided for in the Internal Revenue Code of 1954 as amended by the federal “Employee Retirement Income Security Act of 1974” (P.L. 93-406, 29 U.S.C. Sec. 1001 et seq.) and by the “Tax Reform Act of 1976” (P.L. 94-455), to the extent the amounts held in the plans, annuities, or accounts do not exceed the maximum amounts exempt from federal income taxation under these acts.

(b) All amounts held, controlled, or in process of distribution by a private retirement plan, for the payment of benefits as an annuity, pension, retirement allowance, disability payment, or death benefit from a private retirement plan, all contributions and interest thereon returned to any member of a private retirement plan, and all such amounts after payment, are exempt.

**Comment.** Section 704.115 continues and clarifies the substance of subdivision (d) of former Section 690.18. Subdivision (c) governs the application of the exemption for payable but unpaid benefits against enforcement of child or spousal support. Subdivision (c)(1) applies the general rule governing exemptions in support cases. Subdivision (c)(2) recognizes that federal law requires the protection of periodic payments pursuant to a pension or retirement program to the same extent as wages. See Section 706.052 and the Comment thereto. The exemption provided in subdivision (d) applies whether money received by the judgment debtor is in the actual possession of the recipient or has been deposited. See Section 703.080 (tracing exempt funds). The general rule governing exemptions in support cases provided by Section 703.070 applies to benefits after they have been paid.

**§ 704.120. Unemployment benefits and contributions; strike benefits**

**704.120. (a)** Contributions by workers payable to the Unemployment Compensation Disability Fund and by employers payable to the Unemployment Fund are exempt without making a claim.

(b) Before payment, amounts held for payment of the following benefits are exempt without making a claim:

(1) Unemployment compensation benefits payable under Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code.

(2) Unemployment compensation disability benefits payable under Part 2 (commencing with Section 2601) of Division 1 of the Unemployment Insurance Code.

(3) Extended duration benefits payable under Part 3 (commencing with Section 3501) of Division 1 of the Unemployment Insurance Code.

(4) Federal-state extended benefits payable under Part 4 (commencing with Section 4001) of Division 1 of the Unemployment Insurance Code.

(5) Incentive payments payable under Division 2 (commencing with Section 5000) of the Unemployment Insurance Code.

(6) Benefits under a plan or system established by an employer that makes provision for employees generally

or for a class or group of employees for the purpose of supplementing unemployment compensation benefits.

(7) Unemployment benefits by a fraternal organization to bona fide members.

(8) Benefits payable by a union due to a labor dispute.

(c) After payment, the benefits described in subdivision (b) are exempt.

**Comment.** Section 704.120 supersedes former Sections 690.13, 690.16, and 690.175 and portions of former Section 690.18(c) and (d) and Unemployment Insurance Code Sections 988 and 1342. Subdivision (b) (8) is new.

#### CROSS-REFERENCES

Exception to exemption where child or spousal support § 703.070

### § 704.130. Disability and health benefits and contributions

704.130. (a) Before payment, benefits from a disability or health insurance policy or program are exempt without making a claim. After payment, the benefits are exempt.

(b) Subdivision (a) does not apply to benefits that are paid or payable to cover the cost of health care if the judgment creditor is a provider of health care whose claim is the basis on which the benefits are paid or payable.

**Comment.** Subdivision (a) of Section 704.130 supersedes former Sections 690.11 (disability or health insurance benefits represented by \$500 annual premium) and 690.14 (fraternal benefit society funds) and portions of former Sections 690.13 (money used exclusively in payment of sick benefits by fraternal organization to bona fide members), 690.18 (disability benefits from retirement plans).

Subdivision (b) is new.

#### CROSS-REFERENCES

Defined terms

Judgment creditor § 680.240

Exception to exemption where child or spousal support § 703.070

### § 704.140. Damages for personal injury

704.140. (a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause

of action for personal injury is exempt without making a claim.

(b) An award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

(c) Subdivision (b) does not apply if the judgment creditor is a provider of health care whose claim is based on the providing of health care for the personal injury for which the award or settlement was made.

**Comment.** Section 704.140 is new. An award or settlement that will result from a cause of action that is the subject of a pending action may be reached by the lien procedure provided by Article 5 (commencing with Section 708.410) of Chapter 6, but the exemption provided by subdivision (b) of Section 704.140 may be claimed in the pending action. See Section 708.450. See also Section 695.030 (property not subject to enforcement of money judgment).

#### CROSS-REFERENCES

Application to marital property § 703.110

Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Exception to exemption where child or spousal support § 703.070

### § 704.150. Damages for wrongful death

704.150. (a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action for wrongful death is exempt without making a claim.

(b) An award of damages or a settlement arising out of the wrongful death of the judgment debtor's spouse or a person on whom the judgment debtor or the judgment debtor's spouse was dependent is exempt to the extent reasonably necessary for support of the judgment debtor and the spouse and dependents of the judgment debtor.

**Comment.** Section 704.150 is new. An award or settlement that will result from a cause of action that is the subject of a pending action may be reached by the lien procedure provided by Article 5 (commencing with Section 708.410) of Chapter 6. See the Comment to Section 704.140. See also Section 695.030 (property not subject to enforcement of money judgment).

## CROSS-REFERENCES

Application to marital property § 703.110

Defined terms

Judgment debtor § 680.250

Exception to exemption where child or spousal support § 703.070

**§ 704.160. Workers' compensation**

**704.160.** Except as provided by Chapter 1 (commencing with Section 4900) of Part 3 of Division 4 of the Labor Code, before payment, a claim for workers' compensation or workers' compensation awarded or adjudged is exempt without making a claim. After payment, the award is exempt.

**Comment.** Section 704.160 continues the substance of former Section 690.15.

## CROSS-REFERENCES

Exception to exemption where child or spousal support § 703.070

**§ 704.170. Aid**

**704.170.** Before payment, aid provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or similar aid provided by a charitable organization or a fraternal benefit society as defined in Section 10990 of the Insurance Code, is exempt without making a claim. After payment, the aid is exempt.

**Comment.** Section 704.170 is based on former Sections 690.14 and 690.19. Section 704.170 exempts local aid as well as federal aid administered by the state pursuant to the Welfare and Institutions Code. See also Welf. & Inst. Code § 10052 ("aid" defined). Section 704.170 also expands the category of nongovernmental aid that is exempt. Former Section 690.14 applied only to fraternal benefit societies.

## CROSS-REFERENCES

Exception to exemption where child or spousal support § 703.070

**§ 704.180. Relocation benefits**

**704.180.** Before payment, relocation benefits for displacement from a dwelling which are to be paid pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code or the federal "Uniform Relocation Assistance and Real

Property Acquisition Policies Act of 1970” (42 U.S.C. Sec. 4601 et seq.), as amended, are exempt without making a claim. After payment, the benefits are exempt.

**Comment.** Section 704.180 supersedes Section 690.8a. Section 704.180 expands the former exemption to include relocation benefits paid or payable by a public utility (Pub. Util. Code § 600) or a quasi-public entity (Gov’t Code § 7260). The last sentence of this section requires the debtor to claim an exemption for such benefits after payment, whereas under former law these benefits were designated as exempt without filing a claim.

#### CROSS-REFERENCES

Exception to exemption where child or spousal support § 703.070

### § 704.190. Licenses

**704.190.** Except as provided in Section 708.630, a license to engage in any business, profession, or activity issued by a public entity is exempt without making a claim.

**Comment.** Section 704.190 is derived from a portion of subdivision (f) of former Section 688 which precluded levy or sale on execution of a “license issued by this state to engage in any business, profession, or activity.” See also Section 708.630 (receiver to sell liquor license).

### § 704.200. Cemetery plot

**704.200.** (a) As used in this section:

(1) “Cemetery” has the meaning provided by Section 7003 of the Health and Safety Code.

(2) “Family plot” is a plot that satisfies the requirements of Section 8650 of the Health and Safety Code.

(3) “Plot” has the meaning provided by Section 7022 of the Health and Safety Code.

(b) A family plot is exempt without making a claim.

(c) Except as provided in subdivision (d), a cemetery plot for the judgment debtor and the spouse of the judgment debtor is exempt.

(d) Land held for the purpose of sale or disposition as cemetery plots or otherwise is not exempt.

**Comment.** Section 704.200 supersedes portions of former Section 690.24 which provided an exemption for a cemetery lot not exceeding one-quarter of an acre in size or, in the case of a religious or benevolent association or corporation, five acres in size. Subdivision (b) recognizes that family plots are inalienable. See Health & Saf. Code § 8650. Subdivision (c) exempts cemetery plots for the judgment debtor and spouse. See also Health & Saf. Code § 8601 (spouse's vested right of interment). Subdivision (d) continues the substance of the third paragraph of former Section 690.24. The fourth paragraph of former Section 690.24, relating to the application of the exemption against a judgment for the purchase price, is not continued because it is no longer necessary. See Comment to Section 703.010(b). The portion of land containing graves of human beings is not subject to enforcement of a money judgment. See *Peebler v. Danziger*, 104 Cal. App.2d 491, 493, 231 P.2d 895 (1951).

#### CROSS-REFERENCES

Defined terms

Judgment debtor § 680.250

Exception to exemption where child or spousal support § 703.070

### § 704.210. Property not subject to enforcement

**704.210.** Property that is not subject to enforcement of a money judgment is exempt without making a claim.

**Comment.** Section 704.210 is consistent with Section 695.040 (release of property not subject to enforcement).

## Article 4. Homestead Exemption

### § 704.710. Definitions

**704.710.** As used in this article:

(a) "Dwelling" means a place where a person actually resides and may include but is not limited to the following:

(1) A house together with the outbuildings and the land upon which they are situated.

(2) A mobilehome together with the outbuildings and the land upon which they are situated.

(3) A boat or other waterborne vessel.

(4) A condominium, as defined in Section 783 of the Civil Code.

(5) A planned development, as defined in Section 11003 of the Business and Professions Code.



(6) A stock cooperative, as defined in Section 11003.1 of the Business and Professions Code.

(7) A community apartment project, as defined in Section 11004 of the Business and Professions Code.

(b) "Family unit" means any of the following:

(1) The judgment debtor and the judgment debtor's spouse if the spouses reside together in the homestead.

(2) The judgment debtor and at least one of the following persons who the judgment debtor cares for or maintains in the homestead:

(A) The minor child or minor grandchild of the judgment debtor or the judgment debtor's spouse or the minor child or grandchild of a deceased spouse or former spouse.

(B) The minor brother or sister of the judgment debtor or judgment debtor's spouse or the minor child of a deceased brother or sister of either spouse.

(C) The father, mother, grandfather, or grandmother of the judgment debtor or the judgment debtor's spouse or the father, mother, grandfather, or grandmother of a deceased spouse.

(D) An unmarried relative described in this paragraph who has attained the age of majority and is unable to take care of or support himself or herself.

(3) The judgment debtor's spouse and at least one of the persons listed in paragraph (2) who the judgment debtor's spouse cares for or maintains in the homestead.

(c) "Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse actually resided on the date the judgment creditor's lien attached to the dwelling or which, after the date a judgment lien was created by the recording of an abstract or certified copy of the judgment, was acquired with the intent that the judgment debtor or the judgment debtor's spouse actually reside therein as his or her principal dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse actually resided continuously thereafter until the date of the court determination that the dwelling is a homestead.

(d) "Spouse" does not include a married person following entry of a judgment decreeing legal separation

of the parties, or an interlocutory judgment of dissolution of the marriage, unless such married persons reside together in the same dwelling.

**Comment.** Subdivision (a) of Section 704.710 supersedes the provisions of former law pertaining to the property that could be exempt as a homestead or dwelling. See former Civil Code § 1237 (declared homestead); former Code Civ. Proc. §§ 690.3 (housetrailer, mobilehome, houseboat, boat, or other waterborne vessel), 690.31 (a) (dwelling house). Subdivision (a) is intended to include all forms of property for which an exemption could be claimed under former law and any other property in which the judgment debtor or the judgment debtor's spouse actually resides.

Subdivision (b) continues the substance of former Civil Code Section 1261 (2) except that the minor grandchild of a deceased spouse and a child or grandchild of a former spouse are included in the listing.

Subdivision (c) is intended to preclude a judgment debtor from moving into a dwelling after creation of a judgment lien or after levy in order to create an exemption. Subdivision (c) also makes clear that, even though an abstract of judgment has been recorded to create a judgment lien, the existence of such lien does not prevent a homestead exemption on after-acquired property which is acquired as the principal dwelling. Subdivision (c) is an exception to the rule of Section 703.100 (time for determination of exemption).

Subdivision (d) preserves the effect of former Civil Code Sections 1300-1304 (married person's separate homestead). The effect of subdivision (d) is to permit each spouse to claim a separate homestead after entry of a judgment decreeing legal separation or of an interlocutory judgment of dissolution of the marriage, because subdivision (c) of Section 704.720 is not applicable.

#### CROSS-REFERENCES

Defined terms

Judgment debtor § 680.250

### § 704.720. Homestead exemption

**704.720.** (a) A homestead is exempt from sale under this division to the extent provided in Section 704.800.

(b) If a homestead is sold under this division or is otherwise voluntarily or involuntarily sold or is destroyed, the proceeds of sale or of insurance or other

indemnification for destruction of the homestead are exempt in the amount of the homestead exemption provided in Section 704.730. The proceeds are exempt for a period of 18 months after the sale in the case of a voluntary sale, or 18 months after the receipt of proceeds in all other cases, except that, if a homestead exemption is applied to other property of the judgment debtor or the judgment debtor's spouse during that period, the proceeds thereafter are not exempt.

(c) If the judgment debtor and spouse of the judgment debtor reside in separate homesteads, only the homestead of one of the spouses is exempt and only the proceeds of sale of the exempt homestead are exempt.

**Comment.** Subdivision (a) of Section 704.720 supersedes former Civil Code Section 1240 (providing for a declared homestead) and former Code of Civil Procedure Sections 690.3 and 690.31(a) (providing for a claimed dwelling exemption). A declaration of homestead made under prior law is ineffective for any purpose. See Section 694.090. Unlike the former provisions, Section 704.720 does not specify the interest that is protected and does not limit the homestead in a leasehold to a long-term lease; any interest sought to be reached by the judgment creditor in the homestead is subject to the exemption. The homestead exemption does not apply where a lien on the property other than an enforcement lien is being foreclosed. See Section 703.010.

Subdivision (b) supersedes portions of former Civil Code Sections 1256 and 1265 and of former Code of Civil Procedure Sections 690.8 and 690.31(k). The exemption for insurance proceeds was not found in former law. The exemption period is comparable to the period for reinvestment of proceeds of a personal residence under the tax laws. See, *e.g.*, Rev. & Tax Code § 18091. The proceeds exemption is subject to pre-existing or voluntary liens and encumbrances. See Section 701.810.

Subdivision (c) is new. It does not preclude a "married person's separate homestead." See Section 704.710(d) ("spouse" defined) and the Comment to that section. The spouses may select which of the homesteads is exempt; if the spouses are unable to agree, the court determines which homestead is exempt. See Section 703.110 (application of exemptions to marital property).

## CROSS-REFERENCES

Application to marital property § 703.110

Defined terms

Homestead § 704.710(c)

Spouse § 704.710(d)

Exception to exemption where child or spousal support § 703.070

Tracing exempt proceeds § 703.080

**§ 704.730. Amount of homestead exemption**

**704.730. (a)** The amount of the homestead exemption is one of the following:

(1) Thirty thousand dollars (\$30,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2).

(2) Sixty thousand dollars (\$60,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is either or both of the following:

(A) A person 65 years of age or older.

(B) A member of a family unit. This clause applies only if there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(b) Notwithstanding any other provision of this section, the combined homestead exemptions of spouses on the same judgment shall not exceed sixty thousand dollars (\$60,000), regardless of whether the spouses are jointly obligated on the judgment and regardless of whether the homestead consists of community or separate property or both. Notwithstanding any other provision of this article, if both spouses are entitled to a homestead exemption, the exemption of proceeds of sale of the homestead shall be apportioned between the spouses on the basis of their proportionate interests in the homestead.

**Comment.** Subdivision (a)(1) of Section 704.730 continues the substance of former Civil Code Section 1260(a)(3) (homestead exemption \$30,000). Subdivision (a)(2)(A) increases the exemption of a person 65 years of age or older from \$45,000 to \$60,000. See former Civil Code § 1260(a)(2). Subdivision (a)(2)(B) increases the exemption for the “head of a family” from \$45,000 to \$60,000. See former Civil Code

§ 1260(a)(1). However, subdivision (a)(2)(B) replaces the phrase “head of a family” with the phrase “family unit” and makes clear there is no increased exemption if the members of the family unit also own interests in the homestead (except a community property interest).

Subdivision (b) is new. It is intended to preclude the exemption of unduly large amounts and the inequitable application of exemptions that might otherwise occur under subdivision (a) because of the variety of ways that spouses can hold property and attempt to qualify for increased exemptions.

#### CROSS-REFERENCES

##### Defined terms

Family unit § 704.710(b)

Homestead § 704.710(c)

Judgment debtor § 680.250

Spouse § 704.710(d)

### § 704.740. Court order for sale and determination of homestead exemption

**704.740.** (a) Except as provided in subdivision (b), a dwelling may not be sold under this division to enforce a money judgment except pursuant to a court order for sale obtained under this article.

(b) If the dwelling is personal property or is real property in which the judgment debtor has a leasehold estate with an unexpired term of less than two years at the time of levy:

(1) A court order for sale is not required and the procedures provided in this article relating to the court order for sale do not apply.

(2) An exemption claim shall be made and determined as provided in Article 2 (commencing with Section 703.510).

**Comment.** Subdivision (a) of Section 704.740 supersedes portions of former Civil Code Sections 1245, 1249, and 1250 and former Code of Civil Procedure Section 690.31(c) and (f).

Subdivision (b) incorporates the general procedures for claiming an exemption where the dwelling levied upon is not subject to the delay of sale provision of Section 701.545 (120-day delay of notice of sale of an interest in real property other than a leasehold estate with an unexpired term of less than two years). Under former law, a house trailer, mobilehome, houseboat, boat, or other waterborne vessel in which the judgment debtor or the

judgment debtor's family actually resided could be claimed as exempt in a similar manner. See former Sections 690(a), 690.3, 690.50. This section also applies to claims of exemption for certain mobilehomes that under former law would have been determined as provided in former Section 690.31 (judgment creditor's application for writ of execution on dwelling, including a mobilehome as defined by Health & Safety Code § 18008). See also Health & Saf. Code § 18551(c) (mobilehome installed on foundation system deemed a fixture and a real property improvement). The judgment creditor's instructions to the levying officer must indicate whether property to be levied on is a dwelling. See Section 687.010.

#### CROSS-REFERENCES

##### Defined terms

Dwelling § 704.710(a)

Homestead § 704.710(c)

Judgment debtor § 680.250

Money judgment § 680.270

#### § 704.750. Application for order for sale

704.750. (a) Promptly after a dwelling is levied upon (other than a dwelling described in subdivision (b) of Section 704.740), the levying officer shall serve notice on the judgment creditor that the levy has been made and that the property will be released unless the judgment creditor complies with the requirements of this section. Service shall be made personally or by mail. Within 20 days after service of the notice, the judgment creditor shall apply to the court for an order for sale of the dwelling and shall file a copy of the application with the levying officer. If the judgment creditor does not file the copy of the application for an order for sale of the dwelling within the allowed time, the levying officer shall release the dwelling.

(b) If the dwelling is located in a county other than the county where the judgment was entered:

(1) The judgment creditor shall apply to a court of similar jurisdiction in the county where the dwelling is located or, if there is no court of similar jurisdiction, to a court of higher jurisdiction in that county.

(2) The judgment creditor shall file with the application an abstract of judgment in the form prescribed by Section 674 or, in the case of a judgment

described in Section 697.320, a certified copy of the judgment.

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

**Comment.** Section 704.750 supersedes the introductory portion and the last two paragraphs of former Civil Code Section 1245 and former Code of Civil Procedure Section 690.31(c). Unlike the former provisions which required the judgment creditor to apply for issuance of a writ of execution, Section 704.750 requires the judgment creditor to apply for an order for sale after the execution levy. This ensures that all writs will be issued out of the court in which the judgment is entered. The 20-day period allowed to apply for the order and to file the copy of the application is extended if the notice of levy is served by mail. See Section 684.120. Notice of the application for an order for sale of the property must be given the levying officer or the dwelling will be released. This requirement applies only to real property dwellings and not to personal property dwellings or to dwellings with less than a two-year leasehold. See Section 704.740(b).

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Dwelling § 704.710(a)

Judgment creditor § 680.240

Levying officer § 680.260

Instructions to levying officer § 687.010

Levy on real property § 700.015

Manner of service § 684.010 *et seq.*

Release of property § 699.060

Service on judgment creditor's attorney §§ 684.010, 684.050

#### § 704.760. Contents of application

**704.760.** The judgment creditor's application shall be made under oath, shall describe the dwelling, and shall contain all of the following:

(a) A statement whether or not the records of the county tax assessor indicate that there is a current homeowner's exemption or disabled veteran's exemption for the dwelling and the person or persons who claimed any such exemption.

(b) A statement, which may be based on information and belief, whether the dwelling is a homestead and the amount of the homestead exemption, if any.

**Comment.** Section 704.760 supersedes subdivisions (a)-(c) of former Civil Code Section 1245 and paragraphs (1)-(2) of former Code of Civil Procedure Section 690.31 (c).

#### CROSS-REFERENCES

Amount of homestead exemption § 704.730

Declaration under penalty of perjury § 2015.5

Defined terms

Dwelling § 704.710(a)

Homestead § 704.710(c)

Judgment creditor § 680.240

Disabled veteran's exemption, see Rev. & Tax. Code § 205.5

Homeowner's exemption, see Rev. & Tax. Code § 218

### § 704.770. Notice of hearing

704.770. (a) Upon the filing of the application by the judgment creditor, the court shall set a time and place for hearing and order the judgment debtor to show cause why an order for sale should not be made in accordance with the application. 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.

(b) Not later than 30 days before the time set for hearing, the judgment creditor shall do both of the following:

(1) Serve on the judgment debtor a copy of the order to show cause, a copy of the application of the judgment creditor, and a copy of the notice of the hearing in the form prescribed in Section 693.050. Service shall be made personally or by mail.

(2) Personally serve a copy of each document listed in paragraph (1) on an occupant of the dwelling or, if there is no occupant present at the time service is attempted, post a copy of each document in a conspicuous place at the dwelling.

**Comment.** Subdivision (a) of Section 704.770 supersedes the introductory portions of former Civil Code Section 1246 and former Code of Civil Procedure Section 690.31 (d). Subdivision (b) supersedes former Civil Code Section 1257 and former Code of Civil Procedure Section 690.31 (1). A longer period of notice is required under subdivision (b) if the judgment debtor is served by mail. See Section 684.125.



## CROSS-REFERENCES

## Defined terms

Dwelling § 704.710(a)

Judgment creditor § 680.240

Judgment debtor § 680.250

Manner of service § 684.010 *et seq.*

Proof of service and posting, means of § 684.220

Proof of service required § 684.210

Service on judgment debtor's attorney §§ 684.020, 684.050

**§ 704.780. Hearing**

704.780. (a) The burden of proof at the hearing is determined in the following manner:

(1) If the records of the county tax assessor indicate that there is a current homeowner's exemption or disabled veteran's exemption for the dwelling claimed by the judgment debtor or the judgment debtor's spouse; the judgment creditor has the burden of proof that the dwelling is not a homestead. If the records of the county tax assessor indicate that there is not a current homeowner's exemption for the dwelling claimed by the judgment debtor or the judgment debtor's spouse, the burden of proof that the dwelling is a homestead is on the person who claims that the dwelling is a homestead.

(2) If the application states the amount of the homestead exemption, the person claiming the homestead exemption has the burden of proof that the amount of the exemption is other than the amount stated in the application.

(b) The court shall determine the amount of the homestead exemption, if any, and shall make an order for sale of the dwelling.

(c) The court clerk shall transmit a copy of the court order (1) to the levying officer and (2) if the court making the order is not the court in which the judgment was entered, to the clerk of the court in which the judgment was entered.

**Comment.** Section 704.780 supersedes former Civil Code Section 1247 and a portion of subdivision (c) and subdivision (e) of former Code of Civil Procedure Section 690.31. Subject to the requirements of Section 704.790, if an order for sale is obtained, the dwelling may be sold as provided in Sections 701.510 *et seq.* Notice of sale provisions (Sections 701.540-701.560) apply to the

sale as well as the general provisions governing the sale itself (subject to Sections 704.800-704.820).

#### CROSS-REFERENCES

Amount of homestead exemption § 704.730

Defined terms

Dwelling § 704.710(a)

Homestead § 704.710(c)

Judgment creditor § 680.240

Judgment debtor § 680.250

Spouse § 704.710(d)

Disabled veteran's exemption, see Rev. & Tax. Code § 205.5

Homeowner's exemption, see Rev. & Tax. Code § 218

### § 704.790. Procedure after order of sale upon default

**704.790.** (a) This section applies in any case where the court makes an order for sale of the dwelling upon a hearing at which none of the following appeared:

- (1) The judgment debtor.
- (2) The judgment debtor's spouse.
- (3) The attorney for the judgment debtor.
- (4) The attorney for the judgment debtor's spouse.

(b) Not later than 10 days after the date of the order for sale, the judgment creditor shall serve a copy of the order and a notice of the order in the form prescribed in Section 693.060:

(1) Personally or by mail on the judgment debtor and the judgment debtor's spouse.

(2) Personally on an occupant of the dwelling or, if there is no occupant present at the time service is attempted, post a copy of the order and notice in a conspicuous place at the dwelling.

(c) Proof of service and of any posting shall be filed with the court.

(d) If, within 10 days after service of notice of the order, the judgment debtor or the judgment debtor's spouse files with the levying officer a declaration that the absence of the judgment debtor and the judgment debtor's spouse or the attorney for the judgment debtor or the judgment debtor's spouse from the hearing was due to mistake, inadvertence, surprise, or excusable neglect and that the judgment debtor or spouse of the judgment debtor wishes to assert the homestead exemption, the levying officer shall transmit the declaration forthwith to the court. Upon receipt of the

declaration, the court shall set a time and place for hearing to determine whether the determinations of the court should be modified. The time set for hearing shall be not later than 20 days after receipt of the declaration. The court clerk shall promptly give notice of the hearing to the parties.

**Comment.** Subdivision (a) of Section 704.790 supersedes former Civil Code Sections 1251 and 1257 and former Code of Civil Procedure Section 690.31(g) and (I). Subdivision (d) supersedes former Civil Code Section 1252 and former Code of Civil Procedure Section 690.31(h).

#### CROSS-REFERENCES

##### Defined terms

Dwelling § 704.710(a)

Judgment creditor § 680.240

Judgment debtor § 680.250

Spouse § 704.710(d)

##### Form of notice of order for sale

Judicial Council authority § 681.030

Statutory form § 693.060

##### Manner of service § 684.010 *et seq.*

Proof of service and posting, means of § 684.220

Service on judgment debtor's attorney §§ 684.020, 684.050

## § 704.800. Sale of homestead

**704.800.** If no bid is received at a sale of a homestead pursuant to a court order for sale that equals or exceeds the amount of the homestead exemption plus any additional amount necessary to satisfy the requirements of Section 701.620 (minimum bid), the homestead shall not be sold and shall be released and is not thereafter subject to a court order for sale upon subsequent application by the same judgment creditor for a period of one year.

**Comment.** Section 704.800 supersedes former Civil Code Sections 1253 and 1254. If the property levied upon is not sold, the judgment creditor may not recover costs and is liable for attorney's fees. See Section 704.840.

#### CROSS-REFERENCES

Amount of homestead exemption §§ 704.730, 704.780(b)

Declaration under penalty of perjury § 2015.5

##### Defined terms

Homestead § 704.710(c)

Judgment creditor § 680.240

Instructions to levying officer § 687.010

Release § 699.060

**§ 704.810. Acceleration clauses**

**704.810.** If a homestead sold pursuant to court order is subject to a lien or encumbrance superior to the judgment creditor's lien, levy on and sale of the homestead is not by itself grounds for acceleration of the obligation secured by the lien or encumbrance, notwithstanding any provision of the obligation, lien, or encumbrance.

**Comment.** Section 704.810 is new. It is designed to preserve existing financing when a homestead is sold, thereby encouraging a more adequate sale price and protecting the interests of co-owners sharing financing.

**CROSS-REFERENCES**

Defined terms

Homestead § 704.710(c)

Judgment creditor § 680.240

**§ 704.820. Procedure where judgment debtor is co-owner or owns less than a fee**

**704.820.** If the dwelling is owned by the judgment debtor as a joint tenant or tenant in common or if the interest of the judgment debtor in the dwelling is a leasehold or other interest less than a fee interest:

(a) At an execution sale of a dwelling, the interest of the judgment debtor in the dwelling and not the dwelling shall be sold. If there is more than one judgment debtor of the judgment creditor, the interests of the judgment debtors in the dwelling shall be sold together and each of the judgment debtors entitled to a homestead exemption is entitled to apply his or her exemption to his or her own interest.

(b) All references in this article to the "dwelling" or "homestead" are deemed to be references to the interest of the judgment debtor in the dwelling or homestead.

**Comment.** Section 704.820 implements the intent of this article not to restrict the interest of the judgment debtor for which a homestead exemption is available. A homestead exemption is available to a judgment debtor regardless of whether the judgment debtor's interest is a fee, leasehold, or lesser interest. See Section 704.710(a) and Comment thereto. If the judgment debtor's interest is an interest in community

property, the whole community interest is subject to enforcement of the judgment. See Section 695.020 (liability of community property).

#### CROSS-REFERENCES

##### Defined terms

- Dwelling § 704.710(a)
- Homestead § 704.710(c)
- Judgment creditor § 680.240
- Judgment debtor § 680.250

### § 704.830. Extensions of time and appeals

**704.830.** The provisions of Sections 703.590 and 703.600 apply to proceedings under this article.

**Comment.** Section 704.830 continues the substance of former Civil Code Sections 1258 (portion incorporating Code of Civil Procedure Section 690.50(I)) and 1259.1, and former Code of Civil Procedure Section 690.31(m) (portion incorporating Code of Civil Procedure Section 690.50(I)) and (n). It incorporates the provisions in the general exemption procedure pertaining to extensions of time and appeals.

### § 704.840. Costs

**704.840.** (a) Except as provided in subdivision (b), the judgment creditor is entitled to recover reasonable costs incurred in a proceeding under this article.

(b) If no bid is received at a sale of a homestead pursuant to a court order for sale that equals or exceeds the amount of the homestead exemption plus any additional amount necessary to satisfy the requirements of Section 701.620 (minimum bid), the judgment creditor is not entitled to recover costs incurred in a proceeding under this article or costs of sale and the court shall award to the judgment debtor reasonable attorney's fees incurred in a proceeding under this article.

**Comment.** Section 704.840 supersedes former Civil Code Section 1259.

#### CROSS-REFERENCES

Amount of homestead exemption §§ 704.730, 704.780(b)

Costs §§ 685.040-685.080

##### Defined terms

- Court § 680.200
- Homestead § 704.710(c)
- Judgment creditor § 680.240
- Judgment debtor § 680.250

## CHAPTER 5. WAGE GARNISHMENT

### Article 1. Short Title; Definitions

#### § 706.010. Short title

706.010. This chapter shall be known and may be cited as the “Wage Garnishment Law.”

**Comment.** Section 706.010 substitutes the more descriptive term “Wage Garnishment Law” for the term “Employees’ Earnings Protection Law” used in former Section 723.010.

#### § 706.011. Definitions

706.011. As used in this chapter:

(a) “Earnings” means compensation payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise.

(b) “Employee” means a public officer and any individual who performs services subject to the right of the employer to control both what shall be done and how it shall be done.

(c) “Employer” means a person for whom an individual performs services as an employee.

(d) “Judgment creditor,” as applied to the state, means the specific state agency seeking to collect a judgment or tax liability.

(e) “Judgment debtor” includes a person from whom the state is seeking to collect a tax liability under Article 4 (commencing with Section 706.070), whether or not a judgment has been obtained on such tax liability.

(f) “Person” includes an individual, a corporation, a partnership or other unincorporated association, and a public entity.

(g) “Wage assignment for support” means an order made pursuant to Section 4701 or 4801.6 of the Civil Code which requires an employer to withhold earnings for support.

**Comment.** Section 706.011 continues former Section 723.011 and states definitions used in applying this chapter. Subdivision (g) is a new provision that has been added to permit use of the term “wage assignment for support” in various sections of this

chapter. The definition reflects the enactment of Civil Code Section 4801.6 in 1980 (wage assignment for spousal support).

This chapter deals only with the garnishment or withholding of earnings for services rendered in an employer-employee relationship. See Section 706.020. Subdivisions (b) and (c) are based on the common law requirements for such relationship. It should be noted that an employee may be given considerable discretion and still be an employee as long as his employer has the legal right to control both method and result. However, no attempt is made here to incorporate specific case law arising out of situations involving problems and issues unrelated to the purposes and procedures relevant in applying this chapter. "Employee" includes both private and public employees. See subdivisions (b), (c), and (f).

"Earnings" embraces all remuneration "whether denominated as wages, salary, commission, bonus, or otherwise." The infinite variety of forms which such compensation can take precludes a more precise statutory definition.

Unlike the definition of "earnings" used in Section 1672(a) of Title III of the federal Consumer Credit Protection Act of 1968, the term used here does not include "periodic payments pursuant to a pension or retirement program." Exemptions applicable to such payments are provided by Sections 704.110 and 704.115. See also Section 704.113.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer defined §§ 680.260, 706.073

Service by registered process server § 706.101(e)

## Article 2. General Provisions

### § 706.020. Withholding earnings; use of provisions of chapter

**706.020.** Except for a wage assignment for support, the earnings of an employee shall not be required to be withheld by an employer for payment of a debt by means of any judicial procedure other than pursuant to this chapter.

**Comment.** Section 706.020 makes clear that, with the exception of wage assignments for support (defined in subdivision (g) of Section 706.011), the Wage Garnishment Law is the exclusive judicial method of compelling an employer to

withhold earnings. The section continues former Section 723.020. Attachment of earnings before judgment is abolished by Section 487.020(c). For provisions relating to voluntary wage assignments, see Labor Code Section 300. This chapter has no effect on judgment collection procedures that do not involve the withholding of an employee's earnings. However, where an employee's earnings are sought to be garnished, the creditor must comply with the provisions of this chapter. This rule applies to public entities as well as private persons. This chapter, for example, imposes limitations on the state's ability to garnish wages for tax delinquencies pursuant to its warrant and notice procedures. See Article 4 (commencing with Section 706.070).

The Wage Garnishment Law has no effect on matters that are preempted by federal law, such as federal bankruptcy proceedings and federal tax collection procedures. *E.g.*, I.R.C. § 6334(c). Nor does this chapter apply to deductions which an employer is authorized by statute to make for such items as insurance premiums and payments to health, welfare, or pension plans. See, *e.g.*, Gov't Code §§ 1156-1158, Labor Code §§ 224, 300. Finally, this chapter does not affect the procedures for the examination of a debtor of the judgment debtor provided in Article 2 (commencing with Section 708.110) of Chapter 6. See also Comment to Section 706.154.

#### CROSS-REFERENCES

##### Defined terms

Earnings § 706.011

Employee § 706.011

Employer § 706.011

Wage assignment for support § 706.011

### **§ 706.021. Levy of execution; service of earnings withholding order**

**706.021.** Notwithstanding any other provision of this title, a levy of execution upon the earnings of an employee shall be made by service of an earnings withholding order upon the employer in accordance with this chapter.

**Comment.** Section 706.021 continues former Section 723.021 except that a reference to "this title" is substituted for the reference to former Section 688 in the introductory clause. Section 706.021 makes clear that a levy of execution on earnings is made as provided in this chapter rather than under Chapter 3 (commencing with Section 699.010).



## CROSS-REFERENCES

## Defined terms

Earnings § 706.011

Employee § 706.011

Employer § 706.011

**§ 706.022. Employer's duty to withhold; immunity from liability**

706.022. (a) As used in this section, "withholding period" means the period which commences on the 10th day after service of an earnings withholding order upon the employer and which continues until the earliest of the following dates:

(1) The 100th day after the order was served.

(2) The date the employer has withheld the full amount specified in the order.

(3) The date of termination specified in a court order served on the employer.

(4) The date of termination specified in a notice of termination served on the employer by the levying officer.

(b) Except as otherwise provided by statute, an employer shall withhold the amounts required by an earnings withholding order from all earnings of the employee payable for any pay period of such employee which ends during the withholding period.

(c) An employer is not liable for any amounts withheld and paid over to the levying officer pursuant to an earnings withholding order prior to service upon the employer pursuant to paragraph (3) or (4) of subdivision (a).

**Comment.** Section 706.022 continues former Section 723.022 and states the basic rules governing the employer's duty to withhold pursuant to an earnings withholding order.

Subdivision (b) requires the employer to withhold from all earnings of an employee payable for any pay period of such employee which *ends* during the "withholding period." The "withholding period" is described in subdivision (a). It should be noted that *only* earnings for a pay period ending during the withholding period are subject to levy. Earnings for prior periods, even though still in the possession of the employer, are not subject to the order. An employer may not, however, defer or accelerate any payment of earnings to an employee with the

intent to defeat or diminish the satisfaction of a judgment pursuant to this chapter. See Section 706.153.

Under subdivision (a), the withholding period generally commences 10 calendar days (not working or business days) after service of an earnings withholding order is completed. See Section 706.101 (when service completed). For example, if an order is served on Friday, the withholding period would commence on the second following Monday. See Code Civ. Proc. § 12. The 10-day delay affords the employer time to process the order within his organization, *i.e.*, deliver the order to the employer's bookkeeper, make bookkeeping adjustments, and so on. The introductory clause to subdivision (b) recognizes certain exceptions to this general rule. An employer is not generally required to withhold pursuant to two orders at the same time; thus, a subsequent order will not be given effect. See Section 706.023 (priority of orders) and Comment thereto. Moreover, withholding may be delayed beyond the normal 10-day period where a prior assignment of wages is in effect. See Labor Code § 300(c) and Comment thereto. However, this delay does not affect the date the withholding period terminates under subdivision (a) (1).

The withholding period does not end until the first of the events described in paragraphs (1) through (4) of subdivision (a) occurs; thus, the employer has a *continuing* duty to withhold.

Paragraph (1) provides a general expiration date 100 days after the date of service; thus, the employer will usually be required to withhold for 90 days.

Paragraph (2) requires the employer to stop withholding when he has withheld the full amount specified in the order.

Paragraph (3) reflects the fact that the court may order the termination of the earnings withholding order. See Section 706.105(g). Of course, in some situations, the court will only modify the prior order, and the employer then must comply with the order as modified for the remainder of the withholding period.

Paragraph (4) requires the employer to stop withholding when he is served with a notice of termination. See Section 706.101 (manner of service). A notice of termination is served where the levying officer is notified of the satisfaction of the judgment or where the judgment debtor has claimed an exemption for the entire amount of earnings but the judgment creditor has failed within the time allowed to file with the levying officer a notice of opposition to claim of exemption and a notice of the hearing on the exemption. See Sections 706.027

(satisfaction of judgment) and 706.105(f) (grounds for termination of withholding order by levying officer). The judgment creditor has an affirmative duty to inform the levying officer of the satisfaction of the judgment. See Section 706.027. Service of an order for the collection of state taxes suspends the duty of an employer to withhold pursuant to a prior order (other than an order for support). See Section 706.077 (tax orders). However, this is only a suspension. After the tax order is satisfied, if the withholding period for the prior order has not ended, the employer must again withhold pursuant to the prior order. Similarly, the duty to withhold is not terminated by the layoff, discharge, or suspension of an employee and, if the employee is rehired or returns to work during the withholding period, the employer must resume withholding pursuant to the order. Finally, the termination of certain types of orders—orders for the collection of state taxes and support orders—are governed by separate rules. See Sections 706.030 (support orders), 706.078 (tax orders).

Sometimes an order will be terminated without the employer's prior knowledge. Subdivision (c) makes clear that an employer will not be subject to liability for having withheld and paid over amounts pursuant to an order prior to service of a written notice of termination of the order. In such a case, the employee must look to the judgment creditor for the recovery of amounts previously paid to the judgment creditor. See Section 706.154 (employer entitled to rely on documents actually served). See also Section 706.105(i) (recovery from levying officer or judgment creditor of amounts received after order terminated).

An earnings withholding order may also be affected by federal bankruptcy proceedings. See the Comment to Section 706.020.

#### CROSS-REFERENCES

##### Defined terms

Earnings § 706.011

Employee § 706.011

Employer § 706.011

Levying officer §§ 680.260, 706.073, 706.101 (e)

Effect of failure to withhold §§ 706.152, 706.154

Employer's instructions § 706.127

Lien § 706.029

Manner of paying amount withheld § 706.025

Manner of service of order §§ 706.080, 706.101

### § 706.023. Priority of earnings withholding order

706.023. Except as otherwise provided in this chapter:

(a) An employer shall comply with the first earnings withholding order served upon the employer.

(b) If the employer is served with two or more earnings withholding orders on the same day, the employer shall comply with the order issued pursuant to the judgment first entered. If two or more orders served on the same day are based on judgments entered upon the same day, the employer shall comply with whichever one of such orders the employer selects.

(c) If an earnings withholding order is served while an employer is required to comply with another earnings withholding order with respect to the earnings of the same employee, the subsequent order is ineffective and the employer shall not withhold earnings pursuant to the subsequent order.

**Comment.** Section 706.023 continues former Section 723.023 and establishes the general rules governing priority of earnings withholding orders. Generally speaking, the first order served is given priority. Occasionally, two or more earnings withholding orders will be served on the same day. In this situation, the employer must comply with the earnings withholding order which was issued pursuant to the judgment first entered. The date of entry of judgment will be indicated on the face of the order. See Section 706.125. In rare instances, earnings withholding orders served the same day will also be based on judgments entered the same day. In this situation, the employer has complete discretion to choose the order with which he will comply. He must, of course, comply with one of these orders. For exceptions to these basic priority rules, see Sections 706.030 (support orders) and 706.077 (state taxes) and the Comments thereto. Unless the subsequent earnings withholding order is for state taxes or for support, an earnings withholding order is ineffective if the employer receives the order while he is required to comply with another earnings withholding order. In such a case, the employer does *not* hold such an order and give it effect when the prior order expires but returns it. See Section 706.104. However, the levying officer may later serve the same earnings withholding order if the time for levy on property under the writ has not expired. See Sections 699.530(b) and 706.102.

It should be noted that, in some circumstances, the operation of an earnings withholding order may be suspended, but the duty to withhold is not terminated nor does the 100-day period provided by Section 706.022(a)(1) cease to run. See, *e.g.*, Section 706.077 (tax order suspends operation of prior order); Labor

Code § 300(c) (suspension where prior assignment in effect). See also Comment to Section 706.022. In such cases, as well as in cases where the subsequent earnings withholding order is not given effect, the employer is required to advise the levying officer who has served the order that is suspended or not given effect of the reason for the employer's action. See Sections 706.077 and 706.104.

An employer is generally entitled to rely upon what is served upon him. See Section 706.154 and Comment thereto.

#### CROSS-REFERENCES

Defined terms

Earnings § 706.011

Employee § 706.011

Employer § 706.011

Lien § 706.029

### § 706.025. Payments to levying officer by employer

**706.025.** (a) Except as provided in subdivision (b), the amount required to be withheld pursuant to an earnings withholding order shall be paid monthly to the levying officer not later than the 15th day of each month. The initial monthly payment shall include all amounts required to be withheld from the earnings of the employee during the preceding calendar month up to the close of the employee's pay period ending closest to the last day of that month, and thereafter each monthly payment shall include amounts withheld from the employee's earnings for services rendered in the interim up to the close of the employee's pay period ending closest to the last day of the preceding calendar month.

(b) The employer may elect to pay the amounts withheld to the levying officer more frequently than monthly. If the employer so elects, payment of the amount withheld from the employee's earnings for each pay period shall be made not later than 10 days after the close of the pay period.

**Comment.** Section 706.025 specifies when the amounts withheld pursuant to an earnings withholding order must be paid over to the levying officer. As to payment to the employee if an exemption claim is allowed, see Section 706.105(i). Regardless whether payment is required, the employer is required to send an employer's return to the levying officer. See Sections 706.104 and 706.126. Section 706.025 continues former Section 723.025.

## CROSS-REFERENCES

## Defined terms

Earnings § 706.011

Employee § 706.011

Employer § 706.011

Levying officer §§ 680.260, 706.073, 706.101 (e)

Withholding period § 706.022

**§ 706.026. Receipt and account by levying officer; payments to entitled person**

**706.026.** The levying officer shall receive and account for all amounts received pursuant to Section 706.025 and shall pay the amounts so received over to the person entitled thereto at least once every 30 days.

**Comment.** Section 706.026 continues subdivision (a) of former Section 723.026. The remainder of former Section 723.026 (which in effect extended the time for return of the writ of execution) has not been continued because this portion is no longer necessary in view of Section 699.560 which extends generally the time for return of writs of execution.

## CROSS-REFERENCES

## Defined terms

Levying officer §§ 680.260, 706.073, 706.101 (e)

Person § 706.011

**§ 706.027. Satisfaction of judgment prior to termination of order; notices**

**706.027.** If the judgment pursuant to which the earnings withholding order is issued is satisfied before the order otherwise terminates pursuant to Section 706.022, the judgment creditor shall promptly notify the levying officer who shall promptly terminate the order by serving a notice of termination on the employer.

**Comment.** Section 706.027 continues former Section 723.027 and requires the judgment creditor to give notice of satisfaction of the judgment to the levying officer if the earnings withholding order has not yet terminated. See Section 706.022 (withholding period). In some cases, the employer will be aware of the satisfaction by virtue of the employer's having withheld the amount necessary to satisfy the judgment. See Section 706.022(a)(2). In this case, Section 706.027 does not apply. However, the judgment may be satisfied by additional payments from the debtor or through other debt collection procedures instituted by the judgment creditor. If this is the case, Section

706.027 applies, and the judgment creditor has the duty to notify the levying officer promptly of the satisfaction so that the levying officer may serve a notice of termination on the employer. Service of the notice of termination is to be made on the person, and at the address, indicated in the employer's return. See Sections 706.101(c) and 706.126(b)(6). As to the general duty of a creditor to furnish a satisfaction of judgment, see Chapter 1 (commencing with Section 724.010) of Division 5. Failure to perform the duty imposed by this section may make the judgment creditor liable in an action for abuse of process. See *White Lighting Co. v. Wolfson*, 68 Cal.2d 336, 347-51, 438 P.2d 345, 351-54, 66 Cal. Rptr. 697, 703-06 (1968).

#### CROSS-REFERENCES

##### Defined terms

Employer § 706.011

Judgment creditor §§ 680.240, 706.011

Levying officer §§ 680.260, 706.073, 706.101(e)

Satisfaction of judgment § 724.010

### § 706.028. Subsequent earnings withholding order for costs and interest

**706.028.** Subject to Section 706.107, after the amount stated as owing in the earnings withholding order is paid, the judgment creditor may apply for issuance of another earnings withholding order covering costs and interest that may have accrued since application for the prior order.

**Comment.** Section 706.028 continues former Section 723.028 and makes clear that a judgment creditor must apply for another earnings withholding order to recover costs and interest that accrue following the application for a prior order. To illustrate: A creditor obtains a judgment which his debtor does not pay. The creditor applies for and secures an earnings withholding order directed to the debtor's employer. The application and order require payment of only those amounts owing at the time of the application for this order (including the levying officer's statutory fee for service of the order). See Sections 706.121 (application for issuance of earnings withholding order) and 706.125 (content of earnings withholding order). After the application for this order, further costs may, and interest on the judgment will, accrue. If the creditor wishes to recover these amounts by wage garnishment, he must apply for another earnings withholding order, following the same procedure as before. This later application and order are subject to the same

general requirements as any other withholding order. Of course, the earnings withholding order for costs and interest may only be issued if a writ of execution is outstanding pursuant to which a levy may be made. See Section 706.102. The recovery of costs is limited by Sections 685.040-685.090. The new order is not entitled to any priority over the orders of other creditors, and the creditor is required to comply with the waiting period (prescribed by Section 706.107) before serving the new order.

Service of an earnings withholding order for costs and interest, like service of a second earnings withholding order to collect the principal amount due on the judgment, is a “garnishment for the payment of one judgment” under Labor Code Section 2929(b) which forbids the discharge of an employee for wage garnishment on one judgment.

#### CROSS-REFERENCES

Costs and interest §§ 685.010-685.100

Defined terms

Costs § 680.150

Judgment creditor §§ 680.240, 706.011

Satisfaction of judgment § 724.010

### § 706.029. Lien on employer’s property

**706.029.** Service of an earnings withholding order creates a lien upon all property of the employer subject to the enforcement of a money judgment in the amount required to be withheld pursuant to such order. The lien continues for a period of one year from the date the earnings of the judgment debtor become payable unless the amount required to be withheld pursuant to the order is paid as required by law.

**Comment.** Section 706.029 continues the substance of former Section 723.029 and makes clear that the lien covers all property of the employer subject to the enforcement of a money judgment. The lien may give the levying creditor priority over competing claims by third parties (*e.g.*, in bankruptcy) where the priority questions are not already regulated by other provisions of this chapter. See Section 706.023 and the Comment thereto.

The rule of Section 706.029 that the lien continues for one year from the date the earnings become payable prevails over the general rule that the lien created by levy under a writ of execution continues for one year from the date of issuance of the writ. See Section 697.710. Although the lien is limited to one year, it will not expire if, before the end of the one-year period, the



levying creditor brings suit against the employer for the payment of the sums the creditor claims should have been paid to him. See *Boyle v. Hawkins*, 71 Cal.2d 229, 455 P.2d 97, 78 Cal. Rptr. 161 (1969).

#### CROSS-REFERENCES

Civil liability of employer §§ 706.153, 706.154

Defined terms

Earnings § 706.011

Employer § 706.011

Judgment debtor §§ 680.250, 706.011

Money judgment § 680.270

Property § 680.310

### § 706.030. Withholding order for support

706.030. (a) A “withholding order for support” is an earnings withholding order issued on a writ of execution to collect delinquent amounts payable under a judgment for the support of a child, or spouse or former spouse, of the judgment debtor. A withholding order for support shall be denoted as such on its face.

(b) Notwithstanding any other provision of this chapter:

(1) An employer shall continue to withhold pursuant to a withholding order for support until the earliest of the dates specified in paragraph (2), (3), or (4) of subdivision (a) of Section 706.022, except that a withholding order for support shall automatically terminate one year after the employment of the employee by the employer terminates.

(2) A withholding order for support has priority over any other earnings withholding order. An employer upon whom a withholding order for support is served shall withhold and pay over earnings of the employee pursuant to such order notwithstanding the requirements of another earnings withholding order.

(3) Subject to paragraph (2) and to Article 3 (commencing with Section 706.050), an employer shall withhold earnings pursuant to both a withholding order for support and another earnings withholding order simultaneously.

**Comment.** Section 706.030 continues former Section 723.030 and provides special rules for an earnings withholding order to enforce a judgment for delinquent support payments for a child

or spouse or former spouse of the judgment debtor. An earnings withholding order for support is given a different effect than other withholding orders: It is effective until the employer has withheld the full amount specified in the order or he is served with a notice of termination, in which case the date of termination will be specified in the notice. See subdivision (b)(1). Thus, the withholding order for support does not terminate 100 days after service (it may, of course, be modified). The withholding order for support is subject to special exemption rules (see Section 706.052). Even when in effect, it does not necessarily preclude withholding on either a prior or subsequent earnings withholding order. If not earlier terminated, the withholding order for support automatically terminates one year after the employment of the employee terminates. Thus, for example, if the employee returns to work for the same employer within one year from the date his employment terminated, the employer must withhold pursuant to the withholding order for support. On the other hand, if the employee does not return to work until more than one year from the date his employment terminated, the order expires at the end of the year, and nothing is withheld pursuant to the order when the employee returns to work.

The earnings withholding order for support is given priority over any other earnings withholding order. *But see* Section 706.031 (wage assignment for support given priority). However, a prior earnings withholding order remains in effect, and a judgment creditor may still obtain an earnings withholding order even where there is already in effect a prior earnings withholding order for support. Thus, where there are two earnings withholding orders in effect—one for support and one for another obligation—the amount withheld for support is deducted from the employee's earnings first. The amount, if any, that may be withheld pursuant to the other earnings withholding order is determined by subtracting the amount withheld pursuant to the withholding order for support from the amount that otherwise could be withheld pursuant to the other earnings withholding order. See Sections 706.077, 706.050, and 706.051 and the Comments thereto.

#### CROSS-REFERENCES

##### Defined terms

Earnings § 706.011

Employee § 706.011

Employer § 706.011

Judgment debtor §§ 680.250, 706.011

Form of withholding order for support §§ 706.120, 706.125

**§ 706.031. Order for wage assignment for support**

706.031. (a) Nothing in this chapter affects a wage assignment for support.

(b) A wage assignment for support shall be given priority over any earnings withholding order. An employer upon whom a wage assignment for support is served shall withhold and pay over the earnings of the employee pursuant to the wage assignment for support notwithstanding the requirements of any earnings withholding order. When an employer is required to cease withholding earnings pursuant to an earnings withholding order, the employer shall notify the levying officer who served the earnings withholding order that a supervening wage assignment for support is in effect.

(c) Subject to subdivisions (b), (d), and (e), an employer shall withhold earnings of an employee pursuant to both a wage assignment for support and an earnings withholding order.

(d) The employer shall withhold pursuant to an earnings withholding order only to the extent that the sum of the amount withheld pursuant to any wage assignment for support and the amount withheld pursuant to the earnings withholding order does not exceed the amount that may be withheld under Article 3 (commencing with Section 706.050).

(e) The employer shall withhold pursuant to an earnings withholding order for taxes only to the extent that the sum of the amount withheld pursuant to any wage assignment for support and the amount withheld pursuant to the earnings withholding order for taxes does not exceed the amount that may be withheld under Article 4 (commencing with Section 706.070).

**Comment.** Section 706.031 continues former Section 723.031 and states the effect of a wage assignment for support (defined in subdivision (g) of Section 706.011) on an earnings withholding order.

Subdivision (a) makes clear that nothing in this chapter affects the wage assignment for support, and subdivision (b) makes clear that the wage assignment has priority over any earnings withholding order, including a withholding order for support under Section 706.030. Under subdivision (b), the employer is

required to notify the levying officer who earlier served an earnings withholding order if that order is completely superseded by the wage assignment. It should be noted that "levying officer" includes the state agency where a withholding order for taxes is superseded. See Section 706.073.

Subdivisions (b) and (d) of Section 706.031 make clear that, where any wage assignment for support is in effect, the amount withheld from the debtor's earnings pursuant to any such wage assignment is deducted from the amount that otherwise would be withheld under Section 706.050 on an earnings withholding order to enforce an ordinary money judgment or that otherwise would be withheld where a portion of the debtor's earnings have been determined to be exempt under Section 706.051. Suppose, for example, that a wage assignment for support is in effect which requires that \$40 per week be withheld. Assume that Section 706.050 limits the amount that may be withheld to \$56. To determine the maximum amount that may be withheld pursuant to the earnings withholding order (absent any exemption allowed under Section 706.051), the \$40 withheld pursuant to the wage assignment for support is subtracted from the \$56, leaving \$16 as the maximum amount that may be withheld pursuant to the earnings withholding order. For a special rule applicable when the earnings withholding order is on a judgment for delinquent amounts payable for child or spousal support, see Sections 706.030 and 706.052. The rule stated in subdivision (d) of Section 706.031 is required to avoid conflict with the federal Consumer Credit Protection Act. That act requires that the amount withheld pursuant to any wage assignment for support be included in determining whether any amount may be withheld pursuant to an earnings withholding order on an ordinary judgment. See subdivision (c) of Section 302 of the act, 15 U.S.C. § 1672(c) (1970) ("garnishment" means "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt") and [1969-1973 Transfer Binder] Lab. L. Rep. (CCH) para. 30,813.

Under subdivision (e), the amount that could be withheld pursuant to a withholding order for taxes would be computed in the same manner as for an ordinary earnings withholding order pursuant to Section 706.050 unless the withholding order for taxes is obtained under Section 706.076.

#### CROSS-REFERENCES

##### Defined terms

- Earnings § 706.011
- Employee § 706.011
- Employer § 706.011

Levying officer §§ 680.260, 706.073, 706.101 (e)  
Wage assignment for support § 706.011  
Earnings withholding order for taxes §§ 706.070-706.084

### Article 3. Restrictions on Earnings Withholding

#### § 706.050. Exemption from levy; amount of earnings

**706.050.** Except as otherwise provided in this chapter, the amount of earnings of a judgment debtor exempt from the levy of an earnings withholding order shall be that amount that may not be withheld from the judgment debtor's earnings under federal law in Section 1673 (a) of Title 15 of the United States Code.

**Comment.** Section 706.050 continues the substance of former Section 723.050. The introductory clause is added to reflect the fact that a different amount may in some cases be withheld. This addition is not a substantive change. Section 706.050 provides the standard exemption applicable to all earnings withholding orders other than earnings withholding orders on writs issued for the collection of delinquent amounts payable on a judgment for child or spousal support (Sections 706.030 and 706.052) or certain withholding orders for taxes (Section 706.076). See also Sections 706.031 (wage assignments for support), 706.051 (exemption obtained by special hardship showing), 706.074 (b) (agency issued withholding order for taxes in lesser amount), 706.075 (c) (exemption obtained by special hardship showing to agency which issued withholding order for taxes), 706.105 (f) (modification or termination of earnings withholding order where exemption claims are unopposed).

Where a wage assignment for support (defined in subdivision (g) of Section 706.011) is in effect, the amount withheld from the debtor's earnings pursuant to such wage assignment is deducted from the amount that otherwise would be withheld pursuant to Section 706.050 on an earnings withholding order on an ordinary money judgment. See Section 706.031 and Comment thereto. The amount that may be withheld pursuant to an administratively issued earnings withholding order for taxes when any wage assignment for support is in effect is computed in the same manner. See Section 706.031 and the Comment thereto.

The amount of earnings that are paid to the employee whose earnings are garnished remains exempt to the extent that the exempt earnings can be traced in the form of cash or its equivalent or can be traced into deposit accounts. See Section 703.080.

## CROSS-REFERENCES

## Defined terms

Earnings § 706.011

Judgment debtor §§ 680.250, 706.011

**§ 706.051. Earnings necessary for support of judgment debtor or his family**

706.051. (a) For the purposes of this section, “family of the judgment debtor” includes the spouse or former spouse of the judgment debtor.

(b) Except as provided in subdivision (c), the portion of the judgment debtor’s earnings which the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor’s family supported in whole or in part by the judgment debtor is exempt from levy under this chapter.

(c) The exemption provided in subdivision (b) is not available if any of the following exceptions applies:

(1) The debt was incurred for rent of a dwelling occupied by the judgment debtor or the family of the judgment debtor.

(2) The debt was incurred for other common necessities of life furnished to the judgment debtor or the family of the judgment debtor; but this exception applies only if the judgment debtor owns an interest (excluding a leasehold interest that has an unexpired term of less than five years) in real or personal property that is occupied as the principal dwelling of the judgment debtor, the judgment debtor and the family of the judgment debtor, or the family of the judgment debtor. The judgment creditor has the burden of proof to establish that the debt was incurred for the common necessities of life; the judgment debtor has the burden of proof to establish that the judgment debtor does not own an interest in property that would make the exception provided by this paragraph applicable.

(3) The debt was incurred for personal services rendered by an employee or former employee of the judgment debtor.

(4) The order is a withholding order for support under Section 706.030.

(5) The order is one governed by Article 4 (commencing with Section 706.070) (state tax order).

**Comment.** Section 706.051 continues former Section 723.051 but revises the former provision to provide the renter (who is not eligible to claim a homestead exemption) with an unqualified hardship exemption.

Subdivision (a) of Section 706.051 contains a new definition that is needed to simplify the drafting of the remainder of the section.

Subdivision (b) continues without substantive change the provision of former Section 723.051 that stated the hardship exemption. Exceptions to the hardship exemption—cases where the exemption is not allowed even though the judgment debtor can show the necessity for exempting additional earnings—are set out in subdivision (c).

Paragraphs (1) and (2) of subdivision (c) supersede the exception for “common necessities of life” provided by former Section 723.051. Paragraphs (1) and (2) break down the former common necessities of life exception into two separate exceptions, one for rent for a dwelling and the other for the other common necessities of life. If the debt was incurred for rent as described in paragraph (1), the exemption provided by Section 706.051 is not available. If the debt was incurred for one of the other common necessities of life, the exemption is not available if the judgment debtor owns a dwelling that is used as the principal residence of the judgment debtor, spouse or former spouse, or the family of the judgment debtor. Thus, where the debt was incurred for one of the common necessities of life, the judgment debtor is entitled to the exemption only if the judgment debtor proves both that the earnings sought to be exempt are necessary for support and also that the judgment debtor does not own such a dwelling. However, if the debt is incurred for dwelling rent described in paragraph (1), the judgment debtor is not entitled to the exemption under any circumstances. A debt for dwelling rent is given special treatment under Section 706.051 in recognition that the landlord may be compelled involuntarily to continue to provide the housing after a failure to pay the rent. This is because if the tenant refuses to vacate the premises voluntarily, an unlawful detainer action will be required to recover possession of the property.

Paragraphs (3)-(5) of subdivision (c) continue the substance of portions of former Section 723.051. For a special provision applicable where the earnings withholding order is for the collection of delinquent support payments, see Section 706.052. See also Sections 706.075(c) (administrative hearing for possible

relief from hardship in connection with a withholding order for taxes), 706.076(e) (amount of court issued withholding order for taxes).

#### CROSS-REFERENCES

##### Defined terms

Earnings § 706.011

Employee § 706.011

Judgment creditor §§ 680.240, 706.011

Judgment debtor §§ 680.250, 706.011

Personal property § 680.290

Property § 680.310

Real property § 680.320

Forms in connection with claim §§ 706.120, 706.123, 706.124, 706.128

Procedure for claim generally §§ 706.105, 706.106

### § 706.052. Withholding order for support

**706.052.** (a) Except as provided in subdivision (b), one-half of the disposable earnings (as defined by Section 1672 of Title 15 of the United States Code) of the judgment debtor, plus any amount withheld from the judgment debtor's earnings pursuant to any wage assignment for support, is exempt from levy under this chapter where the earnings withholding order is a withholding order for support under Section 706.030.

(b) Except as provided in subdivision (c), upon motion of any interested party, the court shall make an equitable division of the judgment debtor's earnings that takes into account the needs of all the persons the judgment debtor is required to support and shall effectuate such division by an order determining the amount to be withheld from the judgment debtor's earnings pursuant to the withholding order for support.

(c) An order made under subdivision (b) may not authorize the withholding of an amount in excess of the amount that may be withheld for support under federal law under Section 1673 of Title 15 of the United State Code.

**Comment.** Section 706.052 continues former Section 723.052 except that subdivision (c) is added to reflect that the court's authority under subdivision (b) is limited by the maximum amounts that may be withheld under federal law. See 15 U.S.C. § 1673(b)(2) (Supp. 1979).

Subdivision (a) of Section 706.052 prescribes the exemption applicable to a wage garnishment for the collection of delinquent



child or spousal support payments except in cases where the court has made an equitable division pursuant to subdivision (b). The judgment debtor's earnings that are subject to the 50 percent exemption under subdivision (a) are "disposable earnings" as defined by the federal Consumer Credit Protection Act, 15 U.S.C. § 1672 (1976). Unlike federal law, however, subdivision (a) protects the same amount of earnings regardless of whether the judgment debtor is supporting a present and a former spouse or is more than 12 weeks delinquent. Federal law permits garnishment of 50 percent of the employee's earnings if the employee is supporting a spouse or dependent other than the person who caused the garnishment and 60 percent if the employee is not supporting such additional persons; these percentages are increased to 55 percent and 65 percent, respectively, if the support payments are more than 12 weeks delinquent. See 15 U.S.C. § 1673(b)(2) (Supp. 1979).

Subdivision (a) also makes clear that, in applying the 50 percent exemption, the amount withheld from the earnings of the judgment debtor pursuant to any wage assignment for support (defined in subdivision (g) of Section 706.011) is included in computing the 50 percent of the judgment debtor's earnings that may be withheld. For example, if 30 percent of the judgment debtor's earnings are withheld pursuant to a wage assignment for support, an additional 20 percent may be withheld pursuant to the earnings withholding order for the collection of delinquent amounts payable for child or spousal support.

Subdivision (b) makes the 50 percent standard provided by subdivision (a) subject to the power of the court to make an order that more or less of the judgment debtor's earnings be withheld where the earnings withholding order is issued to collect delinquent child or spousal support payments. Subdivision (c) makes clear that the court may not order the withholding of an amount in excess of that permitted by federal law. This maximum amount varies depending upon whether the judgment debtor is supporting more than one person or is more than 12 weeks delinquent. The authority of the court to make an equitable division of the judgment debtor's earnings between, for example, the debtor and a former spouse, or between a former spouse and a present family, is based on decisions under a former statute. See, *e.g.*, *Rankins v. Rankins*, 52 Cal. App.2d 231, 126 P.2d 125 (1942).

Under this section, an employer who receives an earnings withholding order for support will know that 50 percent of disposable earnings is to be withheld unless the employer is served with a court order requiring a greater or lesser amount to be withheld.

For rules relating to the priority to be given a withholding order for support, see Section 706.030.

#### CROSS-REFERENCES

##### Defined terms

Earnings § 706.011

Judgment debtor §§ 680.250, 706.011

Wage assignment for support § 706.011

### Article 4. Earnings Withholding Order for Taxes

#### § 706.070. State and state tax liability defined

706.070. As used in this article:

(a) “State” means the State of California and includes any officer, department, board, or agency thereof.

(b) “State tax liability” means an amount for which the state has a state tax lien as defined in Section 7162 of the Government Code excluding a state tax lien created pursuant to the Fish and Game Code.

**Comment.** Section 706.070 provides definitions for terms used in this article.

Subdivision (a) continues subdivision (a) of former Section 723.070. “State” means the state or any agency thereof. Where the term “state” is used in this article, it refers to the particular state agency that administers the particular tax law under which recovery of the delinquent tax is sought. See Section 706.011 (d).

Subdivision (b) supersedes subdivision (b) of former Section 723.070 and substitutes a general reference to the amount for which the state has a state tax lien for the listing of the sections of various tax laws in former Section 723.070 (b). Subdivision (b) continues former law by permitting an earnings withholding order for taxes in the case of sales and use taxes (Rev. & Tax. Code § 6757), vehicle fuel license taxes (Rev. & Tax. Code § 7872), use fuel taxes (Rev. & Tax. Code § 8996), gift taxes (Rev. & Tax. Code § 16063), personal income taxes (Rev. & Tax. Code § 18881), bank and corporation taxes (Rev. & Tax. Code § 26161), cigarette taxes (Rev. & Tax. Code § 30322), alcoholic beverage taxes (Rev. & Tax. Code § 32363), and unemployment compensation contributions (Unemp. Ins. Code § 1703).

Subdivision (b) adds new authority for an earnings withholding order for taxes in the case of the timber yield tax (Rev. & Tax. Code § 38532), oil and gas conservation charges (Pub. Res. Code § 3423) and geothermal resources charges (Pub. Res. Code § 3772). The former provision permitting an earnings withholding order for taxes in the case of private car taxes under Section 11451 of the Revenue and Taxation Code is not continued.

### § 706.071. Collection of state tax liability; limitations

**706.071.** This chapter does not limit the state's right to collect a state tax liability except that (a) no levy upon earnings of an employee held by an employer is effective unless such levy is made in accordance with the provisions of this chapter and (b) other methods of collection may not be used to require an employer to withhold earnings of an employee in payment of a state tax liability.

**Comment.** Section 706.071 continues the substance of former Section 723.071. The substitution of "other methods of collection" for "the methods of collection referred to in subdivision (b) of Section 723.070" is not a substantive change; this change merely conforms to the change made by Section 706.070 in the language found in former Section 723.070.

Section 706.071 makes clear that the levy procedure for withholding *earnings* of an employee for the collection of state tax liability provided in the Wage Garnishment Law is exclusive. The authorization, for example, to direct orders to third persons who owe the taxpayer money found in Section 18817 (personal income tax) and Section 26132 (bank and corporation taxes) of the Revenue and Taxation Code is limited by Section 706.071. This article deals, however, only with levy on earnings to collect certain state taxes. The collection of federal taxes is accomplished pursuant to federal law and cannot be limited by state law. See I.R.C. § 6334. As to other taxes not within the scope of this article, the tax obligation must be reduced to judgment, and the taxing authority may then obtain an earnings withholding order like any other creditor; such order is treated the same as any other earnings withholding order, and this article does not apply.

#### CROSS-REFERENCES

##### Defined terms

- Earnings § 706.011
- Employee § 706.011
- Employer § 706.011

State § 706.070

State tax liability § 706.070

Treatment of certain documents as earnings withholding order § 706.084

**§ 706.072. Withholding order for taxes; issuance; conditions**

706.072. (a) A “withholding order for taxes” is an earnings withholding order issued pursuant to this article to collect a state tax liability and shall be denoted as a withholding order for taxes on its face.

(b) A withholding order for taxes may only be issued under one of the following circumstances:

(1) The existence of the state tax liability appears on the face of the taxpayer’s return, including a case where such tax liability is disclosed from the taxpayer’s return after errors in mathematical computations in the return have been corrected.

(2) The state tax liability has been assessed or determined as provided by statute and the taxpayer had notice of the proposed assessment or determination and had available an opportunity to have the proposed assessment or determination reviewed by appropriate administrative procedures. If the taxpayer makes a timely request for review of the assessment or determination, the state shall not issue a withholding order for taxes until the administrative review procedure is completed. If the taxpayer is given notice of the proposed assessment or determination but does not make a timely request for review, the state may issue a withholding order for taxes.

(c) In any case where a state tax liability has been assessed or determined prior to January 1, 1983, and the state determines that the requirement of subdivision (b) may not have been satisfied, the state may send a “Notice of Proposed Issuance of Withholding Order for Taxes” to the taxpayer at the taxpayer’s last known address by first-class mail, postage prepaid. The notice shall advise the taxpayer that the taxpayer may have the assessment or determination reviewed by appropriate administrative procedures and state how such a review may be obtained. If the taxpayer is sent such a notice and requests such a review within 30 days from the date the notice was mailed to the taxpayer, the state shall provide

appropriate administrative procedures for review of the assessment or determination and shall not issue the withholding order for taxes until the administrative review procedure is completed. If the taxpayer is sent such a notice and does not request such a review within 30 days from the date the notice was mailed to the taxpayer, the state may issue the withholding order for taxes.

(d) A withholding order for taxes may be issued whether or not the state tax liability has been reduced to judgment.

**Comment.** Section 706.072 continues former Section 723.072. The date in subdivision (c) has been changed from “January 1, 1980” to “January 1, 1983” to give the state agency an opportunity to provide for review. This will be useful in cases covered by this chapter but not under former law. See the Comment to Section 706.070.

Section 706.072 provides that no withholding order for taxes may be issued unless the state tax liability either appears on the face of the taxpayer’s tax return or has been determined in an administrative proceeding in which the taxpayer had notice and an opportunity for administrative review. See *Greene v. Franchise Tax Bd.*, 27 Cal. App.3d 38, 103 Cal. Rptr. 483 (1972). However, no review of the taxpayer’s tax liability is permitted in court proceedings under this chapter. See Section 706.082. Under subdivision (b) (2), the time for making a request for review of an assessment or determination depends on the appropriate procedures applicable to a particular agency.

Subdivision (d) recognizes that few state tax liabilities are reduced to judgment.

#### CROSS-REFERENCES

Defined terms

State § 706.070

State tax liability § 706.070

Jeopardy withholding order § 706.078

Temporary earnings holding order § 706.076

### § 706.073. Application of chapter to withholding order for taxes

**706.073.** Except as otherwise provided in this article, the provisions of this chapter govern the procedures and proceedings concerning a withholding order for taxes. For the purposes of this article, a reference in this chapter

to a “levying officer” shall be deemed to mean the specific state agency seeking to collect a state tax liability under this article.

**Comment.** Section 706.073 continues former Section 723.073 and makes clear that the provisions of this chapter governing earnings withholding orders are applicable to withholding orders for taxes except to the extent that this article contains special provisions applicable to such orders.

#### CROSS-REFERENCES

Defined terms

State § 706.070

State tax liability § 706.070

### § 706.074. Issuance by state to collect state tax liability; amount to be withheld

**706.074.** (a) The state may itself issue a withholding order for taxes under this section to collect a state tax liability. The order shall specify the total amount required to be withheld pursuant to the order (unpaid tax liability including any penalties, accrued interest, and costs).

(b) Unless a lesser amount is specified in the order, the amount to be withheld by the employer each pay period pursuant to an order issued under this section is the amount required to be withheld under Section 1673(a) of Title 15 of the United States Code, and is not subject to the exception provided in Section 1673(b) of Title 15 of the United States Code.

**Comment.** Section 706.074 continues the substance of former Section 723.074. The reference to the relevant provision of federal law has been substituted for the reference to former Section 723.050. This makes clear that an order issued under this section is limited to the amount that can be withheld on a garnishment by an ordinary creditor. A court-issued order can require the withholding of a greater amount. See Section 706.076.

Section 706.074 specifies the procedure to be followed when the state taxing agency itself issues the withholding order for taxes. In such case, no application to a court for the order is required. Under an order issued pursuant to Section 706.074, the employer may be required to withhold the same amount as if the earnings withholding order were issued at the behest of a judgment creditor. This amount must be withheld by the employer unless the order itself specifies a lesser amount or the

amount to be withheld is reduced pursuant to subdivision (c) of Section 706.075. As to the priority of a withholding order for support, see Sections 706.030 and 706.077 and Comments thereto. As to the effect of a wage assignment for support (defined in subdivision (g) of Section 706.011), see subdivision (e) of Section 706.031 and the Comment thereto.

#### CROSS-REFERENCES

##### Defined terms

- Costs § 680.150
- Employer § 706.011
- State § 706.070
- State tax liability § 706.070
- Form of order § 706.081

### § 706.075. Service on employer of order and notice; delivery to employee; administrative hearing; liability of employer

706.075. (a) This section applies to any withholding order for taxes issued under this article.

(b) Together with the withholding order for taxes, the state shall serve upon the employer an additional copy of the order and a notice informing the taxpayer of the effect of the order and of his right to hearings and remedies provided in this chapter. Within 10 days from the date of service, the employer shall deliver to the taxpayer a copy of the order and the notice, except that immediate delivery shall be made where a jeopardy withholding order for taxes has been served. If the taxpayer is no longer employed by the employer and the employer does not owe the taxpayer any earnings, the employer is not required to make such delivery.

(c) The state shall provide for an administrative hearing to reconsider or modify the amount to be withheld pursuant to the withholding order for taxes, and the taxpayer may request such a hearing at any time after service of the order. If the taxpayer requests a hearing, the hearing shall be provided, and the matter shall be determined, within 15 days after the request is received by the state. The determination of the amount to be withheld is subject to the standard provided in subdivision (b) of Section 706.051.

(d) The employer is not subject to any civil liability for failure to comply with subdivision (b). Nothing in this

subdivision limits the power of a court to hold the employer in contempt of court for failure to comply with subdivision (b).

**Comment.** Section 706.075 continues former Section 723.075. Section 706.075 requires service of a copy of the order and a notice informing the employee of the effect of the order and the employee's right to hearings and other remedies. See also Section 706.080 (manner of service). These papers are served on the employer who is required to deliver them to the employee.

The state is required by subdivision (c) to provide for an administrative hearing for the determination of the employee's application for modification of the amount to be withheld under the withholding order for taxes. The state is to apply the standard of Section 706.051 (the "portion of the judgment debtor's earnings which the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor is exempt") to the determination of the application for modification, and such determination is subject to review by way of administrative mandamus. See Section 1094.5; *County of Tuolumne v. State Bd. of Equalization*, 206 Cal. App.2d 352, 373-74, 24 Cal. Rptr. 113, 126-27 (1962).

Subdivision (d) is the same in substance as the last two sentences of subdivision (a) of Section 706.104. See the Comment to that section for a discussion of the comparable provision.

#### CROSS-REFERENCES

Defined terms

Employer § 706.011

State § 706.070

Forms § 706.081

Jeopardy withholding order § 706.078

Manner of service § 706.080

### § 706.076. Order of court for amount in excess of order issued by state; temporary earnings holding order

706.076. (a) A withholding order for taxes may be issued pursuant to this section requiring the employer of the taxpayer to withhold an amount in excess of the amount that may be required to be withheld pursuant to an order issued under Section 706.074.

(b) The state may, at any time, apply to a court of record in the county where the taxpayer was last known to reside for the issuance of a withholding order for taxes under this section to collect a state tax liability.



(c) The application for the order shall include a statement under oath that the state has served upon the taxpayer both of the following:

(1) A copy of the application.

(2) A notice informing the taxpayer of the purpose of the application and the right of the taxpayer to appear at the court hearing on the application.

(d) Upon the filing of the application, the court shall immediately set the matter for hearing and the court clerk shall send a notice of the time and place of the hearing by first-class mail, postage prepaid, to the state and the taxpayer. The notice shall be deposited in the mail at least 10 days before the day set for the hearing.

(e) After hearing, the court shall issue a withholding order for taxes which shall require the taxpayer's employer to withhold and pay over all earnings of the taxpayer other than that amount which the taxpayer proves is exempt under subdivision (b) of Section 706.051, but in no event shall the amount to be withheld be less than that permitted to be withheld under Section 706.050.

(f) The state may issue a temporary earnings holding order, which shall be denoted as such on its face, in any case where the state intends to apply for a withholding order for taxes under this section and has determined that the collection of the state tax liability will be jeopardized in whole or in part if the temporary earnings holding order is not issued. The temporary earnings holding order shall be directed to the taxpayer's employer and shall require the employer to retain in the employer's possession or under the employer's control all or such portion of the earnings of the taxpayer then or thereafter due as is specified in the order. Together with the temporary earnings holding order, the state shall serve upon the employer an additional copy of the order and a notice informing the taxpayer of the effect of the order and of the right to the remedies provided in this chapter. Upon receipt of the order, the employer shall deliver to the taxpayer a copy of the order and notice. If the taxpayer is no longer employed by the employer and the employer does not owe the taxpayer any earnings,

the employer is not required to make such delivery. The temporary earnings holding order expires 15 days from the date it is served on the employer unless it is extended by the court on ex parte application for good cause shown. If a temporary earnings holding order is served on an employer, the state may not thereafter, for a period of six months, serve on the same employer another temporary earnings holding order for the same employee unless the court for good cause shown otherwise orders. Sections 706.153 and 706.154 apply to temporary earnings holding orders issued under this section.

**Comment.** Section 706.076 continues former Section 723.076. Section 706.076 provides a procedure whereby the taxing agency can obtain an order, after court hearing, that requires the employer to withhold all of the employee's earnings in excess of the amount necessary for the support of the taxpayer or his family. An order may be obtained under Section 706.076 that requires the withholding of more than the amount that the state taxing agency could require the employer to withhold pursuant to an order issued by the agency itself under Section 706.074. This grant of authority is not intended as a directive that such authority be used generally. This extreme remedy could be harsh in its application and should be used sparingly.

Provision is made in subdivision (f) of Section 706.076 for a temporary order directing the employer to hold any earnings of the employee then or thereafter due. Such orders should be used only in rare and unusual cases. The temporary order prevents the employer from paying to the employee all or a specified portion of the employee's earnings for a limited period in order to permit the court to act on the state's application for an earnings withholding order for taxes.

#### CROSS-REFERENCES

Declaration under penalty of perjury in lieu of oath § 2015.5

Defined terms

Earnings § 706.011

Employee § 706.011

Employer § 706.011

State § 706.070

State tax liability § 706.070

Forms § 706.081

Jeopardy withholding order § 706.078

Manner of service § 706.080

**§ 706.077. Priority**

706.077. (a) Subject to subdivision (b), an employer upon whom a withholding order for taxes is served shall withhold and pay over earnings of the employee pursuant to such order and shall cease to withhold earnings pursuant to any prior earnings withholding order except that a withholding order for support shall be given priority as provided in Section 706.030. When an employer is required to cease withholding earnings pursuant to an earlier earnings withholding order, the employer shall notify the levying officer who served the earlier earnings withholding order that a supervening withholding order for taxes is in effect.

(b) An employer shall not withhold earnings of an employee pursuant to a withholding order for taxes if a prior withholding order for taxes is in effect, and, in such case, the subsequent withholding order for taxes is ineffective.

**Comment.** Section 706.077 continues former Section 723.077 and deals with the priority a tax withholding order is to be given with respect to other earnings withholding orders. A withholding order for taxes takes priority over any prior earnings withholding order except one for support or another withholding order for taxes. As indicated in the Comment to Section 706.030, a withholding order for support always takes priority over any other earnings withholding order. Thus, where a withholding order for support is in effect and a subsequent tax order is received, the employer will continue to withhold pursuant to the withholding order for support, and the amount withheld pursuant to the tax order will be reduced by the amount withheld pursuant to the withholding order for support. Similarly, where a tax order is in effect and a withholding order for support is served, the withholding order for support again takes priority. See the Comments to Sections 706.030 and 706.050. However, where the prior earnings withholding order is for the collection of a debt other than for taxes or delinquent support, the tax order displaces the prior earnings withholding order, and the employer must withhold only pursuant to the tax order until the tax debt is completely paid. If the earnings withholding order for taxes is satisfied during the withholding period of the prior earnings withholding order (Section 706.022), the employer must then again withhold pursuant to the prior earnings withholding order. Where there is a prior tax order in effect, the

second tax order is ineffective; the employer may not withhold pursuant to the second order and must promptly notify the agency which issued or obtained the second order of the reason for his action. See Section 706.104(b).

As to the effect of a wage assignment for support (defined in subdivision (g) of Section 706.011), see Section 706.031(e). As indicated in the Comment to Section 706.031, a wage assignment for support takes priority over any earnings withholding order. Thus, where a wage assignment for support is in effect and a subsequent tax order is received, the employer will continue to withhold pursuant to the wage assignment, and the amount withheld pursuant to the tax order will be reduced by the amount withheld pursuant to the wage assignment for support. Similarly, where a tax order is in effect and a wage assignment for support is served, the wage assignment takes priority. See the Comments to Sections 706.031 and 706.050.

#### CROSS-REFERENCES

##### Defined terms

Earnings § 706.011

Employee § 706.011

Employer § 706.011

Levying officer §§ 680.260, 706.073

Manner of service § 706.080

### **§ 706.078. Pay periods subject to order; jeopardy withholding order for taxes; duration of withholding**

706.078. (a) Except as provided in subdivision (b), the employer shall not withhold pursuant to a withholding order for taxes from earnings of the employee payable for any pay period of such employee that ends prior to the 10th day after service of the order.

(b) A “jeopardy withholding order for taxes,” which shall be denoted as such on its face, is a withholding order for taxes that requires that the employer withhold pursuant to the order from earnings due to the employee at the time of service of the order on the employer and from earnings thereafter due. A jeopardy withholding order for taxes may be issued only where the state has determined that the collection of a state tax liability will be jeopardized in whole or in part by delaying the time when withholding from earning commences.

(c) An employer shall continue to withhold pursuant to a withholding order for taxes until the amount specified in the order has been paid in full or the order

is withdrawn, except that the order automatically terminates one year after the employment of the employee by the employer terminates. The state shall promptly serve on the employer a notice terminating the withholding order for taxes if the state tax liability for which the withholding order for taxes was issued is satisfied before the employer has withheld the full amount specified in the order, and the employer shall discontinue withholding in compliance with such notice.

**Comment.** Section 706.078 continues former Section 723.078. Subdivision (a) requires the employer to withhold commencing at the same time as with any other order. See Section 706.022. Subdivision (b) provides for a jeopardy withholding order that requires immediate withholding. Such an order should be used only in rare and unusual cases. Subdivision (c) requires the employer to withhold earnings pursuant to a withholding order for taxes until the amount specified in the order has been paid in full and provides for a notice if the tax liability is satisfied before the full amount specified in the order has been withheld. The notice required by Section 706.078 is in lieu of the notice provided by Section 706.027. If not earlier terminated by the court, the order automatically terminates one year after the employment of the employee by the employer terminates. See the discussion of a comparable provision in the Comment to Section 706.030.

#### CROSS-REFERENCES

##### Defined terms

Earnings § 706.011

Employee § 706.011

Employer § 706.011

State § 706.070

State tax liability § 706.070

Forms § 706.081

Manner of service § 706.080

Temporary earnings holding order § 706.076

#### § 706.080. Service of order or other notice or document

706.080. Service of a withholding order for taxes or of any other notice or document required under this chapter in connection with a withholding order for taxes may be made by the state by first-class mail, postage prepaid, or by any authorized state employee. Service of a withholding order for taxes is complete when it is received by the employer or a person described in

paragraph (1) or (2) of subdivision (a) of Section 706.101. Service of, or the providing of, any other notice or document required to be served or provided under this chapter in connection with a withholding order for taxes is complete when the notice or document is deposited in the mail addressed to the last known address of the person on whom it is served or to whom it is to be provided.

**Comment.** Section 706.080 continues the substance of former Section 723.080 and provides special provisions for service of notices, documents, and orders under this article. This special service provision is in lieu of the one prescribed by Section 706.101.

#### CROSS-REFERENCES

Defined terms

Employer § 706.011

Person § 706.011

State § 706.070

### § 706.081. Forms; prescription by state

**706.081.** Except for the forms referred to in Section 706.076, the state shall prescribe the form of any order, notice, or other document required by this chapter in connection with a withholding order for taxes notwithstanding Sections 706.100 and 706.120, and any form so prescribed is deemed to comply with this chapter.

**Comment.** Section 706.081 continues former Section 723.081. The section requires that forms used in connection with this article be prescribed by the state taxing agency administering the particular tax law except that the Judicial Council prescribes the forms used in connection with court issued orders under Section 706.076. See Section 706.120.

#### CROSS-REFERENCES

Defined terms

State § 706.070

### § 706.082. Review of tax liability; prohibition

**706.082.** No review of the taxpayer's tax liability shall be permitted in any court proceedings under this chapter.

**Comment.** Section 706.082 continues former Section 723.082 and makes clear that the court, in a proceeding under this chapter, may not review the taxpayer's tax liability.

**§ 706.084. Warrant, notice of levy or notice or order to withhold served on employer deemed withholding order for taxes; requirements**

**706.084.** Where a warrant, notice of levy, or notice or order to withhold is served on the employer to enforce a state tax liability of a person who is an employee of that employer, it shall be deemed to be a withholding order for taxes as to any earnings that are subject to the provisions of this chapter if both of the following requirements are satisfied:

(a) The form provides notice on its face that it is to be treated as a withholding order for taxes as to any earnings that are subject to the provisions of this chapter.

(b) The form provides all the information provided in a withholding order for taxes.

**Comment.** Section 706.084 continues the substance of former Section 723.084. The section has been revised to reflect the revised definition of "state tax liability" in Section 706.070.

Section 706.084 deals with the situation where it is not clear whether an employer-employee relationship exists. The warrant, notice of levy, or notice or order to withhold may be issued on the assumption the taxpayer is an independent contractor. However, so that the taxpayer cannot avoid the withholding by claiming that he is an employee and that his earnings may be withheld only pursuant to an earnings withholding order, Section 706.084 provides that the warrant, notice, or order may require that it be treated as an earnings withholding order if the taxpayer is an employee. The contents of the forms (except for a court issued withholding order for taxes) are prescribed by the state. See Section 706.081. The form for the court issued withholding order for taxes is prescribed by the Judicial Council. See Section 706.120.

CROSS-REFERENCES

Defined terms

Earnings § 706.011

Employee § 706.011

Employer § 706.011

State tax liability § 706.070

Forms § 706.081

## Article 5. Procedure for Earnings Withholding Orders and Exemption Claims

### § 706.100. Rules

706.100. Notwithstanding any other provision of law, the Judicial Council may provide by rule for the practice and procedure in proceedings under this chapter except for the state's administrative hearings provided by Article 4 (commencing with Section 706.070).

**Comment.** Section 706.100 continues former Section 723.100. Article 5 outlines generally the procedure for issuance and review of an earnings withholding order; however, Section 706.100 authorizes the Judicial Council to provide by rule for the practice and procedure in proceedings under this chapter. As to the broad authority of the Judicial Council under a comparable provision, see *In re Marriage of Lusk*, 86 Cal. App.3d 228, 150 Cal. Rptr. 63 (1978) (Family Law Act rules). The state tax agency prescribes the rules of procedure for administrative hearings under Article 4 (withholding orders for taxes). The Judicial Council also prescribes the forms to be used under this chapter. See Section 706.120. *But see* Section 706.081 (forms used in connection with withholding orders for taxes—other than the form of a court issued order—are prescribed by state).

### § 706.101. Service; earnings withholding order; employer; employee; delivery; notice or document

706.101. (a) An earnings withholding order shall be served by the levying officer upon the employer by delivery of the order to any of the following:

(1) The managing agent or person in charge, at the time of service, of the branch or office where the employee works or the office from which the employee is paid.

(2) Any person to whom a copy of the summons and of the complaint may be delivered to make service on the employer under Article 4 (commencing with Section 416.10) of Chapter 4 of Title 5.

(b) Service of an earnings withholding order shall be made by personal delivery as provided in Section 415.10 or 415.20 or by delivery by registered or certified mail, postage prepaid, with return receipt requested. When service is made by mail, service is complete at the time



the return receipt is executed by or on behalf of the recipient. If the levying officer attempts service by mail under this subdivision and does not receive a return receipt within 15 days from the date of deposit in the mail of the earnings withholding order, the levying officer shall make service as provided in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5.

(c) Except as provided in subdivision (b), service of any notice or document under this chapter may be made by first-class mail, postage prepaid. If service is made on the employer after the employer's return has been received by the levying officer, the service shall be made by first-class mail, postage prepaid, on the person designated in the employer's return to receive notices and at the address indicated in the employer's return, whether or not such address is within the county. Nothing in this subdivision precludes service by personal delivery (1) on the employer before the employer's return has been received by the levying officer or (2) on the person designated in the employer's return after its receipt.

(d) Notwithstanding subdivision (b), if the judgment creditor so requests, the levying officer shall make service of the earnings withholding order by personal delivery as provided in Section 415.10 or 415.20. If the judgment creditor requests that service be made under this subdivision, the fee provided in Section 26750 of the Government Code shall be increased by one dollar and fifty cents (\$1.50).

(e) An earnings withholding order also may be served by a registered process server. When an earnings withholding order is served by a registered process server pursuant to this subdivision, the levying officer shall perform all other duties required by the provisions of this chapter, except for the actual service of the order, as if the levying officer had served the order. When an earnings withholding order is served by a registered process server, the court, in allowing costs for service pursuant to Section 1032b, shall not allow a sum in excess of one dollar and fifty cents (\$1.50).

**Comment.** Section 706.101 continues the substance of former Section 723.101 and specifies the manner of service under this chapter. Although personal delivery is authorized, it is

anticipated that the convenience and economy of service by mail will result in the general use of this method. Subdivision (b) requires personal delivery by the levying officer where mail service is apparently ineffective because a return receipt has not been received by the levying officer within 15 days after the order is mailed. Where service is made by mail, the employer must indicate on his employer's return the date service was completed. See Section 706.126(b)(1). As to service of withholding orders for taxes, see Section 706.080. Subdivision (c) makes clear that, after the levying officer has received the employer's return, service of any notice or document under this chapter is to be made on the person, and at the address, indicated in the employer's return. See Sections 706.101(c) and 706.126(b)(6). See also, for example, the Comment to Section 706.027. As to the service of an earnings withholding order for taxes, see Section 706.080.

The portion of former Section 723.101 that authorized service by a person authorized by the levying officer is continued and generalized in Section 684.140. That section continues to apply to wage garnishments.

#### CROSS-REFERENCES

##### Defined terms

Employee § 706.011

Employer § 706.011

Judgment creditor §§ 680.240, 706.011

Levying officer §§ 680.260, 706.101(e)

Person § 706.011

Registered process server § 680.330

### **§ 706.102. Application for order by judgment creditor prior to return of writ of execution; issuance**

**706.102.** (a) If a writ of execution has been issued to the county where the judgment debtor's employer is to be served and the time specified in subdivision (b) of Section 699.530 for levy on property under the writ has not expired, a judgment creditor may apply for the issuance of an earnings withholding order by filing an application with a levying officer in such county who shall promptly issue an earnings withholding order.

(b) This section does not apply where the earnings withholding order is a withholding order for taxes.

**Comment.** Section 706.102 continues former Section 723.102. Subdivision (a) requires a judgment creditor to apply for an earnings withholding order to the levying officer in the county

where the order is to be served. The form prescribed by the Judicial Council must be used for the application. See Section 706.120. See also Section 706.121 (contents of application). As a prerequisite to applying for the earnings withholding order, the judgment creditor must have obtained the issuance of a writ of execution to the county where the order is to be served. See also Section 706.101 (place where service may be made). An earnings withholding order shall be promptly issued on the ex parte application of a judgment creditor. The debtor may claim an exemption as provided in Section 706.105, have such order modified or terminated, and even recover from the creditor amounts withheld and paid over pursuant to such order; but this does not affect the initial issuance of the order. The allowance of an exemption claim which results in the termination of withholding will also preclude the judgment creditor from applying for a new order for a specified time. See Section 706.105 (h). The earnings withholding order will be effective only if served within 90 days of the issuance of the writ. See Sections 699.530 (b), 706.103 (c).

For special provisions regarding the issuance of a withholding order for taxes, see Article 4 (commencing with Section 706.070).

#### CROSS-REFERENCES

Contents of application § 706.121

Contents of earnings withholding order § 706.125

Defined terms

Employer § 706.011

Levying officer §§ 680.260, 706.101 (e)

Judicial Council forms must be used § 706.120

### § 706.103. Service on employer; documents and instructions; limitations

706.103. (a) The levying officer shall serve upon the designated employer all of the following:

(1) The original and one copy of the earnings withholding order.

(2) The form for the employer's return.

(3) The notice to employee of earnings withholding order.

(b) At the time the levying officer makes service pursuant to subdivision (a), the levying officer shall provide the employer with a copy of the employer's instructions referred to in Section 706.127. The Judicial Council may adopt rules prescribing the circumstances when compliance with this subdivision is not required.

(c) No earnings withholding order shall be served upon the employer after the time specified in subdivision (b) of Section 699.530.

**Comment.** Section 706.103 continues former Section 723.103 and prescribes what must be served upon the employer by the levying officer and when such service must be accomplished to be effective. The earnings withholding order must be served within 90 days of the issuance of the writ. See Section 699.530 (b).

Section 706.103 requires that the employer be supplied with a copy of the earnings withholding order and with a notice advising the employee of the effect of the earnings withholding order and his rights with respect to the order. The employer is required to deliver these papers to the employee within 10 days of service. See Section 706.104. The person to be served and the manner of service of the earnings withholding order and related documents is specified in Section 706.101.

#### CROSS-REFERENCES

##### Defined terms

Employee § 706.011

Employer § 706.011

Levying officer §§ 680.260, 706.101 (e)

Earnings withholding order, contents § 706.125

Employer's instructions, contents § 706.127

Employer's return, contents § 706.126

Forms § 706.120

Manner of service § 706.101

Notice to employee, contents § 706.122

Service on behalf of same creditor, limitation § 706.107

#### § 706.104. Duties of employer on service of order

**706.104.** Any employer who is served with an earnings withholding order shall:

(a) Deliver to the judgment debtor a copy of the earnings withholding order and the notice to employee of earnings withholding within 10 days from the date of service. If the judgment debtor is no longer employed by the employer and the employer does not owe the employee any earnings, the employer is not required to make such delivery. The employer is not subject to any civil liability for failure to comply with this subdivision. Nothing in this subdivision limits the power of a court to hold the employer in contempt of court for failure to comply with this subdivision.

(b) Complete the employer's return on the form provided by the levying officer and mail it by first-class

mail, postage prepaid, to the levying officer within 15 days from the date of service. If the earnings withholding order is ineffective, the employer shall state in the employer's return that the order will not be complied with for this reason and shall return the order to the levying officer with the employer's return.

**Comment.** Section 706.104 continues former Section 723.104 and imposes certain duties on an employer who is served with an earnings withholding order. The section applies to all earnings withholding orders, including those for support and taxes. See Sections 706.030(a) (support), 706.072(a) (taxes).

Subdivision (a) requires the employer to deliver to the employee a copy of the order and a notice advising the employee of his rights. See also Section 706.075 (withholding order for taxes). There is a special provision, however, concerning the time for such delivery when the order is a jeopardy withholding order for taxes. See Sections 706.073, 706.075(b). See also Section 706.076(f) (notice of temporary earnings holding order).

The last two sentences of subdivision (a) make clear that an employer is not liable for civil damages for failure to give the employee the notice concerning the employee's rights. Section 706.104 does not preclude the Labor Commissioner from taking action under the Labor Code if the employer consistently fails to give employees the notice required under subdivision (a). Moreover, although the employer is not civilly liable, the employer may be subject to punishment for contempt. This would be appropriate where the employer fails to give the employee notice out of malice or willful neglect but would not be appropriate where the employer merely inadvertently fails to give the notice.

Subdivision (b) requires the employer to fill out and mail an employer's return to the levying officer who served the earnings withholding order. In the case of a withholding order for taxes, the return is made to the state agency seeking to collect the tax. See Section 706.073. Under subdivision (b), if the earnings withholding order is ineffective (see Comment to Section 706.023), the employer must state in the return that the order will not be complied with for this reason and also return the order. The form of the return is prescribed by the Judicial Council. See Section 706.120. See also Sections 706.126 (contents of return), 706.081 (form of return for withholding order for taxes as prescribed by state).

## CROSS-REFERENCES

## Defined terms

Employee § 706.011

Employer § 706.011

Judgment debtor §§ 680.250, 706.011

Levying officer §§ 680.260, 706.101(e)

**§ 706.105. Exemption; claim by judgment debtor**

**706.105.** (a) A judgment debtor may claim an exemption under Section 706.051 under either of the following circumstances:

(1) No prior hearing has been held with respect to the earnings withholding order.

(2) There has been a material change in circumstances since the time of the last prior hearing on the earnings withholding order.

(b) A claim of exemption shall be made by filing with the levying officer an original and one copy of (1) the judgment debtor's claim of exemption and (2) the judgment debtor's financial statement.

(c) Upon filing of the claim of exemption, the levying officer shall promptly send to the judgment creditor, at the address stated in the application for the earnings withholding order, by first-class mail, postage prepaid, all of the following:

(1) A copy of the claim of exemption.

(2) A copy of the financial statement.

(3) A notice of claim of exemption. The notice shall state that the claim of exemption has been filed and that the earnings withholding order will be terminated, or modified to reflect the amount of earnings claimed to be exempt in the claim of exemption, unless a notice of opposition to the claim of exemption is filed with the levying officer by the judgment creditor within 10 days after the date of the mailing of the notice of claim of exemption.

(d) A judgment creditor who desires to contest a claim of exemption shall, within 10 days after the date of the mailing of the notice of claim of exemption, file with the levying officer a notice of opposition to the claim of exemption.

(e) If a notice of opposition to the claim of exemption is filed with the levying officer within the 10-day period,

the judgment creditor is entitled to a hearing on the claim of exemption. If the judgment creditor desires a hearing on the claim of exemption, the judgment creditor shall file a notice of motion for an order determining the claim of exemption with the court within 10 days after the date the levying officer mailed the notice of claim of exemption. If the notice of motion is so filed, the hearing on the motion shall be held not later than 20 days from the date the notice of motion was filed unless continued by the court for good cause. Not less than 10 days prior to the hearing, the judgment creditor shall give written notice of the hearing to the levying officer and shall serve a notice of the hearing and a copy of the notice of opposition to the claim of exemption by first-class mail on the judgment debtor and, if the claim of exemption so requested, on the attorney for the judgment debtor. Service is deemed made when the notice of the hearing and a copy of the notice of opposition to the claim of exemption are deposited in the mail, postage prepaid, addressed to the judgment debtor at the address stated in the claim of exemption and, if service on the attorney for the judgment debtor was requested in the claim of exemption, to the attorney at the address stated in the claim of exemption. The judgment creditor shall file proof of such service with the court. After receiving the notice of the hearing and before the date set for the hearing, the levying officer shall file the claim of exemption and the notice of opposition to the claim of exemption with the court.

(f) If the levying officer does not receive a notice of opposition to the claim of exemption within the 10-day period after the date of mailing of the notice of claim of exemption and a notice of the hearing not later than 10 days after the filing of the notice of opposition to the claim of exemption, the levying officer shall serve on the employer one of the following:

(1) A notice that the earnings withholding order has been terminated if all of the judgment debtor's earnings were claimed to be exempt.

(2) A modified earnings withholding order which reflects the amount of earnings claimed to be exempt in

the claim of exemption if only a portion of the judgment debtor's earnings was claimed to be exempt.

(g) If, after hearing, the court orders that the earnings withholding order be modified or terminated, the clerk shall promptly transmit a certified copy of the order to the levying officer who shall promptly serve on the employer of the judgment debtor (1) a copy of the modified earnings withholding order or (2) a notice that the earnings withholding order has been terminated. The court may order that the earnings withholding order be terminated as of a date which precedes the date of hearing. If the court determines that any amount withheld pursuant to the earnings withholding order shall be paid to the judgment debtor, the court shall make an order directing the person who holds such amount to pay it promptly to the judgment debtor.

(h) If the earnings withholding order is terminated by the court, unless the court otherwise orders or unless there is a material change of circumstances since the time of the last prior hearing on the earnings withholding order, the judgment creditor may not apply for another earnings withholding order directed to the same employer with respect to the same judgment debtor for a period of 100 days following the date of service of the earnings withholding order or 60 days after the date of the termination of the order, whichever is later.

(i) If an employer has withheld and paid over amounts pursuant to an earnings withholding order after the date of termination of such order but prior to the receipt of notice of its termination, the judgment debtor may recover such amounts only from the levying officer if the levying officer still holds such amounts or, if such amounts have been paid over to the judgment creditor, from the judgment creditor. If the employer has withheld amounts pursuant to an earnings withholding order after termination of the order but has not paid over such amounts to the levying officer, the employer shall promptly pay such amounts to the judgment debtor.

(j) An appeal lies from any court order under this section denying a claim of exemption or modifying or terminating an earnings withholding order. Such appeal



shall be taken in the manner provided for appeals in the court in which the proceeding is had. An appeal by the judgment creditor from an order modifying or terminating the earnings withholding order does not stay the order from which the appeal is taken. Notwithstanding the appeal, until such time as the order modifying or terminating the earnings withholding order is set aside or modified, the order allowing the claim of exemption in whole or in part shall be given the same effect as if the appeal had not been taken.

(k) This section does not apply to a withholding order for support or a withholding order for taxes.

**Comment.** Section 706.105 continues former Section 723.105 and outlines generally the procedure for the hearing of a judgment debtor's claim for the exemption under Section 706.051. The general provisions governing the procedures for claiming exemptions from execution are not applicable.

A judgment debtor is not limited as to the time within which a claim of exemption must be made. However, unless there has been a material change in the debtor's income or needs, an exemption may be claimed only once during the period the order is in effect. See subdivision (a). A similar limitation applies to a judgment creditor; if a withholding order is terminated by the court, the judgment creditor may not apply for the issuance of an earnings withholding order directed to the same employer for the same debtor for 100 days following the date of service of a prior terminated order or 60 days after the date of termination, whichever is later, unless the court orders otherwise or there is a material change in circumstances. See subdivision (h).

A claim of exemption is made by the debtor by filing an original and one copy of the claim of exemption and a financial statement. Subdivision (b). The form of these documents is prescribed by the Judicial Council. See Section 706.120. See also Sections 706.123 and 706.124 (contents of documents), 706.129 (levying officers to supply forms free of charge). Upon receipt of these documents, the levying officer is required to send the copies of the application and financial statement to the creditor, together with a notice of the claim of exemption which advises the creditor of the effect of the claim. See subdivision (c).

The judgment creditor who contests the claim of exemption must file a notice of opposition with the levying officer within 10 days after the levying officer mails notice of claim of exemption. See subdivisions (d), (e). Unless (1) the notice of opposition is

filed within the 10-day period and (2) the levying officer is given notice of the hearing on the claim of exemption not later than 10 days after the filing of the notice of opposition, the levying officer serves on the employer a notice terminating the order or, if the claim of exemption lists an amount the judgment debtor believes should be withheld pursuant to the order (see Section 706.123), the levying officer serves on the employer a modified order in the amount indicated in the claim of exemption. Subdivision (f). Service of the notice of termination or modified order is to be made on the person, and at the address, indicated in the employer's return. See Sections 706.101(c) and 706.126(b)(6).

The 10-day period provided by subdivision (e) for the judgment creditor to file the documents there specified commences to run from the date of "mailing" of the notice of claim of exemption. This specific provision takes precedence over the general provisions of Section 684.120(c) (extra time to act after mail "service"). And the 10-day period for service of the notice of hearing is not subject to Section 684.125 (increase in period of notice of hearing where notice served by mail).

The form of the notice of opposition is prescribed by the Judicial Council. See Section 706.120. See also Section 706.128 (contents of notice).

If the notice of opposition to the claim of exemption and the notice of motion for an order determining the claim of exemption are timely filed, the hearing is held within 20 days from the filing of the notice of motion unless continued by the court for good cause. The judgment creditor must also serve a copy of the notice of opposition and a notice of hearing on the judgment debtor and file proof of service. See also Section 706.123 (judgment debtor states present mailing address in claim of exemption). If the claim of exemption requested that the attorney for the judgment debtor also be served copies of such notices, the judgment creditor must also serve copies of the notices on such attorney and file proof of service.

After hearing, the court may order that the earnings withholding order be modified or even terminated. The date fixed for termination of the order may precede the date of the hearing. See subdivision (g). The court may order that amounts withheld in excess of the amount determined to be proper be paid to the judgment debtor. See subdivision (g). Where the date of termination is made retroactive, an employer may have already withheld and paid over pursuant to the earnings withholding order prior to receipt of notice of termination. Subdivision (c) of Section 706.022 makes clear that the employer

is not liable to the debtor for such amounts, and subdivision (i) of Section 706.105 authorizes the debtor to recover such amounts from the levying officer or, if paid to the creditor, from the creditor. Where amounts have been withheld but not yet paid over to the levying officer, the employer is required to pay those amounts to the employee-judgment debtor. See subdivision (i).

Subdivision (j) continues the rule that an appeal may be taken from the court's order allowing or denying the claim of exemption in whole or in part. See Section 703.600. Under subdivision (j) of Section 706.105, until such time as the order modifying or terminating the earnings withholding order is set aside or modified, the order allowing the claim of exemption in whole or in part is given the same effect as if the appeal had not been taken.

Subdivision (k) makes clear that this section does not apply to exemption claims made where a withholding order for taxes has been served pursuant to Article 4 (commencing with Section 706.070). See also Section 706.075. Nor does this section apply to a withholding order for support; the exemption in the case of such an order is determined under Section 706.052 which specifies the procedure for claiming the exemption.

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Employer § 706.011

Judgment creditor §§ 680.240, 706.011

Judgment debtor §§ 680.250, 706.011

Levying officer §§ 680.260

Forms § 706.120

Proof of service §§ 684.210-684.220

### § 706.106. Findings in court proceedings

**706.106.** No findings are required in court proceedings under this chapter.

**Comment.** Section 706.106 continues former Section 723.106 and is comparable to a provision found in subdivision (d) of Section 703.580 (claims of exemption).

### § 706.107. Service of another order by same judgment creditor after expiration of prior order; interval

**706.107.** If an employer withholds earnings pursuant to an earnings withholding order, the judgment creditor who obtained the order may not cause another earnings withholding order to be served on the same employer

requiring the employer to withhold earnings of the same employee during the 10 days following the expiration of the prior earnings withholding order.

**Comment.** Section 706.107 continues former Section 723.107. Section 706.107 precludes a creditor who has obtained an earnings withholding order which has gone into effect from causing another order to be served during the 10-day period following the expiration of his prior order. The purpose of this limitation is to give other judgment creditors a 10-day period during which their earnings withholding orders can be served while the original creditor is precluded from competing with them. The original creditor may apply for the second earnings withholding order either before or after his prior order expires. But service of the second order on the same employer while the original order is in effect will be ineffective under Section 706.023, and service during the 10-day period following expiration of the original order is prohibited by Section 706.107. Even though the 10-day moratorium period is violated, the employer may act pursuant to what has been served upon him. See Section 706.154. If the original creditor serves the order after the expiration of the 10-day period, the original creditor is treated like any other creditor.

If an earnings withholding order is terminated because an exemption claim is allowed, the creditor cannot apply for a new order for a specified period. See Section 706.105(h).

It should be noted that each agency of the state is considered a separate entity for the purposes of this chapter. See Section 706.011(d). Hence, even though one agency has been making collection, a second agency may serve an earnings withholding order within the 10-day period provided in this section.

#### CROSS-REFERENCES

##### Defined terms

Earnings § 706.011

Employee § 706.011

Employer § 706.011

Judgment creditor §§ 680.240, 706.011

## Article 6. Forms; Employer's Instructions

### § 706.120. Prescribing by Judicial Council

706.120. Except as provided in Section 706.081, the Judicial Council shall prescribe the form of the applications, notices, claims of exemption, orders, and

other documents required by this chapter as provided in Section 681.030, and only such forms may be used to implement this chapter.

**Comment.** Section 706.120 continues the substance of former Section 723.120. The last two sentences of former Section 723.120 have been omitted as unnecessary in view of the inclusion of the substance of these sentences in the general provisions of Section 681.030.

Section 706.120 requires the Judicial Council to prescribe the forms necessary for the purposes of this chapter. Various sections prescribe information to be contained in the forms; but the Judicial Council has complete authority to adopt and revise the forms as necessary and may require additional information in the forms or may omit information from the forms that it determines is unnecessary. See also Section 706.081 (forms in connection with withholding order for taxes).

#### CROSS-REFERENCES

##### Contents of forms

- Application for earnings withholding order § 706.121
- Claim of exemption § 706.123
- Earnings withholding order § 706.125
- Employer's return § 706.126
- Financial statement § 706.124
- Notice of exemption claim § 706.105
- Notice of opposition to exemption claim § 706.128
- Notice to employee § 706.122
- Employer's instructions § 706.127
- Forms provided by levying officer § 706.129

#### § 706.121. Application for issuance of earnings withholding order; execution; contents

706.121. The "application for issuance of earnings withholding order" shall be executed under oath and shall include all of the following:

- (a) The name, the last known address, and, if known, the social security number of the judgment debtor.
- (b) The name and address of the judgment creditor.
- (c) The court where the judgment was entered and the date the judgment was entered.
- (d) The date of issuance of a writ of execution to the county where the earnings withholding order is sought.
- (e) The total amount to be withheld pursuant to the order (which shall not exceed the amount required to satisfy the writ of execution on the date of the issuance

of the order plus the levying officer's statutory fee for service of the order).

(f) The name and address of the employer to whom the order will be directed.

(g) The name and address of the person to whom the withheld money is to be paid by the levying officer.

**Comment.** Section 706.121 continues former Section 723.121 but a reference has been added to the amount of the fee of the levying officer for the service of the earnings withholding order. See the Comment to Section 706.125.

The form for the application for an earnings withholding order is prescribed by the Judicial Council. See Section 706.120.

#### CROSS-REFERENCES

Declaration under penalty of perjury in lieu of oath § 2015.5

Defined terms

Employer § 706.011

Judgment creditor §§ 680.240, 706.011

Judgment debtor §§ 680.250, 706.011

Levying officer §§ 680.260, 706.073, 706.101 (e)

Person § 706.011

### § 706.122. Notice to employee of earnings withholding order; contents

706.122. The "notice to employee of earnings withholding order" shall contain a statement that informs the employee in simple terms of the nature of a wage garnishment, the right to an exemption, the procedure for claiming an exemption, and any other information the Judicial Council determines would be useful to the employee and appropriate for inclusion in the notice, including all of the following:

(a) The named employer has been ordered to withhold from the earnings of the judgment debtor the amounts required to be withheld under Section 706.050, or such other amounts as are specified in the earnings withholding order, and to pay these amounts over to the levying officer for transmittal to the person specified in the order in payment of the judgment described in the order.

(b) The manner of computing the amounts required to be withheld pursuant to Section 706.050.

(c) The judgment debtor may be able to keep more or all of the judgment debtor's earnings if the judgment

debtor proves that the additional earnings are necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor.

(d) If the judgment debtor wishes a court hearing to prove that amounts should not be withheld from the judgment debtor's earnings because they are necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor, the judgment debtor shall file with the levying officer an original and one copy of the "judgment debtor's claim of exemption" and an original and one copy of the "judgment debtor's financial statement." The notice shall also advise the judgment debtor that the claim of exemption form and the financial statement form may be obtained without charge at the office of the levying officer.

(e) Under Section 300 of the Labor Code, the judgment debtor may revoke an assignment of wages or salary to be earned after the time of the revocation unless the assignment is a wage assignment for support.

**Comment.** Section 706.122 continues former Section 723.122. The form for the notice to the employee is prescribed by the Judicial Council (see Section 706.120) or, in the case of a notice of a withholding order for taxes, by the state (see Section 706.081). For the notice to the employee in the case of a withholding order for taxes, see Section 706.075. See also Section 706.076(f) (temporary earnings holding order). Under Section 706.122, the Judicial Council may, for example, provide a statement that informs the employee where to seek legal advice.

#### CROSS-REFERENCES

##### Defined terms

Earnings § 706.011

Employee § 706.011

Employer § 706.011

Judgment creditor §§ 680.240, 706.011

Judgment debtor §§ 680.250, 706.011

Levying officer §§ 680.260, 706.101(e)

Person § 706.011

Wage assignment for support § 706.011

**§ 706.123. Judgment debtor's claim of exemption; execution; contents**

706.123. The "judgment debtor's claim of exemption" shall be executed under oath. The claim of exemption shall indicate how much the judgment debtor believes should be withheld from the judgment debtor's earnings each pay period by the employer pursuant to the earnings withholding order and shall state the judgment debtor's present mailing address.

**Comment.** Section 706.123 continues former Section 723.123. The form for the claim of exemption is prescribed by the Judicial Council. See Section 706.120. Levying officers must provide copies of the forms without charge. See Section 706.129. The "present mailing address" may or may not be the judgment debtor's residence address.

CROSS-REFERENCES

Declaration under penalty of perjury in lieu of oath § 2015.5

Defined terms

Earnings § 706.011

Employer § 706.011

Judgment debtor §§ 680.250, 706.011

**§ 706.124. Judgment debtor's financial statement; execution; contents**

706.124. The "judgment debtor's financial statement" shall be executed as provided in Section 703.530 and contain all of the information required by that section and the following additional information:

(a) Whether any earnings withholding orders are in effect with respect to the earnings of the judgment debtor or the spouse or dependents of the judgment debtor.

(b) Whether any wage assignments for support are in effect with respect to the earnings of the judgment debtor or the spouse or dependents of the judgment debtor.

(c) Whether the judgment debtor owns an interest in real or personal property that is occupied as the principal dwelling of the judgment debtor, the former spouse of the judgment debtor, the former spouse of the judgment debtor, or the family of the judgment debtor.



**Comment.** Section 706.124 supersedes former Section 723.124. Section 706.124 adopts the general financial statement requirements of Section 703.530 with additional required information. Subdivisions (a) and (b) continue former law. Subdivision (c) is new and is added to reflect the revision of the hardship exemption. See Section 706.051 and the Comment thereto. The form for the financial statement is prescribed by the Judicial Council. See Section 706.120. Levying officers must provide copies of the forms without charge. See Section 706.129.

#### CROSS-REFERENCES

##### Defined terms

- Earnings § 706.011
- Judgment debtor §§ 680.250, 706.011
- Personal property § 680.290
- Property § 680.310
- Real property § 680.320
- Wage assignment for support § 706.011

#### § 706.125. Earnings withholding order; contents

706.125. The “earnings withholding order” shall include all of the following:

(a) The name, address, and, if known, the social security number of the judgment debtor.

(b) The name and address of the employer to whom the order is directed.

(c) The court where the judgment was entered, the date the judgment was entered, and the name of the judgment creditor.

(d) The date of issuance of the writ of execution to the county where the earnings withholding order is sought.

(e) The total amount that may be withheld pursuant to the order (which may not exceed the amount required to satisfy the writ of execution on the date of issuance of the order plus the levying officer’s statutory fee for service of the order).

(f) A description of the withholding period and an order to the employer to withhold from the earnings of the judgment debtor for each pay period the amount required to be withheld under Section 706.050 or the amount specified in the order, as the case may be, for the pay periods ending during such withholding period.

(g) An order to the employer to pay over to the levying officer at a specified address the amount required

to be withheld and paid over pursuant to the order in the manner and within the times provided by law.

(h) An order that the employer fill out the “employer’s return” and return it by first-class mail, postage prepaid, to the levying officer at a specified address within 15 days after service of the earnings withholding order.

(i) An order that the employer deliver to the judgment debtor a copy of the earnings withholding order and the “notice to employee of earnings withholding order” within 10 days after service of the earnings withholding order; but, if the judgment debtor is no longer employed by the employer and the employer does not owe the employee any earnings, the employer is not required to make such delivery.

(j) The name and address of the levying officer.

**Comment.** Section 706.125 specifies the information to be included in the earnings withholding order. The form of the order is prescribed by the Judicial Council. See Section 706.120. Special forms are prescribed for earnings withholding orders for taxes. See Section 706.081.

Section 706.125 continues former Section 723.125 but adds a reference to the levying officer’s fee for service of the earnings withholding order (see Gov’t Code § 26750). This reference is added to make clear that the amount to be withheld by the employer includes the amount of the fee for service of the earnings withholding order.

#### CROSS-REFERENCES

##### Defined terms

Earnings § 706.011

Employer § 706.011

Judgment creditor §§ 680.240, 706.011

Judgment debtor §§ 680.250, 706.011

Levying officer §§ 680.260, 706.073, 706.101 (e)

#### § 706.126. Employer’s return; execution; contents

706.126. (a) The “employer’s return” shall be executed under oath. The form for the return provided to the employer shall state all of the following information:

(1) The name and address of the levying officer to whom the form is to be returned.

(2) A direction that the form be mailed to the levying officer by first-class mail, postage prepaid, no later than 15 days after the date of service of the earnings withholding order.

(3) The name, the address, and, if known, the social security number of the judgment debtor.

(b) In addition, the employer's return form shall require the employer to supply all of the following information:

(1) The date the earnings withholding order was served on the employer.

(2) Whether the judgment debtor is employed by the employer or whether the employer otherwise owes earnings to the employee.

(3) If the judgment debtor is employed by the employer or the employer otherwise owes earnings to the employee, the amount of the employee's earnings for the last pay period and the length of this pay period.

(4) Whether the employer was required on the date of service to comply with an earlier earnings withholding order and, if so, the name of the judgment creditor who secured the earlier order, the levying officer who served such order, the date it was issued, the date it was served, the expiration date of such order, and which of the earnings withholding orders the employer is required to comply with under the applicable statutory rules concerning the priority of such orders.

(5) Whether the employer was required on the date of service to comply with a wage assignment for support and, if so, the court which issued such assignment order and the date it was issued and any other information the Judicial Council determines is needed to identify the order.

(6) The name and address of the person to whom notices to the employer are to be sent.

**Comment.** Section 706.126 continues former Section 723.126 and specifies the information to be included in the employer's return. The form for the return is prescribed by the Judicial Council (see Section 706.120) or, in the case of a return in connection with a withholding order for taxes, by the state (see Section 706.081).

CROSS-REFERENCES

Declaration under penalty of perjury in lieu of oath § 2015.5

Defined terms

Earnings § 706.011

Employee § 706.011

Employer § 706.011

Judgment creditor §§ 680.240, 706.011

Judgment debtor §§ 680.250, 706.011

Levying officer §§ 680.260, 706.073, 706.101 (e)

Person § 706.011

Wage assignment for support § 706.011

Employer's instructions § 706.127

**§ 706.127. Employer's instructions; preparation, publication, and distribution**

706.127. (a) The Judicial Council shall prepare "employer's instructions" for employers and revise or supplement these instructions to reflect changes in the law or rules regulating the withholding of earnings.

(b) Except to the extent that they are included in the forms required to be provided by the employer by the levying officer, the Judicial Council shall publish and provide to the levying officers copies of the employer's instructions.

**Comment.** Section 706.127 continues former Section 723.127 and requires the preparation of employer's instructions that provide the employer with the information he needs to comply with the law. The levying officer provides the employer with a copy of the employer's instructions with the earnings withholding order. See Section 706.103.

CROSS-REFERENCES

Defined terms

Earnings § 706.011

Employer § 706.011

Levying officer §§ 680.260, 706.101 (e)

**§ 706.128. Judgment creditor's notice of opposition to the claim of exemption; execution; contents**

706.128. The "judgment creditor's notice of opposition to the claim of exemption" shall be executed under oath and shall include all of the following:

(a) The name, last known address, and, if known, the social security number of the judgment debtor.

(b) The name and address of the judgment creditor.

(c) The date of mailing of the notice of claim of exemption.

(d) The amount of the judgment debtor's claim of exemption which the judgment creditor claims is not exempt.

(e) The factual and legal grounds for the judgment creditor's opposition to the claim of exemption.

**Comment.** Section 706.128 continues former Section 723.128 and specifies the information to be included in the judgment creditor's notice of opposition to the claim of exemption. The form is prescribed by the Judicial Council. See Section 706.120.

#### CROSS-REFERENCES

Declaration under penalty of perjury in lieu of oath § 2015.5

Defined terms

Judgment creditor §§ 680.240, 706.011

Judgment debtor §§ 680.250, 706.011

### § 706.129. Forms for judgment debtors; availability for distribution

**706.129.** The levying officer shall have copies of the forms for the "judgment debtor's claim of exemption" and "judgment debtor's financial statement" available at the levying officer's office for distribution without charge to a person who desires to make a claim of exemption under Section 706.051.

**Comment.** Section 706.129 continues former Section 723.129 and implements the last sentence of subdivision (d) of Section 706.122. The forms are prescribed by the Judicial Council. See Section 706.120.

#### CROSS-REFERENCES

Defined terms

Levying officer § 680.260

## Article 7. Administration and Enforcement

### § 706.151. Exemption of state from earnings garnishment provisions of Consumer Credit Protection Act of 1968

**706.151.** The Judicial Council may perform all acts required by the Administrator of the Wage and Hour Division of the United States Department of Labor as conditions to exemption of this state from the earnings garnishment provisions of the Consumer Credit Protection Act of 1968 (15 U.S.C. Secs. 1671–1677), including, but not limited to:

(a) Representing and acting on behalf of the state in relation to the Administrator of the Wage and Hour Division and the administrator's representatives with regard to any matter relating to, or arising out of, the application, interpretation, and enforcement of the laws of this state regulating withholding of earnings.

(b) Submitting to the Administrator of the Wage and Hour Division in duplicate and on a current basis, a certified copy of every statute of this state affecting earnings withholding, and a certified copy of any decision in any case involving any of those statutes, made by the Supreme Court of this state.

(c) Submitting to the Administrator of the Wage and Hour Division any information relating to the enforcement of earnings withholding laws of this state which the administrator may request.

**Comment.** Section 706.151 continues former Section 723.151 and authorizes the Judicial Council to do whatever is required by the federal administrator to obtain and maintain a state exemption from the earnings garnishment provisions of the Consumer Credit Protection Act. Subdivisions (a), (b), and (c) are based on the language of 29 Code of Federal Regulations Section 870.55(a), requiring the state representative to act as liaison with the federal administrator.

#### CROSS-REFERENCES

Defined terms

Earnings § 706.011

### § 706.152. Failure to pay withheld earnings by employer with intent to defraud; misdemeanor

**706.152.** If an employer withholds earnings pursuant to this chapter and, with the intent to defraud either the judgment creditor or the judgment debtor, fails to pay such withheld earnings over to the levying officer, the employer is guilty of a misdemeanor.

**Comment.** Section 706.152 continues former Section 723.152.

#### CROSS-REFERENCES

Civil liability § 706.154

Compliance with order as defense § 706.154

## Defined terms

Earnings § 706.011

Employer § 706.011

Judgment creditor §§ 680.240, 706.011

Judgment debtor §§ 680.250, 706.011

Levying officer § 680.260

Lien on employer's property § 706.029

**§ 706.153. Deferment or acceleration of payment of earnings to alter rights of judgment creditor; civil liability**

**706.153.** (a) No employer shall defer or accelerate any payment of earnings to an employee with the intent to defeat or diminish the judgment creditor's rights under an earnings withholding order issued pursuant to the procedures provided by this chapter.

(b) If an employer violates this section, the judgment creditor may bring a civil action against the employer to recover the amount that would have been withheld and paid over pursuant to this chapter had the employer not violated this section. The remedy provided by this subdivision is not exclusive.

**Comment.** Section 706.153 continues former Section 723.153 and makes clear that an employer may neither defer nor accelerate payment of earnings to an employee in an attempt to avoid compliance with an earnings withholding order and specifies the measure of damages in case of violation.

## CROSS-REFERENCES

## Defined terms

Earnings § 706.011

Employee § 706.011

Employer § 706.011

Judgment creditor §§ 680.240, 706.011

Lien on employer's property § 706.029

**§ 706.154. Failure to withhold or pay over; civil action by judgment creditor; immunity from liability for compliance; exception**

**706.154.** (a) If an employer fails to withhold or to pay over the amount the employer is required to withhold and pay over pursuant to this chapter, the judgment creditor may bring a civil action against the employer to recover such amount. The remedy provided by this subdivision is not exclusive.

(b) Notwithstanding subdivision (a), an employer who complies with any written order or written notice which purports to be given or served in accordance with the provisions of this chapter is not subject to any civil or criminal liability for such compliance unless the employer has actively participated in a fraud.

**Comment.** Section 706.154 continues former Section 723.154. The section authorizes suit by a creditor against an employer both where the employer fails to withhold properly and where he fails to pay over amounts withheld. This remedy is independent of the procedure for examination of a debtor of the judgment debtor under Section 708.120.

Subdivision (b) makes clear that an employer is protected from liability where he complies with an order or written notice which appears proper on its face. Occasionally, through mistake, inadvertence, or even deliberate misconduct, an employer may be sent an order or notice which appears valid but which has been improperly obtained or served. For example, a creditor may fail to observe the 10-day moratorium on service of a second earnings withholding order. See Section 706.107 and Comment thereto. The employer is not required in such circumstances to go beyond the document itself and is not subject to liability where he complies with its directions and is not actively participating in a fraud. The remedy of the injured party in such a case is to proceed against the person who falsified the document or who improperly obtained the document or caused it prematurely to be served.

This section also makes clear that, where an employer is complying with a prior order, he is not liable for failing to comply with a subsequent valid order—even though the prior order is in fact invalid—unless he is actively participating in a fraud.

#### CROSS-REFERENCES

Criminal penalty § 706.152

Defined terms

Employer § 706.011

Judgment creditor §§ 680.240, 706.011

Deferring or accelerating of payments of earnings § 706.153

Lien on employer's property § 706.029



## CHAPTER 6. MISCELLANEOUS CREDITORS' REMEDIES

### Article 1. Written Interrogatories to Judgment Debtor

#### § 708.010. Application of article

708.010. (a) Except as provided in this section and in subdivision (b) of Section 708.020, the procedure in this article may be used at any time a money judgment is enforceable.

(b) Whenever enforcement of the money judgment is stayed, all proceedings under this article are stayed unless the court otherwise expressly orders.

**Comment.** Subdivision (a) of Section 708.010 is consistent with former Section 714.5 which provided that interrogatories may be served “any time after execution . . . may properly be issued.” See also Section 683.010 *et seq.* (period for enforcement of judgment).

Subdivision (b) makes clear that when a statute or court order provides for a stay of the enforcement of a money judgment, the stay applies to the use of written interrogatories under this article. However, subdivision (b) also makes clear that the court may permit proceedings under this article despite a stay unless the stay is under Section 916.

#### CROSS-REFERENCES

Defined terms

Money judgment § 680.270

Stay of enforcement § 918

#### § 708.020. Written interrogatories to judgment debtor

708.020. (a) The judgment creditor may propound written interrogatories to the judgment debtor in the manner provided in Section 2030 requesting information to aid in enforcement of the money judgment. The judgment debtor shall answer the interrogatories in the manner and within the time provided by Section 2030.

(b) The judgment creditor may not serve interrogatories pursuant to this section within 120 days after the judgment debtor has responded to interrogatories previously served pursuant to this section or within 120 days after the judgment debtor has been examined pursuant to Article 2 (commencing with

Section 708.110), and the judgment debtor is not required to respond to any interrogatories so served.

(c) Interrogatories served pursuant to this section may be enforced, to the extent practicable, in the same manner as interrogatories in a civil action.

**Comment.** Subdivision (a) of Section 708.020 is the same in substance as the first sentence of former Section 714.5, except that the limitation of former Section 714.5 that interrogatories could be propounded only to a judgment debtor represented by counsel is not continued. This change is consistent with Section 2030 (interrogatories in civil actions generally). The provision that the interrogatories request information to aid in enforcement of the judgment is new, and is consistent with Section 2016 (examination regarding matter relevant to subject matter of the action). The provision of former Section 714.5 that written interrogatories to the judgment debtor are cumulative and in addition to the examination procedure is omitted as unnecessary. Sections 708.010 and 708.020 make clear that written interrogatories may be used at any time the money judgment is enforceable if there has been no stay and the judgment debtor has not responded to interrogatories or been examined within the preceding 120 days.

Subdivision (b) is the same in substance as the last sentence of former Section 714.5.

Subdivision (c) continues the substance of the third sentence of former Section 714.5. Under subdivision (c), if the judgment debtor fails to answer interrogatories without substantial justification, sanctions may include an award of attorney's fees. Section 2034(a). If the court orders the judgment debtor to answer and the judgment debtor refuses to do so, the refusal is punishable as a contempt. Section 2034(b); *MacDonald v. Superior Court*, 75 Cal. App.3d 692, 696, 141 Cal. Rptr. 667 (1977). The court is also authorized to make such protective orders for the benefit of the judgment debtor as justice may require. See Section 2030(c).

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Service on judgment debtor's attorney §§ 684.020, 684.050

## Article 2. Examination Proceedings

### § 708.110. Examination of judgment debtor

708.110. (a) The judgment creditor may apply to the proper court for an order requiring the judgment debtor to appear before the court, or before a referee appointed by the court, at a time and place specified in the order, to furnish information to aid in enforcement of the money judgment.

(b) If the judgment creditor has not caused the judgment debtor to be examined under this section during the preceding 120 days, the court shall make the order upon *ex parte* application of the judgment creditor.

(c) If the judgment creditor has caused the judgment debtor to be examined under this section during the preceding 120 days, the court shall make the order if the judgment creditor by affidavit or otherwise shows good cause for the order. The application shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, it may be made *ex parte*.

(d) The judgment creditor shall personally serve a copy of the order on the judgment debtor not less than 10 days before the date set for the examination. Service of the order creates a lien on the personal property of the judgment debtor.

(e) The order shall contain the following statement in boldface type: “NOTICE TO JUDGMENT DEBTOR. If you fail to appear at the time and place specified in this order, you may be punished for contempt of court and the court may make an order requiring you to pay the reasonable attorney’s fee incurred by the judgment creditor in this proceeding.”

**Comment.** Subdivision (a) of Section 708.110 supersedes the first sentences of former Sections 714 and 715. The former language requiring the judgment debtor to answer concerning his property has been revised to require the judgment debtor to furnish information to aid in enforcement of the judgment. This might include, for example, information concerning future employment prospects. The proper court for an examination under this section is prescribed in Section 708.160. The judgment debtor may not be ordered to appear when the judgment is no longer enforceable. See Section 683.020.

Under subdivision (b), the judgment creditor may obtain an order of examination if the judgment creditor has not caused the judgment debtor to be examined within the preceding 120 days. Subdivision (b) permits the judgment creditor to obtain an order of examination even though the judgment debtor may have been required to respond to written interrogatories under Section 708.020 within the 120-day period. The provision in subdivision (b) that the order of examination is made upon *ex parte* application codifies case law. See *Lewis v. Neblett*, 188 Cal. App.2d 290, 297, 10 Cal. Rptr. 441 (1961).

The good cause requirement of subdivision (c) for examination more frequently than every 120 days supersedes the requirement of former Section 715 that the judgment debtor have property that the judgment debtor “unjustly refuses” to apply toward the satisfaction of the judgment.

The first sentence of subdivision (d) is new. The second sentence of subdivision (d) codifies the rule in *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242, 245 (1909). No duration is specified for the lien. However, it may not be enforced beyond the time for enforcement of the judgment. See Sections 683.010-683.220. See also Sections 697.020 (relation back of liens), 697.920 (effect of liens).

Subdivision (e) continues the substance of the third paragraph of former Section 714 and adds the requirement that the notice advise the judgment debtor that failure to appear may result in attorney’s fees being imposed. See Section 708.170.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Personal property § 680.290

Effect of liens § 697.010 *et seq.*

Manner of service § 684.010 *et seq.*

Period for enforcement of judgment § 683.010 *et seq.*

## § 708.120. Examination of third person

708.120. (a) Upon *ex parte* application by a judgment creditor who has a money judgment and proof by the judgment creditor by affidavit or otherwise to the satisfaction of the proper court that a third person has possession or control of property in which the judgment debtor has an interest or is indebted to the judgment debtor in an amount exceeding two hundred fifty dollars

(§250), the court shall make an order directing the third person to appear before the court, or before a referee appointed by the court, at a time and place specified in the order, to answer concerning such property or debt. The affidavit in support of the judgment creditor's application may be based on the affiant's information and belief.

(b) Not less than 10 days prior to the date set for the examination, a copy of the order shall be:

(1) Served personally on the third person.

(2) Served personally or by mail on the judgment debtor.

(c) If the property in the third person's possession or control in which the judgment debtor has an interest or the debt owed by the third person to the judgment debtor is described in the affidavit or application for an order under subdivision (a) in a manner reasonably adequate to permit it to be identified, service of the order on the third person creates a lien on the judgment debtor's interest in the property or on the debt for a period of one year from the date of the order unless extended or sooner terminated by the court.

(d) The judgment debtor may claim that all or any portion of the property or debt is exempt from enforcement of a money judgment by application to the court on noticed motion, filed with the court and personally served on the judgment creditor not later than three days before the date set for the examination. The judgment debtor shall execute an affidavit in support of the application that includes all of the matters set forth in subdivision (b) of Section 703.520. If a claim of exemption is made pursuant to this section, a notice of opposition to the claim of exemption is not required. The court shall determine any claim of exemption made pursuant to this section. Failure of the judgment debtor to make a claim of exemption does not preclude the judgment debtor from later claiming the exemption unless the property or debt is described in the order in a manner reasonably adequate to permit it to be identified and the judgment debtor receives notice of the

examination proceeding at least 10 days before the date set for the examination.

(e) An order made pursuant to subdivision (a) shall contain the following statements in boldface type:

(1) **“NOTICE TO PERSON SERVED.** If you fail to appear you may be subject to arrest and punishment for contempt of court and the court may make an order requiring you to pay the reasonable attorney’s fee incurred by the judgment creditor in this proceeding.”

(2) **“NOTICE TO JUDGMENT DEBTOR.** The person in whose favor the judgment was entered in this action claims that the person to be examined pursuant to this order has possession or control of property which is yours or owes you a debt. This property or debt is as follows: (Description of property or debt).

If you claim that all or any portion of this property or debt is exempt from enforcement of the money judgment, you must file your exemption claim in writing with the court and personally serve a copy on the judgment creditor not later than three days before the date set for the examination. You must appear at the time and place set for this examination to establish your claim of exemption or your exemption may be waived.”

(f) An order made pursuant to subdivision (a) is not effective unless, at the time it is served on the third person, the person serving the order tenders to the third person fees for the mileage necessary to be traveled from the third person’s residence to the place of examination. The fees shall be in the same amount generally provided for witnesses when legally required to attend civil proceedings in the court where the examination proceeding is to be conducted.

**Comment.** Subdivision (a) of Section 708.120 supersedes the first sentence of the first paragraph of former Section 717. It provides for the issuance of an order for the examination of the debtor of a judgment debtor or a person holding property of the judgment debtor. The minimum indebtedness required before an examination order may issue has been raised from an amount exceeding \$50 to an amount exceeding \$250 to compensate for the change in the value of the dollar since this procedure was originally enacted in 1851 (1851 Cal. Stats. ch. 5, § 241). The

requirement of the first sentence of former Section 717 that a writ of execution be first issued against the property of the judgment debtor is not continued. The third person may not be ordered to appear when the judgment is no longer enforceable. See Section 683.020. The provision for an affidavit based on information and belief codifies *Tucker v. Fontes*, 70 Cal. App.2d 768, 771, 161 P.2d 697, 699 (1945). The proper court for an examination under this section is prescribed in Section 708.160. As to the powers of a referee, see Section 708.140.

Subdivision (b) is new. Prior law did not prescribe the time within which the debtor of the judgment debtor was to be served and did not provide for any notice to the judgment debtor. The requirement that the judgment debtor be given notice changes the rule announced in *High v. Bank of Commerce*, 95 Cal. 386, 30 P. 556 (1892). See also Section 684.125 (extension of time where notice by mail).

Subdivision (c) is comparable to subdivision (d) of Section 708.110 and the second sentence of subdivision (a) of Section 708.205. If the property or debt is described in the judgment creditor's application for an order for examination of a third person and the court ultimately orders the property or debt applied to the satisfaction of the judgment, the priority of the lien under Section 708.205 will date from the service of the order on the third person pursuant to subdivision (c). See also Section 697.920 (effect of lien).

Subdivision (d) is drawn from comparable provisions in the Attachment Law. See Sections 482.100 and 484.070. It makes explicit a principle that was implicit in a provision of former Section 719 for the application of property "not exempt from execution" toward the satisfaction of the judgment. This necessarily involves a determination of the existence of exemptions prefatory to issuing an order applying the property toward satisfaction of the judgment. See Section 703.010 (exemptions apply to all procedures for enforcement of money judgments).

The court may also determine in the examination proceedings that the property sought to be reached may properly be applied to the satisfaction of the judgment through an order in examination proceedings. *Cf.* *Pacific Bank v. Robinson*, 57 Cal. 520, 524 (1881) (supplementary proceedings appropriate to reach patent rights).

For the extent of the duty of a third person to protect the exemption rights of the debtor, see *Bowie v. Union Bank*, 11 Cal. App.3d 807, 815-16, 90 Cal. Rptr. 103 (1970); *Agnew v. Cronin*, 148

Cal. App.2d 117, 126-29, 306 P.2d 527, 533-34 (1957); *Hing v. Lee*, 37 Cal. App. 313, 316-18, 174 P. 356, 358-59 (1918). If the judgment debtor fails to claim the exemption at the hearing when required to do so under subdivision (d), the exemption is waived, subject to the authority of the court to relieve the judgment debtor from the failure pursuant to Section 473. See Section 703.030 and the Comment thereto (manner of claiming exemptions).

Paragraph (1) of subdivision (e) continues the substance of the third paragraph of former Section 717 and adds the requirement that the notice advise the third person that failure to appear may result in attorney's fees being imposed. See Section 708.170. Paragraph (2) is new and is necessitated by the requirement in subdivision (d) that when the property in the hands of the third person or the debt is described in the application for an order of examination, a judgment debtor with at least 10 days' notice of the examination proceeding shall claim any exemption at the hearing. See also Section 703.030 (waiver by failure to claim exemption).

Subdivision (f) continues the second sentence of former Section 717.1, except that the former provision for mileage fees of fifteen cents per mile has been revised to incorporate the mileage fees for witnesses in civil proceedings in the court where the examination proceeding is pending. See Gov't Code § 68093 (twenty cents per mile one way). Mileage fees are recoverable costs under Section 685.040.

Where a corporation is indebted to or holds property of a judgment debtor, the manner of appearance of the corporation is prescribed in Section 708.150. Where the debtor of the judgment debtor is a public entity, the judgment creditor must follow the procedures set forth in Article 8 (commencing with Section 708.710).

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Property § 680.310

Effect of liens § 697.010 *et seq.*

Increase in required period of notice where served by mail § 684.125

Manner of service § 684.010 *et seq.*

Period for enforcement of judgment § 683.010 *et seq.*

Service on judgment debtor's attorney §§ 684.020, 684.050



**§ 708.130. Witnesses; privilege of spouse of judgment debtor**

**708.130.** (a) Witnesses may be required to appear and testify before the court or referee in an examination proceeding under this article in the same manner as upon the trial of an issue.

(b) The privilege prescribed by Article 4 (commencing with Section 970) of Chapter 4 of Division 8 of the Evidence Code does not apply in an examination proceeding under this article.

**Comment.** Subdivision (a) of Section 708.130 continues former Section 718. Subdivision (b) is new and changes the rule set forth in the second sentence of former Section 717 (marital privilege applicable in proceedings to examine debtor of judgment debtor in the absence of a waiver).

**§ 708.140. Powers and qualifications of referee**

**708.140.** (a) The examination proceedings authorized by this article may be conducted by a referee appointed by the court. The referee may issue, modify, or vacate an order authorized by Section 708.205, may make a protective order authorized by Section 708.200, and may issue a warrant authorized by Section 708.170, and has the same power as the court to grant adjournments, to preserve order, and to subpoena witnesses to attend the examination, but only the court that ordered the reference has power to do the following:

(1) Punish for contempt for disobeying an order of the referee.

(2) Make an award of attorneys' fees pursuant to Section 708.170.

(3) Determine a contested claim of exemption or determine a third party's claim under Section 708.180.

(b) Only a member of the State Bar of California is eligible for appointment as a referee pursuant to this article.

(c) Nothing in subdivision (a) limits the power of a court to appoint a temporary judge pursuant to Section 21 of Article VI of the California Constitution.

**Comment.** Subdivision (a) of Section 708.140 continues the authority of a referee appointed by the court provided in former Sections 714-715, 717-721, and 723. The authority to modify and vacate orders is generalized from former Section 720. The authority to compel the appearance of a person at the examination and to control the proceeding generalizes the authority of a referee appointed by a superior court formerly provided by Section 723. The limitation on the power to punish for contempt provided in paragraph (1) of subdivision (a) continues the substance of former Section 721. Paragraph (2) of subdivision (a) is new. Paragraph (3) is drawn from Section 482.060 (subordinate judicial duties in attachment).

Subdivision (b) supersedes the portion of former Section 723 that required a referee to have been a member of the State Bar for at least five years. Former Section 723 was applicable to a referee appointed by a superior court in a county or city and county having a population of one million or more.

Subdivision (c) is drawn from Section 482.060 (attachment).

**§ 708.150. Appearance at examination by representatives of organizations**

**708.150.** (a) If a corporation, partnership, association, trust, or other organization is served with an order to appear for an examination, it shall designate to appear and be examined one or more officers, directors, managing agents, or other persons who are familiar with its property and debts.

(b) If the order to appear for an examination requires the appearance of a specified individual, the specified individual shall appear for the examination and may be accompanied by one or more officers, directors, managing agents, or other persons familiar with the property and debts of the corporation, partnership, association, trust, or other organization.

(c) If the examination is to be conducted pursuant to Section 708.120 and the order to appear for the examination does not require the appearance of a specified individual, the order shall advise the corporation, partnership, association, trust, or other organization of its duty to make a designation under subdivision (a).

**Comment.** Subdivision (a) of Section 708.150 is derived from Section 2019(a)(6). Former Section 717 provided for the appearance of a “corporation, or any officer or member thereof.” Subdivision (b) permits the order to specify that a designated person appear for the examination. Subdivision (c) is comparable to the third sentence of Section 2019(a)(6).

If an organization described in subdivision (a) is served with an order to appear for an examination and no specified individual is required to appear by the order, the organization itself may nonetheless be held in contempt of court for its failure to appear. See Section 1209 (disobedience of lawful order is a contempt); 14 Cal. Jur.3d *Contempt* § 30 (1974) (corporations and other organizations may be held in contempt). If a specified individual is designated to appear in the order under subdivision (b), the designated individual is subject to the contempt sanction. See also Section 708.170 (reasonable attorneys’ fees may be awarded for failure to appear).

#### CROSS-REFERENCES

Defined terms

Property § 680.310

### § 708.160. Proper court for examination; examination outside county where judgment entered

**708.160.** (a) Except as otherwise provided in this section, the proper court for examination of a person under this article is the court in which the money judgment is entered.

(b) A person may not be required to attend an examination before a court located outside the county in which the person resides or has a place of business unless the distance from the person’s place of residence or place of business to the place of examination is less than 150 miles.

(c) If a person sought to be examined does not reside or have a place of business in the county where the judgment is entered, a court of similar jurisdiction in the county where the person resides or has a place of business is a proper court for examination of the person. If there is no court of similar jurisdiction in the county, a court of higher jurisdiction is a proper court.

(d) If the judgment creditor seeks an examination of a person before a court other than the court in which the

judgment is entered, the judgment creditor shall do all of the following:

(1) File with the court from which the order is sought an abstract of judgment in the form prescribed by Section 674.

(2) Present to the court an affidavit in support of the application for the order stating the place of residence or place of business of the person sought to be examined.

(3) Make any necessary affidavit or showing for the examination as required by Section 708.110 or 708.120.

(4) At the time of filing the abstract of judgment, pay a filing fee of twelve dollars (\$12). No law library fee shall be charged.

**Comment.** Subdivision (a) of Section 708.160 is new and makes clear what was implicit under former law. Subdivision (b) continues the substance of the first sentence of former Section 717.1. Subdivisions (c) and (d) continue the substance of former Section 722. Paragraph (2) of subdivision (d) sets forth the required contents of the affidavit in greater detail than did former Section 722. Paragraph (4) of subdivision (d) continues the filing fee under former Section 722.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Money judgment § 680.270

Person § 680.280

### § 708.170. Failure to appear for examination; penalty for unjustified arrest

708.170. (a) If an order requiring a person to appear for an examination was served by a sheriff, marshal, constable, a person specially appointed by the court in the order, or a registered process server, and the person fails to appear:

(1) The court may, pursuant to a warrant, have the person brought before the court to answer for the failure to appear and may punish the person for contempt.

(2) If the person's failure to appear is without good cause, the judgment creditor shall be awarded reasonable attorney's fees incurred in the examination proceeding. Attorney's fees awarded against the judgment debtor

shall be added to and become part of the principal amount of the judgment.

(b) A person who willfully makes an improper service of an order for an examination which subsequently results in the arrest pursuant to subdivision (a) of the person who fails to appear is guilty of a misdemeanor.

**Comment.** Subdivision (a) (1) of Section 708.170 continues the substance of the second paragraph of former Section 714 and the second paragraph of former Section 717. Subdivision (a) (2) is new and does not limit any right to attorney's fees the parties may have under a contract or statute.

Subdivision (b) continues the substance of the last paragraphs of former Sections 714 and 717, respectively. The authority provided by former Section 715 for arresting the judgment debtor where there is a danger of the debtor absconding and for imprisoning the judgment debtor for failure to give an undertaking when ordered to do so is not continued, consistent with the repeal of the civil arrest provisions. See 1973 Cal. Stats. ch. 20. Section 708.170 does not limit the contempt power of the court under Sections 1209-1222.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Person § 680.280

Principal amount of the judgment § 680.300

Registered process server § 680.330

#### § 708.180. Determination of third person's adverse claim

708.180. (a) Subject to subdivision (b), if a third person examined pursuant to Section 708.120 claims an interest in the property adverse to the judgment debtor or denies the debt, the court may determine the ownership of the property or the existence of the debt. Such a determination is conclusive as to the parties to the proceeding and the third person, but an appeal may be taken from the determination in the manner provided for appeals from the court in which the proceeding takes place. The court may grant a continuance for a reasonable time for discovery proceedings, the production of evidence, or other preparation for the hearing.

(b) The court may not make the determination provided in subdivision (a) if the third person's claim is made in good faith and any of the following conditions is satisfied:

(1) The court would not be a proper court for the trial of an independent civil action (including a creditor's suit) for the determination of the ownership of the property or the existence of the debt, and the third person objects to the determination of the matter under subdivision (a).

(2) At the time an order for examination pursuant to Section 708.120 is served on the third person a civil action (including a creditor's suit) is pending with respect to the ownership of the property or the existence of the debt.

(3) The court determines that the ownership of the property or the existence of the debt should be determined in a creditor's suit.

(c) Upon application of the judgment creditor made ex parte, the court may make an order forbidding transfer of the property to the judgment debtor or payment of the debt to the judgment debtor until the ownership of the property or the existence of the debt is determined pursuant to subdivision (a) or until a creditor's suit may be commenced and an order obtained pursuant to Section 708.240. An undertaking may be required in the discretion of the court. The court may modify or vacate the order at any time with or without a hearing on such terms as are just.

(d) Upon application of the judgment creditor upon noticed motion, the court may, if it determines that the judgment creditor's claim is probably valid, make an order forbidding the transfer or other disposition of the property to any person or forbidding payment of the debt until the ownership of the property or the existence of the debt is determined pursuant to subdivision (a) or until a creditor's suit may be commenced and an order obtained pursuant to Section 708.240. The court shall require the judgment creditor to furnish an undertaking as provided in Section 529. The court may modify or vacate the order at any time after notice and hearing on such terms as are just.

**Comment.** Subdivisions (a) and (b) of Section 708.180 are drawn from provisions in the Probate Code relating to the determination of certain claims in the course of estate administration or in guardianship or conservatorship proceedings. See Prob. Code §§ 851.5-853, 2520-2528. Under former Section 719, the court lacked the power to determine the ownership of property in the hands of a third person or whether the third person was indebted to the judgment debtor when the third person claimed an interest in the property adverse to the judgment debtor or denied the debt. The provision of subdivision (b) requiring the third person's claim to be in good faith codifies the rule of *Thomas v. Thomas*, 192 Cal. App.2d 771, 776, 13 Cal. Rptr. 872 (1961). As to the effect of the failure to determine the ownership of the property or the existence of the debt under Section 708.180, see Section 708.205(b).

Subdivisions (c) and (d) are analogous to Section 708.240 (order forbidding transfer of property or payment of debt in a creditor's suit).

#### CROSS-REFERENCES

Creditor's suit §§ 708.210-708.290

Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Property § 680.310

### § 708.190. Intervention

**708.190.** The court may permit a person claiming an interest in the property or debt sought to be applied in an examination proceeding to intervene in the proceeding and may determine the person's rights in the property or debt pursuant to Section 708.180.

**Comment.** Section 708.190 is new. In a proper case, this section permits the early resolution of a third-party claim to property that is the subject of an examination proceeding. For the procedure applicable to third-party claims after levy, see Division 4 (commencing with Section 720.010).

#### CROSS-REFERENCES

Defined terms

Person § 680.280

Property § 680.310

### § 708.200. Protective orders

**708.200.** In any proceeding under this article, the court may, on motion of the person to be examined or on

its own motion, make such protective orders as justice may require.

**Comment.** Section 708.200 is new and is comparable to the court's authority under Section 708.020 (which incorporates Section 2030) to make a protective order with respect to written interrogatories to the judgment debtor. Under Section 708.200, the court is authorized to make the order on its own motion as well as on motion of the person to be examined.

#### CROSS-REFERENCES

Defined terms

Person § 680.280

### § 708.205. Order applying property to satisfaction of judgment

**708.205.** (a) Except as provided in subdivision (b), at the conclusion of a proceeding pursuant to this article, the court may order the judgment debtor's interest in the property in the possession or under the control of the judgment debtor or the third person or a debt owed by the third person to the judgment debtor to be applied toward the satisfaction of the money judgment if the property is not exempt from enforcement of a money judgment. Such an order creates a lien on the property or debt.

(b) If a third person examined pursuant to Section 708.120 claims an interest in the property adverse to the judgment debtor or denies the debt and the court does not determine the matter as provided in subdivision (a) of Section 708.180, the court may not order the property or debt to be applied toward the satisfaction of the money judgment but may make an order pursuant to subdivision (c) or (d) of Section 708.180 forbidding transfer or payment to the extent authorized by that section.

**Comment.** Subdivision (a) of Section 708.205 continues the broad authority provided by former Section 719 for the court to order any nonexempt property or debt to be applied toward the satisfaction of the judgment. See also the last portion of the first sentence of former Section 715. Under subdivision (a), the person examined—whether the judgment debtor or a third person—may be ordered to deliver property or funds to the levying officer. See *Lewis v. Neblett*, 188 Cal. App.2d 290, 295, 10 Cal. Rptr. 441, 444 (1961) (funds in hands of administrator of



estate). The person examined may also be ordered to pay the judgment creditor directly. See *Hustead v. Superior Court*, 2 Cal. App.3d 780, 783-87, 83 Cal. Rptr. 26, 27-30 (1969) (sublessee of judgment debtor ordered to pay rent to judgment creditor, order held invalid on other grounds). A receiver may be appointed with the powers ordered by the court, and the judgment debtor may be ordered to make any necessary assignments or deliveries to the receiver for the purpose of sale or collection. See *Habenicht v. Lissak*, 78 Cal. 351, 357-58, 20 P. 874, 877 (1889) (seat on stock exchange); *Pacific Bank v. Robinson*, 57 Cal. 520, 524 (1881) (patent rights); *Hathaway v. Brady*, 26 Cal. 581, 593-94 (1864) (note); *Tucker v. Fontes*, 70 Cal. App.2d 768, 771-72, 161 P.2d 697, 701 (1945) (business assets). The court may order execution to be issued to collect the amount due. See *William Deering & Co. v. Richardson-Kimball Co.*, 109 Cal. 73, 41 P. 801 (1895) (funds in bank). If property is to be sold pursuant to the court's order under subdivision (a), it will be sold either by a levying officer (in which case there must be a valid writ of execution outstanding) or by a receiver appointed by the court. Orders made in examination proceedings are enforceable by contempt. See Section 1209.

Subdivision (b) supersedes the portion of former Section 719 that precluded a court order applying property in every case where the third person claimed an adverse interest in the property or denied the debt. Under subdivision (b), this rule applies only if the interest of the third person has not been determined pursuant to Section 708.180. The judgment creditor may then proceed by way of a creditor's suit pursuant to Article 3 (commencing with Section 708.210) or an independent civil action.

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Money judgment § 680.270

Property § 680.310

Effect of liens § 697.010 *et seq.*

Exemptions § 703.010 *et seq.*

### Article 3. Creditor's Suit

**Comment.** Article 3 (commencing with Section 708.210) authorizes the judgment creditor to bring suit against third persons indebted to or in possession of property of the judgment debtor. It is anticipated, however, that less expensive and less cumbersome enforcement procedures will be used in the normal case and that the creditor's suit will be used where the third

person has failed to perform the duties of a garnishee (see Section 701.010 *et seq.*), where the court does not determine disputed ownership of the property or the existence of the debt under Section 708.180, or where for some other reason the judgment creditor believes that the third person will not cooperate. Disputes concerning the interests of a third person and a judgment debtor in personal property may also be resolved through the third-party claims procedure. See Division 4 (commencing with Section 720.010).

### § 708.210. Creditor's suit

**708.210.** If a third person has possession or control of property in which the judgment debtor has an interest or is indebted to the judgment debtor, the judgment creditor may bring an action against the third person to have the interest or debt applied to the satisfaction of the money judgment.

**Comment.** Section 708.210 supersedes the first portion of the first sentence of former Section 720. An action may be brought under this article without the necessity of first levying under a writ of execution, examining the third person, or resorting to any other procedure for the satisfaction of the judgment. The rule under former law—requiring the exhaustion of remedies at law before the equitable remedy of the creditor's suit could be employed—is not continued. For the former rule, see *Farmers & Merchants Bank v. Bank of Italy*, 216 Cal. 452, 455-58, 14 P.2d 527, 528-29 (1932) (resort to supplementary proceedings required); *Bond v. Bulgheroni*, 215 Cal. 7, 10-11, 8 P.2d 130, 132 (1932) (resort to supplementary proceedings not required if inadequate or futile).

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Property § 680.310

### § 708.220. Joinder of judgment debtor

**708.220.** The judgment debtor shall be joined in an action brought pursuant to this article but is not an indispensable party. The residence of the judgment debtor may not be considered in the determination of proper venue unless otherwise provided by contract between the judgment debtor and the third person.

**Comment.** Section 708.220 is new. If the judgment debtor cannot be joined, the creditor's suit should proceed, the judgment debtor not being an indispensable party. See Section 389(b). The second sentence makes clear the rules of venue in a creditor's suit. Under this sentence, the venue in a creditor's suit is the same as it would be had the judgment debtor brought the action against the third person. See also *Holstein v. Superior Court*, 275 Cal. App.2d 708, 710, 80 Cal. Rptr. 301, 302 (1969).

#### CROSS-REFERENCES

Defined terms

Judgment debtor § 680.250

### § 708.230. Time for bringing creditor's suit

**708.230.** (a) Except as provided in subdivision (b), an action shall be commenced pursuant to this article before the expiration of the later of the following times:

(1) The time when the judgment debtor may bring an action against the third person concerning the property or debt.

(2) One year after creation of a lien on the property or debt pursuant to this title if the lien is created at the time when the judgment debtor may bring an action against the third person concerning the property or debt.

(b) An action may not be commenced pursuant to this article after the period for enforcement of the money judgment has expired.

(c) Notwithstanding Section 683.020, if an action is commenced pursuant to this article within the time permitted in this section, the action may be prosecuted to judgment.

**Comment.** Section 708.230 is new and provides a statute of limitations for bringing a creditor's suit. Under prior law, the general four-year statute of limitations was applicable and began to run from the return of the writ of execution unsatisfied. See *Sherman v. S.K.D. Oil Co.*, 185 Cal. 534, 538, 545, 197 P. 799, 801 (1921). Under Section 708.230, the statute of limitations is no longer tied to the return of the writ unsatisfied or the failure of examination proceedings because the judgment creditor is not required to exhaust these remedies before resorting to a creditor's suit. See Section 708.210 and the Comment thereto. For a transitional provision, see Section 694.060.

The extension of time provided by paragraph (2) of subdivision (a) may be effectuated by the creation of an

enforcement lien on the property, as for example, an execution lien (see Section 697.710), a judgment lien on personal property (see Sections 697.510-697.670), or a lien created by service of an order of examination on the third person (see Section 708.120).

A creditor's suit commenced within the period prescribed by this section may be pursued to judgment after the money judgment is no longer enforceable against the original judgment debtor notwithstanding Section 683.020. The judgment in the creditor's suit may then be enforced as provided in Section 708.280, and the 10-year period of enforceability (subject to renewal) provided by Section 683.020 applies to the judgment in the creditor's suit.

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Money judgment § 680.270

Property § 680.310

Period for enforcement of judgment § 683.010 *et seq.*

### § 708.240. Order forbidding transfer of property or payment of debt

708.240. The judgment creditor may apply to the court in which an action under this article is pending for either or both of the following:

(a) An order restraining the third person from transferring to the judgment debtor the property in which the judgment debtor is claimed to have an interest or from paying to the judgment debtor the alleged debt. The order shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, the order may be made on *ex parte* application. The order shall remain in effect until judgment is entered in the action or until such earlier time as the court may provide in the order. An undertaking may be required in the discretion of the court. The court may modify or vacate the order at any time with or without a hearing on such terms as are just.

(b) A temporary restraining order or a preliminary injunction or both, restraining the third person from transferring to any person or otherwise disposing of the property in which the judgment debtor is claimed to have an interest, pursuant to Chapter 3 (commencing

with Section 525) of Title 7, and the court may make, dissolve, and modify such orders as provided therein.

**Comment.** Section 708.240 supersedes a portion of former Section 720. See also Section 708.180(c)-(d) (order in examination proceedings forbidding transfer or payment). Although an order may be made under subdivision (a) without notice and of long duration, its effect is narrowly limited to orders forbidding transfer or payment to the judgment debtor. By incorporating Chapter 3 (commencing with Section 525) of Title 7 (injunctions), subdivision (b) provides the third person with procedural safeguards which were not present in former Section 720.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Person § 680.280

Property § 680.310

### § 708.250. Lien of creditor's suit

708.250. Service of summons on the third person creates a lien on the interest of the judgment debtor in the property or on the debt owed to the judgment debtor that is the subject of an action under this article.

**Comment.** Section 708.250 codifies case law. See *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 28-30, 87 P.2d 830, 844 (1939); *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242, 245 (1909); *cf. Seymour v. McAvoy*, 121 Cal. 438, 441, 53 P. 946, 947 (1898) (filing bill in equity creates equitable lien).

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Property § 680.310

Effect of liens § 697.010 *et seq.*

### § 708.260. Judgment debtor's claim of exemption

708.260. (a) In an action brought pursuant to this article, the judgment debtor may claim that all or any portion of the property or debt is exempt from enforcement of a money judgment. The claim shall be made by application to the court on noticed motion, filed with the court and served on the judgment creditor not later than 30 days before the date set for trial. Service

shall be made personally or by mail. The judgment debtor shall execute an affidavit in support of the application that includes all of the matters set forth in subdivision (b) of Section 703.520. No notice of opposition to the claim of exemption is required. If the judgment debtor has not been named as a party to the action, the judgment debtor may obtain an order under Section 389 that the judgment debtor be made a party. Except as provided in subdivision (b), failure of the judgment debtor to make a claim of exemption is a waiver of the exemption.

(b) Failure of the judgment debtor to make a claim of exemption in an action brought pursuant to this article is not a waiver of the exemption if both of the following conditions are satisfied:

(1) The judgment debtor has not been served with process in the action that contains a description of the property or debt reasonably adequate to permit it to be identified.

(2) The judgment debtor does not have actual notice of the pendency of the action and the identity of the property or the nature of the debt in issue.

**Comment.** Section 708.260 is new and is comparable to subdivision (d) of Section 708.120 (exemption claim in proceeding for examination of third person). See also Section 708.280 (court determination of exemption claim). The 30-day period of notice of motion is extended if served by mail. See Section 684.125.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Property § 680.310

Manner of service § 684.010 *et seq.*

Proof of service required § 684.210

Service on judgment creditor's attorney §§ 684.010, 684.050

#### § 708.270. No right to jury trial

708.270. There is no right to a jury trial in an action under this article.

**Comment.** Section 708.270 is new and codifies what appears to be California law. *Cf. Misrach v. Liederman*, 14 Cal. App.2d Supp. 757, 58 P.2d 746 (1936). See generally 21 Am. Jur.2d

*Creditors' Bills* § 9, at 10 (1965); 21 C.J.S. *Creditors' Suits* § 73, at 1125 (1940).

**§ 708.280. Judgment in creditor's suit**

708.280. (a) The court shall determine any exemption claim made in the action. If the judgment debtor establishes to the satisfaction of the court that the property or debt is exempt from enforcement of a money judgment, the court shall so adjudge and may not make the orders referred to in subdivisions (b), (c), and (d).

(b) If the judgment creditor establishes that the third person has property in which the judgment debtor has an interest or is indebted to the judgment debtor, the court shall render judgment accordingly. The property or debt may be applied to the satisfaction of the judgment creditor's judgment against the judgment debtor as ordered by the court.

(c) If the court determines that the third person has property in which the judgment debtor has an interest, the court may order the third person not to transfer the property until it can be levied upon or otherwise applied to the satisfaction of the judgment.

(d) If the court determines that the third person has transferred property that was subject to a lien in favor of the judgment creditor or, contrary to court order of which the third person has notice, has paid the debt to the judgment debtor or has transferred the property, the court shall render judgment against the third person in an amount equal to the lesser of the following:

(1) The value of the judgment debtor's interest in the property or the amount of the debt.

(2) The amount of the judgment creditor's judgment against the judgment debtor remaining unsatisfied.

**Comment.** Section 708.280 is new. Subdivision (a) recognizes that only nonexempt property may be applied to the satisfaction of the judgment. See Section 703.010 (exemptions apply to all procedures for enforcement of money judgments). At the conclusion of a creditor's suit, the property may be applied toward the satisfaction of the judgment in a manner appropriate to the particular type of property. See the Comment to Section 708.205. Ordinarily, the property or debt that has been determined in the creditor's suit to belong to or to be owing to

the judgment debtor will be levied upon under a writ of execution. If the judgment creditor does not have a valid writ of execution, the judgment creditor may apply for an order under subdivision (c) preventing the third person from transferring the property until it can be applied to the satisfaction of the judgment. If the property cannot be levied upon, some other manner of enforcement will be necessary.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Property § 680.310

Manner of levy § 700.010 *et seq.*

### § 708.290. Costs

708.290. (a) The judgment creditor may not recover cost against the third person in an action under this article if the third person does not claim an interest in the property or does not deny the debt to the judgment debtor.

(b) Costs incurred by or taxed against the judgment creditor in an action under this article may not be recovered from the judgment debtor as a cost of enforcing the judgment.

**Comment.** Section 708.290 is new. Subdivision (a) is to discourage the filing of a creditor's suit where there is no real issue. Subdivision (b) makes clear that the cost of litigation under this article required through no fault of the judgment debtor may not ultimately be imposed on the judgment debtor.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Property § 680.310

## Article 4. Charging Orders

### § 708.310. Enforcement by charging order

708.310. If a money judgment is rendered against a partner but not against the partnership, the judgment debtor's interest in the partnership may be applied toward the satisfaction of the judgment by an order



charging the judgment debtor's interest pursuant to Section 15028 or 15522 of the Corporation Code.

**Comment.** Section 708.310 incorporates the charging order provisions of Corporations Code Sections 15028 and 15522. The charging order is the usual manner for applying the interest of a partner in the partnership to the satisfaction of a judgment against a judgment debtor who is a partner. See Section 699.720(a) (property not subject to execution); *Evans v. Galardi*, 16 Cal.3d 300, 310, 546 P.2d 313, 128 Cal. Rptr. 25 (1976); *Baum v. Baum*, 51 Cal.2d 610, 335 P.2d 481 (1959). Enforcement pursuant to this section is subject to the general rules concerning the time within which judgments may be enforced. See Chapter 3 (commencing with Section 683.010) of Division 1.

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Money judgment § 680.270

### § 708.320. Lien of charging order

**708.320.** (a) Service of a notice of motion for a charging order on the judgment debtor and on the other partners or the partnership creates a lien on the judgment debtor's interest in the partnership.

(b) If a charging order is issued, the lien created pursuant to subdivision (a) continues under the terms of the order. If issuance of the charging order is denied, the lien is extinguished.

**Comment.** Section 708.320 is new. Former statutory law did not explicitly provide for a lien of a charging order. The lien of a charging order was recognized in case law, but the time of its creation and its effect were unclear. See *Taylor v. S & M Lamp Co.*, 190 Cal. App.2d 700, 707-12, 12 Cal. Rptr. 323, 329-31 (1961). Section 708.320 establishes the time of creation of the lien by reference to service of notice of motion for the charging order. *Cf. Ribero v. Callaway*, 87 Cal. App.2d 135, 138, 196 P.2d 109 (1948) (charging orders issued on noticed motion). This provision is analogous to the creation of a lien in an examination proceeding under Article 2 (commencing with Section 708.110) by service of the order of examination. See also Section 416.40 (service on partnership).

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Effect of liens §§ 697.010-697.050, 697.910-697.920

## Article 5. Lien in Pending Action or Proceeding

### § 708.410. Judgment creditor's lien in pending action or proceeding

708.410. (a) A judgment creditor who has a money judgment against a judgment debtor who is a party to a pending action or special proceeding may obtain a lien under this article, to the extent required to satisfy the judgment creditor's money judgment, on both of the following:

(1) Any cause of action of such judgment debtor for money or property that is the subject of the action or proceeding.

(2) The rights of such judgment debtor to money or property under any judgment subsequently procured in the action or proceeding.

(b) To obtain a lien under this article, the judgment creditor shall file a notice of lien and an abstract or certified copy of the judgment creditor's money judgment in the pending action or special proceeding.

(c) At the time of the filing under subdivision (b) or promptly thereafter, the judgment creditor shall serve a copy of the notice of lien on all parties who, prior thereto, have made an appearance in the action or special proceeding. Service shall be made personally or by mail. Failure to serve all parties as required by this subdivision does not affect the lien created by the filing under subdivision (b), but the rights of a party are not affected by the lien until the party has notice of the lien.

(d) For the purpose of this article, an action or special proceeding is pending until the time for appeal from the judgment has expired or, if an appeal is filed, until the appeal has been finally determined.

**Comment.** Sections 708.410-708.480 supersede former Section 688.1. A lien under this article reaches the judgment debtor's right to money under the judgment in the pending action or proceeding as permitted by former law. See *Abatti v. Eldridge*, 103 Cal. App.3d 484, 163 Cal. Rptr. 82 (1980). The lien also reaches any right of the judgment debtor to property under the judgment.

The purpose of this lien is to establish and preserve the judgment creditor's priority until the judgment is final and

nonappealable. See subdivision (d) (action pending until judgment is final). Upon motion of any party to the action including the judgment creditor who has obtained a lien, the money or property to which the judgment debtor is entitled upon judgment in the action may be applied to the satisfaction of the judgment creditor's judgment as ordered by the court. See Section 708.470. If no motion is made by a party, the judgment creditor may seek to reach the judgment subject to the lien by some other enforcement procedure if no settlement is agreed upon. See Section 708.480 and the Comment thereto. The lien is ineffective after the time for enforcement of the judgment creditor's money judgment has expired. See Section 683.020. The duration of the lien may be extended as provided in Section 683.190.

If property that is the subject of a pending action or proceeding is real property or tangible personal property in the possession of the judgment debtor, the judgment creditor may levy on the property under a writ of execution. See Section 700.180. This remedy can be used as an alternative to the lien or in addition to the lien.

Subdivision (b) of Section 708.410 provides for the creation of the lien by filing in the pending action or proceeding a notice of lien and an abstract or certified copy of the judgment creditor's money judgment. The requirement of a prior court hearing authorizing the creation of the lien under former Section 688.1 is not continued. Although former Section 688.1 required a hearing on noticed motion before the court could order that a lien be created, the section provided no standard for denial of such an order. It was held under former law to be an abuse of discretion for the court to refuse to order the lien on the ground that it would impede settlement negotiations. *Atiya v. DiBartolo*, 63 Cal. App.3d 121, 133 Cal. Rptr. 611 (1976). Section 708.410 avoids the need for a court hearing before a lien can be created. Although a dictum in the *Atiya* case stated that a substantial showing that other assets were available might justify denial of the lien, Section 708.410 leaves to the judgment creditor the choice of which assets to pursue in satisfaction of the judgment. This is consistent with the judgment creditor's freedom to select assets of the debtor when levy of execution is the method of collection used. If the judgment debtor wishes to avoid the lien under this article, he or she may do so by voluntarily applying other available assets, if any, to the satisfaction of the judgment.

Former Section 688.1 required that all parties to the action or proceeding be given notice of the application for the lien. Under

Section 708.410, the lien is created by the filing in the action or proceeding. Notice to all parties who have appeared in the action or proceeding is required by subdivision (c) of Section 708.410, but this subdivision makes clear that failure to give notice to one or more of the parties does not affect the validity of the lien. Subdivision (c) also makes clear that the rights of a party who makes a settlement, dismissal, compromise, or satisfaction without notice of the existence of the lien are not affected. This principle of protecting obligors without notice is comparable to other provisions. See, *e.g.*, Civil Code §§ 954.5, 955.1; Com. Code § 9318.

#### CROSS-REFERENCES

Abstract of judgment § 674

Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Property § 680.310

Liens generally § 697.010 *et seq.*

Manner of service § 684.010 *et seq.*

State tax lien in pending action or proceeding, see Gov't Code § 7173

### § 708.420. Contents of notice of lien

**708.420.** The notice of lien under Section 708.410 shall contain all of the following:

(a) A statement that a lien has been created under this article and the title of court, cause, and number of the pending action or proceeding in which the notice of lien has been filed.

(b) The name and last-known address of the judgment debtor.

(c) The name and address of the judgment creditor.

(d) The title of the court where the judgment creditor's money judgment is entered and the cause and number of the action, the date of entry of the judgment, and the date of any subsequent renewals, and where entered in the records of the court.

(e) The date the notice of lien was filed in the action or proceeding.

(f) The amount required to satisfy the judgment creditor's money judgment at the time the notice of lien was filed in the action or proceeding.

(g) A statement that the lien attaches to any cause of action of the judgment debtor that is the subject of the

action or proceeding and to the judgment debtor’s rights to money or property under any judgment subsequently procured in the action or proceeding.

(h) A statement that no compromise, dismissal, settlement, or satisfaction of the pending action or proceeding or any of the judgment debtor’s rights to money or property under any judgment procured therein may be entered into by or on behalf of the judgment debtor, and that the judgment debtor may not enforce the judgment debtor’s rights to money or property under any judgment procured in the action or proceeding by a writ or otherwise, unless one of the following requirements is satisfied:

(1) The prior approval by order of the court in which the action or proceeding is pending has been obtained.

(2) The written consent of the judgment creditor has been obtained or the judgment creditor has released the lien.

(3) The money judgment of the judgment creditor has been satisfied.

(i) A statement that the judgment debtor may claim an exemption for all or any portion of the money or property within 30 days after the judgment debtor has notice of the creation of the lien. If the exemption is not claimed within the time allowed, the exemption is waived.

**Comment.** Section 708.420 is new and is designed to advise the parties to the pending action or proceeding of the relevant facts and of the consequences of the filing of a notice of lien under this article.

CROSS-REFERENCES

Defined terms

Judgment § 680.230

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Property § 680.310

Writ § 680.380

Exemptions § 703.010 *et seq.*

**§ 708.430. Intervention; judgment creditor deemed a party for certain purposes**

708.430. (a) The court in which the action or special proceeding is pending may permit a judgment creditor

who has obtained a lien under this article to intervene in the action or proceeding pursuant to Section 387.

(b) For the purposes of Sections 708.450 and 708.470, a judgment creditor shall be deemed to be a party to the action or special proceeding even though the judgment creditor has not become a party to the action or proceeding under subdivision (a).

**Comment.** Subdivision (a) of Section 708.430 continues the substance of a portion of the first sentence of former Section 688.1(a). Subdivision (b) permits a judgment creditor who has not intervened to oppose a claim of exemption pursuant to Section 708.450 or to seek an order applying the property to the satisfaction of the judgment creditor's judgment pursuant to Section 708.470.

#### CROSS-REFERENCES

Defined terms

Judgment creditor § 680.240

#### § 708.440. Enforcement, compromise, dismissal, settlement, satisfaction

708.440. (a) Except as provided in subdivision (c) of Section 708.410, unless the judgment creditor's money judgment is first satisfied or the lien is released, the judgment recovered in the action or special proceeding in favor of the judgment debtor may not be enforced by a writ or otherwise, and no compromise, dismissal, settlement, or satisfaction of the pending action or special proceeding or the judgment procured therein may be entered into by or on behalf of the judgment debtor, without the written consent of the judgment creditor or authorization by order of the court obtained under subdivision (b).

(b) The court in which the action or special proceeding is pending or the judgment is entered may, in its discretion, after a hearing, make an order described in subdivision (a) that may include such terms and conditions as the court deems necessary. The judgment debtor may apply for an order under this subdivision on noticed motion. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail.

**Comment.** Section 708.440 supersedes a portion of the second sentence of former Section 688.1. The provision permitting compromise, dismissal, settlement, or satisfaction pursuant to court order despite the opposition of the judgment creditor is new and has been added to prevent, for example, the judgment creditor from forcing the judgment debtor to proceed with the action when the court concludes that it is in the best interests of the parties to settle. See also *Abatti v. Eldridge*, 112 Cal. App.3d 411, 169 Cal. Rptr. 330 (1980) (power of court to approve settlement that does not fully satisfy lien). The introductory clause of subdivision (a) recognizes that, notwithstanding this section, the rights of a party who settles without notice of the lien are unaffected by the lien. See Section 708.410(c).

#### CROSS-REFERENCES

##### Defined terms

Judgment § 680.230  
 Judgment creditor § 680.240  
 Judgment debtor § 680.250  
 Money judgment § 680.270  
 Writ § 680.380

Manner of service § 684.010 *et seq.*

Proof of service required § 684.210

Satisfaction of judgment § 724.010 *et seq.*

Service on judgment creditor's attorney §§ 684.010, 684.050

### § 708.450. Judgment debtor's claim of exemption

**708.450.** (a) If a lien is created under this article, the judgment debtor may claim that all or any portion of the money or property that the judgment debtor may recover in the action or special proceeding is exempt from enforcement of a money judgment. The claim shall be made by application on noticed motion to the court in which the action or special proceeding is pending, filed and served on the judgment creditor not later than 30 days after the judgment debtor has notice of the creation of the lien. Service shall be made personally or by mail. The judgment debtor shall execute an affidavit in support of the application that includes all the matters set forth in subdivision (b) of Section 703.520. No notice of opposition to the claim of exemption is required. The failure of the judgment debtor to make a claim of exemption under this section constitutes a waiver of the exemption.

(b) Unless continued for good cause shown, the court shall determine the exemption claim at any time prior to

the entry of judgment in the action or special proceeding and may consolidate the exemption hearing with the hearing on a motion pursuant to Section 708.470.

(c) If the judgment debtor establishes to the satisfaction of the court that the right of the judgment debtor to money or property under the judgment in the action or special proceeding, is all or partially exempt from enforcement of a money judgment, the court shall order the termination of the lien created under this article on the exempt portion of the money or property.

**Comment.** Section 708.450 provides the procedure for the making and determination of any exemption claimed for the judgment debtor's prospective recovery that is subject to a lien created under this article. This procedure is drawn from Sections 708.260 and 708.280 (creditor's suit). The judgment creditor is deemed to be a party for the purposes of this section. See Section 708.430 (b).

#### CROSS-REFERENCES

##### Defined terms

Judgment § 680.230

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Property § 680.310

Exemptions § 703.010 *et seq.*

Manner of service § 684.010 *et seq.*

Proof of service required § 684.210

Service on judgment creditor's attorney §§ 684.010, 684.050

#### § 708.460. Endorsement of lien on judgment and abstract

708.460. (a) If a lien is created pursuant to this article, the court clerk shall endorse upon the judgment recovered in the action or special proceeding a statement of the existence of the lien and the time it was created.

(b) Any abstract issued upon the judgment shall include a statement of the lien in favor of the judgment creditor.

**Comment.** Section 708.460 supersedes the third sentence of former Section 688.1. Section 708.460 is consistent with the last two sentences of subdivision (b) of Section 700.190 (execution lien on final money judgment).



## CROSS-REFERENCES

Abstract of judgment § 674

Defined terms

Judgment § 680.230

Judgment creditor § 680.240

Judge to perform duty where no court clerk § 167

**§ 708.470. Orders in action or special proceeding to enforce lien**

708.470. (a) If the judgment debtor is entitled to money or property under the judgment in the action or special proceeding and a lien created under this article exists, upon application of any party to the action or special proceeding, the court may order that the judgment debtor's rights to money or property under the judgment be applied to the satisfaction of the lien created under this article as ordered by the court. Application for an order under this section shall be on noticed motion. The notice of motion shall be served on all other parties. Service shall be made personally or by mail.

(b) If the judgment determines that the judgment debtor has an interest in property, the court may order the party having custody or control of the property not to transfer the property until it can be levied upon or otherwise applied to the satisfaction of the lien created under this article.

(c) If the court determines that a party other than the judgment debtor has transferred property that was subject to a lien created under this article, or that the party having notice of the lien created under this article has paid the amount owing to the judgment debtor, the court shall render judgment against the party in an amount equal to the lesser of the following:

(1) The value of the judgment debtor's interest in the property or the amount paid the judgment debtor.

(2) The amount of the judgment creditor's lien created under this article.

**Comment.** Section 708.470 is drawn from subdivisions (b)-(d) of Section 708.280 (creditor's suit). The judgment creditor is deemed to be a party for the purposes of this section. See Section 708.430(b).

## CROSS-REFERENCES

## Defined terms

Judgment § 680.230

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Property § 680.310

Manner of service § 684.010 *et seq.***§ 708.480. Enforcement of lien after final judgment**

708.480. A lien created under this article may be enforced by any applicable procedure:

(a) After the judgment subject to the lien is entered and the time for appeal from the judgment has expired.

(b) If an appeal is filed from the judgment subject to the lien, after the appeal is finally determined.

**Comment.** Section 708.480 makes available a variety of remedies for the enforcement of a lien created under this article, such as levy on the judgment under a writ of execution (see Section 700.190 relating to levy on final money judgment) and sale or collection pursuant to such levy (see Sections 701.510 and 701.520), appointment of a receiver to collect the judgment (see Section 708.620), application for an assignment order (see Section 708.510), and collection from a public entity owing money to the judgment debtor (see Sections 708.710-708.795). If, for example, the judgment creditor obtains a writ of execution and levies on a money judgment obtained by the judgment debtor in the action or proceeding, the execution lien on the judgment obtained by the levy of execution relates back to the lien created under this article. See Section 697.020. If the property that is the subject of the pending action or proceeding is real property or tangible personal property in the possession of the judgment debtor, the property may be levied upon prior to the final judgment in the action or proceeding. See Section 700.180.

Under former law, it appeared that where the judgment debtor of the judgment debtor did not voluntarily pay the judgment creditor to discharge the lien and the judgment debtor took no steps to enforce the judgment, the judgment creditor had to bring an action to foreclose the lien in order to reach the amount represented by the judgment. See *Roseburg Loggers, Inc. v. U.S. Plywood-Champion Papers, Inc.*, 14 Cal.3d 742, 748, 537 P.2d 399, 403, 122 Cal. Rptr. 567, 571 (1975) (dictum). Section 708.480 expands the remedies available to the judgment creditor and provides remedies that will be more effective than an equitable action to foreclose a lien.

**Article 6. Assignment Order****§ 708.510. Order to assign right to payment**

708.510. (a) Except as otherwise provided by law, upon application of the judgment creditor on noticed motion, the court may order the judgment debtor to assign to the judgment creditor or to a receiver appointed pursuant to Article 7 (commencing with Section 708.610) all or part of a right to payment due or to become due, whether or not the right is conditioned on future developments, including but not limited to the following types of payments:

(1) Wages due from the federal government that are not subject to execution.

(2) Rents.

(3) Commissions.

(4) Royalties.

(5) Payments due from a patent or copyright.

(b) The notice of the motion shall be served on the judgment debtor. Service shall be made personally or by mail.

(c) In determining whether to order an assignment or the amount of an assignment pursuant to subdivision (a), the court may take into consideration all relevant factors, including the following:

(1) The reasonable requirements of a judgment debtor who is a natural person and of persons supported in whole or in part by the judgment debtor.

(2) Payments the judgment debtor is required to make or that are deducted in satisfaction of other judgments and wage assignments.

(3) The amount remaining due on the money judgment.

(4) The amount being or to be received in satisfaction of the right to payment that may be assigned.

(d) A right to payment may be assigned pursuant to this article only to the extent necessary to satisfy the money judgment.

**Comment.** Section 708.510 provides a new procedure for reaching certain forms of property that cannot be reached by levy under a writ of execution, such as the nonexempt loan value

of an unmaturred life insurance, endowment, or annuity policy. See Sections 699.720(a) (6), 704.100. It also provides an optional procedure for reaching assignable forms of property that are subject to levy, such as accounts receivable, general intangibles, judgments, and instruments. This section does not make any property assignable that is not already assignable. This remedy may be used alone or in conjunction with other remedies provided in this title for reaching rights to payment, such as execution, orders in examination proceedings, creditors' suits, and receivership. The use of this remedy is subject to limitations on the time for enforcement of judgments. See Sections 683.010-683.220.

The introductory clause of subdivision (a) recognizes that certain rights to future payments, such as pension benefits, are protected by law from assignment. See, *e.g.*, 5 U.S.C. § 8346 (1976) (federal government employees' retirement benefits); 45 U.S.C. § 231m (1976) (railroad employees' annuities).

Paragraph (1) of subdivision (a) provides a new means to reach federal employees' wages. Such wages generally may not be garnished but may be reached in examination proceedings by an order to the judgment debtor to endorse and deliver paychecks to a receiver. See *Sheridan v. Sheridan*, 33 Cal. App.3d 917, 109 Cal. Rptr. 466 (1972). However, pursuant to 42 U.S.C. § 659 (Supp. III 1979), the wages of federal employees may be garnished for the enforcement of child support and alimony payments as if the United States were a private person.

Paragraph (2) permits issuance of an order for the assignment of the right to payment of rent. Under former law, it was held that future rental installments could not be reached by garnishment. See *Hustead v. Superior Court*, 2 Cal. App.3d 780, 785-87, 83 Cal. Rptr. 26 (1969).

The assignment of a right to charge commissions or royalties pursuant to paragraphs (3) and (4) may be a more appropriate manner for reaching such uncertain amounts than through levy and sale as permitted in *Meacham v. Meacham*, 262 Cal. App.2d 248, 252, 68 Cal. Rptr. 746 (1968).

The nonexempt loan value (see Section 704.100) of an unmaturred life insurance, endowment, or annuity policy may not be reached by a levy of execution (see Section 699.720), but may be reached by an assignment order.

Subdivision (c) is based on the standard for fixing the amount of payments under the New York installment payment order procedure. See N.Y. Civ. Prac. Law & R. § 5226 (*McKinney* 1978).

Subdivision (d) recognizes that the amount collected by the judgment creditor pursuant to this article may not exceed the amount necessary to satisfy the judgment. See also Sections 685.020 (accrual of interest), 685.030 (cessation of interest), 685.040 (right to costs).

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160  
 Judgment creditor § 680.240  
 Judgment debtor § 680.250  
 Money judgment § 680.270  
 Franchise, assignment of § 708.920  
 Manner of service § 684.010 *et seq.*  
 Proof of service required § 684.210  
 Property subject to enforcement of money judgment §§ 695.010-695.050  
 Service on judgment debtor's attorney §§ 684.020, 684.050

### § 708.520. Restraining assignment or other disposition

708.520. (a) When an application is made pursuant to Section 708.510 or thereafter, the judgment creditor may apply to the court for an order restraining the judgment debtor from assigning or otherwise disposing of the right to payment that is sought to be assigned. The application shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, it may be made *ex parte*.

(b) The court may issue an order pursuant to this section upon a showing of need for the order. The court, in its discretion, may require the judgment creditor to provide an undertaking.

(c) The court may modify or vacate the order at any time with or without a hearing on such terms as are just.

(d) The order shall be personally served upon the judgment debtor and shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court.

**Comment.** Section 708.520 affords injunctive relief in an appropriate case, pending determination of the judgment creditor's application for an assignment order.

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160  
 Judgment creditor § 680.240  
 Judgment debtor § 680.250  
 Manner of service § 684.010 *et seq.*

**§ 708.530. Effect and priority of assignment**

708.530. The effect and priority of an assignment ordered pursuant to this article is governed by Section 955.1 of the Civil Code. For the purpose of priority, an assignee of a right to payment pursuant to this article shall be deemed to be a bona fide assignee for value under the terms of Section 955.1 of the Civil Code.

**Comment.** Section 708.530 incorporates the rule generally applicable to assignments of general intangibles and other rights to payment. Under Civil Code Section 955.1 and this section, the judgment creditor who has obtained an assignment under this article will have priority over another assignee of the same right for value and without notice only if the judgment creditor first gives notice to the obligor. See also Section 708.540.

**§ 708.540. Rights of person obligated**

708.540. The rights of an obligor are not affected by an order assigning the right to payment until notice of the order is received by the obligor. For the purpose of this section, “obligor” means the person who is obligated to make payments to the judgment debtor or who may become obligated to make payments to the judgment debtor depending upon future developments.

**Comment.** Section 708.540 makes clear that the person obligated to make payments to the judgment debtor or who will become obligated is not affected by the assignment order until notice of the order is received. This section is analogous to provisions governing the effect of an execution levy. See, *e.g.*, Sections 701.020 (liability of third person under levy), 701.050 (duty of account debtor). See also Civil Code § 955.1 (rights of certain obligors upon assignment); Com. Code § 9318 (rights of account debtor).

## CROSS-REFERENCES

Defined terms

Judgment debtor § 680.250

**§ 708.550. Exemption procedure**

708.550. (a) The judgment debtor may claim that all or a portion of the right to payment is exempt from enforcement of a money judgment by application to the court on noticed motion filed not later than three days before the date set for the hearing on the judgment

creditor's application for an assignment order. The judgment debtor shall execute an affidavit in support of the application that includes all of the matters set forth in subdivision (b) of Section 703.520. Failure of the judgment debtor to make a claim of exemption is a waiver of the exemption.

(b) The notice of the motion shall be personally served on the judgment creditor not later than three days before the date set for the hearing.

(c) The court shall determine any claim of exemption made pursuant to this section at the hearing on issuance of the assignment order.

**Comment.** Section 708.550 provides a motion procedure for claiming exemptions in a proceeding under this article. Exemptions not claimed as provided in this section are waived. See Section 703.030.

#### CROSS-REFERENCES

Application of exemptions § 703.010

Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

Exempt property § 704.010 *et seq.*

Manner of service § 684.010 *et seq.*

Proof of service required § 684.210

Service on judgment creditor's attorney §§ 684.010, 684.050

### § 708.560. Modification or setting aside assignment order

708.560. (a) Either the judgment creditor or the judgment debtor may apply to the court on noticed motion for an order to modify or set aside the assignment order. The notice of motion shall be served on the other party. Service shall be made personally or by mail.

(b) The court shall make an order modifying or setting aside the assignment order upon a showing that there has been a material change in circumstances since the time of the previous hearing on the assignment order. The court may order a reassignment of the right to payments as necessary. The order shall state whether and to what extent it applies to payments already made.

**Comment.** Section 708.560 gives the court broad discretion to modify or set aside an assignment order depending upon the circumstances of the case.

## CROSS-REFERENCES

Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

Manner of service § 684.010 *et seq.*

Proof of service required § 684.210

Service on attorney §§ 684.010, 684.020, 684.050

## Article 7. Receiver to Enforce Judgment

### § 708.610. Application of general provisions

708.610. The provisions of Chapter 5 (commencing with Section 564) and Chapter 5a (commencing with Section 571) of Title 7 govern the appointment, qualifications, powers, rights, and duties of a receiver appointed under this article.

**Comment.** Section 708.610 makes clear that the general receiver provisions continue to apply to receivers for enforcement of judgments. The appointment of a receiver is subject to the general rules concerning the time within which judgments may be enforced. See Chapter 3 (commencing with Section 683.010) of Division 1.

### § 708.620. Appointment of receiver

708.620. The court may appoint a receiver to enforce the judgment where the judgment creditor shows that, considering the interests of both the judgment creditor and the judgment debtor, the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment.

**Comment.** Section 708.620 supersedes portions of Section 564 that authorized the appointment of a receiver to enforce a judgment. It eliminates as a prerequisite to the appointment of a receiver a showing that a writ of execution has been returned unsatisfied or that the judgment debtor refuses to apply property in satisfaction of the judgment as was formerly required by subdivision 4 of Section 564. See *Olsan v. Comora*, 73 Cal. App.3d 642, 647-49, 140 Cal. Rptr. 835 (1977).

Under Section 708.620, a receiver may be appointed where a writ of execution would not reach certain property and other remedies appear inadequate. A receiver may also be appointed in examination proceedings under Article 2 (commencing with Section 708.110) where the requisite showing is made under this



section. *Cf.* *Tucker v. Fontes*, 70 Cal. App.2d 768, 771-72, 161 P.2d 697, 699 (1945); *Medical Finance Ass'n v. Short*, 36 Cal. App.2d Supp. 745, 747, 92 P.2d 961, 962 (1939) (appointment of receiver in supplementary proceedings under former law). A receiver may be appointed to enforce a charging order against a partnership under Corporations Code Section 15028 or 15522. See Section 708.310 (charging orders). As to the appointment of a receiver where necessary to preserve the value of property, see Section 699.070.

A receiver may also be appointed to enforce a judgment for the possession or sale of property. See Section 712.060. See also Section 708.920 (receiver for enforcement against franchise granted by public entity).

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Judgment § 680.230

Judgment creditor § 680.240

Judgment debtor § 680.250

### § 708.630. Receiver to transfer alcoholic beverage license

708.630. (a) The judgment debtor's interest in an alcoholic beverage license may be applied to the satisfaction of a money judgment only as provided in this section.

(b) The court may appoint a receiver for the purpose of transferring the judgment debtor's interest in an alcoholic beverage license that is transferable under Article 5 (commencing with Section 24070) of Chapter 6 of Division 9 of the Business and Professions Code, unless the judgment debtor shows in the proceeding to appoint a receiver that claims of creditors with priority over the judgment creditor pursuant to Section 24074 of the Business and Professions Code exceed the probable sale price of the license.

(c) The receiver may exercise the powers of the licensee as necessary and in exercising such powers shall comply with the applicable provisions of Division 9 (commencing with Section 23000) of the Business and Professions Code and applicable regulations of the Department of Alcoholic Beverage Control.

**Comment.** Section 708.630 supersedes a portion of former Section 688(f). After the amendment of former Section 688 in

1959 (1959 Cal. Stats. ch. 2140, § 1), alcoholic beverage licenses were not reachable by any state enforcement process. See 37 Ops. Cal. Att’y Gen. 4 (1961). Alcoholic beverage licenses are not subject to levy under a writ of execution. See Section 699.720(a). The Alcoholic Beverage Control Act (commencing with Business and Professions Code Section 23000) provides detailed procedures for the sale of alcoholic beverage licenses which make use of a receiver appropriate. *Cf. Mollis v. Jiffy-Stitcher Co.*, 125 Cal. App.2d 236, 270 P.2d 25 (1954).

In order to prevent a situation where the judgment creditor forces the sale of the judgment debtor’s license but does not receive any proceeds to be applied toward satisfaction of the judgment, subdivision (b) precludes transfer if the judgment debtor shows that it is unlikely that the sale of the license would yield any excess over the amount required to satisfy claims of creditors with priority over the judgment creditor under Business and Professions Code Section 24074. The scheme of priorities set out in Section 24074 is “mandatory and exclusive.” *Grover Escrow Corp. v. Gole*, 71 Cal.2d 61, 65, 453 P.2d 461, 463, 77 Cal. Rptr. 21, 23 (1969). See also Bus. & Prof. Code § 24076.

Subdivision (c) enables the receiver to exercise the powers of the licensee as necessary to comply with the transfer provisions of the Alcoholic Beverage Control Act. The strict regulation of all aspects of alcoholic beverage licenses by the Alcoholic Beverage Control Act requires that the receiver comply with its procedures and the regulations of the Department of Alcoholic Beverage Control.

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

## Article 8. Collection of Judgment Where Judgment Debtor Is Creditor of Public Entity

### § 708.710. Definitions

708.710. As used in this article:

(a) “Local public entity” means any public entity other than the state.

(b) “Public entity” means the state, a county, city, district, public authority, public agency, and any other political subdivision in the state.

(c) “State” means the State of California.

(d) “State agency” means a state office, officer, department, division, bureau, board, commission or agency claims against which are paid by warrants drawn by the Controller.

**Comment.** Section 708.710 defines several terms used in this article but makes no substantive change in former law. See former Section 710. Subdivision (d) is drawn from Section 900.6 of the Government Code and reflects the fact that Section 708.740 applies only to state agencies which present claims to the State Controller. As to claims which are not presented to the State Controller, Section 708.750 applies.

### § 708.720. Exclusive procedures

**708.720.** If a public entity owes money to the judgment debtor, the obligation of the public entity may be applied to the satisfaction of the money judgment against the judgment debtor only in the manner provided by (1) this article, (2) Chapter 5 (commencing with Section 706.010) (wage garnishment), or (3) Article 5 (commencing with Section 708.410) (lien in pending action or proceeding).

**Comment.** Section 708.720 makes clear the procedures available to apply the obligation of a public entity to pay money to the judgment debtor to the satisfaction of a money judgment against the judgment debtor. The section continues the substance of former Section 710(h) (wage garnishment) and makes clear that a lien may be obtained in a pending action or proceeding to which the public entity is a party.

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Money judgment § 680.270

Public entity § 708.710

### § 708.730. Filing and notice generally

**708.730.** (a) Except as otherwise provided in Chapter 5 (commencing with Section 706.010) and in Article 5 (commencing with Section 708.410), if money is owing and unpaid to the judgment debtor by a public entity, the judgment creditor may file, in the manner provided in this article, an abstract of the money judgment or a

certified copy of the money judgment, together with an affidavit that states that the judgment creditor desires the relief provided by this article and states the exact amount then required to satisfy the judgment. The judgment creditor may state in the affidavit any fact tending to establish the identity of the judgment debtor.

(b) Promptly after filing the abstract or certified copy of the judgment and the affidavit with the public entity, the judgment creditor shall serve notice of the filing on the judgment debtor. Service shall be made personally or by mail.

**Comment.** Subdivision (a) of Section 708.730 continues the substance of the introductory paragraph of subdivision (a) and the first sentence of subdivision (e) of former Section 710.

Money is “owing and unpaid” under these provisions when there is an existing and unsatisfied legal liability on the part of the public entity. *McDaniel v. City & County of San Francisco*, 259 Cal. App.2d 356, 361, 66 Cal. Rptr. 384, 387 (1968); *Department of Water & Power v. Inyo Chem. Co.*, 16 Cal.2d 744, 751-53, 108 P.2d 410 (1940).

Subdivision (b) is new. Former Section 710 did not provide for a notice of filing. See *McDaniel v. City & County of San Francisco*, 259 Cal. App.2d 356, 363, 66 Cal. Rptr. 384 (1968). This notice serves the same purpose as a notice of levy under a writ of execution. See Section 699.540.

The procedure provided by this article also applies in cases where money is owed to the judgment debtor by reason of an award in an eminent domain proceeding. Former Section 710(d) provided a distinct but similar procedure for reaching such awards. Under this title, the judgment creditor may seek to apply such property toward the satisfaction of a money judgment through the procedures normally applicable, depending upon the status of the money at the time when it is sought to be reached. Hence, if an eminent domain proceeding has been commenced, the judgment creditor may obtain a lien in the pending eminent domain proceeding pursuant to Article 5 (commencing with Section 708.410). If the judgment in the eminent domain proceeding is final and the public entity has not paid the award to the judgment debtor, the judgment creditor may file an abstract or certified copy of the judgment and an affidavit with the public entity pursuant to this article. If the public entity has deposited the amount of the award with the court where the eminent domain proceeding was held and the

judgment creditor has not obtained a lien under Article 5, the judgment creditor may use some other appropriate procedure, such as garnishment or motion. See, *e.g.*, *Kimball v. Richardson-Kimball Co.*, 111 Cal. 386, 394, 43 P. 1111 (1896) (levy of attachment); *Phoenix v. Kovacevich*, 246 Cal. App.2d 774, 778-79, 55 Cal. Rptr. 135 (1966) (permission to levy by court order); *Credit Bureau of San Diego, Inc. v. Getty*, 61 Cal. App.2d Supp. 823, 826-29, 142 P.2d 105 (1943) (affidavit procedure of former Section 710 not effective where court deposited money with county); *Colver v. W.B. Scarborough Co.*, 73 Cal. App. 455, 457-59, 238 P. 1110 (1925) (levy of execution).

#### CROSS-REFERENCES

Abstract of judgment § 674

Amount required to satisfy judgment § 695.210

Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Public entity § 708.710

Manner of service § 684.010 *et seq.*

Service on judgment debtor's attorney §§ 684.020, 684.050

### § 708.740. Collection where judgment debtor is creditor of state agency

**708.740.** (a) If money is owing and unpaid to the judgment debtor by a state agency, the judgment creditor shall file the abstract or certified copy of the judgment and the affidavit with the state agency owing the money to the judgment debtor prior to the time the state agency presents the claim of the judgment debtor to the Controller.

(b) When presenting the claim of the judgment debtor to the Controller, the state agency shall do all of the following:

(1) Note the fact of the filing of the abstract or certified copy of the judgment and the affidavit.

(2) State the amount required to satisfy the judgment as shown by the affidavit.

(3) State any amounts advanced to the judgment debtor by the state, or owed by the judgment debtor to the state, for expenses or for any other purpose.

(c) To discharge the claim of the judgment debtor, the Controller shall (1) deposit with the court, by a warrant or check payable to the court, the amount due the

judgment debtor (after deducting an amount sufficient to reimburse the state for any amounts advanced to the judgment debtor or owed by the judgment debtor to the state) required to satisfy the money judgment as shown by the affidavit in full or to the greatest extent and (2) pay the balance thereof, if any, to the judgment debtor.

**Comment.** Section 708.740 continues the substance of paragraph 1 of subdivision (a) of former Section 710.

#### CROSS-REFERENCES

Abstract of judgment § 674

Amount required to satisfy the judgment § 695.210

Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

State § 708.710

State agency § 708.710

### **§ 708.750. Collection where judgment debtor is creditor of public entity other than state agency**

708.750. If money is owing and unpaid to the judgment debtor by a public entity other than a state agency, the judgment creditor shall file the abstract or certified copy of the judgment and the affidavit with the auditor of the public entity or, if there is no auditor, with the official whose duty corresponds to that of auditor. To discharge the claim of the judgment debtor, the auditor or other official shall (1) deposit with the court by a warrant or check payable to the court, the amount due the judgment debtor (after deducting an amount sufficient to reimburse the public entity for any amounts advanced to the judgment debtor or owed by the judgment debtor to the public entity) required to satisfy the money judgment as shown by the affidavit in full or to the greatest extent and (2) pay the balance thereof, if any, to the judgment debtor.

**Comment.** Section 708.750 continues the substance of paragraph 2 of subdivision (a) of former Section 710. The reference to deductions for advances to, or amounts owed by, the judgment debtor did not appear in the former law applicable to local public entities, but has been included in Section 708.750 to make it parallel to Section 708.740, applicable to the state agencies.

## CROSS-REFERENCES

Abstract of judgment § 674  
Amount required to satisfy the judgment § 695.210  
Defined terms  
  Court § 680.160  
  Judgment creditor § 680.240  
  Judgment debtor § 680.250  
  Money judgment § 680.270  
  Public entity § 708.710  
  State agency § 708.710

**§ 708.760. Collection where judgment debtor is contractor on public work; subordination to claims of laborers**

**708.760.** (a) If the judgment debtor named in the abstract or certified copy of the judgment filed pursuant to this article is a contractor upon a public work, the cost of which is to be paid out of public moneys voted, appropriated, or otherwise set apart for such purpose, only so much of the contract price shall be deemed owing and unpaid within the meaning of Section 708.740 or 708.750 as may remain payable under the terms of the contractor's contract, upon the completion thereof, after deducting sums due and to become due to persons described in Section 3181 of the Civil Code. In ascertaining the sums due or to become due to such persons, only claims which are filed against the moneys due or to become due to the judgment debtor in accordance with the provisions of Chapter 4 (commencing with Section 3179) of Title 15 of Part 4 of Division 3 of the Civil Code shall be considered.

(b) The Controller, auditor, or other public disbursing officer whose duty it is to make payments under the provisions of the contract may not deposit an amount with the court pursuant to this article until the contract is completed, but may deposit an amount with the court to satisfy the claim of the judgment debtor before the payments specified in subdivision (a) are made so long as a sufficient amount is retained for the satisfaction of the claims of persons described in Section 3181 of the Civil Code.

**Comment.** Subdivision (a) of Section 708.760 continues the substance of the first and second sentences of former Section 710a. Subdivision (b) supersedes the last sentence of former

Section 710a. Subdivision (b) is intended to permit payment to the judgment creditor without the necessity of awaiting the resolution of disputes concerning payment to other contractors.

CROSS-REFERENCES

Defined terms

Court § 680.160

Judgment debtor § 680.250

**§ 708.770. Notice of deposit with court; exemption claim**

**708.770.** (a) Promptly after deposit with the court by the public entity, the court clerk shall serve a notice of deposit on the judgment debtor. Service shall be made personally or by mail.

(b) An exemption may be claimed by noticed motion made within 10 days after service of the notice of deposit pursuant to subdivision (a). The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail.

**Comment.** Subdivision (a) of Section 708.770 requires the court clerk to serve on the judgment debtor notice of a deposit made pursuant to Section 708.740 or 708.750. This notice enables the judgment debtor to make a claim of exemption before the money is paid over to the judgment creditor.

The limitation on the time for claiming an exemption provided by subdivision (b) is the same as the period applicable to exemption claims under a writ of execution. See Section 703.520.

CROSS-REFERENCES

Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

Public entity § 708.710

Exemptions § 703.010 *et seq.*

Extension of time where notice served by mail § 684.120

Manner of service § 684.010 *et seq.*

Service on judgment creditor's attorney §§ 684.010, 684.050

Service on judgment debtor's attorney §§ 684.020, 684.050

**§ 708.775. Distribution of money**

**708.775.** After the expiration of the period allowed for claiming an exemption under Section 708.770, if no exemption has been claimed, the court shall pay the nonexempt portion of the money deposited to the judgment creditor and the balance thereof, if any, to the



judgment debtor, unless some other disposition is required by law.

**Comment.** Section 708.775 supersedes subdivision (c) of former Section 710. Section 708.775 recognizes that the judgment debtor may not be entitled to the excess, such as, for example, where a second judgment creditor has a lien subordinate to that of the first judgment creditor. See Section 701.810 (distribution of proceeds).

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

### § 708.780. Lien

**708.780.** Filing of the abstract or certified copy of the judgment and the affidavit pursuant to this article creates a lien on the money owing and unpaid to the judgment debtor by the public entity in an amount equal to that which may properly be applied to the satisfaction of the money judgment under this article.

**Comment.** Section 708.780 provides for the creation of a lien as of the time of filing with the public entity by the judgment creditor under Section 708.740 or 708.750. This principle is consistent with decisions under former law which equated filing with levy and determined priority as of the time of filing. See *Department of Water & Power v. Inyo Chem. Co.*, 16 Cal.2d 744, 751-53, 108 P.2d 410 (1940); *Ott Hardware Co. v. Davis*, 165 Cal. 795, 800, 134 P. 973 (1913).

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

Money judgment § 680.270

Public entity § 708.710

Liens generally § 697.010 *et seq.*

### § 708.785. Filing fee; deposit of fees collected by state

**708.785.** (a) The judgment creditor upon filing the abstract or certified copy of the judgment and the affidavit shall pay a fee of six dollars (\$6) to the public entity with which it is filed.

(b) Fees received by the state under this section shall be deposited to the credit of the fund from which

payments were, or would be, made on account of collection under this article.

**Comment.** Subdivision (a) of Section 708.785 continues the substance of subdivision (b) of former Section 710. Subdivision (b) continues the substance of subdivision (g) of former Section 710.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Public entity § 708.710

State § 708.710

### § 708.790. Liability of public officer

**708.790.** No public officer or employee is liable for failure to perform a duty imposed by this article unless sufficient information is furnished by the abstract or certified copy of the judgment together with the affidavit to enable the officer or employee in the exercise of reasonable diligence to ascertain the identity of the judgment debtor therefrom and from the papers and records on file in the office in which the officer or employee works. The word “office” as used in this section does not include any branch or subordinate office located in a different city.

**Comment.** Section 708.790 continues the substance of the last two sentences of subdivision (e) of former Section 710. See also Section 708.730 (judgment creditor may state additional information in affidavit to establish identity of judgment debtor).

#### CROSS-REFERENCES

##### Defined terms

Judgment debtor § 680.250

### § 708.795. Limitations on procedure of this article

**708.795.** Nothing in this article authorizes the filing against an overpayment of tax, penalty, or interest, or interest allowable with respect to an overpayment, under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

**Comment.** Section 708.795 continues the substance of subdivision (f) of former Section 710.

## Article 9. Enforcement Against Franchise

### § 708.910. Franchise defined

708.910. As used in this article, “franchise” means a franchise granted by a public entity and all the rights and privileges thereof, other than the franchise of being a corporation.

**Comment.** Section 708.910 makes clear that this article applies only to franchises from public entities. Private franchises are governed by the general rules relating to application of property to satisfaction of a money judgment.

### § 708.920. Court order for enforcement

708.920. (a) The court may, in its discretion, order a franchise applied to the satisfaction of a money judgment upon application by the judgment creditor made on noticed motion. The notice of motion shall be served on the judgment debtor and the public entity that granted the franchise. Service shall be made personally or by mail. In exercising its discretion, the court shall determine whether application of the franchise to the satisfaction of the judgment is proper taking into account all the circumstances of the case, including but not limited to the nature of the franchise, whether the franchise is by its terms transferable, and the likelihood that application of the franchise to the satisfaction of the judgment will yield a substantial amount.

(b) If the court orders application of the franchise to the satisfaction of the judgment, application shall be by such means as appears proper to the court, including but not limited to sale of the franchise, assignment of the franchise or proceeds of the franchise, or appointment of a receiver. The court may include in its order, or make additional orders containing, provisions to effectuate the application of the franchise to the satisfaction of the judgment, including but not limited to provisions relating to the place of sale of the franchise, possession of the property of the judgment debtor necessary for the exercise of the franchise, receipt of proceeds of the franchise, recovery of penalties imposed by law and recoverable for injury to the franchise or for damages or

other cause, and the judgment debtor's powers, duties, and liability for penalties and forfeitures.

**Comment.** Subdivision (a) of Section 708.920 supersedes former Section 724a. A franchise is no longer subject to levy and sale under execution but may only be applied to the satisfaction of a judgment pursuant to court order made in the court's discretion. See Section 699.720 and Comment thereto (property not subject to execution) and Section 695.010 (property subject to enforcement of money judgment). Subdivision (b) supersedes former Sections 724b-724e. See also Cal. Const. art. XX, § 4 (liability of franchise or property held thereunder).

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Franchise § 708.910

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Manner of service § 684.010 *et seq.*

Service on judgment debtor's attorney §§ 684.020, 684.050

### § 708.930. Limitations on enforcement

**708.930.** Notwithstanding any other provision of this article, an order for application of a franchise to the satisfaction of a money judgment is subject to all applicable laws governing sale, transfer, or other actions concerning the franchise, including but not limited to any necessary approvals by the Public Utilities Commission or local public entities and compliance with statutory or administrative regulations.

**Comment.** Section 708.930 incorporates limitations on sale and other actions affecting franchises. See, *e.g.*, *City of South Pasadena v. Pasadena Land and Water Co.*, 152 Cal. 579, 93 P. 490 (1908) (franchise not transferable unless transferee continues exercise of franchise).

#### CROSS-REFERENCES

##### Defined terms

Money judgment § 680.270

## Article 10. Other Enforcement Procedures

### § 709.010. Trusts

**709.010.** (a) As used in this section, "trust" has the meaning provided in Section 1138 of the Probate Code

but includes a trust subject to court supervision under Article 1 (commencing with Section 1120) of Chapter 19 of Division 3 of the Probate Code.

(b) The judgment debtor's interest as a beneficiary of a trust is subject to enforcement of a money judgment only upon petition under this section by the judgment creditor to the court prescribed in Chapter 19 (commencing with Section 1120) of Division 3 of the Probate Code (administration of trusts). The judgment debtor's interest in the trust may be applied to the satisfaction of the money judgment by such means as the court, in its discretion, determines are proper, including but not limited to imposition of a lien on or sale of the judgment debtor's interest, collection of trust income, and liquidation and transfer of trust assets by the trustee.

(c) Nothing in this section affects the law relating to enforcement of a money judgment against the judgment debtor's interest in a spendthrift trust, but surplus amounts from a spendthrift trust liable pursuant to Section 859 of the Civil Code are subject to enforcement of a money judgment under this section.

**Comment.** Subdivision (a) of Section 709.010 incorporates provisions that make clear that this section applies only to written, voluntary, express trusts (testamentary or inter vivos) and not to such trusts as Totten trusts, investment trusts, and deeds of trust.

Subdivision (b) provides for the application of the judgment debtor's beneficial interest in a trust to the satisfaction of a money judgment. Section 699.720(a)(8) (property not subject to execution) reverses the case law rule that the judgment debtor's beneficial interest in a trust is subject to execution. See, *e.g.*, *Houghton v. Pacific Southwest Trust & Sav. Bank*, 111 Cal. App. 509, 295 P. 1079 (1931). Enforcement processes may not reach specific trust assets or the judgment debtor's interest in the trust (see, *e.g.*, *Poindexter v. Los Angeles Stone Co.*, 60 Cal. App. 686, 214 P. 241 (1923) (judgment lien)) except pursuant to court order applying the interest or assets to satisfaction of the judgment.

Subdivision (c) makes clear that this section does not affect the validity of a spendthrift provision in a trust instrument but permits the surplus income from a spendthrift trust to be reached under Section 709.010 to the extent that such income is

liable for payment of a judgment under the law otherwise applicable. The remedy provided by Section 709.010 replaces the remedy of a creditor's suit which was used under former law. See *Canfield v. Security-First Nat'l Bank*, 13 Cal. 2d 1, 34, 87 P.2d 830 (1939). See also Civil Code § 859; *Estate of Lawrence*, 267 Cal. App.2d 77, 82-83, 72 Cal. Rptr. 851 (1968).

## CROSS-REFERENCES

## Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

## § 709.020. Contingent interests

**709.020.** The judgment creditor may apply to the court on noticed motion for an order applying a contingent remainder, executory interest, or other interest of the judgment debtor in property that is not vested in the judgment debtor to the satisfaction of the money judgment. The interest of the judgment debtor may be applied to the satisfaction of the money judgment by such means as the court, in its discretion, determines are proper to protect the interests of both the judgment debtor and judgment creditor, including but not limited to the imposition of a lien on or the sale of the judgment debtor's interest.

**Comment.** Section 709.020 reverses the rule of such cases as *Anglo California Nat'l Bank v. Kidd*, 58 Cal. App.2d 651, 137 P.2d 460 (1943), which held that contingent interests are not subject to satisfaction of a money judgment. Section 699.720(a)(9) continues the rule that such interests are not subject to execution. Section 709.020 is intended to permit the court, in an examination proceeding or creditor's suit or otherwise, to fashion a suitable remedy through its equitable powers in order to prevent a sacrifice sale of the judgment debtor's interest while preserving the rights of the judgment creditor.

## CROSS-REFERENCES

## Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Property § 680.310

### § 709.030. Guardianship or conservatorship estates

709.030. Property in a guardianship or conservatorship estate is not subject to enforcement of a money judgment by a procedure provided in this division, but the judgment creditor may apply to the court in which the guardianship or conservatorship proceeding is pending under Division 4 (commencing with Section 1400) of the Probate Code for an order requiring payment of the judgment.

**Comment.** Section 709.030 codifies the rule of *McCracken v. Lott*, 3 Cal.2d 164, 44 P.2d 355 (1935). If the guardian or conservator fails, neglects, or refuses to pay the judgment, the judgment creditor may apply to the court having jurisdiction of the guardianship or conservatorship proceeding pursuant to Probate Code Section 2404.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Money judgment § 680.270

Property § 680.310

## DIVISION 3. ENFORCEMENT OF NONMONEY JUDGMENTS

### CHAPTER 1. GENERAL PROVISIONS

#### § 712.010. Issuance of writ

712.010. (a) Except as provided in subdivision (b), after entry of a judgment for possession or sale of property, a writ of possession or sale shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the judgment is to be enforced. A separate writ shall be issued for each county where the judgment is to be enforced. Writs may be issued successively until the judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 90 days after the issuance of a prior writ for that county unless the prior writ is first returned.

(b) A writ of possession of real property may not be issued to enforce a judgment for unlawful detainer after

default in the payment of rent until the expiration of the time provided by subdivision (c) of Section 1174.

**Comment.** Section 712.010 is a general provision applicable to the issuance of writs of possession or sale that may be used to enforce judgments for possession or sale under this division. The section is analogous to subdivision (a) of Section 699.510 relating to writs of execution. See also the Comment to Section 699.510. It is based in part on former Sections 681, 684, and 687. Section 712.010 authorizes issuance of writs to more than one county; it will be a rare case, however, in which a writ of sale or possession of real property is needed in a county other than that where the judgment is entered. See, *e.g.*, Sections 392 (venue for actions concerning real property), 701.570(a) (execution sale of parcel of real property located in more than one county), 726(d) (place of sale of mortgaged premises). The last sentence providing for successive writs, is made necessary by the provisions of Section 712.050 concerning the return of the writ. In certain unlawful detainer cases, a writ of possession of real property may not be issued until the expiration of five days after entry of the judgment. See Section 1174(c).

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Judgment § 680.230

Judgment creditor § 680.240

Levying officer § 680.260

Writ § 680.380

Return of writ § 712.050

Writ of possession, personal property § 714.010

Writ of possession, real property § 715.010

Writ of sale § 716.010

## § 712.020. Contents of writ

**712.020.** A writ of possession or sale issued pursuant to this division shall require the levying officer to whom it is directed to enforce the judgment and shall include the following information:

(a) The date of issuance of the writ.

(b) The title of the court where the judgment for possession or sale is entered and the cause and number of the action.

(c) The name and address of the creditor and the name and last-known address of the judgment debtor.

(d) The date the judgment was entered, and the date of any subsequent renewals, and where entered in the records of the court.



(e) If the judgment for possession or sale includes a money judgment, the amount required to satisfy the money judgment on the date the writ is issued and the amount of interest accruing daily on the principal amount of the judgment from the date the writ is issued.

(f) Whether any person has requested notice of sale under the judgment and, if so, the name and address of such person.

(g) Any other information required to be included in the particular writ.

**Comment.** Section 712.020 prescribes the essential elements of a writ of possession or sale issued to enforce a judgment under this division. This section is analogous to Section 699.520 (contents of writ of execution). Additional information is required depending upon the type of writ. See Sections 714.010, 715.010, 716.010. A statutory form of the writ is provided in Section 693.010. The Judicial Council has authority to supersede the statutory form. See Section 681.030(b).

#### CROSS-REFERENCES

Amount required to satisfy judgment § 695.210

Computation of daily interest § 699.520

Defined terms

Judgment § 680.230

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Money judgment § 680.270

Principal amount of the judgment § 680.300

Writ § 680.380

Request for notice of sale § 701.550

### § 712.030. Delivery and execution of writ

**712.030.** (a) Upon delivery of the writ of possession or sale to the levying officer to whom the writ is directed, together with the written instructions of the judgment creditor, the levying officer shall execute the writ in the manner prescribed by law.

(b) The levying officer may not levy upon or otherwise seize property under the writ after the expiration of 90 days from the date the writ was issued.

**Comment.** Section 712.030 is analogous to Section 699.530 (delivery and execution of writ of execution). See also the Comment to Section 699.530.

## CROSS-REFERENCES

## Defined terms

Judgment creditor § 680.240

Levying officer § 680.260

Property § 680.310

Writ § 680.380

Instructions to levying officer § 687.010

**§ 712.040. Collection of money amounts**

**712.040.** (a) A writ of possession or sale may be enforced as a writ of execution to satisfy any money judgment included in the judgment for possession or sale. If amounts due under the judgment are not satisfied pursuant to the writ of possession or sale, the judgment creditor may use a writ of execution to satisfy any money judgment included in the judgment after the writ of possession or sale has been returned or 90 days after its issuance, whichever is earlier. If the judgment creditor does not desire issuance of a writ of possession or sale (because possession has been voluntarily surrendered, the secured obligation has been voluntarily satisfied, or other reason), a writ of execution may be issued to satisfy any money judgment included in the judgment.

(b) Whether or not a writ of possession or sale has been issued, enforced, or returned, the judgment creditor may use any available remedies provided by Chapter 5 (commencing with Section 706.010) or Chapter 6 (commencing with Section 708.010) of Division 2 to satisfy any money judgment included in the judgment.

(c) Notwithstanding subdivisions (a) and (b), if so ordered in a judgment for sale, a money judgment included in the judgment may only be enforced as ordered by the court.

**Comment.** Section 712.040 is derived from a portion of subdivision 4 of former Section 682 (satisfaction of costs, damages, rents, or profits under judgment for possession of real or personal property). Subdivision (a) promotes procedural efficiency by permitting a writ of possession or sale to be enforced by a levying officer as if it were a writ of execution issued to enforce a money judgment. Subdivision (a) also makes clear that the money judgment portion of the judgment for sale or possession is enforceable directly by a writ of execution after

the writ of possession or sale is no longer leviable as a writ of execution or in a case where no writ of possession or sale is needed or desired.

Subdivision (b) makes clear that the judgment creditor is not restricted to the remedy under subdivision (a) but is free to use any other appropriate remedy provided for enforcement of a money judgment. See Sections 706.010-706.154 (wage garnishment), 708.010-709.030 (miscellaneous creditors' remedies).

The judgment debtor may be entitled to claim exemptions for property sought to be applied to the satisfaction of a money judgment pursuant to a writ of possession or sale. See Sections 703.010-704.840 (exemptions).

Subdivision (c) recognizes that a judgment for sale may provide restrictions on the collection of money amounts awarded in the judgment. See also Section 716.020 (execution of writ of sale). Costs and attorney's fees may be ordered to be satisfied out of the proceeds from the sale of the property, if it is security for such amounts. See, *e.g.*, Section 727; *Clemens v. Luce*, 101 Cal. 432, 436, 35 P. 1032 (1894).

#### CROSS-REFERENCES

##### Defined terms

Court § 680.160

Judgment § 680.230

Judgment creditor § 680.240

Money judgment § 680.270

Writ of possession, personal property § 714.010

Writ of possession, real property § 715.010

Writ of sale § 716.010

### § 712.050. Return of writ

**712.050.** The return of a writ of possession or sale is governed by Section 699.560 (return of writ of execution).

**Comment.** Section 712.050 is new; prior statutory law did not provide for the return of a writ of possession or sale. See former Section 683. This section differs from the rule applied in *Magnaud v. Traeger*, 66 Cal. App. 526, 530-31, 226 P. 990 (1924), where it was held that a writ of possession of real property remained in force insofar as it directed the levying officer to levy on property to satisfy the part of the judgment awarding damages.

**§ 712.060. Receiver**

**712.060.** The court may appoint a receiver pursuant to Article 7 (commencing with Section 708.610) of Chapter 6 of Division 2 to enforce a judgment for possession or sale of property.

**Comment.** Section 712.060 makes clear that a receiver may be appointed to enforce a judgment for possession or sale of property under this division. Under former law, receivers were not expressly authorized to enforce such judgments. See the former provision of Section 726 for appointment of elisor or commissioner to sell property at conclusion of foreclosure action. See also *Ramsey v. Furlott*, 14 Cal. App.2d 145, 148, 57 P.2d 1007 (1936) (appointment of “receiver and commissioner” to gather property and sell it is in effect appointment of commissioner). Receivers have been appointed at the commencement of a foreclosure action and continued in possession until sale. *Boyd v. Benneyan*, 204 Cal. 23, 25, 266 P. 278 (1928). The appointment of a receiver is subject to the general rules concerning the time within which a judgment may be enforced. See Sections 683.010-683.220.

## CROSS-REFERENCES

Defined terms

Court § 680.160

Judgment § 680.230

Judgment for possession, personal property § 714.010 *et seq.*

Judgment for possession, real property § 715.010 *et seq.*

Judgment for sale § 716.010 *et seq.*

**§ 712.070. Enforcement against public entity**

**712.070.** Except as provided in Section 695.050, a judgment against a public entity is enforceable under this division.

**Comment.** Section 712.070 makes clear that nonmoney judgments against public entities are governed by this title even though money judgments are not. See Section 695.050 and Comment thereto.

## CROSS-REFERENCES

Defined terms

Judgment § 680.230

Money judgment § 680.270

## CHAPTER 2. JUDGMENT FOR POSSESSION OF PERSONAL PROPERTY

### § 714.010. Writ of possession of personal property

714.010. (a) A judgment for possession of personal property may be enforced by a writ of possession of personal property issued pursuant to Section 712.010.

(b) In addition to the information required by Section 712.020, the writ of possession of personal property shall contain the following:

(1) A description of the property to be delivered to the judgment creditor in satisfaction of the judgment.

(2) The value of the property as specified in the judgment.

**Comment.** Section 714.010 supersedes portions of subdivision 4 of former Section 682 and of former Section 684. Under this chapter, a judgment for possession of personal property is enforced by a writ of possession rather than a writ of execution. A statutory form for the writ of possession is provided in Section 693.010. The Judicial Council has authority to supersede the statutory form. See Section 681.030(b).

#### CROSS-REFERENCES

##### Defined terms

Judgment § 680.230

Judgment creditor § 680.240

Personal property § 680.290

### § 714.020. Execution of writ of possession of personal property

714.020. (a) To execute the writ of possession of personal property, the levying officer shall search for the property specified in the writ and, if the property is in the possession of the judgment debtor or an agent of the judgment debtor, take custody of the property in the same manner as a levy under a writ of execution on such property in the possession of the judgment debtor. Custody of personal property used as a dwelling shall be taken as provided by Section 700.080. Custody of property in a private place shall be taken as provided by Section 699.030.

(b) If the property specified in the writ of possession cannot be taken into custody, the levying officer shall

make a demand upon the judgment debtor for the property if the judgment debtor can be located. If custody of the property is not then obtained, the levying officer shall so state in the return. Thereafter the judgment for the possession of the property may be enforced in the same manner as a money judgment for the value of the property as specified in the judgment.

(c) The writ of possession of personal property may, under the circumstances described in subdivision (b), be treated as a writ of execution.

**Comment.** Section 714.020 supersedes a portion of subdivision 4 of former Section 682 and former Section 684.1 (incorporating the manner of enforcing prejudgment writs of possession pursuant to Section 514.010). By incorporating the manner of levy under a writ of execution, subdivision (a) continues the general substance of prior law. See, *e.g.*, Sections 699.030 (property in private place), 700.030 (property in judgment debtor's possession), 700.070 (property of going business), 700.080 (personal property dwelling).

Under subdivision (b), the value of the property is substituted only where the property cannot be delivered. See Section 667; *Drinkhouse v. Van Ness*, 202 Cal. 359, 374, 260 P. 869 (1927). The value of the property is generally alleged and determined in the action. See Sections 627, 667; 3 B. Witkin, *California Procedure Pleading* § 555, at 2197, § 563, at 2202-03 (2d ed. 1971). The judgment creditor is not obligated to accept merely the value of the property if the property itself is available. *Griffith v. Reddick*, 41 Cal. App. 458, 461-62, 182 P. 984 (1919).

#### CROSS-REFERENCES

Collection of money judgment included in judgment § 712.040

Custody § 687.030

Defined terms

Judgment debtor § 680.250

Levying officer § 680.260

Money judgment § 680.270

Personal property § 680.290

Enforcement of money judgments §§ 695.010-709.030

Instructions to levying officer § 687.010

### § 714.030. Turnover order

714.030. (a) After entry of a judgment for possession of personal property, and whether or not a writ of possession of personal property has been issued, the judgment creditor may apply to the court for an order

directing the judgment debtor to transfer possession of the property to the judgment creditor. The application shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, the application may be made ex parte.

(b) The court may issue an order pursuant to this section upon a showing of need for the order.

(c) The order shall be personally served on the judgment debtor and shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court.

**Comment.** Section 714.030 is based on comparable provisions applicable before judgment (Section 512.070) and to money judgments (Section 699.040). Section 714.030 makes clear that the court has power to issue a turnover order directing the judgment debtor to transfer possession of the specified property directly to the judgment creditor. The order may be used in lieu of or in addition to a writ of possession.

CROSS-REFERENCES

Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

Personal property § 680.290

Writ of possession of personal property § 714.010

**CHAPTER 3. JUDGMENT FOR POSSESSION OF REAL PROPERTY**

**§ 715.010. Writ of possession of real property**

715.010. (a) A judgment for possession of real property may be enforced by a writ of possession of real property issued pursuant to Section 712.010.

(b) In addition to the information required by Section 712.020, the writ of possession of real property shall contain the following:

(1) A description of the premises, possession of which is to be delivered to the judgment creditor in satisfaction of the judgment.

(2) A statement that if the premises is not vacated within five days from the date of service of a copy of the

writ on the occupant or, if the copy of the writ is posted, within five days from the date a copy of the writ is served on the judgment debtor, the levying officer will remove the occupants from the premises and place the judgment creditor in possession.

(3) A statement that any personal property remaining on the premises after the judgment creditor has been placed in possession will be sold or otherwise disposed of in accordance with Section 1174 of the Code of Civil Procedure unless the judgment debtor or other owner 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.

**Comment.** Section 715.010 supersedes a portion of subdivision 4 of former Section 682, a portion of former Section 684, and portions of Section 1174 (unlawful detainer). Under this chapter, a judgment for possession of real property is enforced by a writ of possession rather than a writ of execution or a writ of restitution. A statutory form for the writ of possession is provided in Section 693.010. The Judicial Council has authority to supersede the statutory form. See Section 681.030(b). Subdivision (b) (3) continues a provision formerly found in Section 1174(d).

#### CROSS-REFERENCES

##### Defined terms

Judgment § 680.230

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Real property § 680.320

#### § 715.020. Execution of writ of possession of real property

715.020. To execute the writ of possession of real property:

(a) The levying officer shall serve a copy of the writ of possession on one occupant of the property. Service on the occupant shall be made by leaving the copy of the writ with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found upon the property when service is attempted who is either an employee or agent of the occupant or a member of the occupant's household.



(b) If unable to serve an occupant described in subdivision (a) at the time service is attempted, the levying officer shall execute the writ of possession by posting a copy of the writ in a conspicuous place on the property and serving a copy of the writ of possession on the judgment debtor. Service shall be made personally or by mail. If the judgment debtor's address is not known, the copy of the writ may be served by mailing it to the address of the property.

(c) If the judgment debtor, members of the judgment debtor's household, and any other occupants holding under the judgment debtor do not vacate the property within five days from the date of service on an occupant pursuant to subdivision (a) or on the judgment debtor pursuant to subdivision (b), the levying officer shall remove the occupants from the property and place the judgment creditor in possession.

**Comment.** Section 715.020 continues and generalizes provisions formerly contained in Section 1174(d) (unlawful detainer).

#### CROSS-REFERENCES

Collection of money judgment included in judgment § 712.040

Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Real property § 680.320

Manner of service § 684.010 *et seq.*

### § 715.030. Disposition of personal property

715.030. The disposition of personal property remaining on the premises after the judgment creditor is placed in possession thereof pursuant to the writ of possession is governed by subdivisions (e) to (m), inclusive, of Section 1174. For this purpose, references in Section 1174 and provisions incorporated by Section 1174 to the "landlord" shall be deemed to be references to the judgment creditor and references to the "tenant" shall be deemed to be references to the judgment debtor or other occupant.

**Comment.** Section 715.030 makes the procedure for disposition of personal property remaining on the premises where a tenant has vacated in an unlawful detainer action

applicable to all cases where personal property remains on the premises after possession is delivered to a judgment creditor pursuant to a writ of possession of real property.

#### CROSS-REFERENCES

##### Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Personal property § 680.290

## CHAPTER 4. JUDGMENT FOR SALE OF PROPERTY

### § 716.010. Writ of sale

716.010. (a) A judgment for sale of real or personal property may be enforced by a writ of sale issued pursuant to Section 712.010.

(b) In addition to the information required by Section 712.020, the writ of sale shall contain a description of the property to be sold in satisfaction of the judgment for sale.

(c) The writ of sale delivered to the levying officer shall be accompanied by a certified copy of the judgment for sale.

**Comment.** Section 716.010 supersedes a portion of former Section 684. Under this chapter, judgments for the sale of real or personal property are no longer enforced without resort to a writ of sale. The judgment is not enforced through an order of sale or a writ of enforcement as was formerly the practice. See, *e.g.*, *Laubisch v. Roberdo*, 43 Cal.2d 702, 713, 277 P.2d 9 (1954); *Knapp v. Rose*, 32 Cal.2d 530, 534, 197 P.2d 7 (1948). A statutory form for the writ of sale is provided in Section 693.010. The Judicial Council has authority to supersede the statutory form. See Section 681.030(b). A levy is required in every case whereas under former law no levy was required since the property was directed to be sold by the judgment—a practice arising from distinctions between the manner of enforcing common law judgments and equitable decrees. See *Southern Cal. Lumber Co. v. Ocean Beach Hotel Co.*, 94 Cal. 217, 222-24, 29 P. 627 (1892). Subdivision (c) requires delivery of a certified copy of the judgment to enable the levying officer to follow the terms of the judgment. See, *e.g.*, Section 716.020(c) (application of proceeds in conformity with judgment). The judgment may also direct that a single parcel or contiguous parcels of real property situated

in two or more counties be sold in one of the counties as if it were all situated therein. See Sections 701.570(a), 726(d).

#### CROSS-REFERENCES

##### Defined terms

Judgment § 680.230

Levying officer § 680.260

Personal property § 680.290

Real property § 680.320

### § 716.020. Execution of writ of sale

**716.020.** To execute the writ of sale, the levying officer shall:

(a) Levy upon the property described in the writ of sale in the manner prescribed by Article 4 (commencing with Section 700.010) of Chapter 3 of Division 2 for levy under a writ of execution.

(b) Except as otherwise ordered by the court, give notice of sale and sell the property described in the writ of sale in the manner prescribed by Article 6 (commencing with Section 701.510) of Chapter 3 of Division 2 for giving notice and selling under a writ of execution.

(c) Apply the proceeds of the sale of the property in conformity with the judgment for sale.

**Comment.** Section 716.020 continues the substance of former law regarding enforcement of a judgment for the sale of real or personal property. See former Section 684, former portion of Section 726; *Johnson v. Tyrrell*, 77 Cal. App. 179, 182-83, 246 P. 140 (1926) (foreclosure sale of real property made in same manner as execution sale); *Podrat v. Oberndorff*, 207 Cal. 457, 459-60, 278 P. 1035 (1929) (foreclosure sale of personal property under chattel mortgage made in same manner as execution sale); *Marshal's Manual of Procedure* §§ 452.1, 452.2 (rev. 1965); *Cal. State Sheriffs' Ass'n, Civil Procedural Manual* 6.28 (1978). Section 716.020 changes the former practice under which the judgment debtor was requested to bring personal property to the sale and, if he or she refused, the judgment creditor had to bring a claim and delivery action. See *Ely v. Williams*, 6 Cal. App. 455, 457-58, 92 P. 393 (1907).

#### CROSS-REFERENCES

Collection of money judgment included in judgment § 712.040

##### Defined terms

Levying officer § 680.260

**§ 716.030. Turnover order**

716.030. (a) If a writ of sale is issued, the judgment creditor may apply to the court *ex parte*, or on noticed motion if the court so directs or a court rule so requires, for an order directing the judgment debtor to transfer to the levying officer:

(1) Possession of the property to be sold if the prescribed method of levy is by taking the property into custody.

(2) Possession of any documentary evidence of title to property to be sold. An order pursuant to this paragraph may be served when the property is levied upon or thereafter.

(b) The court may issue an order pursuant to this section upon a showing of need for the order.

(c) The order shall be personally served on the judgment debtor and shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court.

**Comment.** Section 716.030 is comparable to Section 699.040 (turnover order in aid of execution) and Section 714.030 (turnover order in aid of writ of possession of personal property).

**CROSS-REFERENCES**

Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

Levying officer § 680.260

Manner of service § 684.010 *et seq.*

**CHAPTER 5. OTHER JUDGMENTS****§ 717.010. Enforcement of other judgments**

717.010. A judgment not otherwise enforceable pursuant to this title may be enforced by personally serving a certified copy of the judgment on the person required to obey it and invoking the power of the court to punish for contempt.

**Comment.** Section 717.010 continues the substance of a portion of former Section 684.

## CROSS-REFERENCES

Contempt §§ 1209-1222

Defined terms

Court § 680.160

Judgment § 680.230

Person § 680.280

Manner of service § 684.010 *et seq.*

## DIVISION 4. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

### CHAPTER 1. DEFINITIONS

#### § 720.010. Application of definitions

720.010. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this division.

**Comment.** This chapter provides special definitions of “creditor” and “debtor” which are necessary because this division also governs third-party claims to property levied upon under writs of attachment and prejudgment writs of possession. See, *e.g.*, Section 720.110 (chapter extends to attachment and prejudgment writ of possession).

#### § 720.020. Creditor

720.020. “Creditor” means the judgment creditor or, in the case of a levy under a writ of attachment or prejudgment writ of possession of personal property, the plaintiff.

**Comment.** See the Comment to Section 720.010. See also Section 680.240 (“judgment creditor” defined).

#### § 720.030. Debtor

720.030. “Debtor” means the judgment debtor or, in the case of a levy under a writ of attachment or prejudgment writ of possession of personal property, the defendant.

**Comment.** See the Comment to Section 720.010. See also Section 680.250 (“judgment debtor” defined).

## CHAPTER 2. THIRD-PARTY CLAIMS OF OWNERSHIP AND POSSESSION

### § 720.110. Application of chapter

720.110. A third person claiming ownership or the right to possession of property may make a third-party claim under this chapter in any of the following cases if the interest claimed is superior to the creditor's lien on the property:

(a) Where real peoperty has been levied upon under a writ of attachment or a writ of execution.

(b) Where personal property has been levied upon under a writ of attachment, a writ of execution, a prejudgment or postjudgment writ of possession, or a writ of sale.

**Comment.** Section 720.110 supersedes a portion of the first paragraph of former Section 689 which permitted claims of title and the right to possession of personal property only.

Subdivision (a) of Section 720.110 makes the summary third-party claims procedure available to a person claiming a superior ownership or possessory right in real property that is subjected to attachment or execution to satisfy a money obligation. Under former law, a quiet title action was the usual remedy where real property was wrongfully sold on execution. See *First Nat'l Bank v. Kinslow*, 8 Cal.2d 339, 345, 65 P.2d 796, 799 (1937). Nothing in this division precludes the use of a quiet title action; Section 720.110 merely makes available the additional remedy of the summary third-party claims procedure. See also Section 720.150 (third-party's interest not affected by failure to make third-party claim).

Subdivision (b) sets forth the cases in which the procedure of this chapter is available to assert superior claims of ownership or right to possession where personal property has been levied upon. Former Section 689 applied to cases where the property was levied upon under execution and also was incorporated for prejudgment remedies. See Section 488.090 (attachment) and Section 514.050 (claim and delivery). The former procedure was also available to determine third-party claims to property seized to satisfy a judgment foreclosing a chattel mortgage. See *Lawler v. Solus*, 101 Cal. App.2d 816, 226 P.2d 348 (1951). Subdivision (b) makes clear that this procedure applies in prejudgment remedy cases and also where property is levied upon under a postjudgment writ of possession. As to a third-party claim of a

security interest or lien on the property levied upon, see Chapter 3 (commencing with Section 720.210). See also Section 688.030 (third-party claims where tax liability enforced). For a transitional provision applicable to claims filed prior to the operative date of this chapter, see Section 694.070.

#### CROSS-REFERENCES

##### Defined terms

Creditor § 720.020

Person § 680.280

Personal property § 680.290

Property § 680.310

Real property § 680.320

Writ § 680.380

Writ of possession, postjudgment § 714.010

Writ of sale § 716.010

### § 720.120. Time and manner of making third-party claim

**720.120.** A person making a third-party claim under this chapter shall file the claim with the levying officer, together with two copies of the claim, after levy on the property but before the levying officer does any of the following:

- (a) Sells the property.
- (b) Delivers possession of the property to the creditor.
- (c) Pays proceeds of collection to the creditor.

**Comment.** Section 720.120 supersedes a portion of the first paragraph of former Section 689. See the Comment to Section 720.110. Two copies of the claim are required to be filed so that one may be served on the debtor and one on the creditor. See Section 720.140. The former statute, unlike Section 720.120, did not specify the time within which a third-party claim could be filed, but in *National Bank of New Zealand v. Finn*, 81 Cal. App. 317, 337, 253 P. 757, 766 (1927), involving attachment of a check, it was stated that the claim must be made before the property was sold or otherwise applied to the satisfaction of the plaintiff's demand.

#### CROSS-REFERENCES

Claims of secured parties and lienholders §§ 720.210-720.290

##### Defined terms

Creditor § 720.020

Levying officer § 680.260

Person § 680.280

Property § 680.310

Delivery of possession §§ 714.020, 715.020

Distribution of proceeds § 701.810

Effect of filing or not filing claim § 720.150

Sale under writ of execution § 701.510 *et seq.*

Sale under writ of sale § 716.020

### § 720.130. Contents of claim

720.130. The third-party claim shall be executed under oath and shall contain all of the following:

(a) The name of the third person and an address in this state where service by mail may be made on the third person.

(b) A description of the property in which an interest is claimed.

(c) A description of the interest claimed, including a statement of the facts upon which the claim is based.

(d) An estimate of the market value of the interest claimed.

**Comment.** Section 720.130 supersedes a portion of the first paragraph of former Section 689.

#### CROSS-REFERENCES

Declaration under penalty of perjury § 2015.5

Defined terms

Person § 680.280

Property § 680.310

### § 720.140. Service of notice and copy of claim

720.140. (a) Not later than five days after the third-party claim is filed with the levying officer, the levying officer shall serve the following personally or by mail on the creditor:

(1) A copy of the third-party claim.

(2) A statement whether the third person has filed an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(3) If the third person has filed an undertaking to release the property, a notice that the property will be released unless, within the time allowed as specified in the notice, the creditor objects to the undertaking.

(4) If the third person has not filed an undertaking to release the property, a notice that the property will be released unless, within the time allowed as specified in the notice, the creditor files with the levying officer an undertaking that satisfies the requirements of Section 720.160.



(b) Subject to Section 684.120 governing extension of time where notice is served by mail, the time allowed the creditor for objecting to the third person's undertaking to release the property or for filing an undertaking is 10 days after service under subdivision (a).

(c) Within the time allowed for service on the creditor under subdivision (a), the levying officer shall serve a copy of the papers specified in subdivision (a) on the debtor. Service shall be made personally or by mail.

(d) The levying officer may serve the copy of the third-party claim and the statement and notice pursuant to this section notwithstanding any defect, informality, or insufficiency of the claim.

**Comment.** Subdivision (a) of Section 720.140 supersedes a portion of the first paragraph of former Section 689. Paragraphs (3) and (4) recognize that it is unnecessary for the creditor to file an undertaking to preserve the lien on the property if the third person has filed an undertaking to release it. Subdivision (b) allows the creditor at least 10 days within which to respond to the claim, whereas the first paragraph of former Section 689 allowed five days. Subdivision (c) is new. Subdivision (d) continues the substance of the first sentence of the sixth paragraph of former Section 689.

#### CROSS-REFERENCES

##### Defined terms

Creditor § 720.020

Debtor § 720.030

Levying officer § 680.260

Person § 680.280

Property § 680.310

Manner of service § 684.010 *et seq.*

Service on judgment creditor's attorney §§ 684.010, 684.050

Service on judgment debtor's attorney §§ 684.020, 684.050

### § 720.150. Effect of filing or not filing third-party claim

720.150. (a) Except as otherwise provided by statute, if a third-party claim is timely filed, the levying officer may not do any of the following with respect to the property in which an interest is claimed:

- (1) Sell the property.
- (2) Deliver possession of the property to the creditor.
- (3) Pay proceeds of collection to the creditor.

(b) The interest of the third person in the property levied upon is not affected by the third person's failure to file a third-party claim under this chapter.

**Comment.** Section 720.150 is new. Subdivision (a) makes clear that enforcement procedures against an item of property claimed by a third person must cease except as otherwise provided. See, *e.g.*, Sections 699.070 (disposition of perishable property), 720.160 (effect of filing undertaking), 720.430 (satisfaction from released property after hearing). Subdivision (b) makes clear that a third person does not waive a superior interest in the property levied upon by failure to make a third-party claim pursuant to this chapter. This principle is a corollary of the general rule that a judgment or levy reaches only the interest of the debtor in the property. See Sections 695.010-695.050 (property subject to enforcement of money judgment), 699.710-699.720 (property subject to execution).

#### CROSS-REFERENCES

Claims of secured parties and lienholders §§ 720.210-720.290

Defined terms

Creditor § 720.020

Levying officer § 680.260

Person § 680.280

Property § 680.310

Delivery of possession § 714.020

Distribution of proceeds § 701.810

Sale under writ of execution § 701.510 *et seq.*

Sale under writ of sale § 716.020

Time and manner of making third-party claim § 720.120

### § 720.160. Effect and contents of creditor's undertaking

720.160. (a) If the creditor files with the levying officer an undertaking that satisfies the requirements of this section within the time allowed under subdivision (b) of Section 720.140:

(1) The levying officer shall execute the writ in the manner provided by law unless the third person files an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(2) After sale, payment, or delivery of the property pursuant to the writ, the property is free of all claims of the third person for which the creditor has given the undertaking.

(b) Subject to Section 720.770, unless the creditor elects to file an undertaking in a larger amount, the amount of the undertaking filed by the creditor under this section shall be in the amount of:

(1) Seven thousand five hundred dollars (\$7,500) if the action is pending or the judgment was entered in the superior court.

(2) Two thousand five hundred dollars (\$2,500) if the action is pending or the judgment was entered in a municipal or justice court.

(c) An undertaking given by the creditor under this chapter shall:

(1) Be made in favor of the third person.

(2) Indemnify the third person against any loss, liability, damages, costs, and attorney's fees, incurred by reason of the enforcement proceedings.

(3) Be conditioned on a final judgment that the third person owns or has the right of possession of the property.

(d) If the creditor is a public entity exempt from giving an undertaking, the public entity shall, in lieu of filing the undertaking, file with the levying officer a notice stating that the public entity opposes the claim of the third person. When so filed, the notice is deemed to satisfy the requirement of this section that an undertaking be filed.

**Comment.** Subdivision (a) of Section 720.160 supersedes the seventh paragraph of former Section 689. Subdivisions (b) and (c) supersede portions of the first and second paragraphs of former Section 689. The option of giving an undertaking in a flat amount pursuant to subdivision (b) is new. The amounts are the same as the amounts set for an initial undertaking in attachment. See Section 489.220(a). The third person (1) may apply to the court for an order requiring an undertaking in a greater amount pursuant to Sections 720.760-720.770 or (2) may obtain the release of the property by giving an undertaking pursuant to Chapter 6 (commencing with Section 720.610) in the same amount as the creditor's undertaking. Whether or not the creditor has filed an undertaking, the debtor may in some circumstances forestall a sale or other proceeding under the writ by obtaining a stay pursuant to Section 720.380.

Subdivision (d) is new and is drawn from existing practice developed as a result of Section 1058 which provides that public entities are generally exempt from giving statutory undertakings. See California State Sheriffs' Ass'n, Civil Procedural Manual 13.02 (rev. 1980).

#### CROSS-REFERENCES

##### Defined terms

Creditor § 720.020

Judgment § 680.230

Levying officer § 680.260

Person § 680.280

Property § 680.310

Delivery of possession §§ 714.020, 715.020

Distribution of proceeds § 701.810

Liability of surety limited to amount of undertaking § 720.790

Liability where levy based on record title § 699.090

Sale under writ of execution § 701.510

Sale under writ of sale § 716.020

Stay pending hearing § 720.380

Undertaking to release property §§ 720.610-720.660

Undertakings, general provisions §§ 720.710-720.800

### § 720.170. Release for creditor's failure to file undertaking

720.170. (a) In a case where the third person has not filed with the levying officer an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610), if the creditor does not within the time allowed under subdivision (b) of Section 720.140 file with the levying officer an undertaking (or file a notice if the creditor is a public entity) that satisfies the requirements of Section 720.160, the levying officer shall release the property unless it is to be held under another lien or unless otherwise ordered by the court.

(b) Except as otherwise provided in this section, release is governed by Section 699.060.

(c) If personal property that has been taken into custody is to be released to the debtor pursuant to Section 699.060 and the debtor has not claimed the property within 10 days after notice was served pursuant to Section 699.060, the levying officer shall release the property to the third person making the claim.

(d) A hearing may be had on the third-party claim pursuant to Chapter 4 (commencing with Section 720.310) notwithstanding the release of the property pursuant to this section.

**Comment.** Subdivision (a) of Section 720.170 supersedes a portion of the first paragraph of former Section 689. The introductory clause recognizes that this section applies only where the third person has not filed an undertaking to release the property. The time allowed the creditor for filing an undertaking depends on the manner of service of the third-party claim pursuant to Section 720.140. See Section 684.120 (service by mail).

Subdivision (b) makes clear that the general rules governing release of property apply except as provided in this section.

Accordingly, if a third person to whom property is to be released pursuant to subdivision (b) or subdivision (c) does not claim property in the levying officer's custody, the property generally will be sold and the proceeds deposited with the county in the name of the third person. See Section 699.060(b).

Subdivision (c) supersedes former Section 689.5. If the property to be released was levied upon in the possession of the debtor, the property will be released to the debtor as provided by the general rules governing release. See Section 699.060 (tangible personal property released to person from whom it was taken). However, if the debtor does not claim the property, the third person who claimed it under this chapter is entitled to its possession as provided in subdivision (c). This is an exception to the general release provision that, if the debtor does not claim the property, it is to be sold and the proceeds deposited in the name of the debtor. See Section 699.060(b).

Subdivision (d) makes clear that the third-party claim may be determined under the appropriate procedure even though the property has been released because the creditor has not filed an undertaking. See Sections 720.310-720.430. If the creditor prevails at the hearing, the released property may again be levied upon as provided in Section 720.430.

#### CROSS-REFERENCES

Custody of levying officer § 687.030

Defined terms

Court § 680.160

Creditor § 720.020

Debtor § 720.030

Levying officer § 680.260

Person § 680.280

Property § 680.310

### CHAPTER 3. THIRD-PARTY CLAIM OF SECURITY INTEREST OR LIEN

#### § 720.210. Application of chapter

720.210. Where personal property has been levied upon under a writ of attachment, a writ of execution, a prejudgment or postjudgment writ of possession, or a writ of sale, a third person claiming a security interest in or lien on the personal property may make a third-party claim under this chapter if the security interest or lien claimed is superior to the creditor's lien on the property.

**Comment.** Section 720.210 supersedes a portion of former Section 689b(2). See the Comment to Section 720.110. This

chapter permits a secured party or other lienholder to make a third-party claim concerning personal property, whereas former Section 689b governed only claims by conditional sellers and chattel mortgagees. See Division 9 (commencing with Section 9101) of the Commercial Code (secured transactions). For a transitional provision applicable to claims filed prior to the operative date of this chapter, see Section 694.070.

## CROSS-REFERENCES

Attachment § 481.010 *et seq.*

Defined terms

Creditor § 720.020

Person § 680.280

Personal property § 680.290

Security interest § 680.360

Writ of execution §§ 699.510, 699.520

Writ of possession, postjudgment § 714.010

Writ of possession, prejudgment § 511.010 *et seq.*

Writ of sale § 716.010

**§ 720.220. Time and manner of making third-party claim**

**720.220.** A person making a third-party claim under this chapter shall file the claim with the levying officer, together with two copies of the claim, after levy on the personal property but before the levying officer does any of the following:

- (a) Sells the property.
- (b) Delivers possession of the property to the creditor.
- (c) Pays proceeds of collection to the creditor.

**Comment.** Section 720.220 supersedes the first sentence of former Section 689b(2). See the Comment to Section 720.210. Two copies of the claim are required to be filed so that one may be served on the debtor and one on the creditor. See Section 720.240. As to the specification in Section 720.220 of the time within which the third-party claim must be filed, see the Comment to Section 720.120.

## CROSS-REFERENCES

Defined terms

Creditor § 720.020

Levying officer § 680.260

Person § 680.280

Personal property § 680.290

Delivery of possession §§ 714.020, 715.020

Distribution of proceeds § 701.810

Effect of filing or not filing claim § 720.250

Sale under writ of execution § 701.510 *et seq.*

Sale under writ of sale § 716.020

### § 720.230. Contents of claim

720.230. The third-party claim shall be executed under oath and shall contain all of the following:

(a) The name of the secured party or lienholder and an address in this state where service by mail may be made on the secured party or lienholder.

(b) A description of the personal property in which a security interest or lien is claimed.

(c) A detailed description of the security interest or lien claimed, including a statement of the facts upon which it is based. 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.

(d) A statement of the total amount of sums due or to accrue under the security interest or lien and the applicable rate of interest on amounts due.

**Comment.** Section 720.230 supersedes a portion of former Section 689b(2).

#### CROSS-REFERENCES

Declaration under penalty of perjury § 2015.5

Defined terms

Personal property § 680.290

Secured party § 680.340

Security agreement § 680.350

Security interest § 680.360

### § 720.240. Service on creditor and debtor of notice and copy of claim

720.240. (a) Not later than five days after the third-party claim is filed with the levying officer, the levying officer shall serve the following personally or by mail on the creditor:

(1) A copy of the third-party claim.

(2) A statement whether the third person has filed an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(3) If the third person has filed an undertaking to release the property, a notice that the property will be released unless, within the time allowed as specified in the notice, the creditor objects to the undertaking.

(4) If the third person has not filed an undertaking to release the property, a notice that the property will be

released unless, within the time allowed as specified in the notice, the creditor does one of the following:

(A) Files with the levying officer an undertaking that satisfies the requirements of Section 720.260 and a statement under Section 720.280.

(B) Deposits with the levying officer the amount claimed plus interest at the applicable rate to the estimated date of tender to the secured party or lienholder.

(b) Subject to Section 684.120 governing extension of time where notice is served by mail, the time allowed the creditor for objecting to the third person's undertaking to release the property or for filing an undertaking and statement or making a deposit pursuant to subdivision (a) is 10 days after service under subdivision (a).

(c) Within the time allowed for service on the creditor under subdivision (a), the levying officer shall serve a copy of the papers specified in subdivision (a) on the debtor. Service shall be made personally or by mail.

(d) The levying officer may serve the copy of the third-party claim and the statement and notice pursuant to this section notwithstanding any defect, informality, or insufficiency of the claim.

**Comment.** Subdivision (a) of Section 720.240 supersedes subdivision (3) and a portion of the first paragraph of subdivision (9) of former Section 689b. Paragraphs (3) and (4) recognize that it is unnecessary for the creditor to file an undertaking to preserve the lien on the property or to pay off the secured party or lienholder if the property is to be released on a third person's undertaking. The creditor may make a deposit pursuant to Section 1054a in lieu of an undertaking, but such a deposit has the effect of an undertaking given under this chapter rather than a deposit made to satisfy the claim of the secured party or lienholder.

Subdivision (b) allows the creditor at least 10 days within which to respond to the claim, whereas former Section 689b(4) allowed five days after receipt. Subdivision (c) is new. Subdivision (d) continues the substance of the second sentence of former Section 689b(2).

#### CROSS-REFERENCES

##### Defined terms

Creditor § 720.020

Debtor § 720.030



Levying officer § 680.260  
 Person § 680.280  
 Secured party § 680.340  
 Manner of service § 684.010 *et seq.*  
 Service on judgment creditor's attorney §§ 684.010, 684.050  
 Service on judgment debtor's attorney §§ 684.020, 684.050

### § 720.250. Effect of filing or not filing third-party claim

720.250. (a) Except as otherwise provided by statute, if a third-party claim is timely filed, the levying officer may not do any of the following with respect to the personal property in which the security interest or lien is claimed:

- (1) Sell the property.
- (2) Deliver possession of the property to the creditor.
- (3) Pay proceeds of collection to the creditor.

(b) The interest of a secured party or lienholder in the property levied upon is not affected by the failure of the secured party or lienholder to file a third-party claim under this chapter.

**Comment.** Section 720.250 is new. See the Comment to Section 720.150. See also Section 720.260 (effect of undertaking or deposit). Subdivision (b) makes clear that a secured party or lienholder does not waive a superior interest in the property levied upon by failure to make a third-party claim pursuant to this chapter. See the Comment to Section 720.150.

#### CROSS-REFERENCES

##### Defined terms

Creditor § 720.020  
 Debtor § 720.030  
 Levying officer § 680.260  
 Personal property § 680.290  
 Secured party § 680.340  
 Security interest § 680.360  
 Distribution of proceeds § 701.810  
 Sale under writ of execution § 701.510 *et seq.*  
 Sale under writ of sale § 716.020

### § 720.260. Effect of undertaking or deposit; contents of undertaking

720.260. (a) If the creditor within the time allowed under subdivision (b) of Section 720.240 either files with the levying officer an undertaking that satisfies the requirements of this section and a statement that satisfies the requirements of Section 720.280 or makes a deposit

with the levying officer of the amount claimed under Section 720.230:

(1) The levying officer shall execute the writ in the manner provided by law unless, in a case where the creditor has filed an undertaking, the secured party or lienholder files an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(2) After sale, payment, or delivery of the property pursuant to the writ, the property is free of all claims or liens of the secured party or lienholder for which the creditor has given the undertaking or made the deposit.

(b) Subject to Section 720.770, unless the creditor elects to file an undertaking in a larger amount, the amount of the undertaking filed by the creditor under this section shall be in the amount of:

(1) Seven thousand five hundred dollars (\$7,500) if the action is pending or the judgment was entered in the superior court.

(2) Two thousand five hundred dollars (\$2,500) if the action is pending or the judgment was entered in a municipal or justice court.

(c) An undertaking given by the creditor under this chapter shall:

(1) Be made in favor of the secured party or lienholder.

(2) Indemnify the secured party or lienholder against any loss, liability, damages, costs, and attorney's fees, incurred by reason of the enforcement proceedings.

(3) Be conditioned on a final judgment that the security interest or lien of the third person is entitled to priority over the creditor's lien.

(d) If the creditor is a public entity exempt from giving an undertaking, the public entity shall, in lieu of filing the undertaking, file with the levying officer a notice stating that the public entity opposes the claim of the third person. When so filed, the notice is deemed to satisfy the requirement of this section that an undertaking be filed.

**Comment.** Subdivision (a) of Section 720.260 supersedes parts of subdivisions (8) and (9) of former Section 689b. Under

paragraph (2) of subdivision (a), the property may be sold free of all interests for which an undertaking is given or deposit is made. However, whether or not the creditor has filed an undertaking or made a deposit, the secured party or lienholder may prevent a sale in an appropriate case by obtaining a stay pursuant to Section 720.380.

Subdivisions (b) and (c) supersede portions of the first and second paragraphs of subdivision (9) of former Section 689b. The option of giving an undertaking in a flat amount pursuant to subdivision (b) is new. The amounts are the same as the amounts set for an initial undertaking in attachment. See Section 489.220(a). The secured party or lienholder (1) may apply to the court for an order requiring an undertaking in a greater amount pursuant to Sections 720.760-720.770 or (2) may obtain the release of the property by giving an undertaking pursuant to Chapter 6 (commencing with Section 720.610) in the same amount as the judgment creditor's undertaking.

Subdivision (d) is new and is drawn from existing practice developed as a result of Section 1058 which provides that public entities are generally exempt from giving statutory undertakings. See California State Sheriffs' Ass'n, Civil Procedural Manual 13.02 (rev. 1980).

#### CROSS-REFERENCES

##### Defined terms

- Creditor § 720.020
- Judgment § 680.230
- Levying officer § 680.260
- Person § 680.280
- Secured party § 680.340
- Security interest § 680.360
- Writ § 680.380
- Delivery of possession § 714.020
- Distribution of proceeds § 701.810
- Liability of surety limited to amount of undertaking § 720.790
- Liability where levy based on record title § 699.090
- Sale under writ of execution § 701.510 *et seq.*
- Sale under writ of sale § 716.020
- Stay pending hearing § 720.380
- Undertaking to release property §§ 720.610-720.660
- Undertakings, general provisions §§ 720.710-720.800

#### § 720.270. Release for creditor's failure to make deposit or file undertaking and statement

**720.270.** (a) In a case where the third person has not filed with the levying officer an undertaking to release

the property pursuant to Chapter 6 (commencing with Section 720.610), if the creditor does not within the time allowed under subdivision (b) of Section 720.240 file with the levying officer an undertaking (or file a notice if the creditor is a public entity) that satisfies the requirements of Section 720.260 and a statement under Section 720.280, or deposit with the levying officer the amount claimed under Section 720.230, the levying officer shall release the personal property unless it is to be held under another lien or unless otherwise ordered by the court.

(b) Except as otherwise provided in this section, release is governed by Section 699.060.

(c) If property that has been taken into custody is to be released to the debtor pursuant to Section 699.060 and the debtor has not claimed the property within 10 days after notice was served pursuant to Section 699.060, the levying officer shall release the property to the secured party or lienholder making the claim.

(d) A hearing may be had on the third-party claim pursuant to Chapter 4 (commencing with Section 720.310) notwithstanding the release of the property pursuant to this section.

**Comment.** Subdivision (a) of Section 720.270 supersedes subdivision (4) and a portion of the first paragraph of subdivision (9) of former Section 689b. The introductory clause recognizes that this section applies only where the third person has not filed an undertaking to release the property. The time allowed the creditor for filing an undertaking and statement or making a deposit depends on the manner of service of the third-party claim pursuant to Section 720.240. See Section 684.120 (service by mail). Subdivision (b) makes clear that the general rules governing release of property apply except as provided in this section. See the Comment to Section 720.170(b). Subdivision (c) supersedes former Section 689.5. See the Comment to Section 720.170(c). Subdivision (d) makes clear that the claim of the secured party or lienholder may be determined under the appropriate procedure even though the property has been released because the creditor has not filed an undertaking and statement or made a deposit. See Sections 720.310-720.430. If the creditor prevails at the hearing, the released property may again be levied upon as provided in Section 720.430.

## CROSS-REFERENCES

Custody of levying officer § 687.030

## Defined terms

Creditor § 720.020

Debtor § 720.030

Levying officer § 680.260

Person § 680.280

Personal property § 680.290

Secured party § 680.340

### § 720.280. Statement concerning security interest

**720.280.** At the time the creditor files an undertaking with the levying officer in response to a third-party claim by a secured party, the creditor shall do both of the following:

(a) File with the levying officer a statement executed under oath that the security interest is invalid, that the security interest is not entitled to priority over the creditor's lien, or that the amount demanded in the claim exceeds the amount to which the secured party is entitled, for the reasons specified therein.

(b) Serve a copy of the statement on the secured party. Service shall be made personally or by mail.

**Comment.** Section 720.280 supersedes a portion of the first paragraph of subdivision (9) of former Section 689b. This section permits the creditor to resist the claim of the secured party on the grounds that the security interest is not entitled to priority or is excessive, whereas former law required a statement that the chattel mortgage or conditional sale was void or invalid. See Section 720.210 (application of article); Com. Code § 9301 (priority of lien creditor over unperfected security interest).

## CROSS-REFERENCES

Declaration under penalty of perjury § 2015.5

## Defined terms

Creditor § 720.020

Levying officer § 680.260

Secured party § 680.340

Security interest § 680.360

Manner of service § 684.010 *et seq.*

### § 720.290. Payment to secured party

**720.290.** (a) If the levying officer receives a sufficient deposit from the creditor, the levying officer shall promptly tender or pay the deposit to the secured party or lienholder who made the third-party claim except

that, if the deposit is made by personal check, the levying officer is allowed a reasonable time for the check to clear.

(b) If the tender is accepted, the interest of the secured party or lienholder in the property for which the deposit is made passes to the creditor making the deposit and, on distribution of any proceeds under Section 701.810, the creditor who makes the deposit shall be entitled to the proceeds to the extent of the deposit in the priority of the interest for which the deposit is made.

(c) If the tender is refused, the amount of the deposit shall be deposited with the county treasurer payable to the order of the secured party or lienholder.

**Comment.** Section 720.290 continues the substance of subdivisions (5)-(7) of former Section 689b, except that the officer is required to tender or pay promptly rather than within five days.

#### CROSS-REFERENCES

##### Defined terms

Creditor § 720.020

Levying officer § 680.260

Secured party § 680.340

## CHAPTER 4. HEARING ON THIRD-PARTY CLAIM

### § 720.310. Application for hearing

720.310. (a) Not later than 15 days after the third-party claim is filed with the levying officer pursuant to Section 720.120 or 720.220, either the creditor or the third person may petition the court for a hearing to determine the validity of the third-party claim and the proper disposition of the property that is the subject of the claim.

(b) A hearing may be held whether or not an undertaking has been filed but not if a deposit has been made pursuant to Section 720.260.

(c) The hearing shall be held within 20 days after the filing of the petition unless continued by the court for good cause shown.

**Comment.** Subdivisions (a) and (b) of Section 720.310 continue the substance of the first two sentences of the eighth paragraph of former Section 689 and the first sentence of subdivision (10) of former Section 689(b). Subdivision (c)

continues the substance of the third and fifth sentences of the eighth paragraph of former Section 689 and the second and fourth sentences of subdivision (10) of former Section 689b.

CROSS-REFERENCES

Defined terms

Court § 680.160  
 Creditor § 720.020  
 Levying officer § 680.260  
 Person § 680.280  
 Property § 680.310

**§ 720.320. Notice of hearing**

**720.320.** (a) Not less than 10 days prior to the hearing, the petitioner shall do both of the following:

(1) Serve notice of the time and place of the hearing on the creditor or the third person (whichever person is not the petitioner) and on the debtor. Service shall be made personally or by mail.

(2) File a copy of the notice of hearing with the levying officer.

(b) The notice of the hearing shall include a statement that the purpose of the hearing is to determine the validity of the third-party claim and the proper disposition of the property that is the subject of the third-party claim.

**Comment.** Section 720.320 supersedes the fourth sentence of the eighth paragraph of Section 689 and the second sentence of subdivision (10) of former Section 689b. This section also requires notice to be given to the debtor to avoid the misapplication of funds that could occur under former law. See *Rubin v. Barasch*, 275 Cal. App.2d 835, 80 Cal. Rptr. 337 (1969).

CROSS-REFERENCES

Defined terms

Creditor § 720.020  
 Debtor § 720.030  
 Levying officer § 680.260  
 Person § 680.280  
 Property § 680.310  
 Manner of service § 684.010 *et seq.*  
 Period of notice where served by mail § 684.125  
 Proof of notice § 684.210  
 Service on judgment creditor's attorney §§ 684.010, 684.050  
 Service on judgment debtor's attorney §§ 684.020, 684.050

**§ 720.330. Papers filed by levying officer**

720.330. Promptly after receipt of the notice of the hearing on the third-party claim, the levying officer shall file the following papers with the court:

(a) The third-party claim that was filed with the levying officer pursuant to Section 720.120 or 720.220.

(b) Any statement filed by the creditor with the levying officer pursuant to Section 720.280 in opposition to the third-party claim of a secured party.

(c) Any undertaking of the creditor filed with the levying officer pursuant to Section 720.160 or Section 720.260.

**Comment.** Section 720.330 supersedes a portion of the eleventh sentence of the eighth paragraph of former Section 689. Former law did not require the levying officer to file the creditor's statement or undertaking with the court. See former Sections 689, 689b. An undertaking in the possession of the levying officer that is not filed with the court pursuant to this section should be filed pursuant to Section 720.800.

**CROSS-REFERENCES****Defined terms**

Court § 680.160

Creditor § 720.020

Levying officer § 680.260

Secured party § 680.340

**§ 720.340. Filing and service of statement in opposition to claim of secured party**

720.340. If the creditor has not filed a statement with the levying officer pursuant to Section 720.280 in opposition to a third-party claim by a secured party:

(a) In a case where the creditor petitions for a hearing on the third-party claim, the creditor shall file the statement with the court at the time the petition is filed and shall serve a copy thereof on the secured party with notice of the hearing served pursuant to Section 720.320.

(b) In a case where the secured party has petitioned for a hearing on the third-party claim, the creditor shall file the statement with the court and serve a copy of the statement on the secured party not later than five days before the date set for the hearing. Service shall be made personally or by mail.



**Comment.** Section 720.340 is new.

CROSS-REFERENCES

Defined terms

Court § 680.160

Creditor § 720.020

Levying officer § 680.260

Secured party § 680.340

Manner of service § 684.010 *et seq.*

**§ 720.350. Pleadings**

**720.350.** (a) Subject to the power of the court to permit an amendment in the interest of justice:

(1) The third-party claim constitutes the pleading of the third person.

(2) In the case of a third-party claim by a secured party, the creditor's statement constitutes the pleading of the creditor.

(b) A third-party claim of ownership, right to possession, or a lien, shall be deemed controverted by the creditor.

**Comment.** Subdivision (a) (1) of Section 720.350 continues the substance of a portion of the eleventh sentence of the eighth paragraph of former Section 689. Unlike subdivision (a) (2), former Section 689b did not prescribe the effect of the creditor's statement in opposition to the claim of a secured party. Subdivision (b) continues the substance of a portion of the eleventh sentence of the eighth paragraph of former Section 689; but subdivision (b) is limited to third-party claims of ownership, right to possession, or a lien, whereas the former provision applied to all claims under former Section 689 or 689b.

CROSS-REFERENCES

Defined terms

Court § 680.160

Creditor § 720.020

Secured party § 680.340

**§ 720.360. Burden of proof**

**720.360.** (a) At a hearing on a third-party claim of ownership, right to possession, or a lien, the third person has the burden of proof.

(b) At a hearing on a third-party claim of a security interest, the creditor has the burden of proof.

**Comment.** Subdivision (a) of Section 720.360 continues the substance of the tenth sentence of the eighth paragraph of

former Section 689. Subdivision (b) is new; under former law, all third-party claimants had the burden of proof.

CROSS-REFERENCES

Defined terms

Creditor § 720.020

Person § 680.280

Security interest § 680.360

**§ 720.370. Dismissal**

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

**Comment.** Section 720.370 continues the substance of the sixth sentence of the eighth paragraph of former Section 689.

CROSS-REFERENCES

Defined terms

Creditor § 720.020

Person § 680.280

**§ 720.380. Stay of sale during pendency of proceedings**

**720.380.** (a) Notwithstanding any other provision of this title, the court may make an order staying the sale of the property under a writ or enjoining any transfer or other disposition of the property levied upon under a writ until proceedings for the determination of the rights of a third person can be commenced and prosecuted to termination and may require such undertaking as it considers necessary as a condition for making the order.

(b) After the filing of a third-party claim, notwithstanding Sections 720.160 and 720.260, the creditor, the debtor, or the third person may apply to the court for an order staying the sale of the property under a writ or enjoining any transfer or other disposition of the property until proceedings under this article can be commenced and prosecuted to termination. The application shall be made on noticed motion if the court so directs or a court rule otherwise so requires. Otherwise, the application may be made *ex parte*.

(c) An order made pursuant to this section may be modified or vacated by the court at any time prior to the termination of the proceedings upon such terms as are just.

**Comment.** Subdivisions (a) and (b) of Section 720.380 supersede the eighth sentence of the eighth paragraph of former Section 689. Subdivision (c) continues the substance of the ninth sentence of the eighth paragraph of former Section 689. See Section 699.070 (disposition of perishable property).

CROSS-REFERENCES

Defined terms

Court § 680.160  
 Creditor § 720.020  
 Debtor § 720.030  
 Property § 680.310  
 Writ § 680.380

**§ 720.390. Determination of claim; disposition of property**

**720.390.** At the conclusion of the hearing, the court shall give judgment determining the validity of the third-party claim and may order the disposition of the property or its proceeds in accordance with the respective interests of the parties. Subject to Section 720.420, the judgment is conclusive between the parties to the proceeding.

**Comment.** Section 720.390 continues the substance of a portion of the fourteenth and fifteenth sentences of the eighth paragraph of former Section 689 and the third sentence of subdivision (10) of former Section 689b. See also Section 699.070 (disposition of perishable property).

CROSS-REFERENCES

Defined terms

Court § 680.160  
 Property § 680.310

**§ 720.400. Findings**

**720.400.** No findings are required in proceedings under this chapter.

**Comment.** Section 720.400 continues the substance of the thirteenth sentence of the eighth paragraph of former Section 689.

**§ 720.410. No right to jury trial**

**720.410.** There is no right to a jury trial in a proceeding pursuant to this chapter.

**Comment.** Section 720.410 codifies the holding in *Misrach v. Liederman*, 14 Cal. App.2d Supp. 757, 58 P.2d 746 (1936).

**§ 720.420. Appeal**

720.420. An appeal may be taken from a judgment given pursuant to Section 720.390 in the manner provided for appeals from the court in which the proceeding takes place.

**Comment.** Section 720.420 continues the substance of the seventeenth sentence of the eighth paragraph of former Section 689.

**§ 720.430. Satisfaction from released property**

720.430. If property has been released pursuant to Section 720.170 or 720.270, it may be levied upon or otherwise sought to be applied to the satisfaction of the judgment only if it is determined in the hearing on the third-party claim that the debtor has an interest in the property that may be levied upon or otherwise applied to the satisfaction of the judgment.

**Comment.** Section 720.430 supersedes the sixteenth sentence of the eighth paragraph of former Section 689 and the second paragraph of subdivision (10) of former Section 689b. Former law referred only to relevy upon property that had been released, but Section 720.430 recognizes that other enforcement procedures may also be employed. See, *e.g.*, Chapter 6 (commencing with Section 708.010) (miscellaneous creditor's remedies) of Division 2.

## CROSS-REFERENCES

## Defined terms

Debtor § 720.030

Judgment § 680.230

Property § 680.310

**CHAPTER 5. CREDITOR'S DEMAND FOR  
THIRD-PARTY CLAIM BY SECURED  
PARTY OR LIENHOLDER****§ 720.510. Creditor's right to demand third-party claim**

720.510. A creditor may make a demand as provided in this chapter that a secured party or lienholder file a third-party claim to personal property that has been levied upon under a writ of attachment or a writ of execution.

**Comment.** Section 720.510 supersedes a portion of former Section 689b(8). As to demands served prior to the operative date of this chapter, see Section 694.070.

CROSS-REFERENCES

Defined terms

Creditor § 720.020  
 Personal property § 680.290  
 Secured party § 680.340  
 Writ of attachment § 481.010 *et seq.*  
 Writ of execution §§ 699.510, 699.520

§ 720.520. Demand for claim

720.520. (a) The creditor's demand for a third-party claim by the secured party or lienholder, together with a copy of the demand, shall be filed with the levying officer after levy on the personal property but before the levying officer sells the property or pays proceeds of collection to the creditor.

(b) Promptly after the demand and a copy thereof are filed, the levying officer shall personally serve the demand on the secured party or lienholder. Service of the demand on the secured party or lienholder shall be attested by the certificate of the levying officer and the certificate shall be filed in the action promptly after service.

(c) The demand shall be served by the levying officer who levied on the property or by any other levying officer whose office is closer to the place of service. If service is made by another levying officer, such levying officer's costs shall be paid out of the costs prepaid to the levying officer who levied on the property.

**Comment.** Section 720.520 supersedes a portion of former Section 689b(8).

CROSS-REFERENCES

Defined terms

Costs § 680.150  
 Creditor § 720.020  
 Levying officer § 680.260  
 Personal property § 680.290  
 Secured party § 680.340  
 Manner of service § 684.010 *et seq.*

**§ 720.530. Contents of demand for claim**

**720.530.** The demand for a third-party claim served on a secured party or lienholder shall contain all of the following:

(a) The name and address of the secured party or lienholder.

(b) The name and address of the creditor.

(c) A detailed description of the personal property levied upon and the date of levy.

(d) A statement that if the secured party or lienholder does not file a third-party claim pursuant to Chapter 3 (commencing with Section 720.210) within 30 days after service of the demand, the secured party or lienholder shall be deemed to have waived any priority the security interest or lien may have over the creditor's lien on the property levied upon unless the property levied upon is released from the creditor's lien.

(e) A statement that if any priority of the security interest or lien is waived, the secured party or lienholder may have a right to share in any excess proceeds of an execution sale of the property as provided in Section 701.810.

**Comment.** Section 720.530 is new. See Section 720.550 and the Comment thereto.

**CROSS-REFERENCES****Defined terms**

Creditor § 720.020

Personal property § 680.290

Secured party § 680.340

Security interest § 680.360

**§ 720.540. Prohibition of release, sale, or other disposition**

**720.540.** Except as otherwise provided by statute, the levying officer may not release, sell, or otherwise dispose of the personal property described in the demand before the expiration of 30 days after service of the demand on the secured party or lienholder.

**Comment.** Section 720.540 is new. The introductory clause recognizes that the property may be sold or released in certain circumstances before the expiration of the 30-day period, such as where the property is perishable (see Section 699.070) or where the property is released pursuant to the claim of the secured

party upon whom the demand was served or of some other third person (see Sections 720.170 and 720.270).

#### CROSS-REFERENCES

##### Defined terms

Levying officer § 680.260

Personal property § 680.290

Secured party § 680.340

### § 720.550. Effect of failure to make third-party claim

**720.550.** (a) If the secured party or lienholder does not file a third-party claim with the levying officer pursuant to Chapter 3 (commencing with Section 720.210) within 30 days after service of the demand, the secured party or lienholder shall be deemed to have waived any priority the security interest or lien may have over the creditor's lien on the personal property levied upon and the property may be applied toward the satisfaction of the judgment free of the security interest or lien.

(b) If the secured party or lienholder is deemed to have waived any priority over the creditor's lien pursuant to subdivision (a) and the creditor's lien on the personal property is released, the security interest or lien is restored to its former position of priority.

**Comment.** Section 720.550 supersedes a portion of the first sentence of subdivision (8) of former Section 689b. Under Section 720.550, a secured party or lienholder who fails to make a third-party claim within the time allowed waives only the superiority of the security interest or lien over the creditor's lien, whereas under former law it appeared that the secured party forfeited all rights in the property or its proceeds. Under Section 720.550, the secured party or lienholder who fails to make a claim within the time allowed retains the right to share in excess proceeds as a junior lienholder pursuant to Section 701.810; but, if there are no excess proceeds, the security interest or lien is lost. See Section 701.630 (extinction of inferior liens upon sale). If the property described in a demand for a claim under this article is released rather than sold, such as in a case where the judgment is satisfied by voluntary payment or resort to other property, the creditor's lien is extinguished and the security interest or lien of a third person served with a demand for a claim would in effect be restored to its former position of priority.

## CROSS-REFERENCES

## Defined terms

Creditor § 720.020

Judgment § 680.230

Levying officer § 680.260

Personal property § 680.290

Secured party § 680.340

Security interest § 680.360

**CHAPTER 6. THIRD-PARTY UNDERTAKING  
TO RELEASE PROPERTY****§ 720.610. Application of chapter**

720.610. A third person may give an undertaking to release property pursuant to this chapter in the following cases:

(a) Where the third person claims ownership or the right to possession of real property that has been levied upon under a writ of attachment or a writ of execution.

(b) Where the third person claims ownership or the right to possession of personal property that has been levied upon under a writ of attachment, a writ of execution, or a writ of sale.

(c) Where the third person claims a security interest in or a lien on personal property that has been levied upon under a writ of attachment, a writ of execution, or a writ of sale.

**Comment.** Section 720.610 supersedes former Section 710b which applied only to personal property levied upon to satisfy a money judgment in a case where the third person “claimed” the property. Compare former Section 689 (paragraph seven of which referred to release under former Section 710b) with former Section 689b (which contained no reference to former Section 710b).

## CROSS-REFERENCES

## Defined terms

Person § 680.280

Personal property § 680.290

Real property § 680.320

Security interest § 680.360

Writ of attachment § 481.010 *et seq.*

Writ of execution §§ 699.510, 699.520

Writ of sale § 716.010



**§ 720.620. Filing of undertaking to release property**

720.620. The third person shall file the undertaking to release property with the levying officer, together with two copies of the undertaking:

(a) At the time the third person files a third-party claim pursuant to Chapter 2 (commencing with Section 720.110) or Chapter 3 (commencing with Section 720.210).

(b) If the third person has previously filed a third-party claim to the property, at any time before the levying officer does any of the following:

- (1) Sells the property.
- (2) Delivers possession of the property to the creditor.
- (3) Pays proceeds of collection to the creditor.

**Comment.** Section 720.620 supersedes a portion of former Sections 710b and 711. This section permits the filing of an undertaking to release property at any time that a third person could make a third-party claim as to property that can be released pursuant to Section 720.610 and also requires that the third person file a third-party claim. Former law did not prescribe the time for filing an undertaking to release property, nor did it require the third person to file a third-party claim. Section 720.620 requires the undertaking to be filed with the levying officer, whereas former Section 711 provided for filing with the court. Undertakings filed with the levying officer under this chapter are eventually filed with the court. See Sections 720.330(c), 720.800.

**CROSS-REFERENCES****Defined terms**

- Creditor § 720.020
- Levying officer § 680.260
- Person § 680.280
- Property § 680.310

**§ 720.630. Contents of undertaking**

720.630. (a) The undertaking to release property shall contain a description of the property to be released and shall describe the interest of the third person.

(b) The undertaking shall be made in favor of the creditor and shall provide that, if the debtor is finally adjudged to have an interest in the property levied upon, the third person shall pay to the creditor the lesser of the following:

(1) The amount required to satisfy the judgment against the debtor of the creditor who had the lien on the property.

(2) A sum equal to the market value of the debtor's interest in the property levied upon.

(c) Except as provided in subdivision (d) and unless the third person elects to file an undertaking in a larger amount, the amount of the undertaking shall be the lesser of the following amounts:

(1) Twice the market value of the property sought to be released.

(2) Twice the amount of the creditor's lien on the property sought to be released.

(d) If the creditor has given an undertaking in response to the third person's claim regarding the property pursuant to Section 720.160 or 720.260, the third person's undertaking shall be in the amount of the creditor's undertaking.

**Comment.** Section 720.630 supersedes portions of former Section 710c. Subdivision (b) recognizes that the creditor is not entitled to a greater satisfaction from the third person's undertaking than from the debtor. Subdivision (c) continues the substance of a portion of former Section 710c, subject to the exception provided in subdivision (d). Subdivision (d) enables the third person to obtain the release of the property only by giving an undertaking in the amount of the creditor's undertaking filed in response to the third-party's claim.

#### CROSS-REFERENCES

##### Defined terms

Creditor § 720.020

Debtor § 720.030

Person § 680.280

Property § 680.310

Liability of surety limited to amount of undertaking § 720.790

Market value of property, estimate in undertaking § 720.740

Third-party claim of ownership or possession § 720.110 *et seq.*

Third-party claim of security interest or lien § 720.210 *et seq.*

#### § 720.640. Service of undertaking to release property

720.640. (a) If the undertaking to release property is filed with the levying officer at the time the third-party claim is filed, the levying officer shall serve a copy of the undertaking on the creditor and on the debtor with the

notice of the filing of the third-party claim served pursuant to Section 720.140 or 720.240.

(b) If the undertaking to release property is filed with the levying officer after the third-party claim is filed, not later than five days after the undertaking is filed, the levying officer shall serve a copy of the undertaking on the creditor and on the debtor with a notice that the property will be released unless, within the time allowed as specified in the notice, the creditor objects to the undertaking. Service shall be made personally or by mail.

**Comment.** Section 720.640 is new. Under former Section 711, the third person was required to serve a copy of the undertaking on the creditor.

#### CROSS-REFERENCES

##### Defined terms

Creditor § 720.020

Debtor § 720.030

Levying officer § 680.260

Property § 680.310

Manner of service § 684.010 *et seq.*

Service on judgment creditor's attorney §§ 684.010, 684.050

Service on judgment debtor's attorney §§ 684.020, 684.050

### § 720.650. Effective date of undertaking

**720.650.** The third person's undertaking becomes effective when the property described therein is released pursuant to this chapter.

**Comment.** Section 720.650 supersedes former Section 713½ which provided that the undertaking was effective 10 days after service on the creditor or, if an objection to the undertaking was made, when a new undertaking was given. Under Section 720.650, the undertaking is effective when it achieves its purpose—the release of the property it describes—by which time the period for making an objection will have expired. See Section 720.760.

### § 720.660. Release of property pursuant to undertaking

**720.660.** The levying officer shall release the property described in the third person's undertaking in the manner provided by Section 720.170 promptly after the expiration of the time allowed under subdivision (b) of Section 720.760 for objecting to the undertaking, unless the creditor has objected to the undertaking prior to the expiration of that time.

**Comment.** Section 720.660 supersedes a portion of the seventh paragraph of former Section 689 and a portion of former Section 713½.

#### CROSS-REFERENCES

Defined terms

Court § 680.160

Creditor § 720.020

Levying officer § 680.260

Property § 680.310

Objection to undertaking § 720.760

Undertakings, general provisions §§ 720.710-720.800

## CHAPTER 7. UNDERTAKINGS

### § 720.710. Application of chapter

720.710. The provisions of this chapter apply to undertakings given pursuant to this division.

**Comment.** Section 720.710 makes clear that the provisions of this chapter govern only undertakings given in connection with third-party claims and related procedures. Former Sections 689 and 689b (third-party claims) incorporated certain procedural provisions applicable to attachment, whereas former Sections 711½ through 713½ (undertaking to release) contained detailed provisions relating to undertakings.

### § 720.720. Definitions

720.720. As used in this chapter:

(a) “Beneficiary” means the person to be benefited by an undertaking.

(b) “Principal” means the person who files an undertaking.

**Comment.** Section 720.720 is the same as Section 489.020 (attachment).

### § 720.730. Number of sureties

720.730. An undertaking shall be executed by two or more personal sureties or by one corporate surety possessing a certificate of authority from the Insurance Commissioner authorizing it to write surety insurance defined in Section 105 of the Insurance Code.

**Comment.** Section 720.730 continues the requirement of two or more personal sureties found in several provisions of former law. See the first paragraph of former Section 689, former Section

710c; see also former Section 689b(9). Section 720.730 also makes clear that a corporate surety may be used in lieu of personal sureties. See Section 1056.

### § 720.740. Estimate of value of property

720.740. If the amount of an undertaking depends upon the value of property or an interest therein, the undertaking shall include the principal's estimate of the market value of the property or interest.

**Comment.** Section 720.740 is the same in substance as Section 489.050 (attachment). See Section 720.630(c) (amount of undertaking to release property).

#### CROSS-REFERENCES

Defined terms

Principal § 720.720

Property § 680.310

### § 720.750. Undertaking effective upon filing

720.750. Except as otherwise provided by statute, an undertaking is effective upon filing.

**Comment.** Section 720.750 is derived from a portion of Section 489.060 (undertakings in attachment). The introductory clause recognizes that an undertaking to release property is effective when the property is released. See Section 720.650.

### § 720.760. Beneficiary's objection to undertaking

720.760. (a) The beneficiary may object to an undertaking on either or both of the following grounds:

- (1) The sureties are insufficient.
- (2) The amount of the undertaking is insufficient.

(b) Subject to Section 684.120 governing extension of time where notice is served by mail, the objection to an undertaking shall be made by noticed motion within 10 days after service of a copy of the undertaking on the beneficiary. If no objection is made within such time, the beneficiary is deemed to have waived any objections. The notice of motion shall specify the precise ground for the objection and shall be served on the principal and the levying officer. Service shall be made personally or by mail.

(c) If the objection is made on the ground that the market value of the property on which the amount of the

undertaking depends exceeds the value estimated in the undertaking, the notice of motion shall state the beneficiary's estimate of the market value of the property.

**Comment.** Section 720.760 continues the substance of Sections 489.070 and 489.080 (attachment) which were incorporated by former Sections 689 and 689b, and supersedes a portion of former Section 711½. The time for objecting to an undertaking has been changed from five days after notice of receipt of the undertaking (see the third paragraph of former Section 689) to 10 days after service.

#### CROSS-REFERENCES

##### Defined terms

Beneficiary § 720.720

Levying officer § 680.260

Principal § 720.720

Property § 680.310

Manner of service § 684.010 *et seq.*

### § 720.770. Hearing on objection

720.770. (a) Unless the parties otherwise agree, the hearing on an objection shall be held not less than 10 nor more than 15 days after service of the notice of motion.

(b) The hearing shall be conducted in such manner as the court determines is proper. At the hearing, witnesses may be required to attend, and evidence may be procured and introduced, in the same manner as in the trial of a civil case. The court may appoint one or more disinterested persons to appraise property for the purpose of ascertaining its value.

(c) If the court determines that the undertaking is insufficient, the court shall specify in what respect it is insufficient and shall order that an undertaking with sufficient sureties and in a sufficient amount be filed within five days. If the order is not complied with, all rights obtained by filing the original undertaking immediately cease.

(d) If the court determines that an undertaking is insufficient, the undertaking remains in effect until an undertaking with sufficient sureties and in a sufficient amount is filed in its place.

(e) If the court determines that an undertaking is sufficient, no future objection to the undertaking may be made except upon a showing of changed circumstances.

(f) If the beneficiary objects to an undertaking on the ground that the amount is insufficient to indemnify the beneficiary, the court shall order the amount of the undertaking increased or decreased to the amount it determines to be the probable recovery of the beneficiary if the beneficiary ultimately prevails in proceedings to enforce the liability on the undertaking. The court may order the amount of the undertaking decreased below the amount prescribed by Section 720.160 or 720.260.

**Comment.** Section 720.770 is drawn from Section 489.090 (attachment) which was incorporated by former Sections 689 and 689b, and supersedes portions of former Sections 712 and 712½ (undertaking to release property). Subdivision (f) is derived from Section 489.220(b) (undertakings in attachment). The amount of the undertaking may not be decreased on the principal's initiative but only in a situation where the beneficiary has objected to the amount of the undertaking and the court finds that it is more than adequate.

#### CROSS-REFERENCES

##### Defined terms

Beneficiary § 720.720

Court § 680.160

Property § 680.310

### § 720.780. Acceptance of beneficiary's estimate of value

**720.780.** If an objection to an undertaking is made on the ground that the market value of property on which the amount of the undertaking depends exceeds the value estimated in the undertaking, the principal may accept the beneficiary's estimate of the market value of the property and immediately file an increased undertaking based on the estimate. In such case, no hearing may be held on the objection, and the beneficiary is bound by the estimate of the market value of the property in any hearing on the sufficiency of the undertaking.

**Comment.** Section 720.780 continues the substance of Section 489.100 (attachment) which was incorporated by former

Sections 689 and 689b, and supersedes portions of former Sections 711½ and 712½ (undertaking to release property).

CROSS-REFERENCES

Defined terms

Beneficiary § 720.720

Principal § 720.720

Property § 680.310

**§ 720.790. Liability of surety**

**720.790.** (a) Notwithstanding Section 2845 of the Civil Code, a judgment of liability on an undertaking shall be in favor of the beneficiary and against the sureties and may be enforced by the beneficiary directly against the sureties. The liability of a surety is limited to the amount of the undertaking. Nothing in this section affects any right of subrogation of a surety against the principal.

(b) The beneficiary may enforce the liability of sureties on the undertaking by a motion in the court pursuant to Section 1058a without the necessity of an independent action.

**Comment.** Subdivision (a) of Section 720.790 is the same as Section 489.110 (attachment). See Section 1058a and the Comment to Section 489.110. Subdivision (b) makes clear that a judgment creditor or third person who is a beneficiary of an undertaking given pursuant to this chapter may enforce the liability of sureties by motion in the court having jurisdiction of the enforcement proceedings.

CROSS-REFERENCES

Defined terms

Beneficiary § 720.720

Court § 680.160

Principal § 720.720

**§ 720.800. Undertaking filed in action**

**720.800.** If an undertaking has been filed with a levying officer pursuant to this division, and the undertaking remains in the levying officer's possession when the writ is to be returned, the levying officer shall file the undertaking with the court at the time the writ is returned.

**Comment.** Section 720.800 is new. Former law did not provide for the disposition of the undertaking. In cases where an undertaking is given and a hearing is held, the levying officer will



file the undertaking with the court prior to the hearing. See Section 720.330(c).

CROSS-REFERENCES

Defined terms

Court § 680.160

Levying officer § 680.260

Writ § 680.380

Return of writ §§ 699.560, 712.050

## DIVISION 5. SATISFACTION OF JUDGMENT

### CHAPTER 1. SATISFACTION OF JUDGMENT

#### § 724.010. Satisfaction of money judgment

724.010. A money judgment may be satisfied by payment of the full amount required to satisfy the judgment or by acceptance by the judgment creditor of a lesser sum in full satisfaction of the judgment.

**Comment.** Section 724.010 is drawn from language that was contained in subdivision (a) of former Section 675. See also *Yost-Linn Lumber & Finance Co. v. Bennet*, 116 Cal. App. 155, 2 P.2d 488 (1931) (part payment in full satisfaction); *Schwartz v. California Claim Service*, 52 Cal. App.2d 47, 125 P.2d 883 (1942) (part payment). Section 724.010 is not an exclusive statement of the methods for satisfying a money judgment. See, *e.g.*, Section 431.70 and *Murchison v. Murchison*, 219 Cal. App.2d 600, 33 Cal. Rptr. 285 (1963) (use of judgment as offset); *George S. Nolte Consulting Civil Engineers, Inc. v. Magliocco*, 93 Cal. App.3d 190, 155 Cal. Rptr. 348 (1979) (entry of satisfaction ordered where trial court determined that \$4,000 contingent liability could be disregarded since contingency would not occur); *Yanchor v. Kagan*, 22 Cal. App.3d 544, 99 Cal. Rptr. 367 (1971) (covenant not to enforce judgment); Penal Code § 1205 (criminal fine satisfied by serving term).

CROSS-REFERENCES

Amount required to satisfy judgment § 695.210

Defined terms

Judgment creditor § 680.240

Money judgment § 680.270

#### § 724.020. Entry of satisfaction of money judgment

724.020. The court clerk shall enter satisfaction of a money judgment in the register of actions when the following occur:

- (a) A writ is returned satisfied.
- (b) An acknowledgment of satisfaction of judgment is filed with the court.
- (c) The court orders entry of satisfaction of judgment.

**Comment.** Section 724.020 continues the substance of portions of subdivision (a) of former Section 675.

#### CROSS-REFERENCES

Acknowledgment of satisfaction § 724.060  
 Court clerk's certificate of satisfaction § 724.100  
 Court order that satisfaction of judgment be entered § 724.050  
 Defined terms  
   Court § 680.160  
   Money judgment § 680.270  
 Filing of acknowledgment of satisfaction §§ 724.030, 724.040  
 Return of writ § 699.560

### § 724.030. Judgment creditor or assignee to file acknowledgment of satisfaction of judgment

724.030. When a money judgment is satisfied, the judgment creditor immediately shall file with the court an acknowledgment of satisfaction of judgment. This section does not apply where the judgment is satisfied in full pursuant to a writ.

**Comment.** Section 724.030 continues what appears to have been required under the second sentence of former Section 675(a). The requirement that the filing be made "immediately" upon the satisfaction of the judgment is drawn from Section 117.9 (small claims court). Section 724.030 does not apply where the judgment is satisfied pursuant to a writ because in that case the court clerk is required to enter satisfaction. See Section 724.020. For an additional requirement when an abstract of the judgment has been recorded to create a lien on real property, see Section 724.040. See also Section 697.640 (termination statement where lien on personal property created). As to the duty to file an acknowledgment of satisfaction of a small claims court judgment, see Section 117.9.

#### CROSS-REFERENCES

Acknowledgment of satisfaction  
   Attorney's authority to give § 283  
   Contents and manner of execution § 724.060  
   Demand for filing § 724.050  
 Defined terms  
   Court § 680.160  
   Judgment creditor § 680.240  
   Money judgment § 680.270

**§ 724.040. Judgment creditor's or assignee's duty where abstract of judgment recorded**

724.040. If an abstract of a money judgment has been recorded with the recorder of any county and the judgment is satisfied, the judgment creditor shall immediately do both of the following:

(a) File an acknowledgment of satisfaction of judgment with the court.

(b) Serve an acknowledgment of satisfaction of judgment on the judgment debtor. Service shall be made personally or by mail.

**Comment.** Section 724.040 generally continues what appears to have been required under subdivision (b) of former Section 675. However, the former requirement that the acknowledgment be filed and served within 30 days after the judgment is paid in full has been replaced by the requirement that such filing and service be made immediately upon satisfaction of the judgment. The former 30-day period apparently was provided because the failure without just cause to file and serve within the time allowed resulted in liability for damages and forfeiture of \$100. See former Section 675(b). Under this chapter, the sanction is imposed only for failure to file or serve after a demand by the judgment debtor. See Section 724.050. This change makes Section 724.040 consistent with Section 724.030 and conforms to the procedure provided in Section 117.9 (small claims court). Section 724.040 applies whether the judgment is satisfied pursuant to a writ or by other means.

Section 724.040 requires service of an acknowledgment of satisfaction of judgment on the judgment debtor for two reasons: (1) To give the judgment debtor a list of the county or counties where the abstract of the judgment has been recorded and (2) to give notice to the judgment debtor that the acknowledgment of satisfaction of judgment or a certificate of satisfaction of judgment (see Section 724.100) must be recorded in each such county in order to release the judgment lien. See Sections 697.400 (release of judgment lien on real property) and 724.060 (execution of and information required to be included in acknowledgment of satisfaction of judgment). See also Section 697.640 (duty of judgment creditor to send termination statement to judgment debtor to terminate judgment lien on personal property).

## CROSS-REFERENCES

Abstract of judgment § 674

Attorney's authority to give acknowledgment § 283

Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Manner of service § 684.010 *et seq.*

Service on judgment debtor's attorney §§ 684.020, 684.050

**§ 724.050. Demand for filing or delivery of acknowledgment of satisfaction of judgment**

724.050. (a) If a money judgment has been satisfied, the judgment debtor or the owner of real or personal property subject to a judgment lien created under the judgment may serve personally or by mail on the judgment creditor a demand in writing that the judgment creditor do one or both of the following:

(1) File an acknowledgment of satisfaction of judgment with the court.

(2) Execute, acknowledge, and deliver an acknowledgment of satisfaction of judgment to the person who made the demand.

(b) The demand shall include the following statement: "Important warning. If this judgment has been satisfied, the law requires that you comply with this demand not later than 15 days after you receive it. If a court proceeding is necessary to compel you to comply with this demand, you will be required to pay my reasonable attorney's fees in the proceeding if the court determines that the judgment has been satisfied and that you failed to comply with the demand. In addition, if the court determines that you failed without just cause to comply with this demand within the 15 days allowed, you will be liable for all damages I sustain by reason of such failure and will also forfeit one hundred dollars to me."

(c) If the judgment has been satisfied, the judgment creditor shall comply with the demand not later than 15 days after actual receipt of the demand.

(d) If the judgment creditor does not comply with the demand within the time allowed, the judgment debtor or the owner of the real or personal property subject to a judgment lien created under the judgment may apply to

the court on noticed motion for an order requiring the judgment creditor to comply with the demand. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. If the court determines that the judgment has been satisfied and that the judgment creditor has not complied with the demand, the court shall either (1) order the judgment creditor to comply with the demand or (2) order the court clerk to enter satisfaction of the judgment.

(e) If the judgment has been satisfied and the judgment creditor fails without just cause to comply with the demand within the time allowed, the judgment creditor is liable to the person who made the demand for all damages sustained by reason of such failure and shall also forfeit one hundred dollars (\$100) to such person. Liability under this subdivision may be determined in the proceedings on the motion pursuant to subdivision (d) or in an action.

**Comment.** Section 724.050 provides a means whereby the judgment creditor can be compelled to file an acknowledgment of satisfaction of judgment in any case where a money judgment has been satisfied, whether pursuant to a writ, by payment, offset, or other means. The other provisions of this chapter which require the filing of an acknowledgment of satisfaction of judgment are limited in scope. See Sections 724.030 (judgment creditor to file an acknowledgment of satisfaction of judgment if judgment satisfied other than pursuant to a writ), 724.040 (judgment creditor to file an acknowledgment of satisfaction of judgment if abstract of judgment recorded). Subdivision (e) provides a sanction if the judgment creditor fails without just cause to file within the time allowed after actual receipt of the demand.

Section 724.050 also provides a method whereby a judgment debtor may obtain an acknowledgment of satisfaction of judgment, whether or not one is required to be served on the judgment debtor under Section 724.040. In addition, this section provides a method whereby the owner of real or personal property subject to a judgment lien may obtain an acknowledgment of satisfaction of judgment.

Subdivisions (a) and (c) of Section 724.050 are drawn from the first portion of subdivision (c) of former Section 675. Subdivision

(b) is new. Subdivision (d) of Section 724.050 supersedes the last portion of the second sentence of subdivision (a) of former Section 675. Subdivision (e) is drawn from the last sentence of subdivision (b) and subdivision (c) of former Section 675.

Section 724.050 continues the substance of subdivision (c) of former Section 675 (demand for *delivery* of acknowledgment to person making demand) and also provides for a demand for the *filing* of an acknowledgment of satisfaction. This procedure is made available to the owner of personal property, as well as real property, subject to a judgment lien. Section 724.050 also supersedes the last sentence of subdivision (b) of former Section 675 which imposed a sanction even though the judgment debtor had not made a demand. A sanction is imposed under subdivision (e) of Section 724.050 only if a demand is made and the judgment creditor fails without just cause to comply with the demand within the 15-day period allowed. This change adopts the procedure provided in Section 117.9 (small claims court). The requirement that a demand be made protects against imposition of the sanction where, for example, the failure to file or deliver the acknowledgment is the result of an oversight on the part of the judgment creditor. But see Section 724.090 (other remedies preserved).

Section 697.640 (demand for termination statement to terminate judgment lien on personal property) adopts the enforcement-of-demand procedure provided by Sections 724.050-724.090. The remedy provided by Section 697.640 is in addition to the remedy provided by Section 724.050. See Section 697.640 and Comment thereto.

#### CROSS-REFERENCES

Acknowledgment of satisfaction of judgment § 724.060  
 Attorney's authority to give acknowledgment §§ 283, 724.060  
 Attorney's fees § 724.080  
 Defined terms  
   Court § 680.160  
   Judgment creditor § 680.240  
   Judgment debtor § 680.250  
   Money judgment § 680.270  
 Demand for acknowledgment of:  
   Partial satisfaction of judgment § 724.110  
   Satisfaction of matured installments § 724.220  
 Demand for removal of erroneous judgment lien on:  
   Personal property § 697.660  
   Real property § 697.410  
 Liability for requiring additional performance or payment § 724.070  
 Manner of service § 684.010 *et seq.*  
 Other remedies preserved § 724.090  
 Service on judgment creditor's attorney §§ 684.010, 684.050

§ 724.060. Contents and manner of execution of acknowledgment of satisfaction of judgment

724.060. (a) An acknowledgment of satisfaction of judgment shall contain the following information:

(1) The title of the court.  
(2) The cause and number of the action.  
(3) The names and addresses of the judgment creditor, the judgment debtor, and the assignee of record if any. If an abstract of the judgment has been recorded in any county, the judgment debtor's name shall appear on the acknowledgment of satisfaction of judgment as it appears on the abstract of judgment.

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

(5) A statement either that the judgment is satisfied in full or that the judgment creditor has accepted payment or performance other than that specified in the judgment in full satisfaction of the judgment.

(6) A statement whether an abstract of the judgment has been recorded in any county and, if so, a statement of each county where the abstract has been recorded and the book and page of the county records where the abstract has been recorded, and a notice that the acknowledgment of satisfaction of judgment (or a court clerk's certificate of satisfaction of judgment) will have to be recorded with the county recorder of each county where the abstract of judgment has been recorded in order to release the judgment lien on real property in that county.

(7) A statement whether a notice of judgment lien has been filed in the office of the Secretary of State and, if such a notice has been filed, a statement of the file number of such notice, and a notice that the acknowledgment of satisfaction of judgment (or a termination statement or a court clerk's certificate of satisfaction of judgment) will have to be filed in that office to terminate the judgment lien on personal property.

(b) The acknowledgment of satisfaction of judgment shall be made in the manner of an acknowledgment of a conveyance of real property.

(c) The acknowledgment of satisfaction of judgment shall be executed and acknowledged by one of the following:

- (1) The judgment creditor.
- (2) The assignee of record.
- (3) The attorney for the judgment creditor or assignee of record unless a revocation of the attorney's authority is filed.

**Comment.** Section 724.060 supersedes portions of subdivisions (a) and (b) of former Section 675. The required contents of the acknowledgment of satisfaction of judgment are drawn from the official form approved by the Judicial Council. See Form for Acknowledgment of Full Satisfaction of Judgment (Form Approved by the Judicial Council of California, effective July 1, 1975). The reference to a notice of judgment lien on personal property filed in the office of the Secretary of State is new and will alert the judgment debtor as to the need to take action to terminate the judgment lien on personal property. See Section 697.640. As to the effect of an acknowledgment of satisfaction executed by the attorney, see *Wherry v. Rambo*, 97 Cal. App.2d 569, 218 P.2d 142 (1950).

#### CROSS-REFERENCES

Abstract of judgment § 674

Attorney's authority to give acknowledgment § 283

Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

Title of action, validity of paper if title is omitted or defective § 1046

### § 724.070. Liability for requiring additional performance or payment

724.070. (a) If a judgment creditor intentionally conditions delivery of an acknowledgment of satisfaction of judgment upon the performance of any act or the payment of an amount in excess of that to which the judgment creditor is entitled under the judgment, the judgment creditor is liable to the judgment debtor for all damages sustained by reason of such action or two hundred fifty dollars (\$250), whichever is the greater amount.

(b) Subdivision (a) does not apply if the judgment creditor has agreed to deliver an acknowledgment of



satisfaction of judgment to the judgment debtor prior to full satisfaction of the judgment in consideration for the judgment debtor's agreement either to furnish security or to execute a promissory note, or both, the principal amount of which does not exceed the amount to which the judgment creditor is entitled under the judgment.

**Comment.** Section 724.070 continues the substance of subdivision (d) of former Section 675.

#### CROSS-REFERENCES

Acknowledgment of satisfaction of judgment § 724.060

Attorney's fees § 724.080

Defined terms

Judgment creditor § 680.240

Judgment debtor § 680.250

Other remedies preserved § 724.090

### § 724.080. Attorney's fees

**724.080.** In an action or proceeding maintained pursuant to this chapter, the court shall award reasonable attorney's fees to the prevailing party.

**Comment.** Section 724.080 continues the substance of a portion of subdivision (f) of former Section 675.

### § 724.090. Other remedies preserved

**724.090.** The damages recoverable pursuant to this chapter are not in derogation of any other damages or penalties to which an aggrieved person may be entitled by law.

**Comment.** Section 724.090 continues the substance of former Section 675(g).

### § 724.100. Certificate of satisfaction of judgment

**724.100.** (a) If satisfaction of a judgment has been entered in the register of actions, the court clerk shall issue a certificate of satisfaction of judgment upon application therefor and payment of a fee of three dollars (\$3).

(b) The certificate of satisfaction of judgment shall contain the following information:

(1) The title of the court.

(2) The cause and number of the action.

(3) The names of the judgment creditor and the judgment debtor.

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

(5) The date of entry of satisfaction of judgment and where it was entered in the register of actions.

**Comment.** Section 724.100 is new. The certificate of satisfaction of judgment serves the same function as an acknowledgment of satisfaction of judgment and can be used, for example, where an acknowledgment of satisfaction of judgment cannot be easily obtained.

#### CROSS-REFERENCES

Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

Entry of satisfaction § 724.020

## CHAPTER 2. ACKNOWLEDGMENT OF PARTIAL SATISFACTION OF JUDGMENT

### § 724.110. Demand for delivery of acknowledgment of partial satisfaction of judgment

724.110. (a) The judgment debtor or the owner of real or personal property subject to a judgment lien created under a money judgment may serve on the judgment creditor a demand in writing that the judgment creditor execute, acknowledge, and deliver an acknowledgment of partial satisfaction of judgment to the person who made the demand. Service shall be made personally or by mail. If the judgment has been partially satisfied, the judgment creditor shall comply with the demand not later than 15 days after actual receipt of the demand.

(b) If the judgment creditor does not comply with the demand within the time allowed, the judgment debtor or the owner of the real or personal property subject to a judgment lien created under the judgment may apply to the court on noticed motion for an order requiring the judgment creditor to comply with the demand. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. If the court determines that the judgment has been

partially satisfied and that the judgment creditor has not complied with the demand, the court shall make an order determining the amount of the partial satisfaction and may make an order requiring the judgment creditor to comply with the demand.

**Comment.** Section 724.110 is a new provision that provides a procedure whereby the judgment debtor or owner of property subject to a judgment lien may obtain an acknowledgment of partial satisfaction of judgment or a court determination of the amount of partial satisfaction if the judgment creditor does not comply with a demand for an acknowledgment of partial satisfaction. Former statutory law did not provide for a similar procedure, but such a procedure was apparently allowed. See *Campbell v. Southern Pacific Co.*, 22 Cal.3d 51, 583 P.2d 121, 148 Cal. Rptr. 596 (1978); *Kaplan v. Hacker*, 113 Cal. App.2d 571, 248 P.2d 464 (1952). See also *Dallman v. Dallman*, 179 Cal. App.2d 27, 3 Cal. Rptr. 383 (1960) (motion to compel plaintiff to acknowledge partial satisfaction of terms of interlocutory divorce decree). Unlike the procedure for compelling the judgment creditor to deliver an acknowledgment of full satisfaction of judgment, Section 724.110 does not provide a sanction for failure to comply with the demand (compare subdivision (e) of Section 724.050) or for attorney's fees to the prevailing party (compare Section 724.080).

#### CROSS-REFERENCES

Acknowledgment of partial satisfaction § 724.120

Attorney's authority to give acknowledgment §§ 283, 724.060, 724.120

Defined terms

Court § 680.160

Judgment creditor § 680.240

Judgment debtor § 680.250

Money judgment § 680.270

Demand for acknowledgment of:

Full satisfaction of judgment § 724.050

Satisfaction of matured installments § 724.220

Judgment lien on:

Personal property § 697.510 *et seq.*

Real property § 697.310 *et seq.*

Manner of service § 684.010 *et seq.*

Service on judgment creditor's attorney §§ 684.010, 684.050

### § 724.120. Contents and manner of execution of acknowledgment of partial satisfaction of judgment

724.120. An acknowledgment of partial satisfaction of judgment shall be made in the same manner and by the same person as an acknowledgment of satisfaction of judgment and shall contain the following information:

- (a) The title of the court.
- (b) The cause and number of the action.
- (c) The names and addresses of the judgment creditor, the judgment debtor, and the assignee of record if any. If an abstract of the judgment has been recorded in any county, the judgment debtor's name shall appear on the acknowledgment of partial satisfaction of judgment as it appears on the abstract of judgment.
- (d) The date of entry of judgment and of any renewals of the judgment and where entered in the records of the court.
- (e) A statement of the amount received by the judgment creditor in partial satisfaction of the judgment.
- (f) A statement whether an abstract of judgment has been recorded in any county and, if so, a statement of each county where the abstract has been recorded and the book and page of the county records where the abstract has been recorded.
- (g) A statement whether a notice of judgment lien has been filed in the office of the Secretary of State and, if so, the file number of the notice.

**Comment.** Section 724.120 is adapted from Section 724.060 which prescribes the contents and manner of execution of an acknowledgment of full satisfaction of judgment.

#### CROSS-REFERENCES

Abstract of judgment § 674

Attorney's authority to give acknowledgment § 283

Defined terms

    Court § 680.160

    Judgment creditor § 680.240

    Judgment debtor § 680.250

    Money judgment § 680.270

Judgment lien on:

    Personal property § 697.510 *et seq*

    Real property § 697.310 *et seq*

Manner of acknowledgment § 724.060

Persons who may execute § 724.060

Title of action, validity of paper if title is omitted or defective § 1046

### CHAPTER 3. ACKNOWLEDGMENT OF SATISFACTION OF MATURED INSTALLMENTS UNDER INSTALLMENT JUDGMENT

#### § 724.210. Definitions

724.210. As used in this chapter:

(a) "Installment judgment" means a money judgment under which a lien may be created on an interest in real property under Section 697.320.

(b) "Matured installments" means the sum of all of the following:

(1) All amounts and installments that have matured under an installment judgment on or before the date specified in the demand for an acknowledgment of satisfaction of matured installments under an installment judgment.

(2) The interest that has accrued on the installment judgment on the date specified in the demand.

(3) The costs that have been added to the installment judgment on or before the date specified in the demand pursuant to Chapter 5 (commencing with Section 685.010) of Division 1.

**Comment.** Section 724.210 is included to provide a convenient reference to the installment judgments that constitute a judgment lien on real property under Section 697.320 (judgment for periodic spousal or child support, judgment against health care provider requiring periodic payments, and workers' compensation award judgment payable in installments).

#### CROSS-REFERENCES

Defined terms

Money judgment § 680.270

#### § 724.220. Demand for delivery of acknowledgment of satisfaction of matured installments

724.220. (a) If real property is subject to a judgment lien created under an installment judgment, the judgment debtor or the owner of real property subject to the judgment lien may serve on the judgment creditor a demand in writing that the judgment creditor execute, acknowledge, and deliver to the person who made the demand an acknowledgment of satisfaction of matured

installments under an installment judgment. Service shall be made personally or by mail.

(b) The demand shall include the following statement: “Important warning. If the matured installments on this judgment have been satisfied as of date specified in this demand, the law requires that you comply with this demand not later than 15 days after you receive it. (The ‘matured installments’ are all amounts and installments that are due and payable on or before the date specified in this demand together with the accrued interest to that date and costs added to the judgment on or before that date.) If a court proceeding is necessary to compel you to comply with this demand, you will be required to pay my reasonable attorney’s fees in the proceeding if the court determines that the matured installments have been satisfied and that you failed to comply with the demand. In addition, if the court determines that you failed without just cause to comply with this demand within the 15 days allowed, you will be liable for all damages I sustain by reason of such failure and will also forfeit one hundred dollars to me.”

(c) If the matured installments have been satisfied as of the date specified in the demand, the judgement creditor shall comply with the demand not later than 15 days after actual receipt of the demand.

**Comment.** Section 724.220 is adapted from subdivisions (a)-(c) of Section 724.050. If real property is subject to a judgment lien, the acknowledgment of satisfaction of matured installments permits the judgment debtor or other owner to transfer the property free of the lien. See Section 697.400(b).

#### CROSS-REFERENCES

- Acknowledgment of satisfaction of matured installments § 724.250
- Attorney’s authority to give acknowledgment §§ 283, 724.050, 724.260
- Attorney’s fees § 724.260
- Damages and penalty for noncompliance § 724.240
- Defined terms
  - Court § 680.160
  - Installment judgment § 724.210
  - Judgment creditor § 680.240
  - Judgment debtor § 680.250
  - Matured installments § 724.210
  - Real property § 680.320
- Demand for acknowledgment of:
  - Full satisfaction of judgment § 724.050
  - Partial satisfaction of judgment § 724.110

Effect of recording certificate § 697.400(b)

Judgment lien on real property § 697.310 *et seq.*

Manner of service § 684.010 *et seq.*

Proceeding to compel compliance with demand § 724.230

Service on judgment creditor's attorney §§ 684.010, 684.050

### § 724.230. Proceeding to compel compliance with demand

**724.230.** If the judgment creditor does not comply with the demand within the time allowed, the judgment debtor or the owner of the real property subject to a judgment lien created under the installment judgment may apply to the court on noticed motion for an order requiring the judgment creditor to comply with the demand. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. If the court determines that the matured installments have been satisfied as of the date specified in the demand and that the judgment creditor has not complied with the demand, the court shall either (1) order the judgment creditor to comply with the demand or (2) make an order determining that the matured installments as of the date specified in the demand have been satisfied.

**Comment.** Section 724.230 is drawn from subdivision (d) of Section 724.050.

#### CROSS-REFERENCES

Attorney's fees § 724.260

Defined terms

Court § 680.160

Installment judgment § 724.210

Judgment creditor § 680.240

Judgment debtor § 680.250

Matured installments § 724.210

Real property § 680.320

Determination of liability for damages and penalty § 724.240

Judgment lien on real property § 697.310 *et seq.*

Manner of service § 684.010 *et seq.*

Service on judgment creditor's attorney §§ 684.010, 684.050

### § 724.240. Damages and penalty for failure to comply with demand

**724.240.** (a) If the matured installments under the installment judgment have been satisfied as of the date specified in the demand and the judgment creditor fails without just cause to comply with the demand within the

time allowed, the judgment creditor is liable to the person who made the demand for all damages sustained by reason of such failure and shall also forfeit one hundred dollars (\$100) to such person. Liability under this subdivision may be determined in the proceedings on a motion pursuant to Section 724.230 or in an action.

(b) The damages recoverable pursuant to subdivision (a) are not in derogation of any other damages or penalties to which an aggrieved person may be entitled by law.

**Comment.** Section 724.240 is drawn from subdivision (e) of Section 724.050 and from Section 724.090.

#### CROSS-REFERENCES

Attorney's fees § 724.260

Defined terms

Judgment creditor § 680.240

Matured installments § 724.210

Money judgment § 680.270

Person § 680.280

### § 724.250. Contents and manner of execution of acknowledgment of satisfaction of matured installments

724.250. (a) An acknowledgment of satisfaction of matured installments under an installment judgment shall be made in the same manner and by the same person as an acknowledgment of satisfaction of judgment and shall contain the following information:

(1) The title of the court.

(2) The cause and number of the action.

(3) The names and addresses of the judgment creditor, the judgment debtor, and the assignee of record if any. The judgment debtor's name shall appear on the acknowledgment of satisfaction of matured installments as it appears on the certified copy of the judgment that was recorded to create the judgment lien.

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

(5) A statement that the matured installments under the installment judgment had been satisfied as of a specified date.



(6) A statement whether a certified copy of the judgment has been recorded in any county and, if so, a statement of each county where the certified copy has been recorded and the book and page of the county records where the certified copy of the judgment has been recorded.

(b) If any amount of child support provided in a support order has been directed to be made to an officer designated by the court pursuant to Section 4702 of the Civil Code or any other provision of law and such directive is set forth in the certified copy of the judgment that was recorded to create the judgment lien on real property, or in a similarly recorded certified copy of an amended or supplemental order, the acknowledgment of satisfaction of matured installments under the installment judgment is not effective and does not affect the judgment lien unless the acknowledgment is approved in writing by such designated officer.

**Comment.** Subdivision (a) of Section 724.250 is adapted from Section 724.120 which prescribes the contents and manner of execution of an acknowledgment of partial satisfaction of judgment. Subdivision (b) continues the substance of a portion of the second paragraph of former Section 674.5. Section 724.060 specifies the manner of execution and the persons who may execute.

#### CROSS-REFERENCES

Attorney's authority to give acknowledgment §§ 283, 724.060

Defined terms

Court § 680.160

Installment judgment § 724.210

Judgment creditor § 680.240

Judgment debtor § 680.250

Matured installments § 724.210

Judgment lien on real property § 697.310 *et seq.*

Title of action, validity of paper if title is omitted or defective § 1046

### § 724.260. Attorney's fees

**724.260.** In an action or proceeding maintained pursuant to this chapter, the court shall award reasonable attorney's fees to the prevailing party.

**Comment.** Section 724.260 is drawn from Section 724.080.

### **OPERATIVE DATE**

SEC. 3. (a) Except as provided in subdivisions (b) and (c), this act becomes operative on January 1, 1983.

(b) On and after the effective date of this act, the Judicial Council may adopt any forms necessary so that the forms may be used when this act becomes operative.

(c) On and after the effective date of this act, the courts may adopt any rules necessary so that the rules will be effective when this act becomes operative.

### **NO LOCAL REIMBURSEMENT**

SEC. 4. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.



## **CONFORMING ADDITIONS, AMENDMENTS, AND REPEALS**

The Law Revision Commission prepared a bill to make the necessary revisions (amendments, additions, and repeals) of existing codes to conform them to the new Enforcement of Judgments Law.<sup>1</sup> On March 5, 1981, this bill was introduced as Assembly Bill No. 798 of the 1981-82 Regular Session by Assemblyman Alister McAlister (the Assembly Member of the Law Revision Commission).

To save printing costs, the entire text of the conforming revisions bill is not set out in this report. Instead, only those sections of the bill that are of special significance are set out.

In the material that follows, for each section of the conforming revisions bill, a section heading for the section is set out, followed in some cases by the text of the code section being amended, added, or repealed. The comment to the section being amended, added, or repealed follows, whether or not the text of the section is included in this report.

### **Business & Professions Code § 24075 (technical amendment). Transfer of alcoholic beverage license**

**Comment.** Section 24075 is amended to make clear that the priorities for distribution of proceeds from the sale of a liquor license provided by Section 24074 apply where a liquor license is to be sold to satisfy a money judgment by a receiver appointed pursuant to Section 708.630 of the Code of Civil Procedure.

### **Civil Code § 765 (technical amendment). Nature of estates in property**

**Comment.** Section 765 is amended to conform to the terminology of Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

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<sup>1</sup> The significant provisions of this bill are noted at various points in the discussion of the provisions of the enforcement of judgments law in the preliminary portion of this publication.

**Civil Code § 859 (technical amendment). Claims of creditors against trust surplus**

**Comment.** Section 859 is amended to refer to Code of Civil Procedure Section 709.010 which provides for enforcing a money judgment against trust assets.

**Civil Code § 954.5 (added). Transfer of right represented by judgment**

954.5. (a) Subject to subdivisions (b) and (c), a transfer of a right represented by a judgment excluded from coverage of Division 9 of the Commercial Code by subdivision (h) of Section 9104 of the Commercial Code shall be deemed perfected as against third persons upon there being executed and delivered to the transferee an assignment thereof in writing.

(b) As between bona fide assignees of the same right for value without notice, the assignee who first becomes an assignee of record, by filing an acknowledgment of assignment of judgment with the court as provided in Section 673 of the Code of Civil Procedure or otherwise becoming an assignee of record, has priority.

(c) The filing of an acknowledgment of assignment of the judgment with the court under Section 673 of the Code of Civil Procedure is not, of itself, notice to the judgment debtor so as to invalidate any payments made by the judgment debtor that would otherwise be applied to the satisfaction of the judgment.

**Comment.** Section 954.5 continues the substance of a former portion of Section 955.1, but Section 954.5 changes prior law concerning the priorities of conflicting bona fide assignees of the same judgment for value without notice; such an assignee who first files an acknowledgment of assignment of judgment under Code of Civil Procedure Section 673 (or otherwise becomes an assignee of record) obtains a priority over other assignees of the same judgment. Under prior law formerly found in Section 955.1, the good faith, for value, without notice, assignee who first gave notice of the assignment in writing to the judgment debtor had priority. Nothing in Section 954.5 requires the filing of an acknowledgment of assignment of judgment with the court in

order to accomplish the transfer of the interest in the judgment; the section merely covers the priorities between conflicting bona fide assignees of the same right for value and without notice and protects the judgment debtor who pays the judgment creditor without notice of the assignment.

**Civil Code § 955 (technical amendment). Transfer of nonnegotiable instruments; sale of accounts or chattel paper as part of sale of business**

**Comment.** Section 955 is amended to delete the reference to “contract rights” since that term is no longer used in the Commercial Code and to make other technical changes.

**Civil Code § 955.1 (amended). Transfer of general intangibles, accounts, or chattel paper**

**Comment.** Section 955.1 is amended to delete the reference to “contract rights,” since that term is no longer used in the Commercial Code. The reference to a “right represented by a judgment” is deleted because this provision is superseded by Section 954.5. The other changes are not substantive.

**Civil Code § 986 (technical amendment). Sale of work of fine art**

**Comment.** Section 986(a) (6) is amended to conform to the terminology of Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). The reference to attachment has been deleted as unnecessary because Code of Civil Procedure Section 487.020 incorporates for attachment the exemptions from enforcement of a money judgment.

**Civil Code §§ 1237-1304 (repealed). Declared homesteads**

**Comment.** Sections 1237 through 1304 relating to the declared homestead are not continued. As an exemption from execution (former Section 1240), the declared homestead is superseded by the homestead exemption provided by Code of Civil Procedure Sections 704.710-704.840. As a restraint on the ability to convey, encumber, or partition property (former Sections 1240 and 1242), the declared homestead is superseded by more general provisions governing conveyance,

encumbrance, and partition of community and separate property and imposing obligations on spouses for mutual support and to provide a dwelling; the ability of one spouse to affect the separate property of the other spouse is not continued except as provided in Section 5102 of the Civil Code. See Civil Code §§ 5107 (wife may convey separate property without consent of husband), 5108 (husband may convey separate property without consent of wife), 5125 (spouse may not convey or encumber community personal property used as a dwelling without written consent of other spouse), 5127 (both spouses must join in conveyance or encumbrance of community real property), 5100 (spouses' obligation of mutual support), 5102 (right to occupy dwelling of spouse and restraint on alienation of dwelling); Code Civ. Proc. § 872.210(b) (no partition of community property).

**Civil Code § 1861 (technical amendment). Innkeeper's lien**

**Comment.** The last paragraph of Section 1861 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). See Code Civ. Proc. §§ 703.010-704.840 (exemptions). The reference to attachment has been deleted as unnecessary because Code of Civil Procedure Section 487.020 incorporates for attachment the exemptions from enforcement of a money judgment.

**Civil Code § 1861a (amended). Apartment keeper's lien**

1861a. Keepers of furnished and unfurnished apartment houses, apartments, cottages, or bungalow courts shall have a lien upon the baggage and other property of value belonging to their tenants or guests, and upon all the right, title and interest of their tenants or guests in and to all property in the possession of such tenants or guests which may be in such apartment house, apartment, cottage, or bungalow court, for the proper charges due from such tenants or guests, for their accomodation, rent, services, meals, and such extras as are furnished at their request, and for all moneys expended for them, at their request, and for the costs of enforcing such lien.

Such lien may be enforced only after final judgment in an action brought to recover such charges or moneys.

During the pendency of the proceeding, the plaintiff may take possession of such baggage and property upon an order issued by the court, where it appears to the satisfaction of the court from an affidavit filed by or on behalf of the plaintiff that the baggage or property is about to be destroyed, substantially devalued, or removed from the premises. Ten days written notice of the hearing on the motion for such order shall be served on the defendant and shall inform the defendant that ~~he~~ *the defendant* may file affidavits on ~~his~~ *the defendant's* behalf and present testimony in ~~his~~ *the defendant's* behalf and that if ~~he~~ *the defendant* fails to appear the plaintiff will apply to the court for such order. The plaintiff shall file an undertaking with good and sufficient sureties, to be approved by the court, in such sum as may be fixed by the court.

Upon such order, the plaintiff shall have the right to enter peaceably the unfurnished apartment house, apartment, cottage, or bungalow court used by ~~his~~ *the* guest or tenant without liability to ~~such~~ *the* guest or tenant, including any possible claim of liability for conversion, trespass, or forcible entry. The plaintiff shall have the same duties and liabilities as a depository for hire as to property which ~~he~~ *the plaintiff* takes into ~~his~~ possession. An entry shall be considered peaceable when accomplished with a key or passkey or through an unlocked door during the hours between sunrise and sunset. Unless the judgment shall be paid within 30 days from the date when it becomes final, the plaintiff may sell the baggage and property, at public auction to the highest bidder, after giving notice of such sale by publication of a notice containing the name of the debtor, the amount due, a brief description of the property to be sold, and the time and place of such sale, pursuant to Section 6064 of the Government Code in the county in which said apartment house, apartment, cottage, or bungalow court is situated, and after by mailing, at least 15 days prior to the date of sale, a copy of such notice addressed to such tenant or guest at ~~his~~ *the* residence or other known address *of the tenant or guest*, and if not known, such notice shall be addressed to ~~such~~ *the* tenant



or guest at the place where such apartment house, apartment, cottage, or bungalow court is situated; and, after satisfying such lien out of the proceeds of such sale, together with any reasonable costs, that may have been incurred in enforcing said lien, the residue of said proceeds of sale, if any, shall, upon demand made within six months after such sale, be paid to such tenant or guest; and if not demanded within six months from the date of such sale, said residue, if any, shall be paid into the treasury of the county in which such sale took place; and if the same be not claimed by the owner thereof, or ~~his~~ *the owner's* legal representative within one year thereafter, it shall be paid into the general fund of the county; and such sale shall be a perpetual bar to any action against said keeper for the recovery of such baggage or property, or of the value thereof, or for any damages, growing out of the failure of such tenant or guest to receive such baggage or property.

When the baggage and property are not in the possession of the keeper as provided herein, such lien shall be enforced only ~~by writ of execution in the manner provided for enforcement of a money judgment.~~

~~This section does not apply to:~~

~~(a) Any musical instrument of any kind or description which is used by the owner thereof to earn all or a part of his living.~~

~~(b) Any prosthetic or orthopedic appliance, or any medicine, drug, or medical equipment or health apparatus, personally used by a tenant or guest, or a member of his family who is residing with him.~~

~~(c) Table and kitchen furniture, including one refrigerator, washing machine, sewing machine, stove; bedroom furniture, one overstuffed chair, one davenport, one dining table and chairs, and also all tools, instruments, clothing and books used by the tenant or guest in gaining a livelihood; beds, bedding and bedsteads, oil paintings and drawings drawn or painted by any member of the family of the tenant or guest, and any family portraits and their necessary frames.~~

~~(d) All other household, table or kitchen furniture not expressly mentioned in paragraph (c); including but not~~

~~limited to radios, television sets, phonographs, records, motor vehicles that may be stored on the premises except so much of any such articles as may be reasonably sufficient to satisfy the lien provided for by this section; and provided further, that such lien shall be secondary to the claim of any prior bona fide holder of a chattel mortgage on and the rights of a conditional seller of such articles, other than the tenant or guest.~~

~~Any property which is exempt from attachment or execution under the provisions of the Code of Civil Procedure shall not be enforcement of a money judgment is not~~ subject to the lien provided for in this section.

**Comment.** Section 1861a is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). The provision concerning the rights of chattel mortgagees and conditional sellers is not continued because it is unnecessary. See, *e.g.*, Com. Code §§ 9301 (rights of lien creditor), 9310 (priority of certain liens arising by operation of law). The last paragraph of Section 1861a is revised to read the same as the last paragraph of revised Section 1861. See the Comment to that section.

#### **Civil Code § 3057 (repealed). Levying officer's lien**

**Comment.** Section 3057 is repealed as unnecessary in view of the detailed provisions of the Code of Civil Procedure prescribing the levying officer's duties and authority in connection with the levy of attachment or execution.

#### **Civil Code § 3058 (repealed). Judgment lien**

**Comment.** Section 3058 is repealed because it is unnecessary. Judgment liens are governed by Code of Civil Procedure Sections 697.310-697.670.

#### **Civil Code § 3152 (technical amendment). Collection of debt owed to mechanic's lien claimant**

**Comment.** The first sentence of Section 3152 is amended to make clear that the holder of a mechanic's lien may resort to any available procedure for enforcement of a money judgment and is not limited to enforcement by writ of execution. See Chapter

6 (commencing with Section 708.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure. The other revisions make no substantive change.

**Civil Code § 3193 (technical amendment). Priorities where stop notice for public work**

**Comment.** Section 3193 is amended to refer to the provisions that superseded Sections 710 and 710a of the Code of Civil Procedure which formerly were referred to in the section.

**Civil Code § 4383 (added). Execution to enforce support**

4383. (a) Notwithstanding Section 4380, a final judgment, order, or decree for the payment of child or spousal support may be enforced by a writ of execution without prior court approval for amounts that are not more than 10 years overdue.

(b) The application for a writ of execution shall be accompanied by an affidavit of the judgment creditor showing the amount of each due and unpaid installment and the date it became due. The affidavit shall be filed in the action and a copy shall be attached to the writ of execution delivered to the levying officer. The levying officer shall serve the copy of the affidavit on the judgment debtor when the writ of execution is first served on the judgment debtor pursuant to a levy under the writ.

**Comment.** Section 4383 is a new provision permitting enforcement of child and spousal support judgments by execution without the necessity of obtaining prior court approval under Section 4380, so long as the amounts sought to be collected are not more than 10 years overdue. See Sections 4380 and 4384 (court approval required before amounts due more than 10 years may be enforced). Section 4383 applies only to enforcement of final support judgments, not to interlocutory judgments.

Subdivision (b) provides technical requirements that must be complied with in addition to the general provisions governing execution. The affidavit of amounts due and owing provides the court clerk with the information needed to issue the writ and informs the judgment debtor concerning the nature of the debt sought to be collected.

**Civil Code § 4384 (added). Lack of diligence for more than 10 years in seeking enforcement of money judgment under Family Law Act**

4384. The lack of diligence for more than 10 years in seeking enforcement of a judgment, order, or decree of the court made or entered pursuant to this part that requires the payment of money shall be considered by the court in determining whether to permit enforcement of the judgment, order or decree under Section 4380. In the case of a judgment, order, or decree for the payment of money in installments, the 10-year period runs as to each installment from the date the installment became due.

**Comment.** The first sentence of Section 4384 is drawn from a portion of former Code of Civil Procedure Section 685 that applied to issuance of writs of execution to enforce judgments under the Family Law Act. See, *e.g.*, *Lesh v. Lesh*, 8 Cal. App.3d 883, 87 Cal. Rptr. 632 (1970); *Nutt v. Nutt*, 247 Cal. App.2d 166, 55 Cal. Rptr. 380 (1966). Unlike former Section 685, Section 4384 is not limited to enforcement by execution but applies to all enforcement procedures sought after the expiration of 10 years. The second sentence recognizes case law concerning the time within which installment judgments may be enforced without a showing of diligence. See, *e.g.*, *Wolfe v. Wolfe*, 30 Cal.2d 1, 4, 180 P.2d 345 (1947). Nothing in Section 4384 precludes the court from permitting enforcement after 10 years even though diligence is not shown if the court, in its discretion, determines that enforcement would be equitable in light of all the circumstances of the particular case. Sections 4380 and 4384 provide an exception to the general provisions governing time for enforcement and renewal of judgments provided by Sections 683.010-683.220 of the Code of Civil Procedure. See Code Civ. Proc. § 683.310.

**Civil Code § 4701 (amended). Wage assignment for child support**

4701. (a) In any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, the court may order either parent or both parents to assign to the county clerk, probation officer, or other officer of the court or county

officer designated by the court to receive the payment, that portion of salary or wages of either parent due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance, and education of the minor child. The order shall operate as an assignment and shall be binding upon any existing or future employer of the defaulting parent upon whom a copy of the order is served. Any such order may be modified or revoked at any time by the court.

(b) (1) Notwithstanding the provisions of subdivision (a), in any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, upon a petition signed under penalty of perjury by the person or county officer to whom support has been ordered to have been paid that the parent so ordered is in arrears in payment in a sum equal to the amount of one month of the payment within the 24-month period immediately preceding filing of the petition with the court, the court shall issue without notice to the parent ordered to pay support an order requiring the parent ordered to pay support to assign either to the person to whom support has been ordered to have been paid or to a county officer designated by the court to receive the payment, that portion of the salary or wages of the parent due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance, and education of the minor child. Such an order shall operate as an assignment and shall be binding upon any existing or future employer of the parent ordered to pay support upon whom a copy of the order is served.

The petition shall state the number of previous times a petition for assignment has been filed pursuant to this subdivision and the county in which any such petition was filed.

(2) No petition shall be accepted for filing pursuant to this subdivision unless it contains a declaration stating that the parent, or any other person designated pursuant to subdivision (a), to whom support has been ordered to be paid has given the parent ordered to pay support a

written notice of his or her intent to seek a wage assignment in the event of a default in support payments and that the notice was transmitted by certified mail or personally served at least 15 days prior to the date of the filing of the petition. A written notice of intent to seek a wage assignment may be given at the time of the entry of the final decree of dissolution or at any time subsequent thereto. In addition to any other penalty provided by law, the filing of a petition with knowledge of the falsity of the declaration of notice is punishable as a contempt pursuant to Section 1209 of the Code of Civil Procedure. The parent ordered to pay support may at any time waive the written notice required by this subdivision.

(3) The parent to whom support has been ordered to be paid shall notify the court and the employer of the parent ordered to pay support, by any form of mailing requiring a return receipt, of any change of address within a reasonable period of time after any such change. In instances in which payments have been ordered to be made to a county officer designated by the court, the parent to whom support has been ordered to be paid shall notify the court and the county officer, by any form of mail requiring a return receipt, of any address change within a reasonable period of time after any such change. If the employer or county officer is unable to deliver payments under the assignment for a period of three months due to the failure of the person to whom support has been ordered to be paid to notify the employer or county officer of a change of address, the employer or county officer shall not make any further payments under the assignment and shall return all undeliverable payments to the employee.

(4) An assignment order made pursuant to this subdivision shall not become effective until 10 days after service of the order on an employer.

(5) Within 10 days of service of an assignment order issued pursuant to this subdivision on an employer, the employer shall deliver a copy of the assignment order to the parent ordered to pay support.

(6) A parent alleged to be in default may move to quash an assignment order issued under this subdivision within 10 days after service on the parent of notice of the assignment order by his or her employer if the parent states under oath that a default in the amount alleged in the petition has not occurred within the 24-month period referred to in the petition or that the amount is not owed. The motion and notice of motion to quash the assignment order shall be filed with the court issuing the assignment order within 10 days after service on the parent of notice of the order by the employer. The clerk of the court shall set the motion to quash for hearing within not less than 15 days, nor more than 20 days, after receipt of the notice of motion and shall mail to the petitioner at the return address contained in the petition a copy of the notice of motion by first-class mail within five days after receipt of the notice of motion.

(7) The employer shall continue to withhold and forward support as ordered by the court until served with notice that the motion to quash under this subdivision has been granted.

(8) The due date of support payments under this subdivision shall be the date specifically stated in the order of support or if no date is stated in the support order, then it shall be the last day of the month in which the support payment is to be paid.

(9) For purposes of this subdivision, arrearages of payment shall be computed on the basis of the payments owed and unpaid on the date that the parent ordered to pay support has been given notice of the order of assignment and the fact that the parent ordered to pay support may have subsequently paid such arrearages shall not relieve the court of its duty under this subdivision to order the assignment.

(10) Upon petition by the parent ordered to pay support, the court shall terminate an order of assignment entered pursuant to this subdivision upon proof of full payment pursuant to the wage assignment for the appropriate period of time, as follows:

(A) An assignment pursuant to this subdivision pursuant to an initial petition shall continue until support payments are current.

(B) An assignment under this subdivision pursuant to a second petition filed within 24 months shall continue for 12 months.

(C) An assignment under this subdivision pursuant to a third or subsequent petition filed within 48 months shall continue for 18 months.

Upon petition by the parent ordered to pay support the court shall terminate an order of assignment entered pursuant to this subdivision if the employer or county officer has been unable to deliver payments under the assignment for a period of three months due to the failure of the person to whom support has been ordered to be paid to notify the employer or county officer of a change of address.

(c) The Judicial Council shall prescribe forms for the orders for wage assignment required or authorized by this section. The employer may deduct from the salary or wages of the employee the sum of one dollar (\$1) for each payment made pursuant to the order. Any such assignment made pursuant to court order shall have priority as against any attachment, execution, or other assignment, unless otherwise ordered by the court.

(d) The employer shall cooperate with and provide relevant employment information to the district attorney for the purpose of enforcing the child support obligation.

(e) No employer shall use any assignment authorized by this section as grounds for the dismissal of such employee.

(f) As used in this section "employer" includes the United States government and any public entity as defined in Section 811.2 of the Government Code.

(g) On declaration or affidavit of the parent to whom support has been ordered to be paid to the court that: (1) the parent ordered to make support payments is in default in such payment in the amount specified in subdivision (b), and (2) the whereabouts of such defaulting parent or the identity of his employer are unknown to the parent to whom support has been ordered to be paid, the district attorney shall contact the central registry maintained by the Department of Justice in the manner prescribed in Section 11478.5 of the



Welfare and Institutions Code, and upon receiving the requested information, notify the court of the last known address of the absent parent and the name and address of the absent parent's last known employer. The court shall then order the defaulting parent to make support payments pursuant to subdivision (b).

(h) Nothing in this section shall limit the authority of the district attorney to utilize any and all civil and criminal remedies to enforce child support obligations regardless of whether or not the custodial parent receives welfare moneys.

(i) Notwithstanding any other provision of law, the provisions of this section shall be applicable to any of the following:

(1) All money payable to any person as a pension; or as an annuity or retirement or disability or death or other benefit; or as a return of contributions and interest thereon from the United States government; or from the state; or any county; city; or city and county; or other political subdivision of the state; or any public trust; or public corporation; or from the governing body of any of them; or from any public board or boards; or from any retirement; disability; or annuity system established by any of them pursuant to statute.

(2) All money held, controlled, or in process of distribution by the state; or a city; city and county; county; or other political subdivision of the state; or any public trust or public corporation; or the governing body of any of them; or by any public board or boards; derived from the contributions by the state or such city; county; city and county; or other political subdivision; or such public trust; public corporation; governing body; or public board or boards; or by any officer or employee thereof; for retirement or pension purposes or the payment of disability; death; or other benefits; and all rights and benefits accrued or accruing to any person under any system established pursuant to statute by the state; city; city and county; county; or other political subdivision of the state; or any public trust or public corporation for retirement; annuity; or pension purposes or payment of disability or death benefits; and all vacation credits accumulated by a state employee

pursuant to the provisions of Section 18050 of the Government Code, or any other public employee pursuant to any law for the accumulation of vacation credits applicable to such employee where money, a benefit, or vacation credit has become payable under such program; provided, however, the paying authority may deduct a sum reflecting the actual cost of administration of the court-ordered child or spousal support payment up to one dollar (\$1) for each payment made pursuant to court order.

This subdivision shall not apply to any money held, controlled, or in process of distribution by any such entity pursuant to the statutory provisions of the Unemployment Insurance Code, or of Division 4 (commencing with Section 3201) or Division 4.5 (commencing with Section 6100) of the Labor Code pertaining to workers' compensation and insurance.

*(i) The provisions of this section apply to the money and benefits described in Sections 704.110 and 704.113 of the Code of Civil Procedure to the extent that such money and benefits are subject to a wage assignment for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.*

(j) Notwithstanding any other provision of law, when a certified copy of any order of assignment is served on any public entity described in ~~subdivision (i)~~, Section 704.110 of the Code of Civil Procedure other than the United States government, such entity shall comply with any request for a return of employee contributions by an employee named in such order by delivering such contributions to the clerk of the court from which such order issued, unless the entity has received a certified copy of an order terminating the order of assignment. Upon receipt of moneys pursuant to this section, the clerk of the court, within 10 days, shall send written notice of such fact to the parties, and any agency through whom payments have been ordered under Section 4702. Such moneys shall be subject to any procedure available to enforce an order for child support, but if no enforcement procedure is commenced after 30 days have elapsed from

the date the notice of receipt is sent, the clerk shall, upon request, ~~release the moneys~~ *return the moneys to the public entity that delivered the moneys to the court unless the public entity has informed the court in writing that the moneys shall be released* to the defaulting parent. A court shall not directly or indirectly condition the issuance, modification, or termination of, or condition the terms or conditions of, any order for the support of a minor child upon the issuance of such a request by such an employee.

**Comment.** Subdivision (i) of Section 4701 is replaced by a reference to the provisions of the Enforcement of Judgments Law that supersede the former subdivision. Paragraph (1) of former subdivision (i) is superseded by Code of Civil Procedure Sections 703.070 (application of exempt property to satisfaction of judgment for child or spousal support) and 704.110(d). Paragraph (2) of former subdivision (i) is superseded by subdivisions (b) and (c) of Code of Civil Procedure Section 704.110 and by subdivision (c) of Code of Civil Procedure Section 704.113. The last sentence of former subdivision (i) has been omitted as unnecessary in view of Code of Civil Procedure Sections 704.120 and 704.160. The one dollar sum that was provided for administrative costs under former subdivision (i) is increased to two dollars in Section 704.110; the increased fee conforms to the fee formerly provided for administrative costs in Government Code Section 21201. The reference to attachment in Section 4701 has been deleted because attachment of earnings is not permitted. See Section 487.020(c). Subdivision (j) is revised to require contributions to be returned to the public retirement system (unless the system otherwise advises the court) rather than to the employee. This change reflects the fact that the employee may not have a right to return of the contributions under the provisions applicable to the particular public retirement system.

**Civil Code § 4800 (technical amendment). Division of property under Family Law Act**

**Comment.** Section 4800 is amended to reflect the elimination of the declared homestead. See Comment to former Civil Code §§ 1237-1304.

**Civil Code § 4801.6 (amended). Wage assignment for spousal support**

4801.6. (a) In any proceeding where the court has ordered a party to pay any amount of spousal support to the other party, the court, upon a showing of good cause, may order the party required to make such payment of spousal support to assign to the county clerk or other officer of the court or county officer designated by the court to receive such payment, that portion of salary or wages of ~~said~~ *the* party due or to be due in the future as will be sufficient to pay the amount ordered by the court for spousal support. Such order shall operate as an assignment and shall be binding upon any existing or future employer of the party required to make such payment of spousal support upon whom a copy of such order is served. The Judicial Council shall prescribe forms for such orders. The employer may deduct the sum of one dollar (\$1) for each payment made pursuant to such order. Any such order may be modified or revoked at any time by the court. Any such assignment made pursuant to court order shall have priority as against any ~~attachment~~, execution or other assignment, unless otherwise ordered by the court, with the exception of assignments made pursuant to Section 4701. The employer shall cooperate with and provide relevant employment information to the district attorney for the purpose of enforcing the spousal support obligation.

(b) Notwithstanding the provisions of subdivision (a), in any proceeding where the court has ordered a party to pay spousal support to the other party upon both a petition by the person to whom support has been ordered to have been paid and a finding by the court that the party so ordered to pay spousal support is in arrears in payment in a sum equal to the amount of two months of such payments within the 24-month period immediately preceding submission of such petition, the court shall order the defaulting party to assign either to the person to whom support has been ordered to have been paid or to a county officer designated by the court to receive such payment, that portion of the salary or wages of the party

required to make such payment of spousal support as will be sufficient to pay the amount ordered by the court for spousal support. Such an order shall operate as an assignment and shall be binding upon any existing or future employer of the party required to make such payment of spousal support upon whom a copy of such order is served. The Judicial Council shall prescribe forms for such orders. The employer may deduct the sum of one dollar (\$1) for each payment made pursuant to the order. Any such assignment made pursuant to court order shall have priority as against any ~~attachment~~, execution; or other assignment, unless otherwise ordered by the court, with the exception of assignments made pursuant to Section 4701.

The party to whom support has been ordered to be paid shall notify the court and the employer of the party ordered to pay spousal support, by any form of mail requiring a return receipt, of any change of address within a reasonable period of time after any such change. In instances in which payments have been ordered to be made to a county officer designated by the court, the party to whom spousal support has been ordered to be paid shall notify the court and such county officer, by any form of mail requiring a return receipt, of any address change within a reasonable period of time after such changes. If the employer or county officer is unable to deliver payments under the assignment for a period of three months due to the failure of the person to whom support has been ordered to be paid to notify the employer or county officer of a change of address, the employer or county officer shall not make any further payments under the assignment and shall return all undeliverable payments to the employee.

For purposes of this subdivision, arrearages in payment shall be computed on the basis of the payments owed and unpaid on the date that the defaulting party has been given notice personally, and not by mail pursuant to Sections 1010 and 1011 of the Code of Civil Procedure of the application for the order of assignment, and the fact that the defaulting party may have subsequently paid

such arrearages shall not relieve the court of its duty under this subdivision to order the assignment.

Upon a petition by the defaulting party, the court shall terminate such order of assignment entered pursuant to ~~the~~ *this* subdivision if (1) there has been 18 continuous and uninterrupted months of full payment under the wage assignment or (2) the employer or county officer has been unable to deliver payments under the assignment for a period of three months due to the failure of the person to whom spousal support has been ordered to be paid to notify the employer or county officer of a change of address.

(c) No employer shall use any assignment authorized by this section as grounds for the dismissal of such employee.

(d) As used in this section "employer" includes the United States government and any public entity as defined in Section 811.2 of the Government Code.

(e) On declaration or affidavit of the party to whom spousal support has been ordered to be paid to the court that: (1) the party ordered to make a spousal support payment is in default in such payment in the amount specified in subdivision (b), and (2) the whereabouts of such defaulting party or the identity of his employer are unknown to the party to whom spousal support has been ordered to be paid, the district attorney shall contact the central registry maintained by the Department of Justice in the manner prescribed in Section 11478.5 of the Welfare and Institutions Code, and upon receiving the requested information, notify the court of the last known address of the absent party and the name and address of the absent party's last known employer. The court shall then order the party obligated to make spousal support payments to show cause why an order for assignment pursuant to subdivision (b) should not issue. The county may charge a reasonable fee not to exceed two dollars and fifty cents (\$2.50) for the services of the district attorney under this subdivision.

(f) Nothing in this section shall limit or expand the authority of the district attorney to utilize any and all civil

and criminal remedies to enforce spousal support obligations regardless of whether or not the party to be supported receives welfare moneys.

(g) ~~Notwithstanding any other provision of law, the provisions of this section shall be applicable to all money received by any person as a pension, or as an annuity or retirement or disability or death or other benefit, or as a return of contributions and interest thereon from the United States government or from the state, or any county, city, or city and county, or other political subdivision of the state, or any public trust, or public corporation, or from the governing body of any of them, or from any public board or boards, or from any retirement, disability, or annuity system established by any of them pursuant to statute. The provisions of this section apply to the money and benefits described in Sections 704.110 and 704.113 of the Code of Civil Procedure to the extent that such moneys and benefits are subject to a wage assignment for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.~~

(h) Notwithstanding any other provision of law, when a certified copy of any order of assignment is served on any public entity described in ~~subdivision (g)~~ *Section 704.110 of the Code of Civil Procedure* other than the United States government, such entity shall comply with any request for a return of employee contributions by an employee named in such order by delivering such contributions to the clerk of the court from which such order issued, unless the entity has received a certified copy of an order terminating the order of assignment. Upon receipt of moneys pursuant to this section, the clerk of the court, within 10 days, shall send written notice of such fact to the parties, and any agency through whom payments have been ordered under Section 4801.7. Such moneys shall be subject to any procedure available to enforce an order for spousal support, but if no enforcement procedure is commenced after 30 days have elapsed from the date the notice is sent, the clerk shall,

upon request, ~~release the moneys~~ *return the moneys to the public entity that delivered the moneys to the court unless the public entity has informed the court in writing that the moneys shall be released to the defaulting party.* A court shall not directly or indirectly condition the issuance, modification or termination of, or condition the terms or conditions of, any order for spousal support upon the issuance of such a request by such an employee.

**Comment.** The amendments made to Section 4801.6 are consistent with those made to Section 4701. See the Comment to Section 4701.

**Civil Code § 4810 (technical amendment). Revision of marital property disposition**

**Comment.** Section 4810 is amended to reflect the elimination of the declared homestead. See Comment to former Civil Code §§ 1237-1304.

**Civil Code § 5102 (amended). Separate property**

5102. ~~Neither~~ *(a) Except as otherwise provided in this section, neither husband nor wife has any interest in the separate property of the other, but neither can be excluded from the other's dwelling except as provided in Section 4359 or, in proceedings under Chapter 1 (commencing with Section 4400) or Chapter 2 (commencing with Section 4425) of Title 2 of this part, or under Chapter 1 (commencing with Section 4500) of Title 3 of this part, upon application of either party in the manner provided by Section 527 of the Code of Civil Procedure, the court may order the temporary exclusion of either party from the family dwelling or from the dwelling of the other upon a showing that the party to be excluded has assaulted or threatens to assault the other party, and that physical or emotional harm would otherwise result to the other party or any other person under the care, custody, or control of the other party, until the final determination of the proceeding.*

*(b) If notice of the pendency of a proceeding for separation or annulment or dissolution of marriage is recorded in any county in which the husband or wife*



*resides on real property that is the separate property of the other, the real property shall not for a period of three months thereafter be transferred, encumbered, or otherwise disposed of voluntarily or involuntarily without the joinder of both spouses, unless the court otherwise orders.*

**Comment.** Subdivision (b) is added to Section 5102 to provide a means of restraining transfer or encumbrance of the dwelling that is the separate property of a spouse during the pendency of separation, annulment, or dissolution proceedings. The restraint applies to involuntary as well as voluntary dispositions of the dwelling, such as pursuant to writ of execution. This supersedes former Civil Code Section 1238(c) which permitted a spouse to declare a homestead on the separate property of the other spouse. As to the authority of the court to restrain transfer during pendency of the proceedings, see Section 4359. A community property dwelling may not be transferred or encumbered without joinder or consent of both spouses. See Sections 5125 and 5127.

**Civil Code § 5121 (amended). Liability of separate property**

5121. (a) The separate property of a spouse is liable for the debts of the spouse contracted before or after the marriage of the spouse, but is not liable for the debts of the other spouse contracted after marriage; provided, that the separate property of the spouse is liable for the payment of debts contracted by either spouse for the necessities of life pursuant to Section 5132.

(b) *The separate property of a spouse is not subject to enforcement of a money judgment for a debt of the other spouse unless the spouse is made a judgment debtor under the judgment for the purpose of liability.*

**Comment.** Subdivision (b) is added to Section 5121 to codify the rule that the separate property of a spouse may not be subjected to process by creditors of the other spouse unless the spouse has been made a party for the purpose of making the separate property liable. See, *e.g.*, *Evans v. Noonan*, 20 Cal. App. 288, 128 P. 794 (1912); *Credit Bureau of Santa Monica Bay Dist., Inc. v. Terranova*, 15 Cal. App.3d 854, 93 Cal. Rptr. 538 (1971).

**Civil Code § 5125 (amended). Management and control of community personal property**

5125. (a) Except as provided in subdivisions (b), (c), and (d) and Sections 5113.5 and 5128, either spouse has the management and control of the community personal property, whether acquired prior to or on or after January 1, 1975, with like absolute power of disposition, other than testamentary, as the spouse has of the separate estate of the spouse.

(b) A spouse may not make a gift of community personal property, or dispose of community personal property without a valuable consideration, without the written consent of the other spouse.

(c) A spouse may not sell, convey, or encumber *community personal property used as the family dwelling*, or the furniture, furnishings, or fittings of the home, or the clothing or wearing apparel of the other spouse or minor children which is community personal property, without the written consent of the other spouse.

(d) A spouse who is operating or managing a business or an interest in a business which is community personal property has the sole management and control of the business or interest.

(e) Each spouse shall act in good faith with respect to the other spouse in the management and control of the community property.

**Comment.** Section 5125 is amended to limit the disposition of personal property used as the family dwelling, such as a mobilehome. *Cf.* Code Civ. Proc. § 704.710(a) (“dwelling” defined). This change accommodates the elimination of the declared homestead. See the Comment to former Civil Code §§ 1237-1304.

**Code of Civil Procedure § 85 (technical amendment). Enforcement of money judgment in municipal and justice court**

**Comment.** Section 85 is amended to substitute references to the provisions that replaced the ones formerly listed in the section.

**Code of Civil Procedure § 86 (technical amendment).  
Municipal and justice court jurisdiction**

**Comment.** Section 86 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 (Enforcement of Judgments Law).

**Code of Civil Procedure § 117 (technical amendment).  
Informal hearing and disposition in small claims court;  
costs**

**Comment.** Section 117 is amended to make clear that the prevailing party is entitled to the costs of enforcing the judgment. See also Section 117.7 (small claims judgment may be enforced as provided in Enforcement of Judgments Law).

**Code of Civil Procedure § 117.7 (technical amendment).  
Enforcement of judgments in small claims court**

**Comment.** The first sentence of Section 117.7 is amended to delete the reference to garnishment which is not a separate remedy. The second sentence is amended to reflect the enactment of a new Title 9 of Part 2 (Enforcement of Judgments Law).

**Code of Civil Procedure § 117.9 (technical amendment).  
Payment of small claims court judgment;  
acknowledgment of satisfaction**

**Comment.** Section 117.9 is amended to refer to an assignee "of record." A small claims judgment is enforced under the Enforcement of Judgments Law (Section 117.7), and an assignee of a judgment may not enforce the judgment under the Enforcement of Judgments Law unless an acknowledgment of assignment has been filed in the action or the assignee has otherwise become an assignee of record. See Sections 673, 681.020. The other revisions are not substantive changes.

**Code of Civil Procedure § 117.19 (technical amendment).  
Amendment of claim to set forth legal name of  
business; form concerning judgment debtor's assets**

**Comment.** Subdivision (b) of Section 117.19 is amended to refer to the sanction provision of the Enforcement of Judgments Law relating to failure to appear for an examination.

**Code of Civil Procedure § 166 (amended). Judicial powers at chambers**

**Comment.** Subdivision (a)(4) is added to Section 166 to continue a provision of former Section 1033.7.

**Code of Civil Procedure § 339 (technical amendment). Statute of limitations**

**Comment.** Subdivision 2 of Section 339 is amended to conform to the Enforcement of Judgments Law and to delete the exception to the two-year statute of limitations for an action for an escape. Former subdivision 4 of Section 340 which applied a one-year statute of limitations in this case was repealed by 1973 Cal. Stats. ch. 20, § 1.

**Code of Civil Procedure § 431.70 (amended). Offset of cross-demands for money**

431.70. Where cross-demands for money have existed between persons at any point in time when neither demand was barred by the statute of limitations, and an action is thereafter commenced by one such person, the other person may assert in ~~his~~ *the* answer the defense of payment in that the two demands are compensated so far as they equal each other, notwithstanding that an independent action asserting ~~his~~ *the person's* claim would at the time of filing ~~his~~ *the* answer be barred by the statute of limitations. If the cross-demand would otherwise be barred by the statute of limitations, the relief accorded under this section shall not exceed the value of the relief granted to the other party. The defense provided by this section is not available if the cross-demand is barred for failure to assert it in a prior action under Section 426.30. Neither person can be deprived of the benefits of this section by the assignment or death of the other. *For the purposes of this section, a money judgment is a "demand for money" and, as applied to a money judgment, the demand is barred by the statute of limitations when enforcement of the judgment is barred under Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9.*

**Comment.** Section 431.70 is amended to codify the case law rule that applies the offset principle where one of the claims to be offset is a judgment. See, *e.g.*, *Erlich v. Superior Court*, 63 Cal.2d 551, 555, 407 P.2d 649, 651, 47 Cal. Rptr. 473, 475 (1965); *Harrison v. Adams*, 20 Cal.2d 646, 648-49, 128 P.2d 9, 11-12 (1942); *Machado v. Borges*, 170 Cal. 501, 150 P. 351 (1915); *Coonan v. Loewenthal*, 147 Cal. 218, 223, 81 P. 527, 528 (1905); *Nash v. Krelig*, 136 Cal. 627, 69 P. 418 (1902). A judgment on which the time limit on enforceability has run (see Section 683.020) is analogous to a claim barred by the statute of limitations. The policy which allows the offsetting of cross-demands that have coexisted at some point in time, notwithstanding that one of the claims is now barred by the statute of limitations (see *Jones v. Mortimer*, 28 Cal.2d 627, 632-33, 170 P.2d 893, 896-97 (1946); *Sunrise Produce Co. v. Malovich*, 101 Cal. App.2d 520, 522-23, 225 P.2d 973, 974-75 (1950)), applies equally to cross-demands where one of the demands which coexisted is a judgment on which the time for enforcement has expired. Section 431.70 as amended allows the offset of a judgment if the claim of the judgment debtor existed during the period during which the judgment was enforceable. However, where the judgment debtor's claim arises after the period for enforcement of the judgment has run, the judgment cannot be offset against the judgment debtor's claim; in this case, the demands have not "existed between persons at any point in time when neither demand was barred by the statute of limitations."

**Code of Civil Procedure § 482.100 (technical amendment).**  
**Attachment; exemption claim in changed circumstances**

**Comment.** Section 482.100 is amended to correct cross-references.

**Code of Civil Procedure § 484.530 (technical amendment).**  
**Attachment; exemption claim after ex parte writ**

**Comment.** Section 484.530 is amended to correct cross-references.

**Code of Civil Procedure § 485.610 (technical amendment).**  
**Attachment; exemption claim after ex parte writ**

**Comment.** Section 485.610 is amended to correct cross-references.

**Code of Civil Procedure § 487.020 (technical amendment).  
Exemptions from attachment**

**Comment.** Section 487.020 is amended to conform to the Enforcement of Judgments Law. See Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9.

**Code of Civil Procedure § 488.090 (technical amendment).  
Attachment; third-party claims**

**Comment.** Section 488.090 is amended to substitute the appropriate cross-reference. The word “personal” is deleted to conform to the broadening of the third-party claims procedure to cover real as well as personal property. See Section 720.110 and the Comment to that section.

**Code of Civil Procedure § 488.530 (technical amendment).  
Attachment; sale of perishable property**

**Comment.** Section 488.530 is amended to substitute the correct cross-reference.

**Code of Civil Procedure § 490.010 (amended). Wrongful attachment**

490.010. A wrongful attachment consists of any of the following:

(a) The levy of a writ of attachment or the service of a temporary protective order in an action in which attachment is not authorized, except that it is not a wrongful attachment if both of the following are established:

(1) The levy was not authorized solely because of the prohibition of subdivision (c) of Section 483.010.

(2) The person who sold or leased, or licensed for use, the property, furnished the services, or loaned the money reasonably believed that it would not be used primarily for personal, family, or household purposes.

(b) The levy of a writ of attachment or the service of a temporary protective order in an action in which the plaintiff does not recover judgment.

(c) The levy of a writ of attachment obtained pursuant to Article 3 (commencing with Section 484.510) of Chapter 4 or Chapter 5 (commencing with Section

485.010) on property exempt from attachment except where the plaintiff shows that ~~he~~ *the plaintiff* reasonably believed that the property attached was not exempt from attachment.

~~(d) The levy of a writ of attachment on property of a person other than the person against whom the writ was issued except that it is not a wrongful attachment if all of the following exist:~~

~~(1) The property levied on is required by law to be registered or recorded in the name of the owner.~~

~~(2) It appeared that, at the time of the levy, the person against whom the writ was issued was such registered or record owner.~~

~~(3) The plaintiff made the levy in good faith and in reliance on the registered or recorded ownership.~~

**Comment.** Section 490.010 is amended to delete subdivision (d) which related to wrongful attachment of property of third persons. A third person whose property is levied upon may resort to the remedies provided by Division 4 (commencing with Section 720.010) of Title 9 (third-party claim) or to common law remedies.

### **Code of Civil Procedure § 490.020 (amended). Liability for wrongful attachment**

490.020. (a) The liability of a plaintiff for causing a wrongful attachment *under Section 490.010* includes both of the following:

(1) All damages proximately caused to the defendant ~~or any other person~~ by the wrongful attachment.

(2) All costs and expenses, including attorney's fees, reasonably expended in defeating the attachment.

(b) The liability of a plaintiff for wrongful attachment pursuant to Section 490.010 is limited by the amount of the undertaking.

**Comment.** Section 490.020 is amended to make clear that only the defendant may recover for a wrongful attachment pursuant to Section 490.010. A third person is entitled to protection pursuant to Division 4 (commencing with Section 720.010) of Title 9 (third-party claims). See also Section 489.240(c) (objection by third person to undertaking where joint account or safe deposit box in name of third person).

**Code of Civil Procedure § 490.050 (amended).****Attachment; third-party intervention**

490.050. A person not originally a party to an action whose property is attached is entitled to intervene in the action ~~and to recover damages for wrongful attachment to the same extent and in the same manner as a defendant in the action. For this purpose, the person whose property is attached shall be deemed to be the beneficiary of the undertaking for the attachment of such property and shall have all rights of the beneficiary, including the right to recover such damages by using the procedure provided by Section 490.030.~~

**Comment.** Section 490.050 is amended to delete the provision that permitted the third person to resort to the plaintiff's undertaking for damages for wrongful attachment. See the Comment to Section 490.010. The third person may obtain the release of the attached property, or the protection of an undertaking, pursuant to Division 4 (commencing with Section 720.010) of Title 9 (third-party claims).

**Code of Civil Procedure § 514.050 (technical amendment).****Third-party claims**

**Comment.** Section 514.050 is amended to insert a reference to the appropriate provisions of the Enforcement of Judgments Law.

**Code of Civil Procedure § 564 (technical amendment).****Receivers**

**Comment.** Subdivision 4 of Section 564 is amended to conform to the Enforcement of Judgments Law. Proceedings in aid of execution are entitled examination proceedings under the new law. See Sections 708.110-708.205. The prerequisite that an execution be returned unsatisfied or that the debtor refuse to apply property to the satisfaction of the judgment is not continued. See Section 708.620 and the Comment thereto. The provision for appointment of a receiver during the redemption period is not continued because statutory redemption has been repealed. See Section 701.680. See also Section 712.060 (receiver to enforce judgment for possession or sale of property).



**Code of Civil Procedure § 568.5 (technical amendment).  
Sale by receiver**

**Comment.** The first sentence of Section 568.5 is amended to refer to the sale provisions of the Enforcement of Judgments Law. The third sentence is deleted as unnecessary because the right of redemption after an execution sale has been eliminated. See Section 701.680.

**Code of Civil Procedure § 585.5 (technical amendment).  
Motion to set aside default**

**Comment.** Subdivision (b) of Section 585.5 is amended to clarify the time within which a motion to set aside a default must be made. The 60-day period runs from the date notice of enforcement proceedings (whether levy, examination, or some other procedure) is received by the defendant rather than the date of levy itself. See Sections 699.010-701.830 (execution), 708.010-709.030 (miscellaneous creditors' remedies).

**Code of Civil Procedure § 667 (technical amendment).  
Payment in specified currency**

**Comment.** Section 667 is amended to delete the portion relating to payment in a specified kind of money or currency. This provision is superseded by Section 577.5, which requires a judgment shall be computed and stated in dollars and cents. See also 65 Harv. L. Rev. 887 (1952) (if an obligation is payable in foreign currency, the judgment converts it into dollars). The deleted language dates back to 1851 (Cal. Stats. 1851 ch. 5, § 200 p. 82) and was applied, for example, to a judgment on a note containing a promise to pay in gold coin.

**Code of Civil Procedure § 673 (added). Acknowledgment  
of assignment of judgment**

673. (a) An assignee of a right represented by a judgment may become an assignee of record by filing with the clerk of the court which entered the judgment an acknowledgment of assignment of judgment.

(b) An acknowledgment of assignment of judgment shall contain 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 date of entry of the judgment and of any renewals of the judgment and where entered in the records of the court.

(3) The name and address of the judgment creditor and name and last known address of the judgment debtor.

(4) A statement describing the right represented by the judgment that is assigned to the assignee.

(5) The name and address of the assignee.

(c) The acknowledgment of assignment of judgment shall be:

(1) Made in the manner of an acknowledgment of a conveyance of real property.

(2) Executed and acknowledged by the judgment creditor or by the prior assignee of record if there is one.

(d) This section is in addition to, and does not limit or restrict, any other means by which an assignee may become an assignee of record.

**Comment.** Section 673 is a new provision that prescribes the content and manner of execution of an acknowledgment of assignment of judgment. Although prior law referred to an “assignee of record” (see reference in former Section 675 relating to satisfaction of judgment), it was unclear how a person became an “assignee of record.” Section 673 fills this gap, but the section does not limit or restrict the use of any other means by which an assignee may become an assignee of record. See subdivision (d).

The required contents and manner of execution of the acknowledgment of assignment of judgment are comparable to those specified in Section 724.060 (contents and manner of execution of acknowledgment of satisfaction of judgment).

The filing of the acknowledgment of assignment with the court under this section does not, of itself, give notice to the judgment debtor so as to invalidate any payments made by the judgment debtor to the judgment creditor or a prior assignee of record. See Civil Code § 954.5(c). The filing with the court, however, affects the priorities between conflicting assignments. See Civil Code § 954.5(b).

Nothing in Section 673 requires the filing of the acknowledgment of assignment of judgment with the court in order to accomplish the transfer of the interest in the judgment. See Civil Code § 954.5(a). But, unless the assignee becomes an

assignee of record by some other means, the failure to file an acknowledgment of assignment of judgment precludes the use by the assignee of a writ of execution and other enforcement remedies. See Section 681.020.

**Code of Civil Procedure § 674 (amended). Abstract of judgment**

674. ~~(a)~~ An abstract of ~~the~~ a judgment or decree of any court of this state, including a judgment entered pursuant to Chapter 1 ~~(commencing with Section 1710.10)~~ of Title 11 of Part 3, or a judgment of any court sitting as a small claims court, or any court of record of the United States, the enforcement of which has not been stayed on appeal or pursuant to Section 1710.50, *requiring the payment of money shall be certified by the clerk; judge or justice* of the court where such ~~the~~ judgment or decree was rendered, may be recorded with the recorder of any county and from such recording the judgment or decree becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterward and before the lien expires, acquire. Such lien continues for 10 years from the date of the entry of the judgment or decree unless the enforcement of the judgment or decree is stayed on appeal or pursuant to Section 1710.50 by the execution of a sufficient undertaking or the deposit in court of the requisite amount of money as provided in this code, or by the statutes of the United States, in which case the lien of the judgment or decree, and any lien or liability now existing or hereafter created by virtue of an attachment that has been issued and levied in the action, unless otherwise by statutes of the United States provided, ceases, or upon an undertaking on release of attachment, or unless the judgment or decree is previously satisfied, or the lien otherwise discharged. The abstract above mentioned *entered and shall contain all of the following:*

(a) *The title of the court where the judgment or decree is entered and cause and number of the action ; .*

*(b) The date of entry of the judgment or decree ; and of any renewals of the judgment or decree and where entered in the records of the court.*

*(c) The ~~names~~ name and last known address of the judgment debtor and of the judgment creditor and the address at which the summons was either personally served or mailed to the judgment debtor or the judgment debtor's attorney of record ; .*

*(d) The name and address of the judgment creditor.*

*(e) The amount of the judgment or decree ; ~~and where entered in judgment book or minutes as entered or as last renewed. It shall also contain the~~*

*(f) The social security number ~~or~~ and driver's license number ~~or both~~ of the judgment debtor if they are known to the judgment creditor - ~~If~~ ; and, if either or both of such numbers are not known to the judgment creditor, that fact shall be indicated on the abstract of judgment.*

*~~(b) An order made pursuant to subdivision (b) of Section 908 of the Welfare and Institutions Code shall be considered a judgment for the purposes of subdivision (a) of this section.~~*

*~~(e) With respect to real property containing a dwelling house judicially determined to be exempt from levy of execution pursuant to the provisions of Section 690.31, as distinguished from property subject to a declared homestead created pursuant to Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code, a judgment lien created pursuant to subdivision (a) of this section shall attach to such real property notwithstanding the exemption provided by Section 690.31.~~*

*(g) Whether a stay of enforcement has been ordered by the court and, if so, the date the stay ends.*

*(h) The date of issuance of the abstract.*

**Comment.** Section 674 is amended so that the section states the person who certifies an abstract of a judgment or decree and the contents of the abstract. The remainder of the section is superseded. Subdivisions (g) and (h) state required contents not formerly specified in the section but required by the Judicial Council form for an abstract of judgment. See Official Form for Abstract of Judgment (Form Adopted by Rule 982 Judicial

Council of California—Revised Effective January 1, 1981). The contents specified in this section for the abstract of judgment are subject to the general authority of the Judicial Council to prescribe forms.

The portion of the first sentence of Section 674 which specified the courts that may issue judgments as the basis for a judgment lien is not continued as such, but its substance is continued in Section 697.310 except for the misleading language pertaining to judgments of federal courts. A federal money judgment may be recorded to create a judgment lien pursuant to federal law if it is rendered in California or is registered in a federal court sitting in California. 28 U.S.C. §§ 1962 (judgment lien of federal judgment), 1963 (registration of judgment of one federal district court in another district) (1976). The portion of the first sentence providing for certification by the judge or justice of the court is omitted as unnecessary in view of the general provision of Section 167. The remainder of the first sentence is continued in substance in Section 697.310 but a lien may be created under that section by recording on any interest in real property subject to levy of execution. See Section 697.340.

The portion of the second sentence of Section 674 which specified the duration of the lien is superseded by subdivision (b) of Section 697.310. The portion of the second sentence relating to stay of enforcement of the judgment is superseded by Section 697.040. The portion relating to an undertaking on release of attachment has not been continued, since this portion is unnecessary in view of Sections 489.310, 489.420, and 697.050. See also Sections 697.400 and 697.410. The portion relating to the release of the lien if the judgment is satisfied or the lien is otherwise discharged is superseded by Sections 697.050 and 697.370.

Former subdivision (b) of Section 674 has been omitted. This subdivision is unnecessary in view of subdivision (b) of Section 908 of the Welfare and Institutions Code.

Subdivision (c) is not continued. The statutes no longer provide a declared homestead procedure and the homestead exemption provided for in the Enforcement of Judgments Law does not prevent the creation of a judgment lien on real property. See Section 697.340 and the Comment thereto.

#### CROSS-REFERENCES

Court without clerk § 167

Lien endorsed on judgment and abstract §§ 700.190, 708.460

Preferred labor claims endorsed on abstract § 1206

State tax lien included on abstract, see Gov't Code § 7173

**Code of Civil Procedure § 674.5 (repealed). Lien of judgment or order for spousal or child support**

**Comment.** Former Section 674.5 is superseded by provisions of the new Enforcement of Judgments Law. The first paragraph of former Section 674.5 is superseded by Sections 697.320-697.390. The second and third paragraphs are superseded by Sections 697.370-697.400 and 724.210-724.260.

**Code of Civil Procedure § 674.7 (repealed). Lien of periodic payment judgment**

**Comment.** Former Section 674.7 is superseded by provisions of the new Enforcement of Judgments Law. The first paragraph of former Section 674.7 is superseded by Sections 697.320-697.390. The second and third paragraphs are superseded by Sections 697.370-697.400 and 724.210-724.260.

**Code of Civil Procedure § 675 (repealed). Satisfaction of judgment**

**Comment.** Former Section 675 is superseded by Sections 724.010-724.260. See those sections and the Comments thereto.

**Code of Civil Procedure § 675b (repealed). Discharge in bankruptcy**

**Comment.** Sections 675b and 675c are repealed because they are unnecessary. The effect of a discharge in bankruptcy is determined by the Bankruptcy Code. See 11 U.S.C. § 524.

**Code of Civil Procedure § 675c (repealed). Discharge in bankruptcy**

**Comment.** See the Comment to former Section 675b.

**Code of Civil Procedure § 725a (technical amendment).  
Foreclosure of deed of trust or mortgage with power of sale**

**Comment.** Section 725a is amended to reflect the repeal of the statutory right of redemption. See Section 701.680 and the Comment thereto.

**Code of Civil Procedure § 726 (technical amendment).  
Foreclosure of mortgage or deed of trust**

**Comment.** The provisions of Section 726 relating to commissioners appointed to sell real property under a judgment of foreclosure are repealed. Pursuant to Section 712.060 a receiver may be appointed to sell the property under the direction of the court. See also Sections 567 (oath and undertaking of receiver), 568 (powers of receiver), 568.5 (sales by receiver), 708.620 (appointment of receiver). The provisions concerning the qualification and duties of receivers and commissioners were essentially the same under former law. Consequently, special commissioners have been eliminated in favor of the uniform provisions concerning receivers. The provisions of Section 726 concerning elisors are unnecessary. See, *e.g.*, Section 262.8.

A provision for the application of the costs of levy is added to Section 726(a) because Section 716.010 requires levy under a writ of sale if the judgment is enforced by a levying officer.

See Chapter 1 (commencing with Section 712.010) and Chapter 4 (commencing with Section 716.010) of Division 3 of Title 9 for provisions governing the enforcement of judgments for sale of real property.

**Code of Civil Procedure § 729 (repealed). Commissioners**

**Comment.** Section 729 is not continued. The function formerly performed by a specially appointed commissioner may be performed by a receiver. See the Comment to Section 726.

**Code of Civil Procedure § 745 (amended). Restraint of  
waste during foreclosure or before sale pursuant to levy**

**Comment.** Section 745 is amended to reflect the provision which requires a delay in the sale of real property under a levy. See Section 701.545.

**Code of Civil Procedure § 746 (amended). Damages for  
waste after sale pursuant to levy**

**Comment.** Section 746 is amended to reflect that sales on execution are absolute pursuant to Section 701.680 and that Section 701.545 requires a delay of sale after levy. The statutory right of redemption provided by former Sections 700a-707 is not continued.

**Code of Civil Procedure § 802 (repealed). Scire Facias**

**Comment.** Section 802 is repealed because it is unnecessary. The writ of scire facias was supplanted by the motion procedure for issuance of a writ of execution under former Section 685 which, in turn, is superseded by Sections 683.110-683.220 (renewal of judgments).

**Code of Civil Procedure § 874.140 (technical amendment).  
Costs of partition**

**Comment.** Section 874.140 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 (Enforcement of Judgments Law).

**Code of Civil Procedure—heading for Title 11  
(commencing with Section 875) (amended)**

**TITLE 11. ~~RELEASES FROM AND CONTRIBUTION~~  
AMONG JOINT ~~TORTFEASORS~~ JUDGMENT  
DEBTORS**

**Code of Civil Procedure—heading for Chapter 1  
(commencing with Section 875) of Title 11 (added)**

**CHAPTER 1. RELEASES FROM AND CONTRIBUTION  
AMONG JOINT TORTFEASORS**

**Code of Civil Procedure §§ 881-883 (added)**

**CHAPTER 2. CONTRIBUTION AMONG OTHER  
JUDGMENT DEBTORS**

**§ 881. Application of chapter**

881. This chapter governs contribution among joint judgment debtors other than joint tortfeasors.

**Comment.** Section 881 clarifies the relationship between this chapter and Chapter 1 (commencing with Section 875) which is applicable to contribution among joint tortfeasors.

**§ 882. Right to contribution**

882. If two or more judgment debtors are jointly liable on a money judgment:



(a) A judgment debtor who has satisfied more than his or her due proportion of the judgment, whether voluntarily or through enforcement procedures, may compel contribution from another judgment debtor who has satisfied less than his or her due proportion of the judgment.

(b) If the judgment is based upon an obligation of one judgment debtor as surety for another and the surety satisfies the judgment or any part thereof, whether voluntarily or through enforcement procedures, the surety may compel repayment from the principal.

**Comment.** Section 882 continues the substance of the first sentence of former Section 709. This section permits contribution where a joint judgment debtor satisfies a disproportionate share of a money judgment, or satisfies the judgment as a surety, whether by voluntary payment or involuntarily through levy upon and sale of property, wage garnishment, examination proceedings, or some other procedure. This section does not determine the proportionate shares of the obligation on a judgment; the joint judgment debtor's share depends on the circumstances of the case. See, *e.g.*, Section 578; *Tucker v. Nicholson*, 12 Cal.2d 427, 433, 84 P.2d 1045 (1938); *Pacific Freight Lines v. Pioneer Express Co.*, 39 Cal. App.2d 609, 614, 103 P.2d 1056 (1940); *Stowers v. Fletcher*, 84 Cal. App.2d Supp. 845, 848, 190 P.2d 338 (1948).

### § 883. Procedure for compelling contribution or repayment

883. (a) A judgment debtor entitled to compel contribution or repayment pursuant to this chapter may apply on noticed motion to the court that entered the judgment for an order determining liability for contribution or repayment. The application shall be made at any time before the judgment is satisfied in full or within 10 days thereafter.

(b) The order determining liability for contribution or repayment entitles the judgment debtor to the benefit of the judgment to enforce the liability, including every remedy that the judgment creditor has against the persons liable, to the extent of the liability.

(c) Nothing in this section limits any other remedy that a judgment debtor entitled to contribution or repayment may have.

**Comment.** Section 883 supersedes the second sentence of former Section 709. This section codifies the practice under former law of determining the right to contribution only after a hearing on noticed motion. See *Stowers v. Fletcher*, 84 Cal. App.2d Supp. 845, 848, 190 P.2d 338 (1948); 5 B. Witkin, *California Procedure Enforcement of Judgment* § 211, at 3564 (2d ed. 1971).

The language in subdivision (b) relating to the entitlement of the judgment debtor to the remedies of the judgment creditor is drawn from Civil Code Section 2848 (right of surety against principal). Under subdivision (b), the judgment debtor receives the priority of any liens created by the judgment creditor.

Subdivision (c) makes clear that Section 883 does not prescribe the exclusive procedure for enforcement of the right to contribution. A joint judgment debtor may take an assignment of the judgment or may bring an action to obtain a judgment for contribution. See, e.g., *Painter v. Berglund*, 31 Cal. App.2d 63, 87 P.2d 360 (1939) (assignment); *Tucker v. Nicholson*, 12 Cal.2d 427, 431, 84 P.2d 1045 (1938) (action). See also Section 1059 (surety on appeal substituted to rights of judgment creditor).

#### **Code of Civil Procedure § 916 (technical amendment). Stay on appeal**

**Comment.** Subdivision (b) of Section 916 has been deleted as unnecessary in view of Sections 697.040(a) (effect of stay of enforcement on enforcement liens) and 697.050 (release of property). See also Section 917.1 (undertaking required as condition of stay of enforcement of money judgment). Subdivision (a) has been revised to substitute the correct cross-reference.

#### **Code of Civil Procedure § 918 (amended). Stay of enforcement of judgment by trial court**

918. ~~The~~ (a) *Subject to subdivision (b), the trial court may stay the enforcement of any judgment or order ; provided that if .*

(b) *If the enforcement of ~~such~~ the judgment or order would be stayed on appeal only by the giving of an undertaking, a trial court shall not have power, without*

the consent of the adverse party, to stay the enforcement thereof pursuant to this section for a period which extends for more than 10 days beyond the last date on which a notice of appeal could be filed.

*(c) This section applies whether or not an appeal will be taken from the judgment or order and whether or not a notice of appeal has been filed.*

**Comment.** Subdivision (c) is added to Section 918 to make clear that, subject to the limitations specified in Section 918, the court is authorized to stay the enforcement of a judgment whether or not an appeal has been or will be taken. In this respect, Section 918 supersedes former Section 681a, which granted the court authority similar to that granted by Section 918 but prescribed limitations that were inconsistent with later enacted Section 918. As to the effect of a stay of enforcement under Section 918 on enforcement liens, see Section 697.040(b) and Section 697.050.

**Code of Civil Procedure § 918.5 (added). Stay to protect possible set-off**

918.5. (a) The trial court may, in its discretion, stay the enforcement of a judgment or order if the judgment debtor has another action pending on a disputed claim against the judgment creditor.

(b) In exercising its discretion under this section, the court shall consider all of the following:

(1) The likelihood of the judgment debtor prevailing in the other action.

(2) The amount of the judgment of the judgment creditor as compared to the amount of the probable recovery of the judgment debtor in the action on the disputed claim.

(3) The financial ability of the judgment creditor to satisfy the judgment if a judgment is rendered against the judgment creditor in the action on the disputed claim.

**Comment.** Section 918.5 codifies a judicially developed rule. See *Erlich v. Superior Court*, 63 Cal.2d 551, 407 P.2d 649, 47 Cal. Rptr. 473 (1965); *Airfloor Company of California, Inc. v. The Regents of the University of California*, 97 Cal. App.3d 739 (1979). The rationale for the rule is based on equitable principles that not

to stay enforcement of the judgment unfairly deprives the judgment debtor not only of the right to offset but also—with an impecunious creditor—of any right to recover at all.

**Code of Civil Procedure § 1007 (repealed). Enforcement of order for payment of money**

**Comment.** Section 1007 is repealed because it is unnecessary. See Sections 680.230 (“judgment” includes order) and 680.270 (“money judgment” defined).

**Code of Civil Procedure § 1027 (technical amendment). Costs of appeal**

**Comment.** Section 1027 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 (Enforcement of Judgments Law).

**Code of Civil Procedure § 1032.6 (repealed). Costs in supplementary proceedings**

**Comment.** Section 1032.6 is superseded by Section 685.040 (right to costs of enforcing judgment).

**Code of Civil Procedure § 1033.7 (repealed). Costs after judgment**

**Comment.** Former Section 1033.7 is superseded by Chapter 5 (commencing with Section 685.010) of Division 1 of Title 9. The reference to superior, municipal, and justice courts in the introductory clauses of the first and second paragraphs of former Section 1033.7 is not continued because it is unnecessary. The substance of subdivisions (a) and (b) is continued in Section 685.070(a)(1). Subdivisions (c) and (d) are superseded by Sections 685.070(a)(3) (unsatisfied costs allowable pursuant to memorandum) and 685.050(a)(1) (entry on writ of costs of issuing writ). See also Section 680.380 (“writ” defined). The portion of subdivision (c) pertaining to a writ of prohibition is not continued because it is unnecessary. Subdivision (e) is superseded by Sections 685.050 (costs under writ) and 685.070(a)(3) (unsatisfied costs of levying officer). Subdivision (f) is superseded by Section 685.070(a)(5) (costs determined in special enforcement procedures).

The substance of the procedural provisions concerning the memorandum of costs in the first paragraph of former Section 1033.7 is continued in Section 685.070(b), (c), except that the

motion to tax must be noticed. See 4 B. Witkin, *California Procedure Judgment* § 113, at 3264 (2d ed. 1971) (motion customarily made on notice). The references in former law to the judgment creditor's agent and attorney are not continued; Section 685.070(b) provides for a memorandum on oath of a person who has knowledge of the facts. See 1 B. Witkin, *California Procedure Attorneys* § 23, at 32-33, § 107, at 117-19 (2d ed. 1970) (authority of attorney). See also Sections 680.150 ("costs" means fees, commissions, charges, disbursements, and other expenses), 166 (judicial powers at chambers).

The substance of the procedural provisions concerning the motion for costs in the second paragraph of former Section 1033.7 is continued in Section 685.080. See also Section 167 (judge performing clerk's duties).

The substance of the third paragraph of former Section 1033.7 is continued in Sections 685.090 (addition of costs to judgment) and 685.050 (costs entered on writ).

**Code of Civil Procedure § 1034 (technical amendment).**  
**Costs on appeal**

**Comment.** The last sentence of Section 1034 is amended to make clear that an award for costs may be enforced by any available means, not only by levy of execution. See Title 9 (commencing with Section 680.010). The other changes are not substantive.

**Code of Civil Procedure § 1034.5 (technical amendment).**  
**Costs in unlawful detainer**

**Comment.** Section 1034.5 is amended to make clear that a judgment for costs may be enforced by any available means, not only by levy of execution. See Title 9 (commencing with Section 680.010). The other changes are not substantive.

**Code of Civil Procedure § 1095 (technical amendment).**  
**Costs in writ of mandate proceedings**

**Comment.** Section 1095 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 (Enforcement of Judgments Law). The other changes are not substantive.

**Code of Civil Procedure § 1161a (technical amendment).  
Removal of person holding over after notice**

**Comment.** Section 1161a is amended to conform to the Enforcement of Judgments Law. See Sections 701.510-701.680 (sale under writ of execution), 716.020 (sale under writ of sale). The other changes are not substantive.

**Code of Civil Procedure § 1162a (technical amendment).  
Service of levying officer's deed**

**Comment.** Section 1162a is amended to conform to the Enforcement of Judgments Law. See Sections 701.660 (deed of sale of real property), 712.060 (receiver to enforce judgment for sale of real property), 716.020 (sale under writ of sale).

**Code of Civil Procedure § 1174 (amended). Judgment for  
restitution of premises**

1174. (a) If upon the trial, the verdict of the jury, or, if the case be tried without a jury, the findings of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceedings be for an unlawful detainer after neglect, or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement if the notice required by Section 1161 of the code states the election of the landlord to declare the forfeiture thereof, but if such notice does not so state such election, the lease or agreement shall not be forfeited.

Except as provided in Section 1166a, in any action for unlawful detainer brought by a petroleum distributor against a gasoline dealer, possession shall not be restored to the petroleum distributor unless the court in the unlawful detainer action determines that the petroleum distributor had good cause under Section 20999.1 of the Business and Professions Code to terminate, cancel, or refuse to renew the franchise of the gasoline dealer.

In any action for unlawful detainer brought by a petroleum distributor against the gasoline dealer, the

court may, at the time of request of either party, require the tenant to make rental payments into the court, for the lessor, at the contract rate, pending the resolution of the action.

(b) The jury or the court, if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent. If the defendant is found guilty of forcible entry, or forcible or unlawful detainer, and malice is shown, the plaintiff may be awarded either damages and rent found due or punitive damages in an amount which does not exceed three times the amount of damages and rent found due. The trier of fact shall determine whether damages and rent found due or punitive damages shall be awarded, and judgment shall be entered accordingly.

(c) When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, and the notice required by Section 1161 has not stated the election of the landlord to declare the forfeiture thereof, the court may, and, if the lease or agreement is in writing, is for a term of more than one year, and does not contain a forfeiture clause, shall order that ~~execution upon the judgment~~ *a writ* shall not be issued *to enforce the judgment* until the expiration of five days after the entry of the judgment, within which time the tenant, or any subtenant, or any mortgagee of the term, or any other party interested in its continuance, may pay into the court, for the landlord, the amount found due as rent, with interest thereon, and the amount of the damages found by the jury or the court for the unlawful detainer, and the costs of the proceedings, and thereupon the judgment shall be satisfied and the tenant be restored to ~~his~~ *the tenant's* estate.

(d) ~~But if~~ *If* payment as ~~here~~ provided ~~be~~ *in subdivision (c)* is not made within five days, the judgment may be enforced for its full amount; and for the possession of the premises. In all other cases the

judgment may be enforced immediately. *The judgment for possession of the premises may be enforced as provided in Division 3 (commencing with Section 712.010) of Title 9 of Part 2.*

(d) A plaintiff, having obtained a writ of restitution of the premises pursuant to an action for unlawful detainer, shall be entitled to have the premises restored to him by officers charged with the enforcement of such writs. Promptly upon payment of reasonable costs of service, the enforcing officer shall serve an occupant or post a copy of the writ in the same manner as upon levy of writ of attachment pursuant to subdivision (d) of Section 488.310. In addition, where the copy is posted on the property, another copy of the writ shall thereafter be mailed to the defendant at his business or residence address last known to the plaintiff or his attorney or, if no such address is known, at the premises. The writ of restitution of the premises shall include a statement that personal property remaining on the premises at the time of its restitution to the landlord will be sold or otherwise disposed of in accordance with Section 1174 of the Code of Civil Procedure unless the tenant or the owner pays the landlord the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the premises are restored to the landlord. If the tenant does not vacate the premises within five days from the date of service, or, if the copy of the writ is posted, within five days from the date of mailing of the additional notice, the enforcing officer shall remove the tenant from the premises and place the plaintiff in possession thereof. It shall be the duty of the party delivering the writ to the officer for execution to furnish the information required by the officer to comply with this section.

(e) Personal property remaining on the premises which the landlord reasonably believes to have been lost shall be disposed of pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Title 6 of Part 4 of Division 3 of the Civil Code. The landlord is not liable to the owner of any property which he ~~disposes~~ *is disposed* of in this manner. If the appropriate police or sheriff's



department refuses to accept such property, it shall be deemed not to have been lost for the purposes of this subdivision.

(f) The landlord shall give notice pursuant to Section 1983 of the Civil Code to any person (other than the tenant) reasonably believed by the landlord to be the owner of personal property remaining on the premises.

(g) The landlord shall store the personal property in a place of safekeeping until it is either released pursuant to subdivision (h) or disposed of pursuant to subdivision (i).

(h) The landlord shall release the personal property to the tenant or, at the landlord's option, to a person reasonably believed by the landlord to be its owner if such tenant or other person pays the costs of storage as provided in Section 1990 of the Civil Code and claims the property not later than the date specified in the writ of ~~restitution~~ *possession* before which the tenant must make his claim or the date specified in the notice before which a person other than the tenant must make his claim.

(i) Personal property not released pursuant to subdivision (h) shall be disposed of pursuant to Section 1988 of the Civil Code.

(j) Where the landlord releases personal property to the tenant pursuant to subdivision (h), the landlord is not liable with respect to that property to any person.

(k) Where the landlord releases personal property pursuant to subdivision (h) to a person (other than the tenant) reasonably believed by the landlord to be its owner, the landlord is not liable with respect to that property to:

(1) The tenant or to any person to whom notice was given pursuant to subdivision (f); or

(2) Any other person, unless such person proves that, prior to releasing the property, the landlord believed or reasonably should have believed that such person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of such person.

(l) Where personal property is disposed of pursuant to Section 1988 of the Civil Code, the landlord is not liable with respect to that property to:

(1) The tenant or to any person to whom notice was given pursuant to subdivision (f); or

(2) Any other person, unless such person proves that, prior to disposing of the property pursuant to Section 1988 of the Civil Code, the landlord believed or reasonably should have believed that such person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of such person.

(m) For the purposes of subdivisions (e), (f), (h), (k), and (l), the terms “owner,” “premises,” and “reasonable belief” have the same meaning as provided in Section 1980 of the Civil Code.

**Comment.** Section 1174 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 (Enforcement of Judgments Law). Former subdivision (d) is replaced by the third sentence which has been added to subdivision (d) of the amended section. The material that was contained in former subdivision (d) is continued in Sections 715.010 (writ of possession of real property), 715.020 (execution of writ of possession).

**Code of Civil Procedure § 1206 (technical amendment).  
Preferred labor claim**

**Comment.** Section 1206 is amended to delete references to garnishment which is not a separate remedy. The other changes are not substantive.

**Code of Civil Procedure § 1208 (technical amendment).  
Payment of preferred labor claims**

**Comment.** Section 1208 is amended to delete references to garnishment which is not a separate remedy. The other changes are not substantive.

**Code of Civil Procedure § 1710.30 (technical amendment).  
Service of notice of entry of judgment based on sister state judgment**

**Comment.** Section 1710.30 is amended to correct a cross-reference. See Sections 685.050 (costs satisfied under writ), 685.070 (memorandum of costs).

**Code of Civil Procedure § 1710.45 (technical amendment).  
 Delay of enforcement of judgment entered on basis of  
 sister state judgment**

**Comment.** Section 1710.45 is amended to make clear that all procedures for the enforcement of a money judgment entered pursuant to this chapter are subject to the same limitations under this section.

**Heading of Title 11b (commencing with Section 1800) of  
 Part 3 of the Code of Civil Procedure (amended)**

**TITLE 11b. RECOVERY OF PREFERENCES *AND*  
*EXEMPT PROPERTY* IN AN ASSIGNMENT FOR  
 THE BENEFIT OF CREDITORS**

**Code of Civil Procedure § 1801 (added). Exempt  
 property where assignment for benefit of creditors**

**Comment.** Section 1801 continues former Section 690.60 without substantive change.

**Commercial Code § 9409 (technical amendment).  
 Combined certificate of Secretary of State**

**Comment.** Section 9409 is amended to add a provision requiring that judgment liens on personal property be included in the combined certificate.

**Corporations Code § 15025 (technical amendment).  
 Partnerships**

**Comment.** Subdivision (c) of Section 15025 is amended to conform to the terminology of Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). The reference to attachment has been deleted as unnecessary because Code of Civil Procedure Section 487.020 incorporates for attachment the exemptions from enforcement of a money judgment. The other changes are not substantive.

**Corporations Code § 24002 (technical amendment).  
Property of unincorporated association subject to  
enforcement**

**Comment.** Section 24002 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

**Education Code § 22005 (technical amendment).  
Exemption of retirement fund**

**Comment.** Section 22005 is amended to conform to the Enforcement of Judgments Law. See Code Civ. Proc. §§ 704.110 (public retirement exemption), 703.070 (exception for support judgment), 487.020 (exemptions from attachment). See also Civil Code §§ 4701, 4801.6 (wage assignment for support). The second paragraph of Section 22005 is superseded by the provisions listed above.

**Financial Code § 864 (amended). Bank setoff**

**Comment.** Section 864 is amended to correct cross-references and to conform to the Enforcement of Judgments Law.

**Financial Code § 1875 (technical amendment). Exemption  
of trust funds**

**Comment.** Section 1875 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). See also Code Civ. Proc. § 487.020 (exemptions from attachment).

**Financial Code § 3105 (technical amendment). Exemption  
of bank or trust company property**

**Comment.** Section 3105 is amended to delete unnecessary language. A writ of execution may not be issued prior to final judgment. See Code Civ. Proc. § 699.510.

**Financial Code § 7609.5 (amended). Savings and loan  
association setoff**

**Comment.** Section 7609.5 is amended to correct cross-references and to conform Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

**Financial Code § 11209 (technical amendment).  
Exemption of association property**

**Comment.** Section 11209 is amended to delete unnecessary language. A writ of execution may not be issued prior to final judgment. See Code Civ. Proc. § 699.510.

**Financial Code § 14864 (repealed). Exemption of credit union shares**

**Comment.** Former Section 14864 is superseded by Code of Civil Procedure Section 704.070.

**Financial Code § 17410 (technical amendment).  
Exemption of escrow and trust funds**

**Comment.** Section 17410 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). See also Code Civ. Proc. § 487.020 (exemptions from attachment).

**Government Code § 965.5 (technical amendment).  
Enforcement of money judgment against state**

**Comment.** Section 965.5 is amended to correct the cross-reference.

**Government Code § 970.1 (technical amendment).  
Enforcement of money judgment against local public entity**

**Comment.** Section 970.1 is amended to correct the cross-reference and to make technical revisions.

**Government Code § 1587 (technical amendment).  
Enforcement of official bond**

**Comment.** Section 1587 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law) and to make technical revisions.

**Government Code § 6103.2 (amended). Writ fees**

**Comment.** Section 6103.2 is amended to add references to writs of possession and sale.

**Government Code § 7173 (amended). State tax lien in pending action or proceeding**

**Comment.** Section 7173 is amended to delete the unnecessary introductory clause and to delete the unnecessary reference in subdivision (c). These are not substantive changes. The abstract contains the matter required by Sections 674, 700.190, 708.460, and 1206 of the Code of Civil Procedure and by this section. The provision added to subdivision (b) to protect the rights of a party who does not have notice of the lien is consistent with Code of Civil Procedure Section 708.410(c) (lien of judgment creditor in pending action or proceeding).

**Government Code § 9359.3 (technical amendment). Exemption of retirement fund**

**Comment.** Section 9359.3 is amended to conform to the Enforcement of Judgments Law. See Code Civ. Proc. §§ 704.110 (public retirement exemption), 703.070 (exception for support judgment), 703.080 (tracing exempt funds), 487.020 (exemptions from attachment). See also Civil Code §§ 4701, 4801.6 (wage assignment for support).

**Government Code § 12516 (amended). Redemption of property**

**Comment.** Section 12516 is amended to reflect the repeal of the statutory right of redemption from judicial sales. See Code Civ. Proc. §§ 701.545, 701.680, and the Comments thereto.

**Government Code § 16211.5 (amended). Voluntary sale of residence of claimant of property, tax postponement**

**Comment.** Section 16211.5 is amended to reflect the repeal of Civil Code Sections 1237-1304 providing for a declared homestead. See Code Civ. Proc. §§ 704.710-704.840 (homestead exemption).

**Government Code § 21201 (technical amendment). Exemption of retirement fund**

**Comment.** Section 21201 is amended to conform to the Enforcement of Judgments Law. See Code Civ. Proc. §§ 704.110 (public retirement exemption), 703.070 (exception for support judgment), 703.080 (tracing exempt funds), 487.020 (exemptions from attachment). See also Civil Code §§ 4701, 4801.6 (wage

assignment for support). The deleted portion of Section 21201 is superseded by the provisions listed above.

**Government Code § 26606 (repealed). Release of attachments and garnishments**

**Comment.** Section 26606 is superseded by Code of Civil Procedure Sections 488.560, 699.060.

**Government Code § 26664 (amended). Liability of sheriff**

**Comment.** Section 26664 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). This amendment also makes the sheriff liable for failure to perform duties under a writ of attachment or a prejudgment writ of possession. See Code Civ. Proc. §§ 481.010-493.060 (attachment), 511.010-516.050 (claim and delivery).

**Government Code § 26725 (technical amendment). Fee for execution of process on real property**

**Comment.** Section 26725 is amended to add a reference to a writ of sale. See Code Civ. Proc. §§ 716.010-716.030.

**Government Code § 26726 (technical amendment). Fee for keeper levy on motor vehicle**

**Comment.** Section 26726 is amended to conform to the terminology of Division 3 (commencing with Section 712.010) of Title 9 of Part 2 of the Code of Civil Procedure.

**Government Code § 26728 (technical amendment). Fee for notice of sale of personal property**

**Comment.** Section 26728 is amended to add a reference to a writ of sale. See Code Civ. Proc. §§ 716.010-716.030.

**Government Code § 26733 (technical amendment). Fee for service of writ of possession of real property**

**Comment.** Section 26733 is amended to conform to the terminology of Chapter 3 (commencing with Section 715.010) of Division 3 of Title 9 of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

**Government Code § 26738 (technical amendment). Fee for not-found return**

**Comment.** Section 26738 is amended to conform to the terminology of Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

**Government Code § 26741 (technical amendment). Fee for certificate or deed of sale**

**Comment.** Section 26741 is amended to add a reference to the deed of sale. See Code Civ. Proc. § 701.660.

**Government Code § 26744 (technical amendment). Fee for bench warrant**

**Comment.** Section 26744 is amended to correct cross-references.

**Government Code § 26750 (technical amendment). Fee for duties under Wage Garnishment Law**

**Comment.** Section 26750 is amended to correct the references to the Wage Garnishment Law.

**Government Code § 26820.4 (technical amendment). Fee for filing first paper**

**Comment.** Section 26820.4 is amended to insert a reference to the provision that replaced former Section 722 and to add a reference to Section 704.750.

**Government Code § 26828 (technical amendment). Fee for issuance of writ**

**Comment.** Section 26828 is amended to conform to the terminology of Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). See, *e.g.*, Code Civ. Proc. 716.010.

**Government Code § 27248 (technical amendment). Books of county recorder**

**Comment.** Section 27248 is amended to conform to the terminology of Title 9 (commencing with Section 680.010) of



Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law) and to add subdivision (c) which provides for the manner of the recording and indexing of certified copies of certain judgments payable in installments that are recorded to create judgment liens and other documents affecting judgment liens in real property. Subdivision (c) implements the provisions of Code of Civil Procedure Sections 697.320, 697.330, and 697.400.

**Government Code § 27249 (technical amendment). Books of county recorder**

**Comment.** Section 27249 is amended to conform to the language used in the Attachment Law. The issuance of a writ of attachment does not result in a recording with the county recorder; only the levy is recorded with the county recorder. See, e.g., Code Civ. Proc. §§ 488.310 (attachment of interest in real property), 488.360(c) (attachment of growing crops or timber to be cut). See also Code Civ. Proc. § 488.560(c) (recording release of attachment with county recorder).

**Government Code § 31452 (technical amendment). Exemption of retirement fund**

**Comment.** Section 31452 is amended to conform to the Enforcement of Judgments Law. See Code Civ. Proc. §§ 704.110 (public retirement exemption), 703.070 (exception for support judgment), 703.080 (tracing exempt funds), 487.020 (exemptions from attachment). See also Civil Code §§ 4701, 4801.6 (wage assignment for support). The public retirement exemption is available in bankruptcy. See 11 U.S.C. § 522(b).

**Government Code § 31913 (technical amendment). Exemption of retirement fund**

**Comment.** Section 31913 is amended to conform to the Enforcement of Judgments Law. See Code Civ. Proc. §§ 704.110 (public retirement exemption), 703.070 (exception for support judgments), 703.080 (tracing exempt funds), 487.020 (exemptions from attachment). See also Civil Code §§ 4701, 4801.6 (wage assignment for support). The public retirement exemption is available in bankruptcy. See 11 U.S.C. § 522(b).

**Government Code § 32210 (technical amendment).  
Exemption of retirement fund**

**Comment.** Section 32210 is amended to conform to the Enforcement of Judgments Law. See Code Civ. Proc. §§ 704.110 (public retirement exemption), 703.070 (exception for support judgments), 703.080 (tracing exempt funds), 487.020 (exemptions from attachment). See also Civil Code §§ 4701, 4801.6 (wage assignment for support). The public retirement exemption is available in bankruptcy. See 11 U.S.C. § 522(b).

**Government Code § 66499.6 (technical amendment).  
Liability of performance bond**

**Comment.** Section 66499.6 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). See also Code Civ. Proc. § 487.020 (exemptions from attachment).

**Government Code § 72055 (technical amendment). Fee  
for filing first paper**

**Comment.** Section 72055 is amended to insert a reference to the provision that replaced former Section 722 and to add a reference to Section 704.750.

**Health & Safety Code § 7925 (technical amendment).  
Unused cemetery lands**

**Comment.** Section 7925 is amended to conform to the terminology of Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). See also Code Civ. Proc. § 487.020 (exemptions from attachment).

**Health & Safety Code § 8561 (amended). Exemption of  
dedicated property**

**Comment.** Section 8561 is amended for consistency with the general exemption provision.

**Health & Safety Code § 33124 (repealed). Exemption of  
redevelopment agency's property from levy and sale**

**Comment.** Former Section 33124 is not continued. Property of a redevelopment agency—a public entity—is not subject to

enforcement of a money judgment. See Code Civ. Proc. § 695.050; Gov't Code § 970.1. See also Code Civ. Proc. § 487.020 (exemptions from attachment).

**Health & Safety Code § 34142 (repealed). Exemption of property of community development commission**

**Comment.** Former Section 34142 is not continued. Property of a community development commission—a public entity—is not subject to enforcement of a money judgment. See Code Civ. Proc. § 695.050; Gov't Code § 970.1. See also Code Civ. Proc. § 487.020 (exemptions from attachment).

**Health & Safety Code § 34217 (repealed). Exemption of housing authority realty**

**Comment.** Former Section 34217 is not continued. Property of a housing authority—a public entity—is not subject to enforcement of a money judgment. See Code Civ. Proc. § 695.050; Gov't Code § 970.1. See also Code Civ. Proc. § 487.020 (exemptions from attachment).

**Insurance Code § 10213 (repealed). Exemption of group life insurance**

**Comment.** Section 10213 is superseded by Code of Civil Procedure § 704.100 (exemption of insurance cash value and proceeds). See also Code Civ. Proc. § 487.020 (exemptions from attachment).

**Insurance Code § 10498.5 (technical amendment). Funds of certificate of exemption holder**

**Comment.** Section 10498.5 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). See also Code Civ. Proc. § 487.020 (exemptions from attachment).

**Insurance Code § 11045 (repealed). Fraternal benefit society aid**

**Comment.** Former Section 11045 is superseded by exemptions provided by Code of Civil Procedure Sections 704.100 (life insurance benefits), 704.130 (disability and health benefits), and 704.170 (charitable aid). See also Code Civ. Proc. § 487.020 (exemptions from attachment).

**Labor Code § 101 (technical amendment). Costs**

**Comment.** Section 101 is amended to delete unnecessary language. Garnishment is not a separate remedy. See, *e.g.*, Code Civ. Proc. §§ 700.010-700.200 (method of levy). The provision permitting the serving officer to recover “mileage fees” has been replaced by one permitting the recovery of “service fees.” Levying officers no longer charge mileage fees for service of process. See 1975 Cal. Stats. ch. 368, § 24 (repealing Gov’t Code § 26746).

**Labor Code § 270.5 (technical amendment). Logging trust fund exemption**

**Comment.** Section 270.5 is amended to delete unnecessary language and to make nonsubstantive revisions. See also Code Civ. Proc. § 487.020 (exemptions from attachment).

**Labor Code § 270.6 (technical amendment). Seller’s trust fund exemption**

**Comment.** Section 270.6 is amended to delete unnecessary language and to make nonsubstantive revisions. See also Code Civ. Proc. § 487.020 (exemptions from attachment).

**Labor Code § 404 (technical amendment). Exemption of bond**

**Comment.** Section 404 is amended to conform with Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

**Labor Code § 3862 (technical amendment). Enforcement of employer’s lien**

**Comment.** Section 3862 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

**Penal Code § 597e (technical amendment). Liability for care of animal**

**Comment.** The last sentence of Section 597e is amended to make clear that a judgment creditor under this section may resort to any appropriate procedures to enforce the judgment.

See, *e.g.*, Code Civ. Proc. § 708.205 (order applying property to satisfaction of money judgment). The other revisions are not substantive.

**Penal Code § 987.8 (technical amendment). Collection of costs of legal assistance**

**Comment.** Section 987.8 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

**Penal Code § 1206 (repealed). Judgment lien for fine**

**Comment.** Section 1206 is repealed because it is unnecessary. See Section 1214 and the Comment thereto.

**Penal Code § 1214 (amended). Enforcement of fine**

**Comment.** Section 1214 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). Pursuant to Code of Civil Procedure Sections 697.310-697.410, a judgment lien may be created on the defendant's real property as provided by former Penal Code Section 1206.

**Penal Code § 1306 (technical amendment). Enforcement of bail bond**

**Comment.** Section 1306 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

**Penal Code § 1397 (technical amendment). Collection of fine against corporation**

**Comment.** Section 1397 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

**Penal Code § 1448 (technical amendment). Collection of costs against prosecutor**

**Comment.** Section 1448 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

**Probate Code § 732.5 (repealed). Redemption from sale**

**Comment.** Section 732.5 is repealed because the right of redemption from execution and foreclosure sales has been repealed. See Code Civ. Proc. §§ 701.545, 701.680, 716.020.

**Probate Code § 734 (repealed). Payment in specified currency**

**Comment.** Section 734 is repealed, consistent with changes made by Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure. See the Comment to Code of Civil Procedure Section 667.

**Probate Code § 954 (technical amendment). Enforcement against executor or administrator**

**Comment.** Section 954 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

**Heading of Part 6 (commencing with Section 3000) of Division 4 of the Probate Code (technical amendment)**

**Comment.** See the Comment to Section 3002.

**Probate Code § 3002 (technical amendment). Community property defined**

**Comment.** The heading of Part 6 (commencing with Section 3000) is amended and provisions of Part 6 are amended or repealed to reflect the elimination of the declared homestead. See the Comment to former Civil Code §§ 1237-1304.

**Probate Code § 3010 (repealed). Homestead defined**

**Comment.** See the Comment to Section 3002.

**Probate Code § 3012 (technical amendment). Legal capacity with respect to property**

**Comment.** See the Comment to Section 3002.

**Probate Code § 3021 (repealed). Acquisition of new homestead**

**Comment.** See the Comment to Section 3002.

**Probate Code § 3022 (repealed). Homestead exemption**

**Comment.** See the Comment to Section 3002.

**Probate Code § 3023 (technical amendment).  
Determination of homestead**

**Comment.** See the Comment to Section 3002.

**Probate Code § 3052 (repealed). Separate property  
constituting homestead**

**Comment.** See the Comment to Section 3002.

**Probate Code § 3053 (repealed). Separate property of  
both spouses constituting homestead**

**Comment.** See the Comment to Section 3002.

**Probate Code § 3054 (technical amendment). Authority  
of court**

**Comment.** See the Comment to Section 3002.

**Probate Code § 3055 (technical amendment). Effect on  
consent of death or subsequent lack of legal capacity**

**Comment.** See the Comment to Section 3002.

**Probate Code § 3056 (technical amendment). Manner of  
management of community property**

**Comment.** See the Comment to Section 3002.

**Probate Code § 3071 (technical amendment). Satisfaction  
of joinder or consent requirements**

**Comment.** See the Comment to Section 3002.

**Probate Code § 3073 (technical amendment). Manner of  
joinder or consent**

**Comment.** See the Comment to Section 3002.

**Probate Code § 3100 (technical amendment). Transaction  
defined**

**Comment.** See the Comment to Section 3002.

**Probate Code § 3101 (technical amendment). Nature of proceeding**

**Comment.** See the Comment to Section 3002.

**Probate Code § 3121 (technical amendment). Contents of petition**

**Comment.** See the Comment to Section 3002.

**Probate Code § 3122 (technical amendment). Petition for court order authorizing transaction**

**Comment.** See the Comment to Section 3002.

**Probate Code § 3144 (technical amendment). Order authorizing transaction**

**Comment.** See the Comment to Section 3002.

**Public Utilities Code § 12337 (technical amendment). Exemption of retirement fund**

**Comment.** Sections 12337, 25337, 28896, 50146, 95836, and 98196 are amended to conform to the Enforcement of Judgments Law. See Code Civ. Proc. §§ 704.110 (public retirement exemption), 703.070 (exception for support judgment), 703.080 (tracing exempt funds), 487.020 (exemptions from attachment). See also Civil Code §§ 4701, 4801.6 (wage assignment for support).

**Public Utilities Code § 25337 (technical amendment). Exemption of retirement fund**

**Comment.** See Comment to Section 12337.

**Public Utilities Code § 28896 (technical amendment). Exemption of retirement fund**

**Comment.** See the Comment to Section 12337.

**Public Utilities Code § 50146 (technical amendment). Exemption of retirement fund**

**Comment.** See the Comment to Section 12337.



**Public Utilities Code § 95836 (technical amendment).  
Exemption of retirement fund**

**Comment.** See the Comment to Section 12337.

**Public Utilities Code § 98196 (technical amendment).  
Exemption of retirement fund**

**Comment.** See the Comment to Section 12337.

**Revenue & Taxation Code § 32373 (amended).  
Redemption from sale**

**Comment.** Section 32373 is amended to reflect the repeal of the statutory right of redemption from judicial sales. See Code Civ. Proc. §§ 701.545, 701.680, and the Comments thereto.

**Streets & Highways Code § 5422 (amended). Redemption  
from sale**

**Comment.** Section 5422 is amended to reflect the repeal of the statutory right of redemption from judicial sales. See Code Civ. Proc. §§ 701.545, 701.680, and the Comments thereto.

**Streets & Highways Code § 6617 (repealed). Redemption  
from judicial sale**

**Comment.** Section 6617 is repealed because the statutory right of redemption from judicial sales has been repealed. See Code Civ. Proc. §§ 701.545, 701.680, and the Comments thereto.

**Streets & Highways Code § 8832 (amended). Judicial sale  
of property subject to assessment lien**

**Comment.** Section 8832 is amended to reflect the repeal of the statutory right of redemption from judicial sales. See Code Civ. Proc. §§ 701.545, 701.680, and the Comments thereto.

**Streets & Highways Code § 9356 (amended). Sale of  
property subject to reassessment lien**

**Comment.** Section 9356 is amended to reflect the repeal of the statutory right of redemption from judicial sales. See Code Civ. Proc. §§ 701.545, 701.680, and the Comments thereto.

**Unemployment Insurance Code § 988 (technical amendment). Exemption of contributions**

**Comment.** Section 988 is amended to delete unnecessary language. See Code Civ. Proc. §§ 487.020 (exemptions from attachment), 704.120 (exemption of unemployment benefits and contributions from enforcement of money judgments).

**Unemployment Insurance Code § 1342 (technical amendment). Exemption of benefits**

**Comment.** Section 1342 is amended to delete unnecessary language. See Code Civ. Proc. §§ 487.020 (exemptions from attachment), 704.120 (exemption of unemployment benefits and contributions from enforcement of money judgments).

**Unemployment Insurance Code § 1788 (repealed). Third-party claim**

**Comment.** Section 1788 is superseded by Section 688.030 of the Code of Civil Procedure which generally applies the third-party claim procedure of Division 4 (commencing with Section 720.010) of Title 9 of Part 2 of the Code of Civil Procedure.

**Water Code § 8537 (repealed). Property exempt from execution or attachment**

**Comment.** Former Section 8537 is not continued. Property of a public entity is not subject to enforcement pursuant to Title 9 (commencing with Section 680) of Part 2 of the Code of Civil Procedure. See Code Civ. Proc. § 695.050; Gov't Code §§ 965.5, 970.1. See also Code Civ. Proc. § 487.020 (exemptions from attachment). See also former Code Civ. Proc. § 690.26 and the Comment thereto.

**Water Code § 22142 (repealed). Exemption of retirement fund**

**Comment.** Section 22142 is superseded by Code of Civil Procedure Sections 704.110 (public retirement exemption), 703.070 (exception for support judgments), 703.080 (tracing exempt fund), and 487.020 (property exempt from attachment).

**Welfare & Institutions Code § 908 (technical amendment). Enforcement of order for payment in proceeding for support of ward or dependent child**

**Comment.** Section 908 is amended to correct a cross-reference in subdivision (b).

**Welfare & Institutions Code § 929 (technical amendment). Earnings of minor**

**Comment.** Section 929 is amended to supply a cross-reference to the provisions governing wage garnishment which are the exclusive provisions governing the levy on earnings. The reference to attachment is deleted because wages may not be levied upon before judgment. See Code Civ. Proc. § 487.020(c).

**Welfare & Institutions Code § 11002 (technical amendment). Exemption of aid**

**Comment.** Section 11002 is amended to conform to the Enforcement of Judgments Law. See Sections 487.020 (exemptions from attachment), 704.170 (exemption of aid). The aid exemption is available in bankruptcy. See 11 U.S.C. § 522(b).

**Welfare & Institutions Code § 14115.5 (technical amendment). Exemption of Medi-Cal funds**

**Comment.** Section 14115.5 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). See also Code Civ. Proc. § 487.020 (exemptions from attachment).

**Welfare & Institutions Code § 17409 (amended). Exemptions from public aid reimbursement**

**Comment.** Section 17409 is amended to correct cross-references.

# APPENDIX

## DISPOSITION OF EXISTING ENFORCEMENT OF JUDGMENTS LAW

**Note.** A Comment to each section of existing law relating to enforcement of judgments—Title 9 (commencing with Section 681) of Part 2 of the Code of Civil Procedure—is set out below. Existing Title 9 will be repealed when the new Enforcement of Judgments Law is enacted. The disposition of each section of existing law is indicated in the Comment to the section.

### TITLE 9. EXECUTION OF JUDGMENT IN CIVIL ACTIONS

#### CHAPTER 1. EXECUTION

##### § 681 (repealed). Time for issuance of execution

**Comment.** The first sentence of former Section 681 is superseded by Sections 683.010 (judgment enforceable upon entry), 683.020 (ten-year period for enforcement of judgment), 699.510 (issuance of writ of execution), 712.010 (issuance of writ to enforce nonmoney judgment). The tolling provision of the second sentence of former Section 681 is not continued. See the Comment to Section 683.020.

##### § 681a (repealed). Stay of execution

**Comment.** Former Section 681a is superseded by Section 918, which has been amended to make clear that it authorizes the trial court to grant a stay of enforcement whether or not an appeal has been or will be taken.

##### § 682 (repealed). Issuance and contents of writ

**Comment.** The introductory paragraph of former Section 682 is superseded by Sections 699.510 (issuance of writ of execution) and 699.520 (contents of writ of execution). See also Sections 681.030(b) (Judicial Council authority to prescribe form of writ), 712.010 (form of writ of possession or sale), 712.020 (contents of writ of possession or sale). The portion of the introductory paragraph relating to payment in a specified kind of money or currency is not continued. See the Comment to Section 667 as amended.

Subdivision 1 of former Section 682 is superseded by Sections 697.390 (judgment lien on real property), 699.520 (contents of writ), 699.710 (property subject to execution). The order of levy specified in subdivisions 1 and 4 of former Section 682 is not continued. See the Comment to Section 699.530.

Subdivision 2 of former Section 682 is not continued because it is unnecessary. Property of the judgment debtor is generally subject to execution regardless of who possesses it. See, e.g., Sections 699.710 (property subject to execution), 700.015 (levy on real property), 700.040 (levy on tangible personal property in possession of third person), 700.170 (levy on accounts receivable and general intangibles), 700.200 (levy on interest in personal property in decedent's estate).

Subdivision 3 of former Section 682 is not continued. See the Comment to Section 667 as amended.

Subdivision 4 of former Section 682 is superseded by Sections 712.020 (contents of writ of possession or sale), 712.040 (collection of money amounts), 714.010 (contents of writ of possession of personal property), 714.020 (execution of writ of possession of personal

property), 715.010 (contents of writ of possession of real property), 715.020 (execution of writ of possession of real property).

**§ 682a (repealed). Levy on joint deposit accounts and safe deposit boxes**

**Comment.** The substance of former Section 682a is generally continued in Section 700.160 (levy on deposit accounts and safe deposit boxes not exclusively in name of judgment debtor). See the Comment to Section 700.160. See also Sections 680.170 (“deposit account” defined), 680.200 (“financial institution” defined), 699.080 (levy by registered process server), 700.150(c)-(d) (levy on safe deposit boxes).

**§ 682.1 (repealed). Writ of execution form**

**Comment.** Former Section 682.1 is superseded by Section 693.010 (statutory form of writ). The Judicial Council is given authority to prescribe superseding forms by Section 681.030(b). See also Sections 685.030 (cessation of interest), 695.220 (order of application of money received), 699.520 (contents of writ of execution), 700.010 (service of writ and notice of levy on judgment debtor), 701.810 (distribution of proceeds of sale or collection).

**§ 682.2 (repealed). Interest and costs entered on writ**

**Comment.** Former Section 682.2 is superseded by Sections 685.020 (commencement of interest), 685.030 (cessation of interest), 685.050 (costs and interest under writ), and 699.520 (contents of writ of execution). See also Section 693.010 (form of writ). The authorization for the judge to act if there is no clerk is unnecessary. See Section 167.

**§ 683 (repealed). Return of writ; issuance of new writ**

**Comment.** The first sentence of subdivision (a) of former Section 683 is superseded by Sections 699.530(b) (time for levy under writ of execution) and 699.560 (return of writ of execution). See also Sections 712.030(b) (time for executing writ of possession or sale), 712.050 (return of writ of possession or sale). The last sentence of subdivision (a) is not continued. See Section 681.030(a) (Judicial Council may provide by rule for procedure under Title 9).

Subdivision (b) is superseded by Section 699.510 (issuance of writs of execution). See also Section 712.010 (issuance of writs of possession and sale).

Subdivisions (c) and (d) are superseded by Section 699.560 (return of writ of execution). See also Section 712.050 (return of writ of possession or sale).

Subdivision (e) is superseded by Section 684.210 (proof of service of notice of hearing). See also Sections 704.770 (notice of hearing for sale of dwelling), 704.790 (proof of service where no appearance by debtor at first hearing).

Subdivision (f) is superseded by Section 699.560 (return of writ of execution). See the Comment to Section 706.026.

**§ 684 (repealed). Process for enforcing judgments**

**Comment.** Former Section 684 is superseded by Section 681.010 (provisions for enforcing judgments). See also Sections 712.010 (issuance of writ of possession or sale), 712.020 (contents of writ of possession or sale), 714.010 (writ of possession of personal property), 715.010 (writ of possession of real property), 716.010 (writ of sale), 716.020 (execution of writ of sale), 717.010 (enforcement of other judgments).

**§ 684.1 (repealed). Enforcement of judgment for possession of personal property**

**Comment.** Former Section 684.1 is superseded by Section 714.020 (execution of writ of possession of personal property). See also Section 680.260 (“levying officer” defined).

**§ 684.2 (repealed). Satisfaction first from attached property**

**Comment.** Former Section 684.2 is superseded by Section 699.050 (satisfaction from or release of attached property). The last sentence of subdivision (a) is not continued

since it is unnecessary. See also Sections 680.260 (“levying officer” defined), 699.060 (release).

§ 685 (repealed). Enforcement after 10 years

**Comment.** Former Section 685 is superseded by Sections 683.110-683.220 (renewal of judgments). See the Comment to Section 683.110.

§ 686.010 (repealed). Enforcement after death of creditor

**Comment.** Former Section 686.010 is continued in Section 686.010.

§ 686.020 (repealed). Enforcement after death of debtor

**Comment.** Former Section 686.020 is continued in Section 686.020.

§ 687 (repealed). Officer to whom writ issued

**Comment.** The substance of the first, second, and fourth sentences of subdivision (a) of former Section 687 is continued in Sections 699.510(a) (issuance of writ of execution to enforce money judgment) and 712.010(a) (issuance of writ of possession or sale). See also Section 680.260 (“levying officer” defined). The third sentence of subdivision (a) is not continued.

Subdivisions (b) and (c) are superseded by Section 699.080 (levy by registered process server). See also Section 680.330 (“registered process server” defined).

§ 688 (repealed). Property subject to execution

**Comment.** Subdivision (a) of former Section 688 is superseded by Sections 695.010-695.030 (property subject to enforcement of money judgment) and 699.710-699.720 (property subject to execution).

Subdivision (b) is superseded by Sections 699.060 (release from lien and custody) and 700.010-700.200 (methods of levy). See also Sections 684.010-684.140 (manner of service).

The substance of the first sentence of subdivision (c) is continued in Section 700.030 (levy on tangible personal property in possession of judgment debtor). The substance of the second sentence is continued in Section 687.030 (manner of custody). The third and fourth sentences are superseded by Section 700.080 (levy on personal property used as dwelling). The remainder of subdivision (c) is superseded by Section 700.070 (levy on tangible personal property of going business).

Subdivision (d) is not continued because it is unnecessary. See Section 697.710 (creation of execution lien).

The substance of the first sentence of subdivision (e) is continued in Sections 699.710 (duration of execution lien) and 700.200(d) (exception where interest in personal property of decedent’s estate levied upon). The second sentence of subdivision (e) is not continued. See Section 699.510 (issuance of writ, successive writs).

Subdivision (f) is superseded by Sections 699.720(a) (1) (alcoholic beverage license not subject to execution), 699.720(a) (3) (pending cause of action not subject to execution), 699.720(a) (4) (nonfinal judgment not subject to execution), 700.190 (levy on final money judgment owing to judgment debtor), 704.190 (exemption for licenses), and 708.630 (receiver to transfer alcoholic beverage license). See also Section 701.520(a) (4) (collection of final money judgment levied upon).

The substance of subdivision (g) is continued in Section 687.020 (endorsement and collection of certain instruments by levying officer).

§ 688.1 (repealed). Lien on cause of action

**Comment.** Subdivision (a) of former Section 688.1 is superseded by Sections 708.410-708.480 (lien in pending action or proceeding). See also Sections 695.030(b) (3) (cause of action subject to enforcement), 699.720(a) (3) (cause of action not subject to execution), 699.720(a) (4) (nonfinal judgment not subject to execution). Subdivision (b) is not continued because it was held to be in conflict with the Bankruptcy Act. See *In re Kanter*, 505 F.2d 228 (9th Cir. 1974), *aff’g*, 345 F. Supp. 1151 (C.D. Cal. 1972).

§ 689 (repealed). Third-party claims of title and right to possession

**Comment.** The first paragraph of former Section 689 is superseded by Sections 720.110-720.140, 720.160 (b), (c), 720.170 (a), and 720.730. See also Section 684.120 (manner of service by mail).

The substance of the second paragraph is continued in Sections 720.160 (b), (c) (undertaking) and 699.090 (liability for levy based on record ownership).

The third, fourth, and fifth paragraphs are superseded by Sections 720.760-720.780.

The substance of the first sentence of the sixth paragraph is continued in Section 720.140 (d). The second sentence is superseded by Section 687.040 (liability of levying officer).

The substance of the seventh paragraph of former Section 689 is continued in Sections 720.160 (a) and 720.660.

The substance of the first, second, third, and fifth sentences of the eighth paragraph of former Section 689 is continued in Section 720.310 (application for hearing). The fourth sentence is superseded by Section 720.320 (notice of hearing). The substance of the sixth sentence is continued in Section 720.370 (dismissal). The seventh sentence is superseded by Section 699.070 (disposition of perishable property during pendency of proceedings). The eighth sentence is superseded by Section 720.380 (a), (b) (stay). The substance of the ninth sentence is continued in Section 720.380 (c) (modification of order). The substance of the tenth sentence is continued in Section 720.360 (a) (burden of proof). The substance of the eleventh sentence is continued in Sections 720.330 (filing claim in court) and 720.350 (a) (1), (b) (pleadings). The twelfth sentence is superfluous and is not continued; it has been decided that there is no right to a jury trial in third-party claim proceedings (see *Misrach v. Liederman*, 14 Cal. App.2d Supp. 757, 58 P.2d 746 (1936)) and, in any event, if there were a right to a jury trial, it would exist independently under the Constitution. The substance of the thirteenth sentence is continued in Section 720.400 (findings). The substance of the fourteenth and fifteenth sentences is continued in Section 720.390 (determination of claim and disposition of property). The sixteenth sentence is superseded by Section 720.430 (satisfaction from released property). The substance of the seventeenth sentence is continued in Section 720.420 (appeal).

§ 689a (repealed). Certain collateral subject to levy

**Comment.** Former Section 689a is not continued. It is unnecessary in view of Commercial Code Section 9311 (alienability of debtor's rights in collateral).

§ 689b (repealed). Third-party claims under chattel mortgage or conditional sale

**Comment.** Subdivision (1) of former Section 689b is superseded by Section 700.090 (notice to legal owner of vehicle or boat).

The first sentence of subdivision (2) is superseded by Sections 720.210-720.230 (secured party claim of superior interest in the property). The substance of the second sentence of subdivision (2) is continued in Section 720.240 (d).

Subdivision (3) is superseded by Section 720.240 (service of claim). See also Sections 684.120 (manner of service by mail), 684.010, 684.050 (service on creditor's attorney).

Subdivision (4) is superseded by Sections 720.240 (b) (time for responding) and 720.270 (a) (release).

The substance of subdivisions (5), (6), and (7) is continued in Section 720.290 (payment to secured party).

Subdivision (8) is superseded by Section 720.250 (a) (delay of sale until deposit or undertaking), 720.260 (a) (effect of undertaking or deposit), and Sections 720.510, 720.520, and 720.550 (judgment creditor's demand for third-party claim).

The first paragraph of subdivision (9) is superseded by Sections 720.260 (effect of undertaking or deposit) and 720.280 (verified statement). The levying officer's discretion to require an undertaking in an amount twice the value of the property is not continued. The substance of the first sentence of the second paragraph of subdivision (9) is continued in Section 720.260 (c) (contents of undertaking). The remainder of the second paragraph of subdivision (9) is superseded by Sections 720.760 (objections to undertakings) and 720.770 (c) (hearing on objections). The third paragraph of subdivision (9) is superseded by Section 687.040 (liability of levying officer).

The substance of the first sentence of the first paragraph of subdivision (10) is continued in Section 720.310(a), (b) (application for hearing). The second sentence of the first paragraph of subdivision (10) is unnecessary because the third-party claims procedures formerly contained in Sections 689 and 689b are combined in Chapter 4 (commencing with Section 720.310) of Division 4. The substance of the third sentence of the first paragraph of subdivision (10) is continued in Section 720.390 (determination of claim). The substance of the fourth sentence of the first paragraph of subdivision (10) is continued in Section 720.310(a). See also Section 680.160 ("court" defined). The second paragraph of subdivision (10) is superseded by Section 720.430 (satisfaction from released property).

References to attachment and execution throughout former Section 689b are superseded by Section 720.210 (application of third-party claims provisions).

**§ 689c (repealed). Distribution of sale proceeds**

**Comment.** The substance of former Section 689c is continued in Section 701.810 (disposition of proceeds of sale).

**§ 689d (repealed). Third-party claim to property levied upon to collect tax**

**Comment.** Former Section 689d is superseded by Sections 688.010 (jurisdiction) and 688.030 (third-party claims).

**§ 689.5 (repealed). Release of property under third-party claim**

**Comment.** Former Section 689.5 is superseded by Sections 720.170(b), (c) and 720.270(b), (c). See also Section 699.060 (general rules governing release).

**§ 690 (repealed). Exemptions; defined terms**

**Comment.** Subdivision (a) of former Section 690 is superseded by Sections 703.010(a) (application of exemptions) and 703.510(a) (exemption claims). The substance of subdivision (b) is continued in Section 703.030(b) (property exempt without making claim). See also Section 487.020(a) (property exempt from execution is exempt from attachment). Subdivision (c) is superseded by Section 680.250 ("judgment debtor" defined) and Section 703.020 (persons entitled to exemptions). Subdivision (d) is superseded by Section 680.240 ("judgment creditor" defined).

**§ 690.1 (repealed). Household goods and works of art exemption**

**Comment.** The first sentence of former Section 690.1 is superseded by Sections 704.020 (household furnishings, personal effects) and 704.040 (personal effects of special sentimental or psychological value). The second sentence is superseded by Section 704.040.

**§ 690.2 (repealed). Motor vehicle exemption**

**Comment.** Subdivision (a) of former Section 690.2 is superseded by Sections 680.190 ("equity" defined) and 704.010(a) (motor vehicle exemption). Subdivision (b) is superseded by Sections 701.620 (minimum bid) and 699.060 (release). Subdivision (c) is superseded by Sections 701.810 (distribution of proceeds of sale) and 704.010(b) (exemption without making claim). Subdivision (d) is superseded by Sections 704.010(b) (consultation with records of DMV), 703.520(b)(3) (description of property in claim of exemption), and 701.810 (distribution of proceeds of sale). See also Section 699.540 (contents of notice of levy). The special provisions in subdivision (d) relating to additional notices to the judgment debtor and extensions of time for filing a claim of exemption are not continued. The substance of subdivision (e) is continued in Section 704.010(e) (proceeds exemption).

**§ 690.3 (repealed). Personal property dwelling exemption**

**Comment.** The substance of the introductory paragraph of subdivision (a) of former Section 690.3 is continued in Section 704.710. Paragraphs (1)-(3) of subdivision (a) are



superseded by Sections 680.190 ("equity" defined), 704.720 (homestead exemption), and 704.730 (amount of exemption). The first portion of subdivision (b) is not continued because the declared homestead exemption formerly provided by Civil Code Sections 1237-1304 is repealed. The last portion of subdivision (b) is not continued; the various homestead provisions of former law are consolidated in Sections 704.710-704.840.

§ 690.4 (repealed). Tools of trade exemption

**Comment.** Former Section 690.4 is superseded by Sections 680.190 ("equity" defined) and 704.060 (tools of trade exemption).

§ 690.5 (repealed). Prosthetic and orthopedic appliances exemption

**Comment.** The substance of former Section 690.5 is continued in Section 704.050.

§ 690.7 (repealed). Savings and loan association account exemption

**Comment.** Subdivision (a) of former Section 690.7 is superseded by Section 704.070 (a) (savings and loan association account exemption). Subdivision (b) is superseded by Section 704.070 (d) (spouse's exemption). See also Section 680.170 ("deposit account" defined).

§ 690.8 (repealed). Condemnation proceeds exemption

**Comment.** Former Section 690.8 is superseded by Section 704.720 (b) (exemption of dwelling proceeds).

§ 690.8a (repealed). Relocation benefits exemption

**Comment.** Former Section 690.8a is superseded by Section 704.180, which requires the judgment debtor to make an exemption claim for relocation benefits after payment. Section 487.020 (b) incorporates the exemption for purposes of attachment.

§ 690.9 (repealed). Life insurance exemption

**Comment.** Former Section 690.9 is superseded by Section 704.100 (life insurance).

§ 690.10 (repealed). Group life insurance exemption

**Comment.** Former Section 690.10 is superseded by Section 704.100 (life insurance).

§ 690.11 (repealed). Disability and health insurance exemption

**Comment.** Former Section 690.11 is superseded by Section 704.130 (disability and health benefits and contributions).

§ 690.12 (repealed). Segregated benefit funds exemption

**Comment.** Former Section 690.12 is not continued; it duplicated Insurance Code Section 10498.5.

§ 690.13 (repealed). Fraternal organization funds exemption

**Comment.** Former Section 690.13 is superseded by Sections 704.120 (unemployment benefits) and 704.130 (disability and health benefits).

§ 690.14 (repealed). Fraternal benefit society aid exemption

**Comment.** Former Section 690.14 is superseded by Sections 704.100 (life insurance benefits), 704.130 (disability and health benefits), and 704.170 (aid).

§ 690.15 (repealed). Workers' compensation exemption

**Comment.** The substance of former Section 690.15 is continued in Section 704.160 (workers' compensation).

§ 690.16 (repealed). Unemployment insurance exemption

**Comment.** The substance of former Section 690.16 is continued in Section 704.120 (unemployment benefits).

§ 690.17 (repealed). Building materials exemption

**Comment.** Former Section 690.17 is superseded by Sections 704.030 (materials for repair of dwelling) and 704.060 (materials used in trade, business, or profession).

§ 690.175 (repealed). Unemployment compensation exemption

**Comment.** The substance of former Section 690.175 is continued in Section 704.120 (unemployment benefits and contributions).

§ 690.18 (repealed). Retirement exemption

**Comment.** Subdivisions (a) and (b) are superseded by Sections 704.110 (public retirement benefits), 704.113 (public employee vacation credit), and 703.080 (tracing exempt funds). The substance of subdivision (c) is continued in Section 704.120 (unemployment benefits). Subdivision (d) is superseded by Section 704.115 (private retirement benefits). The portion of subdivision (d) relating to moneys withheld under the Unemployment Insurance Code is superseded by Section 688.030 (exemptions from enforcement of tax).

§ 690.19 (repealed). Public assistance exemption

**Comment.** The substance of the first and last sentences of former Section 690.19 is continued in Section 704.170. The substance of the second sentence is continued in Section 17409 of the Welfare and Institutions Code (limited set of exemptions for recipient of public support) which is an exception to the application of exemptions recognized by Section 703.010(a).

§ 690.20 (repealed). Hospital endowment fund exemption

**Comment.** Former Section 690.20 is not continued. It duplicated a portion of Health and Safety Code Section 32508.

§ 690.21 (repealed). Prisoners' funds exemption

**Comment.** Former Section 690.21 is superseded by Section 704.090 (prisoners' trust funds).

§ 690.22 (repealed). Public property exemption

**Comment.** Former Section 690.22 is not continued. A money judgment against a local public entity is not enforceable under Title 9. See Section 695.050; Gov't Code § 970.1(b).

§ 690.24 (repealed). Cemetery lots exemption

**Comment.** The first two paragraphs of former Section 690.24 are superseded by Section 704.200(a)-(c). The substance of the third paragraph is continued in Section 704.200(d). The fourth paragraph is superseded by Section 704.200(a)-(c). See also Health & Saf. Code § 8561. The last paragraph is not continued; it duplicated Health and Safety Code Section 7925.

§ 690.25 (repealed). Church pew exemption

**Comment.** The church pew exemption provided by former Section 690.25 is not continued. This exemption no longer serves a useful purpose because the practice of member ownership of pews has ceased. See 6J. Weinstein, H. Korn, & A. Miller, *New York Civil Practice* ¶ 5205.15 (rev. 1980).

§ 690.26 (repealed). Certain board and district property exemption

**Comment.** Former Section 690.26 is not continued. A money judgment against a public entity is not enforceable under Title 9. See Section 695.050; Gov't Code §§ 965.5, 970.1. See also former Water Code Section 8537 and the Comment thereto.

§ 690.27 (repealed). Housing authority realty exemption

**Comment.** Former Section 690.27 is not continued. A money judgment against a public entity is not enforceable under Title 9. See Section 695.050; Gov't Code §§ 965.5, 970.1. See also former Health & Saf. Code § 34217 and the Comment thereto.

§ 690.28 (repealed). Educational grant exemption

**Comment.** Former Section 690.28 is not continued. It duplicated Education Code Section 21116.

§ 690.29 (repealed). Redevelopment agency property exemption

**Comment.** Former Section 690.29 is not continued. A money judgment against a public entity is not enforceable under Title 9. See Section 695.050; Gov't Code § 970.1. See also former Health & Saf. Code § 33124 and the Comment thereto.

§ 690.30 (repealed). Social Security direct deposit exemption

**Comment.** Former Section 690.30 is superseded by Section 704.080 (deposit account in which social security payments are directly deposited).

§ 690.31 (repealed). Dwelling house exemption

**Comment.** Former Section 690.31 is superseded by Sections 704.710-704.840 (homestead exemption), 701.810 (distribution of proceeds), and 693.050-693.060 (forms).

§ 690.50 (repealed). Exemption procedure

**Comment.** Former Section 690.50 is generally superseded by Sections 703.510-703.610 (procedure for claiming exemptions after levy). Subdivision (a) is superseded by Section 703.520. Subdivision (b) is superseded by Section 703.540. Subdivision (c) is superseded by Sections 703.550-703.570. Subdivision (d) is superseded by Section 703.550. Subdivision (e) is superseded by Sections 703.550 and 703.570. Subdivision (f) is superseded by Section 703.550. Subdivision (g) is superseded by Sections 699.070 (perishable property) and 703.610(b). Subdivision (h) is superseded by Section 703.610(a). Subdivision (i) is superseded by Sections 703.550 and 703.580(a)-(d); the reference to the constitutional provision for jury trials is not continued because it is unnecessary. The first sentence of subdivision (j) is superseded by Section 703.580(e); the second sentence is superseded by Section 703.610(a). Subdivision (k) is superseded by Sections 684.110-684.140. The substance of subdivision (l) is continued in Section 703.590. The substance of subdivision (m) is continued in Section 703.600.

§ 690.51 (repealed). Exemptions from tax enforcement

**Comment.** Section 690.51 is superseded by Sections 688.010 (jurisdiction) and 688.030 (exemptions from tax liability).

§ 690.52 (repealed). Exception where judgment for price or of foreclosure

**Comment.** The portion of former Section 690.52 pertaining to foreclosure judgments is continued in Section 703.010(b). The portion pertaining to judgments recovered for the purchase price of property is not continued since it is unenforceable in practice.

§ 690.60 (repealed). Exemptions upon general assignment

**Comment.** Former Section 690.60 is continued in Section 1801 without substantive change.

**§ 691 (repealed). Execution of writ; collection or sale**

**Comment.** The portion of the first sentence of former Section 691 that related to levy of execution is superseded by Section 699.530(a) (execution of writ). The portion of the first sentence that related to collecting or selling things in action is superseded by Sections 701.510 (sale of property levied upon) and 701.520 (collection). The portion of the first sentence that related to the disposition of proceeds and the second sentence are superseded by Sections 701.810-701.830 (disposition of proceeds). The last sentence is not continued, but the judgment debtor may request that property be sold in a certain order pursuant to Section 701.570(d).

**§ 692 (repealed). Notice of execution sale**

**Comment.** Subdivision 1 of former Section 692 is superseded by Section 699.070(c) (notice of sale of perishable property).

The substance of the first sentence of subdivision 2 is continued in Section 701.530(a)-(c). See also Section 684.120 (manner of service by mail). The substance of the last sentence of subdivision 2 is continued in Section 687.010 (instructions to levying officer).

The first sentence of subdivision 3 is superseded by Section 701.540(a)-(d), (g). See also Section 680.320 ("real property" defined). The substance of the second sentence is continued in Section 687.010 (instructions to levying officer). The third sentence is superseded by Section 701.540(d). The fourth, fifth, and sixth sentences are superseded by Section 701.540(a). The seventh sentence is superseded by Section 701.540(g) (notice of sale pursuant to Gov't Code § 6063). See also Gov't Code §§ 6000 (newspaper of general circulation), 6060 (publication of notice). The last sentence is not continued. See Sections 680.250 ("judgment debtor" defined), 716.020(b) (notice of sale under writ of sale).

Subdivision 4 is not continued. See the Comment to Section 667 as amended.

**§ 692a (repealed). Request for notice of execution sale**

**Comment.** The substance of former Section 692a is continued in Sections 699.520(h) (notation on writ) and 701.550 (requested notice of sale).

**§ 693 (repealed). Penalty for sale without notice**

**Comment.** The portion of former Section 693 relating to actual damages against a levying officer failing to give notice is continued in Section 701.560(b). The forfeiture provisions are not continued. *Cf.* Penal Code § 616 (penalty for taking down or defacing notice).

**§ 694 (repealed). Execution sale procedure**

**Comment.** The substance of the first sentence of former Section 694 is continued in Section 701.570(a)-(b). The substance of the second sentence is continued in Section 701.570(e). The substance of the third sentence is continued in Section 701.610.

The fourth and fifth sentences of former Section 694 are superseded by Section 701.570(c)-(d). The authority of a third person to direct a separate sale of property claimed is not continued. If a third-party claim has been made, however, the property may not be sold without the consent of the third person unless a deposit is made or undertaking is given. See Sections 720.150, 720.250.

The substance of the second paragraph of former Section 694 is continued in Section 701.580.

**§ 695 (repealed). Resale and liability upon nonpayment of bid**

**Comment.** The first portion of former Section 695 is superseded by the first sentence of Section 701.600(a) (sale to next highest bidder). The remainder of former Section 695 is superseded by Section 701.600(c) (liability of defaulting bidder).

§ 696 (repealed). **Rejection of bid of defaulting bidder**

**Comment.** The substance of former Section 696 is continued in the second sentence of Section 701.600(a) (defaulting bidder).

§ 697 (repealed). **Liability of officer**

**Comment.** Former Section 697 is superseded by Section 687.040 (liability of levying officer). The levying officer is no longer provided with authority to sue the defaulting bidder. See Section 701.600(c).

§ 698 (repealed). **Delivery of personal property capable of manual delivery**

**Comment.** The substance of the first sentence of former Section 698 is continued in Section 701.650(a) (1) (certificate of sale). The second sentence is superseded by Section 701.640 (interest acquired by purchaser).

§ 699 (repealed). **Certificate of sale of personal property not capable of manual delivery**

**Comment.** The substance of the first sentence of former Section 699 is continued in Section 701.650(a) (2) (certificate of sale). The second sentence is superseded by Section 701.640 (interest acquired by purchaser).

§ 700 (repealed). **Purchaser's title to real property sold on execution**

**Comment.** Former Section 700 is superseded by Section 701.640 (interest acquired by purchaser).

§ 700a (repealed). **Absolute sales; redemption**

**Comment.** The first sentence of subdivision (a) of former Section 700a is superseded by Section 701.680(a) (sales absolute). The second sentence is not continued; the statutory right of redemption from judicial sales is repealed. The substance of the first portion of the third sentence is continued in Section 701.660 (delivery and recording of deed of sale). The portion of the third sentence prescribing the contents of the certificate of sale is superseded by Section 701.670.

Subdivision (b) is not continued since the statutory right of redemption is not continued.

§ 701 (repealed). **Persons entitled to redeem**

**Comment.** The statutory right of redemption provided by former Sections 701-707 is not continued. See Section 701.680 and the Comment thereto. However, notice of sale of an interest in real property, other than a leasehold estate with an unexpired term of less than two years, is delayed for 120 days after notice of levy is given. See Section 701.545.

§ 702 (repealed). **Time for redemption; dispute as to amount**

**Comment.** Former Section 702 is not continued. See the Comment to former Section 701.

§ 703 (repealed). **Second redeptioner; dispute as to amount**

**Comment.** Former Section 703 is not continued. See the Comment to former Section 701.

§ 704 (repealed). **Person to whom redemption payment made**

**Comment.** Former Section 704 is not continued. See the Comment to former Section 701.

§ 705 (repealed). Instruments to be produced by redemptioner

**Comment.** Former Section 705 is not continued. See the Comment to former Section 701.

§ 706 (repealed). Restraint of waste

**Comment.** Former Section 706 is not continued. See the Comment to former Section 701.

§ 707 (repealed). Rents and profits from property subject to redemption

**Comment.** Former Section 707 is not continued. See the Comment to former Section 701.

§ 708 (repealed). Remedies where sale irregular or judgment reversed or discharged

**Comment.** Former Section 708 is superseded by Section 701.680 (sales absolute; liability).

§ 709 (repealed). Contribution among judgment debtors

**Comment.** The substance of the first sentence of former Section 709 is continued in Section 882 (right to contribution). The second sentence is superseded by Section 883 (procedure for compelling contribution). The last sentence is not continued.

§ 710 (repealed). Collection of judgment where debtor is creditor of public entity

**Comment.** The substance of former Section 710 is continued in Sections 708.710-708.795.

§ 710a (repealed). Collection of judgment where debtor is contractor on public work

**Comment.** The substance of the first and second sentences of former Section 710a is continued in Section 708.760(a) (collection where debtor is contractor on public works). The last sentence is superseded by Section 708.760(b).

§ 710b (repealed). Third person's undertaking to release property

**Comment.** Former Section 710b is superseded by Sections 720.610 (application of chapter) and 720.620 (filing of undertaking to release property). See also Section 680.280 ("person" defined).

§ 710c (repealed). Contents of undertaking to release

**Comment.** Portions of former Section 710c are superseded by Section 720.630 (contents of undertaking). The substance of the portion of former Section 710c regarding the amount of undertaking is continued in Section 720.630(c), subject to the exception provided in 720.630(d). See also Sections 680.280 ("person" defined), 720.730 (number of sureties), 720.740 (principal's estimate of property value).

§ 711 (repealed). Filing and service of undertaking to release

**Comment.** Former Section 711 is superseded by Sections 720.620 (filing of undertaking with levying officer) and 720.640 (service of undertaking on creditor). See also Sections 684.010, 684.050 (service on creditor's attorney).

§ 711½ (repealed). Objection to sureties

**Comment.** Former Section 711½ is superseded by Sections 720.760 (beneficiary's objection to undertaking) and 720.780 (acceptance of beneficiary's estimate of value). See also Section 680.280 ("person" defined).

§ 712 (repealed). Justification of sureties

**Comment.** Former Section 712 is superseded by Section 720.770 (hearing on objection).

§ 712½ (repealed). Dispute as to property value; new undertaking

**Comment.** Former Section 712½ is superseded by Sections 720.770 (hearing on objection) and 720.780 (acceptance of beneficiary's estimate of value). See also Section 680.280 ("person" defined).

§ 713 (repealed). Justification of sureties

**Comment.** Former Section 713 is not continued because it is unnecessary. Section 1057 applies by its terms.

§ 713½ (repealed). Effective date of undertaking

**Comment.** Former Section 713½ is superseded by Sections 720.650 (effective date of undertaking) and 720.660 (release of property pursuant to undertaking).

## CHAPTER 2. PROCEEDINGS SUPPLEMENTAL TO EXECUTION

§ 714 (repealed). Examination of judgment debtor

**Comment.** The first sentence of former Section 714 is superseded by Section 708.110(a) (examination of judgment debtor). See also Section 708.140(a) (power of referee). The remainder of the first paragraph is superseded by Section 708.110(b) (examination of judgment debtor on ex parte application not more than once every 120 days). The substance of the second paragraph is continued in Section 708.170(a) (1). The substance of the third paragraph is continued in Section 708.110(e). The substance of the last paragraph is continued in Section 708.170(b).

§ 714.5 (repealed). Written interrogatories to judgment debtor

**Comment.** The substance of the first sentence of former Section 714.5 is continued in Section 708.020(a) (written interrogatories to judgment debtor), except that interrogatories may be propounded to all judgment debtors, not just those represented by counsel. The second sentence is superseded by Section 708.010(a) (time for serving interrogatories). The third sentence is continued in Section 708.020(c) (enforcement of interrogatories). The fourth sentence is omitted as unnecessary. The substance of the last sentence is continued in Section 708.020(b) (frequency of interrogatories).

§ 715 (repealed). Examination of judgment debtor upon refusal to apply property to judgment

**Comment.** The first sentence of former Section 715 is superseded by Section 708.110(a) (examination of judgment debtor). See also Section 708.140(a) (power of referee). The introductory clause requiring issuance of a writ of execution is not continued because it was an unnecessary formality. The language pertaining to the unjust refusal to apply property to the satisfaction of the judgment is superseded by Section 708.110(c) (examination more often than every 120 days upon showing of good cause). The remainder of former Section 715 is not continued. These provisions for the arrest of the judgment debtor on the ex parte application of the judgment creditor and providing the alternative of giving of an undertaking or imprisonment conflicted with the policies supporting the repeal of the civil arrest provisions. See *Recommendation and Study Relating to Civil Arrest*, 11 Cal. L. Revision Comm'n Reports 1 (1973).

§ 716 (repealed). Payment by debtor of judgment debtor

**Comment.** The substance of former Section 716 is continued in Section 699.020 (payment by debtor of judgment debtor).

**§ 717 (repealed). Examination of debtor of judgment debtor**

**Comment.** The first sentence of former Section 717 is superseded by Section 708.120(a) (examination of third person). See also Sections 680.280 ("person" defined), 708.140(a) (power of referee), 708.150 (appearance by organization). The requirement that a writ of execution be issued or returned is not continued. See the Comment to Section 708.120. The second sentence of former Section 717 is superseded by Section 708.130(b) (marital privilege not applicable). The substance of the second paragraph is continued in Section 708.170(a)(1). The substance of the third paragraph is continued in Section 708.120(e)(1). The substance of the last paragraph is continued in Section 708.170(b).

**§ 717.1 (repealed). Examination within 150 miles of residence or business**

**Comment.** The substance of the first sentence of former Section 717.1 is continued in Section 708.160(b). See also Section 708.140(a) (power of referee). The substance of the first sentence of the second paragraph is continued in Section 708.120(f) except that the mileage fee for witnesses in civil proceedings generally is incorporated by Section 708.120(f). The last sentence is superseded by the general provisions relating to costs. See Sections 685.040, 685.070(a)(5), 685.080(a).

**§ 718 (repealed). Witnesses**

**Comment.** The substance of former Section 718 is continued in Section 708.130(a) (appearance of witnesses). See also Section 708.140(a) (power of referee).

**§ 719 (repealed). Order applying property to satisfaction of judgment**

**Comment.** The substance of the first portion of former Section 719 is continued in Section 708.205(a) (order applying property to satisfaction of judgment). See also Sections 708.140(a) (power of referee), 708.120(d) (exemption claim by judgment debtor in examination of third person). The latter portion of former Section 719 is superseded by Sections 708.180(a)-(b) (determination of third person's adverse claim) and 708.205(b) (remedy where third person's adverse claim not determined).

**§ 720 (repealed). Adverse claim by third person; protective orders**

**Comment.** The first portion of the first sentence of former Section 720 is superseded by Section 708.210 (creditor's suit). See also Section 680.280 ("person" defined). The latter portion of the first sentence and the second sentence are superseded by Sections 708.180(c)-(d) and 708.240 (order forbidding transfer of property of payment of debt). See also Section 708.140(a) (power of referee).

**§ 721 (repealed). Contempt**

**Comment.** The substance of former Section 721 is continued in Section 708.140(a)(1) (court's power to punish for disobeying referee's order).

**§ 722 (repealed). Examination in other county**

**Comment.** The substance of former Section 722 is continued in Section 708.160(c)-(d) (examination outside county where judgment entered).

**§ 722.5 (repealed). Remedies of certain state agencies**

**Comment.** The substance of the first sentence of former Section 722.5 is continued in Section 688.020(a) (remedies of state when warrant may be issued). The second sentence is superseded by Sections 688.010 (jurisdiction) and 688.020(b) (proper court).

**§ 723 (repealed). Powers and qualifications of referee**

**Comment.** Former Section 723 is superseded by Section 708.140(a)-(b) (powers and qualifications of referee).



**CHAPTER 2.5. EMPLOYEES' EARNINGS  
PROTECTION LAW****§§ 723.010-723.154 (repealed). Wage garnishment**

**Comment.** Former Sections 723.010-723.154 are generally continued in Sections 706.010-706.154 (Wage Garnishment Law). For an explanation of the technical and substantive changes made in the former sections, see the Comments to the corresponding sections in the new law.

**CHAPTER 3. SALE OF FRANCHISES****§§ 724a-724e (repealed). Sale of franchises**

**Comment.** Sections 724a-724e are superseded by Sections 699.720(a)(7) (franchises not subject to execution) and 708.910-708.930 (enforcement against franchise).

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