

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

REPORT AND RECOMMENDATIONS

Debtor-Creditor Relations:

- Attachment Where Claim Is Partially Secured — Report on 1990 Amendments
- Exemptions from Enforcement of Money Judgments — Decennial Review
- Miscellaneous Debtor-Creditor Matters

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November 1994

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

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This report and recommendations will appear in Volume 25 of the Commission's *Reports, Recommendations, and Studies*.

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4000 Middlefield Road, Suite D-2
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NOTE

This report includes an explanatory Comment to each section of the legislation enacted on Commission recommendation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative.

Cite this recommendation as *Debtor-Creditor Relations*, 25 Cal. L. Revision Comm'n Reports 1 (1995).

STATE OF CALIFORNIA

PETE WILSON, Governor

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November 18, 1994

To: The Honorable Pete Wilson
Governor of California, and
The Legislature of California

This set of recommendations relates to several aspects of debtor-creditor law:

Attachment where claim is partially secured. The Commission concludes that experience under 1990 amendments permitting attachment by creditors whose claims are partially secured by personal property justifies continuation of that law. The recommendation provides implementing legislation and proposes some additional technical revisions in the Attachment Law. This report is submitted in fulfillment of a legislative direction in Chapter 943 of the Statutes of 1990.

Exemptions from enforcement of judgments. Following its decennial review of the dollar amounts of exemptions from enforcement of judgments, the Commission recommends doubling the dollar amount of the basic personal property monetary exemptions — motor vehicles, tools of a trade, residential construction materials, life insurance cash value, and jewelry, heirlooms, and works of art. These revisions would account for the change in the value of the dollar since the Enforcement of Judgments Law was enacted in 1982. The exemption for deposit accounts into which Social Security benefits are directly deposited should be quadrupled. To conform to recent federal legislation, the amounts in the California alternative bankruptcy exemptions should be

doubled. The decennial review of exemptions has been conducted pursuant to Code of Civil Procedure Section 703.120(a).

Miscellaneous technical matters. The Commission recommends technical amendments to resolve inconsistencies between the Enforcement of Judgments Law and the Family Code and to make clear that courts are not required to make an order for sale of a homestead if the sale would not be likely to yield any amount in satisfaction of the creditor's judgment.

These recommendations were prepared pursuant to Resolution Chapter 40 of the Statutes of 1983, continued in Resolution Chapter 81 of the Statutes of 1994.

Respectfully submitted,

Daniel M. Kolkey
Chairperson

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ATTACHMENT WHERE CLAIM IS PARTIALLY SECURED:
REPORT ON CHAPTER 943 OF THE STATUTES OF 1990

This report has been prepared in satisfaction of a legislative direction to evaluate the experience under 1990 amendments to the Attachment Law that relaxed the rules concerning issuance of attachment where the plaintiff's claim is partially secured by personal property.¹

Background

The Attachment Law² was enacted in 1974 on recommendation of the Commission and has been amended on Commission recommendation several times since then.³ In 1990, a bill sponsored by the California State Bar amended the Attachment Law to permit attachment where the plaintiff's claim is secured by personal property or fixtures.⁴ The amendments eliminated the former rule that limited attachment in claims secured by personal property to cases where the plaintiff could show that the security had decreased in value or become valueless without fault of the plaintiff. Under

1. See 1990 Cal. Stat. ch. 943 (SB 2170), amending Code of Civil Procedure Sections 483.010 and 483.015. (Hereinafter, all code citations are to the Code of Civil Procedure, unless otherwise noted.) In an uncodified provision of this 1990 legislation, the Commission is directed to

study the impacts of the changes in Sections 483.010 and 483.015 of the Code of Civil Procedure made by ... this act during the period from January 1, 1991, to and including December 31, 1993, and shall report the results of its study, together with recommendations concerning continuance or modification of these changes, to the Legislature on or before December 31, 1994.

[1990 Cal. Stat. ch. 943, § 3.]

2. Section 481.010 *et seq.*; see *Recommendation Relating to Prejudgment Attachment*, 11 Cal. L. Revision Comm'n Reports 701 (1973).

3. See recommendations cited in *1982 Creditors' Remedies Legislation*, 16 Cal. L. Revision Comm'n Reports 1001, 1608 (1982).

4. See 1990 Cal. Stat. ch. 943.

the new rule, the existence of personal property security is irrelevant to the right to attach, but the amount of the attachment is reduced by the present value of the security plus the amount of any decrease in value caused by the plaintiff or prior holders of the security interest. The 1990 amendments were designed to give an *undersecured* creditor the same attachment remedy as an *unsecured* creditor, to the extent that the debt is not secured.⁵

The new rule will expire on January 1, 1996, by operation of statutory sunset clauses, unless the Legislature takes action before that date. If there is no legislative action to preserve the 1990 amendments, the former rule would come back into force.⁶

Experience Under 1990 Amendments

The Law Revision Commission was directed to study the impact of the 1990 amendments on the attachment process during 1991-1993 and to report to the Legislature any recommendations concerning continuation or modification of the 1990 changes.

The Commission solicited comments on the experience under the new rule from superior courts in ten of the most populous counties. In addition, letters were sent to all persons

5. For background on the 1990 legislation, see Senate Committee on Judiciary, Consultant's Analysis of SB 2170, as amended May 1, 1990, 1989-90 Regular Session (attached to Memorandum 94-16, on file with California Law Revision Commission); letter from Brian L. Holman (June 22, 1994) (attached to Memorandum 94-41, on file with California Law Revision Commission).

6. See Sections 483.010 (as added by 1990 Cal. Stat. ch. 943, § 1.5), 483.015 (as added by 1990 Cal. Stat. ch. 943, § 2.5). Although these sections appear to be new enactments operative in the future, they are actually prior law as it existed on December 31, 1990, before the new rule became operative. It has been reported to the Commission that the appearance of two sets of two sections with the same numbers in the code has caused practitioners some confusion. See letter from Commissioner Arnold Levin to Stan Ulrich (March 31, 1994) (attached to Memorandum 94-16, on file with California Law Revision Commission).

on the Commission's mailing list who have expressed an interest in debtor-creditor relations and to about 30 other potentially interested organizations that maintain registered lobbyists. The State Bar liaisons were notified of the study and the opinions of relevant State Bar sections were requested.

The Commission received comments from four superior courts, the Debtor/Creditor Relations and Bankruptcy Committee of the Business Law Section of the State Bar, and the Commercial Law League.⁷ Opinion was nearly unanimous in support of continuing the 1990 amendments:

- Judge Joe S. Gray of the Sacramento County Superior Court reported that he and Judge Morrison, who handle almost all attachments in that county, have not perceived any difficulties with or any effect from the new rule.
- Judge Ronald L. Bauer of the Orange County Superior Court reported no observable impact of the 1990 amendments in over 700 cases considered since enactment of the new rule.
- Judge Arthur W. Jones of the San Diego County Superior Court reported that the new rule appears to be working well and that it has had no unusual or adverse affect on the number or dollar amount of attachments. Judge Jones concluded that evaluation of security is generally an easy task and saw no reason not to extend the new rule.

7. See letters attached to Memorandum 94-16 (on file with California Law Revision Commission); letter from Leo G. O'Bieunas, Jr., on behalf of the Creditor Rights Section of the Commercial Law League of America, to Stan Ulrich (Sept. 22, 1994) (on file with California Law Revision Commission). The Commission also received comments from Brian L. Holman and Alan M. Mirman, who were instrumental in sponsoring the 1990 amendments. Mr. Holman and Mr. Mirman believe respectively that the amendments are "serving their purpose" and that the amendments have created "no problems, concerns, or drawbacks." See letter and background materials from Brian L. Holman to the Commission (June 22, 1994) and letter from Alan M. Mirman to the Commission (Sept. 7, 1994) (attached to Memorandum 94-41, on file with California Law Revision Commission).

- The Debtor/Creditor Relations and Bankruptcy Committee of the Business Law Section of the State Bar wrote that, based on anecdotal history available to the members of the committee, the new rule “works effectively and should remain in operation.”
- The Commercial Law League of America believes that the attachment provisions “should be allowed to remain in effect.”

The dissenting note came from Commissioner Arnold Levin of the Los Angeles County Superior Court, who reported that the number of attachments has increased under the amended statute and concluded with the suggestion that the law be restored to its earlier form.⁸

Commission Recommendation

In view of the reports received on experience under the new rule, the Commission concludes that the substance of the 1990 amendments should be made permanent. Based on the information at hand, the new rule does not appear to be causing any problems and the Commission has not found any grounds for modifying the policy of the 1990 amendments. Consequently, the Commission recommends removal of the sunset clauses and the final repeal of the earlier rule.⁹

8. Commissioner Levin expresses the concern that an attachment can be issued even though the amount of the claim is fully secured. See letter from Commissioner Arnold Levin to Stan Ulrich (March 31, 1994) (attached to Memorandum 94-16, on file with California Law Revision Commission). This is theoretically possible, but the amount of the attachment would be \$0, since Section 483.015(b)(4) requires the deduction of the value of the security. This points to an inconsistency between Section 483.015(b) (amount to be secured by attachment) and Section 484.050(c) (notice of attachment, which omits the reduction required by the 1990 amendment to Section 483.015(b)(4)). The Commission recommends that this inconsistency be resolved and that the Attachment Law be amended to make clear that the application for a right to attach order and writ of attachment should be dismissed if the value of the security exceeds the plaintiff's claim.

9. For the implementation of this recommendation, see *infra*, Sections 483.010 (amended), 483.010 (repealed), 483.015 (amended), 483.015 (repealed).

Technical Issues

The Commission also recommends a number of technical revisions to improve the coordination of the 1990 amendments with other provisions in the Attachment Law.¹⁰ For example, the rules relating to attachment in unlawful detainer actions were not adjusted for conformity with the 1990 amendments,¹¹ and obsolete language qualifying the former limitation applicable to claims secured by personal property still remains in the code.¹²

10. For the implementation of this technical revision, see *infra*, Sections 483.020, 484.050, 484.090, 485.220, 492.030.

11. Section 483.020, read literally, appears to require that the amount of any security for rent be deducted twice from the amount of the attachment, once under subdivision (d) and once under subdivision (e) (incorporating Section 483.015(b)(4)).

12. E.g., the reference to claims secured by nonconsensual possessory liens in Section 483.010(b).

DECENNIAL REVIEW OF EXEMPTIONS FROM ENFORCEMENT OF MONEY JUDGMENTS

The Commission is charged with the responsibility of reviewing the dollar amount of debtors' exemptions under the Enforcement of Judgments Law¹³ every 10 years and recommending any changes in amounts "that appear proper."¹⁴

Background

Existing law provides six personal property exemptions that are subject to dollar limitations.¹⁵ Whether an exemption may be increased in the case of marital property depends on the applicable statute. The general rule is that married persons are not entitled to double dollar amount exemptions, whether one or both of the spouses are debtors and regardless of the separate or community nature of the property.¹⁶

13. Section 680.010 *et seq.* The Enforcement of Judgments Law, operative July 1, 1983, was enacted on Commission recommendation. Part of that study involved modernizing the exemption statutes. Exemptions are necessary 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. See generally *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001, 2075-106 (1980); *1982 Creditors' Remedies Legislation*, 16 Cal. L. Revision Comm'n Reports 1001, 1079-109 (1982).

14. See Section 703.120(a). The 10-year period runs from July 1, 1983, the operative date of the Enforcement of Judgments Law. This review was deferred until 1994 as authorized by Government Code Section 7550.5.

15. The exemption for inmate trust funds is not considered in this discussion. See Section 704.090. The Commission does not recommend any revision of this exemption.

16. In relevant part, Section 703.110(a) provides:

Where the property exempt under a particular exemption is limited to a specified maximum dollar amount, unless the exemption provision specifically provides otherwise, the two spouses together are entitled to one exemption limited to the specified maximum dollar amount, whether one or both of the spouses are judgment debtors under the judgment and

The dollar exemptions are as follows:

| CCP | Type of Property | Amount | Married Debtors Increase? |
|-----------|---|--------|--|
| § 704.010 | Motor vehicle | \$1200 | Not increased |
| § 704.030 | Residential repair materials | \$1000 | Not increased |
| § 704.040 | Jewelry, heirlooms, art | \$2500 | Not increased |
| § 704.060 | Tools of trade, business, or profession | \$2500 | \$5000 if spouse engaged in trade, business, or profession |
| § 704.080 | Social Security direct deposits | \$500 | \$750 if more than one depositor |
| § 704.100 | Life insurance loan value | \$4000 | May be doubled |

The dollar amounts of these exemptions have not been changed since they became operative in 1983.

Exemptions based on need or on the type of property are immune from inflation and price changes.¹⁷ Exemptions in fixed dollar amounts are subject to degradation as the purchasing power of a dollar shrinks. It is difficult to determine a dollar amount that is appropriate in all circumstances. But once a dollar amount has been set by the Legislature, it follows that exempt amounts should be revised from time to time to take account of inflation. Otherwise, the protection enacted at one point in time will erode significantly over the years.

Depending on the index used, it appears that the purchasing value of the dollar since 1983 has declined by one-third or more. In other words, a dollar amount set in 1983 would need

whether the property sought to be applied to the satisfaction of the judgment is separate or community.

17. See, e.g., Sections §§ 704.020 (necessary household furnishings, appliances, provisions, wearing apparel, and other personal effects), 704.050 (necessary health aids and prosthetic and orthopedic appliances).

to be multiplied by a factor of from 1.5 to 1.67 to adjust for changes reflected in the consumer price index up to 1993.¹⁸

The homestead exemption has been increased and supplemented several times since its enactment in 1982. Originally, the basic homestead exemption in Code of Civil Procedure Section 704.730 was \$30,000, for a single resident, with a special exemption of \$45,000 for family units and persons over 65. In 1986, the exemption for a person over 65 was set at \$60,000 and applied to disabled persons. In 1988, this third tier exemption was increased from \$60,000 to \$75,000 and extended to low income persons over 55. In 1990, all three tiers were increased, to \$50,000, \$75,000, and \$100,000, respectively. As a result of this legislative activity, the basic homestead protection has been increased so that it is effectively the same as it was in 1982, as measured by the home ownership component of the Consumer Price Index for western states.¹⁹

Commission Recommendation

The Commission has reviewed the dollar amount of exemptions under California law and proposes to double the amount of the basic personal property exemptions — (1) motor vehicle, (2) tools of a trade, business, or profession, (3) jewelry, heirlooms, and works of art, (4) life insurance loan value, and (5) residential repair materials. Doubling these exemptions will compensate for inflation, conform with recent amend-

18. Using a base of 1982-84 as 100, in 1993 the California average CPI factor was approximately 150. See Department of Finance, California Economic Indicators November/December 1993.

19. See U.S. Department of Labor, CPI Detailed Report Data for November 1993, Table 11. Using a ratio of 100/166, the basic \$30,000 exemption should be \$49,800 and the second tier \$45,000 exemption should be \$74,700. The third tier, which was set at \$60,000 in 1986, if subject to the same ratio, would be \$99,600.

ments to the federal Bankruptcy Code, and avoid the need to adjust exemption amounts in the near future.

The automatic exemption for deposit accounts into which Social Security payments are directly deposited should be quadrupled to \$2,000 for a single person and to \$3,000 where joint Social Security payees share an account. The amounts of this exemption have not been changed since 1976.²⁰

The exemption amounts under the federal Bankruptcy Code were recently doubled.²¹ Although California has opted out of the federal exemption scheme,²² the California alternative bankruptcy exemptions have paralleled the federal amounts.²³ The amounts of these two exemption schemes should be the same. Accordingly, the Commission recommends that the alternative state bankruptcy exemptions be revised to conform to the federal Bankruptcy Code amounts.

20. See 1976 Cal. Stat. ch. 810, § 1 (enacting Code Civ. Proc. § 690.30, the predecessor of Section 704.080).

21. 11 U.S.C. § 522, as amended by P.L. 103-393, 108 Stat. 4106, § 108 (Oct. 22, 1994).

22. Section 703.130.

23. See Section 703.140.

MISCELLANEOUS DEBTOR-CREDITOR MATTERS

Order of Sale in Homestead Exemption Proceedings ²⁴

A recent case held the court hearing a petition for an order to sell a dwelling was required to order a sale of the dwelling even though the court's fair market value determination at the initial hearing indicated that the amount of liens plus the homestead exemption exceeded the estimated fair market value.²⁵ The Commission is informed that, in practice, courts generally do not make an order for sale under these conditions.²⁶ It is argued that ordering a sale may intimidate a debtor with the threatened loss of the debtor's home even though the creditor has reason to believe that the property will not actually be sold at auction because no bid will exceed the amount of liens plus the exemption.²⁷

24. The State Bar Legal Services Section has proposed that the homestead statutes be amended to eliminate the distinction between the automatic homestead protection and the declared homestead. See letter from Robin Leonard to Stan Ulrich (April 26, 1994) (attached to Memorandum 94-17, Exhibit p. 65, on file with California Law Revision Commission). The Commission has approved study of this matter and intends to consider the issue during 1995. The Commission recommended abolition of the declared homestead in favor of the automatic homestead in its original recommendation on this topic. See *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001, 2090-93 (1980).

25. *Abbett Electric Corp. v. Storek*, 22 Cal. App. 4th 1460, 27 Cal. Rptr. 2d 845, 851-52 (1994).

26. See letter from Robin Leonard, on behalf of the State Bar Legal Services Section, to Stan Ulrich (April 26, 1994) (attached to Memorandum 94-17, Exhibit p. 65, on file with California Law Revision Commission).

27. Section 704.800 precludes sale if such a minimum bid is not received and forbids subsequent levies by the creditor causing the sale for a period of one year. In addition, Section 704.840 precludes the creditor from recovering costs of the proceeding and sale if the minimum bid is not received at the sale.

The language at issue in the case — “shall make an order for sale of the dwelling” — is a fragment of an earlier proposal that was not enacted.²⁸ This leftover rule should be modified. The Commission recommends that the statute be amended to conform to the better practice of avoiding orders for sale where it is not likely that an amount will be bid sufficient to satisfy part of the judgment.

28. The *Abbett* court reads Section 704.780(b) literally and bolsters its conclusion by quoting from the Commission’s original recommendation:

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. [Footnote omitted.] 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 a minimum bid at sale is not received, the judgment creditor is not entitled to recover the costs of the sale procedure In addition, the judgment creditor is precluded from again levying on the homestead for a period of one year.

See *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm’n Reports 2001, 2092-93 (1980), quoted in part in *Abbett, supra*, at 851-52.

In quoting from the Commission’s original report, the court failed to notice that the scheme as proposed in 1980 dispensed with the need for determining the fair market value of the dwelling. The original procedure was intended to eliminate burdensome procedural details and relied on the execution sale process and the potential penalties for failing to obtain a sufficient sale price. The judgment creditor was liable for costs and attorney’s fees if the sale price was inadequate to satisfy liens and the exemption. The Commission’s original recommendation thus had abandoned the attempt to protect debtors through appraisals. However, the determination of fair market value was reinserted in the legislative process, along with the 90% rule in Section 704.800, and the liability for attorney’s fees was omitted. Apparently due to an oversight, the mandatory sale language at issue in *Abbett* was not eliminated.

Enforcement of Judgments Under Family Code

Background

When the Enforcement of Judgments Law was enacted in 1982, it established a 10-year period of enforcement for money judgments and judgments for possession or sale of property.²⁹ This 10-year period was not tolled for any reason and when it expired the judgment became unenforceable. However, the judgment was renewable by a simple procedure for filing an application for renewal with the court and giving notice and an opportunity to the debtor to petition to vacate or modify the renewal. In addition, the statute preserved the ancient right to bring an action on the judgment subject to the 10-year rule of Section 337.5 and its exceptions and tolling features. In the case of a money judgment payable in installments, the 10-year period of enforceability and the renewal scheme treated each installment as if it were a judgment entered on the date the installment fell due.³⁰ This structure was intended to provide certainty as a foundation for the various enforcement procedures. It was intended to eliminate the doubt about when a judgment or part thereof was enforceable and to regularize the process of determining how much was still owing on a judgment.

This scheme was not applied to judgments enforceable under the Family Law Act.³¹ The Enforcement of Judgments

29. See generally Sections 683.010-683.320, as enacted by 1982 Cal. Stat. ch. 1364, § 2. The Enforcement of Judgments Law was enacted on Commission recommendation. See *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980); *1982 Creditors' Remedies Legislation*, 16 Cal. L. Revision Comm'n Reports 1001, 1009 (1982).

30. Section 683.030.

31. See Section 683.310, as enacted by 1982 Cal. Stat. ch. 1364, § 2. The former Family Law Act was located at Civil Code Section 4000 *et seq.*, until replaced by the Family Code, operative January 1, 1994. See 1992 Cal. Stat. ch. 162, § 3.

Law did not affect the rule in family law that the court had discretion as to the manner of enforcement of judgments.³² However, some of the benefits of the scheme in the Enforcement of Judgments Law were extended to the Family Law Act by providing that judgments for child or spousal support were enforceable by a writ of execution without the need for a court order if the amounts owing were not more than 10 years overdue — after 10 years, overdue support payments were enforceable only in the court's discretion, and lack of diligence was to be considered in determining whether to permit enforcement.³³ The 10-year period ran as to each installment when it fell due.³⁴

Revisions of the Original Scheme

In 1986, Section 4384.5 was added to the Civil Code providing that a judgment for child or spousal support could be renewed by application under the general procedures in the Enforcement of Judgments Law.³⁵ This section created the situation whereby the Enforcement of Judgments Law provided that the general rules on renewal did not apply to the Family Law Act and the Family Law Act provided that they did apply to enforcement of child or spousal support by execution.

In 1987, Civil Code Section 4383 was amended to permit enforcement of child or family support by execution, without prior court approval, until five years after the child reaches the age of majority, and thereafter for amounts not more than

32. See former Civ. Code. § 4380.

33. See former Civ. Code §§ 4383-4384, as enacted by 1982 Cal. Stat. ch. 497, §§ 15, 16.

34. See former Civ. Code § 4384 (see now Fam. Code § 5102).

35. See former Civ. Code § 4384.5, as enacted by 1986 Cal. Stat. ch. 1046, § 1.

10 years overdue.³⁶ The 10-year rule was retained for enforcement of spousal support by a writ of execution.

Thus, by 1988, the Family Law Act had a hybrid system. The 10-year rule was no longer related to enforceability and renewal requirements, but only served as a limitation on the discretion of the court, making enforcement by writ of execution a procedural right for amounts not more than 10 years overdue (or more in the case of child and family support involving a child age 23 or less). Amounts more than 10 years overdue continued to be enforceable in the court's discretion without any renewal requirement. It should also be noted that the renewal scheme in the Enforcement of Judgments Law as applied to judgments for possession or sale also did not apply to such judgments made under the Family Law Act, although there was no exception for enforcement by writ as in the case of support.

This situation changed dramatically in 1992 when Civil Code Section 4384.5 was replaced by a new rule that judgments for child or spousal support or for arrearages are completely exempt from any renewal requirement and are enforceable until paid in full.³⁷ In 1993, the law was again revised to provide for the optional renewal of support judgments.³⁸ The rules concerning nonmoney judgments were not revised.

36. See former Civ. Code § 4383, as amended by 1987 Cal. Stat. ch. 960, § 1.

37. See former Civ. Code § 4384.5, as enacted by 1992 Cal. Stat. ch. 718, § 3 (see now Fam. Code § 4502); Code Civ. Proc. § 683.130(c), as amended by 1992 Cal. Stat. ch. 718, § 4.

38. See Code Civ. Proc. § 683.130(c), as amended by 1993 Cal. Stat. ch. 876, § 8.

Current Law

In 1992 and 1993, this area of the law was reorganized in the course of creating the new Family Code.³⁹ As a first step, the former cross-referenced provisions were carried over into the new code without substantive review.⁴⁰ At the same time, confusing an already complicated situation, many of these rules were amended to eliminate the last vestige of the 10-year rule.⁴¹ Attempts were made to coordinate the Family Code with the ongoing revisions occurring around it, but the situation remained confused.⁴²

39. The Family Code was enacted on Commission recommendation. See 1992 Cal. Stat. ch. 162 (AB 2650); 1992 Cal. Stat. ch. 163 (AB 2641) (conforming revisions); 1993 Cal. Stat. ch. 219 (AB 1500); *1994 Family Code*, 23 Cal. L. Revision Comm'n Reports 1, 9 n.1 (1993).

40. Code of Civil Procedure Section 683.310 was revised to provide as follows:

683.310. Except as otherwise provided in Section 4502 of the Family Code, this chapter does not apply to a judgment or order made or entered pursuant to the Family Code.

Family Code Section 4502, as enacted in 1992, carried forward the then-existing version of Civil Code Section 4384.5:

4502. A party may renew a judgment for child, family, or spousal support as provided in Article 2 (commencing with Section 683.110) of Chapter 3 of Title 9 of Part 2 of the Code of Civil Procedure.

The special writ of execution rules from former Civil Code Section 4383 were continued in Family Code Sections 5100-5102 and 5103-5104 without substantive change. See *infra* note 42.

41. See 1992 Cal. Stat. ch. 718; 1993 Cal. Stat. ch. 876. These amendments, not sponsored by the Commission, occurred in parallel bills at the same sessions during which the Family Code was created.

42. Family Code Section 4502 was amended in 1993 to pick up the 1992 amendments to Civil Code Section 4384.5. It now provides:

4502. Notwithstanding any other provision of law, a judgment for child, family, or spousal support, including a judgment for reimbursement or other arrearages, is exempt from any requirement that judgments be renewed. A judgment for child, family, or spousal support, including all lawful interest and penalties computed thereon, is enforceable until paid in full.

The writ of execution rules from former Civil Code Sections 4383 and 4384, as revised in 1993, read as follows in their Family Code setting:

Fam. Code § 5100. Enforcement of child or family support without prior court approval

5100. Notwithstanding Section 290, a child or family support order may be enforced by a writ of execution without prior court approval as long as the support order remains enforceable.

Fam. Code § 5101. Enforcement of spousal support without prior court approval

5101. Notwithstanding Section 290, a spousal support order may be enforced by a writ of execution without prior court approval as long as the support order remains enforceable.

Fam. Code § 5102. Period for enforcement of installment payments

5102. If a support order provides for the payment of support in installments, the period specified pursuant to this chapter runs as to each installment from the date the installment became due.

Fam. Code § 5103. Enforcement of support against employee pension benefit plan

5103. (a) Notwithstanding Section 2060, an order for the payment of child, family, or spousal support may be enforced against an employee pension benefit plan regardless of whether the plan has been joined as a party to the proceeding in which the support order was obtained.

(b) Notwithstanding Section 697.710 of the Code of Civil Procedure, an execution lien created by a levy on the judgment debtor's right to payment of benefits from an employee pension benefit plan to enforce an order for the payment of child, family, or spousal support continues until the date the plan has withheld and paid over to the levying officer, as provided in Section 701.010 of the Code of Civil Procedure, the full amount specified in the notice of levy, unless the plan is directed to stop withholding and paying over before that time by court order or by the levying officer.

(c) A writ of execution pursuant to which a levy is made on the judgment debtor's right to payment of benefits from an employee pension benefit plan under an order for the payment of child, family, or spousal support shall be returned not later than one year after the date the execution lien expires under subdivision (b).

Fam. Code § 5104. Application for writ

5104. (a) The application for a writ of execution shall be accompanied by an affidavit stating the total amount due and unpaid that is authorized to be enforced pursuant to Sections 5100 to 5103, inclusive, on the date of the application.

(b) If interest on the overdue installments is sought, the affidavit shall state the total amount of the interest and the amount of each due and unpaid installment and the date it became due.

The Commission proposes to reconcile the relationship between the Enforcement of Judgments Law and the Family Code. Accordingly, the vestiges of the 10-year renewal rule as applicable to support judgments should be deleted from the Family Code⁴³ and the obsolete cross-reference to the Family Code in the Enforcement of Judgments Law should be deleted.⁴⁴

The Commission also recommends making clear that *non-money* judgments under the Family Code are subject to the general rules governing the period of enforceability and renewal, on a mandatory basis, not on an optional basis as in the case of support judgments. The general renewal scheme in the Enforcement of Judgments Law applies to judgments for possession or sale of property.⁴⁵ In recent years, the revisions of the law concerning enforcement and renewal of judgments under the Family Law Act, or now the Family Code, have focused on support judgments. It appears that the policies supporting that legislation do not apply to enforcement of judgments for sale or possession of property. Thus, it is appropriate to clarify the law by applying the orderly renewal procedure to such judgments.⁴⁶

(c) 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.

43. See proposed repeal of Fam. Code §§ 291, 5102 *infra*.

44. See proposed amendment to Code Civ. Proc. § 683.310 *infra*.

45. See Sections 683.020 (10-year period for enforcement of judgments), 683.110 (renewal of judgments).

46. The Commission is informed that at least one judge has refused to exercise discretion under former Civil Code Section 4380 (now Family Code Section 290) on the grounds that the 10-year period of enforceability had expired, notwithstanding that Code of Civil Procedure Section 683.310 makes the general rules inapplicable to such judgments.

Commission Recommendations

In summary, the Commission recommends several technical revisions to clarify the law concerning enforcement of Family Code judgments:

- Code of Civil Procedure Section 683.310 should be amended to eliminate the cross-reference to Family Code Section 4502, since that section no longer provides an exception to the general judgment renewal procedure.
- Family Code Sections 291 (diligence) and 5102 (running of time on installments) should be repealed since there is no longer a limited period of enforceability.
- The general rules governing enforceability and renewal of judgments for possession or sale should be applied to these types of judgments under the Family Code.

RECOMMENDED LEGISLATION

Code Civ. Proc. § 483.010 (amended). Cases in which attachment authorized

SECTION 1. Section 483.010 of the Code of Civil Procedure, as amended by Section 26 of Chapter 589 of the Statutes of 1993, is amended to read:

483.010. (a) Except as otherwise provided by statute, an attachment may be issued only in an action on a claim or claims for money, each of which is based upon a contract, express or implied, where the total amount of the claim or claims is a fixed or readily ascertainable amount not less than five hundred dollars (\$500) exclusive of costs, interest, and attorney's fees.

(b) An attachment may not be issued on a claim which is secured by any interest in real property arising from agreement, statute, or other rule of law (including any mortgage or deed of trust of realty and any statutory, common law, or equitable lien on real property, but excluding any security interest in fixtures subject to Division 9 (commencing with Section 9101) of the Commercial Code). However, an attachment may be issued (1) where the claim was originally so secured but, without any act of the plaintiff or the person to whom the security was given, the security has become valueless or has decreased in value to less than the amount then owing on the claim, in which event the amount to be secured by the attachment shall not exceed the lesser of the amount of the decrease or the difference between the value of the security and the amount then owing on the claim, or (2) where the claim was secured by a nonconsensual possessory lien but the lien has been relinquished by the surrender of the possession of the property.

(c) If the action is against a defendant who is a natural person, an attachment may be issued only on a claim which

arises out of the conduct by the defendant of a trade, business, or profession. An attachment may not be issued on a claim against a defendant who is a natural person if the claim is based on 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 the defendant primarily for personal, family, or household purposes.

(d) An attachment may be issued pursuant to this section whether or not other forms of relief are demanded.

~~(e) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.~~

Comment. The last clause of subdivision (b) of Section 483.010 is omitted as obsolete. This exception was applicable to personal property formerly covered by the general rule against attachment on a claim secured by personal property.

Subdivision (e) is deleted to remove the sunset provision that was enacted in 1990. See 1990 Cal. Stat. ch. 943, § 1.

Background Comment (1974-90 revised). Section 483.010 is based on subdivision (a) of former Section 537.1. Subdivision (a) of former Section 537.1 was designed to limit attachment to cases arising out of commercial transactions. (The title to the 1972 enactment provides that it is one “relating to attachment in commercial actions.”) Section 483.010 continues this purpose. Subdivision (a) limits the claims on which an attachment may be issued to those based on a contract, express or implied, where the total amount claimed is \$500 or more, exclusive of costs, interest, and attorney’s fees. Subdivision (c) further carries out this purpose by providing that, if the defendant is an individual, an attachment may be issued only if the contract claim “arises out of the conduct by the individual of a trade, business, or profession” and only if the goods, services, or money furnished were not used primarily for the defendant’s personal, family, or household purposes. *Cf.* *Advance Transformer Co. v. Superior Court*, 44 Cal. App. 3d 127, 142, 118 Cal. Rptr. 350, 360 (1974) (construing former Sections 537.1 and 537.2 as “limiting the attachment to situations in which the claim arises out of defendant’s conduct of his business”). Compare Civil Code Section

1802.1 (retail sales). However, Section 483.010 is intended to encompass each of the situations described in paragraphs (1) through (4) of subdivision (a) of former Section 537.1. In this respect, it should be noted that the term “contract” used in subdivision (a) includes a lease of either real or personal property. See *Stanford Hotel Co. v. M. Schwind Co.*, 180 Cal. 348, 181 P. 780 (1919) (realty); *Walker v. Phillips*, 205 Cal. App. 2d 26, 22 Cal. Rptr. 727 (1962) (personalty). In addition, unlike former Section 537.2, Section 483.010 permits attachment on such claims against corporations and partnerships and other unincorporated associations which are not organized for profit or engaged in an activity for profit. Under Section 483.010, the court is not faced with the potentially difficult and complex problem of determining whether a corporation, partnership, or association is engaged in a trade, business, or profession.

Claims may be aggregated, but the total amount claimed in the action must be not less than \$500. Generally an expeditious remedy will be available for lesser amounts under the small claims procedure. See Section 116.110 *et seq.* The claim must be for a “fixed or readily ascertainable” amount. This provision continues former law. E.g., *Lewis v. Steifel*, 98 Cal. App. 2d 648, 220 P.2d 769 (1950).

The introductory clause of Section 483.010 recognizes the authority to attach granted by other miscellaneous statutory provisions. See, e.g., Civ. Code §§ 3065a, 3152; Fin. Code § 3144; Food & Agric. Code § 281; Harb. & Nav. Code § 495.1; Health & Safety Code § 11501; Lab. Code § 5600; Rev. & Tax. Code §§ 6713, 7864, 8972, 11472, 12680, 18833, 26251, 30302, 32352. See also Section 492.010 (nonresident attachment).

The attachment remedy is not available where the plaintiff’s claim is secured by real property unless, without act of the plaintiff, the security has become valueless or has decreased in value to less than the amount then owing on the claim. See subdivision (b). Moreover, the security cannot simply be waived. As to a claim secured by personal property, see Section 483.015(b)(4). Special rules also apply in unlawful detainer cases. See Section 483.020.

Code Civ. Proc. § 483.010 (repealed). Cases in which attachment authorized

SEC. 2. Section 483.010 of the Code of Civil Procedure, as added by Section 1.5 of Chapter 943 of the Statutes of 1990, is repealed.

~~483.010. (a) Except as otherwise provided by statute, an attachment may be issued only in an action on a claim or~~

claims for money, each of which is based upon a contract, express or implied, where the total amount of the claim or claims is a fixed or readily ascertainable amount not less than five hundred dollars (\$500) exclusive of costs, interest, and attorney's fees.

(b) An attachment may not be issued on a claim which is secured by any interest in real or personal property arising from agreement, statute, or other rule of law (including any mortgage or deed of trust of realty, any security interest subject to Division 9 (commencing with Section 9101) of the Commercial Code, and any statutory, common law, or equitable lien). However, an attachment may be issued (1) where the claim was originally so secured but, without any act of the plaintiff or the person to whom the security was given, the security has become valueless or has decreased in value to less than the amount then owing on the claim, in which event the amount for which the attachment may issue shall not exceed the lesser of the amount of the decrease or the difference between the value of the security and the amount then owing on the claim, or (2) where the claim was secured by a nonconsensual possessory lien but the lien has been relinquished by the surrender of the possession of the property.

(c) If the action is against a defendant who is a natural person, an attachment may be issued only on a claim which arises out of the conduct by the defendant of a trade, business, or profession. An attachment may not be issued on a claim against a defendant who is a natural person if the claim is based on 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 the defendant primarily for personal, family, or household purposes.

~~(d) An attachment may be issued pursuant to this section whether or not other forms of relief are demanded.~~

~~(e) This section shall become operative on January 1, 1996.~~

Comment. Former Section 483.010 (as added by 1990 Cal. Stat. ch. 943, § 1.5) is repealed in light of continuation of the alternative rule in Section 483.010, as amended to delete the sunset provision.

Code Civ. Proc. § 483.015 (amended). Amount to be secured by attachment

SEC. 3. Section 483.015 of the Code of Civil Procedure, as amended by Section 27 of Chapter 589 of the Statutes of 1993, is amended to read:

483.015. (a) Subject to subdivision (b) and to Section 483.020, the amount to be secured by an attachment is the sum of the following:

(1) The amount of the defendant's indebtedness claimed by the plaintiff.

(2) Any additional amount included by the court under Section 482.110.

(b) The amount described in subdivision (a) shall be reduced by the sum of the following:

(1) The amount of any money judgment in favor of the defendant and against the plaintiff that remains unsatisfied and is enforceable.

(2) The amount of any indebtedness of the plaintiff that the defendant has claimed in a cross-complaint filed in the action if the defendant's claim is one upon which an attachment could be issued.

(3) The amount of any claim of the defendant asserted as a defense in the answer pursuant to Section 431.70 if the defendant's claim is one upon which an attachment could be issued had an action been brought on the claim when it was not barred by the statute of limitations.

(4) The value of any security interest in the property of the defendant held by the plaintiff to secure the defendant's

indebtedness claimed by the plaintiff, together with the amount by which the value of the security interest has decreased due to the act of the plaintiff or ~~any person to whom a prior holder of the security interest was transferred.~~

~~(c) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.~~

Comment. Subdivision (c) of Section 483.015 is deleted to remove the sunset provision that was enacted in 1990. See 1990 Cal. Stat. ch. 943, § 2. For a special limitation on the reduction factor in subdivision (b)(4), see Section 483.020(e) (unlawful detainer). Subdivision (b)(4) is amended for clarity. This is a technical, nonsubstantive change.

Background Comment (1982-83 revised). Section 483.015 governs the amount for which an attachment may issue. Subdivision (b) clarifies the nature of claims that will reduce the amount to be secured by attachment. This subdivision makes clear, for example, that the amount to be secured by the attachment is not reduced by a tort claim that has not been reduced to judgment. The defendant may seek to have the amount secured by the attachment reduced as provided in Sections 484.060 and 485.240. Under subdivision (b), if a claim may be offset only if it is “one upon which an attachment could be issued,” the claim must meet the requirements of Section 483.010 as to amount and nature of the claim.

Code Civ. Proc. § 483.015 (repealed). Amount to be secured by attachment

SEC. 4. Section 483.015 of the Code of Civil Procedure, as added by Section 2.5 of Chapter 943 of the Statutes of 1990, is repealed.

~~483.015. (a) Subject to subdivision (b) and to Section 483.020, the amount to be secured by an attachment is the sum of the following:~~

~~(1) The amount of the defendant’s indebtedness claimed by the plaintiff.~~

~~(2) Any additional amount included by the court under Section 482.110.~~

~~(b) The amount described in subdivision (a) shall be reduced by the sum of the following:~~

~~(1) The amount of any money judgment in favor of the defendant and against the plaintiff that remains unsatisfied and is enforceable.~~

~~(2) The amount of any indebtedness of the plaintiff that the defendant has claimed in a cross-complaint filed in the action if the defendant's claim is one upon which an attachment could be issued.~~

~~(3) The amount of any claim of the defendant asserted as a defense in the answer pursuant to Section 431.70 if the defendant's claim is one upon which an attachment could be issued had an action been brought on the claim when it was not barred by the statute of limitations.~~

~~(c) This section shall become operative on January 1, 1996.~~

Comment. Former Section 483.015 (as added by 1990 Cal. Stat. ch. 943, § 2.5) is repealed in light of continuation of the alternative rule in Section 483.015, as amended to delete the sunset provision.

Code Civ. Proc. § 483.020 (technical amendment). Amount secured by attachment in unlawful detainer proceeding

SEC. 5. Section 483.020 of the Code of Civil Procedure is amended to read:

483.020. (a) Subject to subdivisions (d) and (e), the amount to be secured by the attachment in an unlawful detainer proceeding is the sum of the following:

(1) The amount of the rent due and unpaid as of the date of filing the complaint in the unlawful detainer proceeding.

(2) Any additional amount included by the court under subdivision (c).

(3) Any additional amount included by the court under Section 482.110.

(b) In an unlawful detainer proceeding, the plaintiff's application for a right to attach order and a writ of attachment pursuant to this title may include (in addition to the rent due

and unpaid as of the date of the filing of the complaint and any additional estimated amount authorized by Section 482.110) an amount equal to the rent for the period from the date the complaint is filed until the estimated date of judgment or such earlier estimated date as possession has been or is likely to be delivered to the plaintiff, such amount to be computed at the rate provided in the lease.

(c) The amount to be secured by the attachment in the unlawful detainer proceeding may, in the discretion of the court, include an additional amount equal to the amount of rent for the period from the date the complaint is filed until the estimated date of judgment or such earlier estimated date as possession has been or is likely to be delivered to the plaintiff, such amount to be computed at the rate provided in the lease.

~~(d) Notwithstanding subdivision (b) of Section 483.010, an attachment may be issued in an unlawful detainer proceeding where *Except as provided in subdivision (e), the amount to be secured by the attachment as otherwise determined under this section shall be reduced by the amounts described in subdivision (b) of Section 483.015.*~~

~~(e) Where the plaintiff has received a payment or holds a deposit to secure the payment of rent or the performance of other obligations under the lease. If the payment or deposit secures only the payment of rent, the amount of the payment or deposit shall be subtracted in determining the amount to be secured by the attachment. If the payment or deposit secures (1) the payment of rent and the performance of other obligations under the lease or secures (2) only the performance of other obligations under the lease, the amount of the payment or deposit shall not be subtracted in determining the amount to be secured by the attachment.~~

~~(e) The amount to be secured by the attachment as otherwise determined under this section shall be reduced by the amounts described in subdivision (b) of Section 483.015.~~

Comment. Section 483.020 is amended to conform this section to Sections 483.010 and 483.015, as amended in 1990. The “notwithstanding” clause formerly in subdivision (d) is unnecessary, since Section 483.010 has been amended to eliminate the categorical restriction on attachment where a claim is secured by personal property. See 1990 Cal. Stat. ch. 943, § 1. Former subdivision (e) is deleted as surplus, since the appropriate reduction in the amount of the attachment is covered by subdivision (d), which incorporates the reduction factors in Section 483.015. See 1990 Cal. Stat. ch. 943, § 2, which added paragraph (4) to Section 483.015(b).

As revised, this section is consistent with the rule that an attachment is available where a claim is partially secured by personal property (Section 483.010(b)), with the amount of the attachment reduced by the value of any security interest (Section 483.015(b)(4)) that is applicable exclusively to the rental obligation. If the security may be applied to any obligation other than rent, subdivision (e) makes clear that the amount of the attachment is not reduced by the amount of the security.

Background Comment (1978 revised). Section 483.020 makes clear that, on the plaintiff’s application, the “amount to be secured by the attachment” in an unlawful detainer proceeding may include, in the court’s discretion, an amount for the use and occupation of the premises by the defendant during the period from the time the complaint is filed until either the time of judgment or such earlier time as possession has been or is likely to be delivered to the plaintiff. One factor the court should consider in deciding whether to allow the additional amount is the likelihood that the unlawful detainer proceeding will be contested. There may be a considerable delay in bringing the unlawful detainer proceeding to trial if it is contested. In this case, there may be a greater need for attachment to include an additional amount to cover rent accruing after the complaint is filed. It should be noted that, in the case of a defendant who is a natural person, attachment is permitted only where the premises were leased for trade, business, or professional purposes. See Section 483.010.

The amount authorized under subdivision (c) is in addition to (1) the amount in which the attachment would otherwise issue (unpaid rent due and owing at the time of the filing of the complaint) and (2) the additional amount for costs and attorney’s fees that the court may authorize under Section 482.110.

Subdivision (d) makes clear that the amount of a deposit (such as a deposit described in Civil Code Section 1950.7) held by the plaintiff solely to secure the payment of rent is to be subtracted in determining the amount to be secured by the attachment. However, the amount of the deposit is not subtracted in determining the amount to be secured by the attachment where, for example, the deposit is to secure both the payment of rent and the repair and cleaning of the premises on termination of the tenancy. Under former law, it was held that a deposit in connection with a lease of real property was not “security” such as to preclude an attachment under former Section 537(4), superseded by Section 483.010(b). See *Garfinkle v. Montgomery*, 113 Cal. App. 2d 149, 155-57, 248 P.2d 52, 56-57 (1952).

Code Civ. Proc. § 484.050 (technical amendment). Contents of notice of application and hearing

SEC. 6. Section 484.050 of the Code of Civil Procedure is amended to read:

484.050. The notice of application and hearing shall inform the defendant of all of the following:

(a) A hearing will be held at a place and at a time, to be specified in the notice, on plaintiff’s application for a right to attach order and a writ of attachment.

(b) The order will be issued if the court finds that the plaintiff’s claim is probably valid and the other requirements for issuing the order are established. The hearing is not for the purpose of determining whether the claim is actually valid. The determination of the actual validity of the claim will be made in subsequent proceedings in the action and will not be affected by the decisions at the hearing on the application for the order.

(c) ~~The amount to be secured by the attachment is the amount of the defendant’s indebtedness claimed by the plaintiff over and above the sum of (1) the amount of any money judgment in favor of the defendant and against the plaintiff that remains unsatisfied and is enforceable, (2) the amount of any indebtedness of the plaintiff claimed by the defendant in a cross-complaint filed in the action if the~~

~~defendant's claim is one upon which an attachment could be issued, and (3) the amount of any claim of the defendant asserted as a defense in the answer pursuant to Section 431.70 if the defendant's claim is one upon which an attachment could be issued had an action been brought on the claim when it was not barred by the statute of limitations determined pursuant to Sections 482.110, 483.010, 483.015, and 483.020, which statutes shall be summarized in the notice.~~

(d) If the right to attach order is issued, a writ of attachment will be issued to attach the property described in the plaintiff's application unless the court determines that such *the* property is exempt from attachment or that its value clearly exceeds the amount necessary to satisfy the amount to be secured by the attachment. However, additional writs of attachment may be issued to attach other nonexempt property of the defendant on the basis of the right to attach order.

(e) If the defendant desires to oppose the issuance of the order, the defendant shall file with the court and serve on the plaintiff a notice of opposition and supporting affidavit as required by Section 484.060 not later than five court days prior to the date set for hearing.

(f) If the defendant claims that the personal property described in the application, or a portion thereof, is exempt from attachment, the defendant shall include that claim in the notice of opposition filed and served pursuant to Section 484.060 or file and serve a separate claim of exemption with respect to the property as provided in Section 484.070. If the defendant does not do so, the claim of exemption will be barred in the absence of a showing of a change in circumstances occurring after the expiration of the time for claiming exemptions.

(g) The defendant may obtain a determination at the hearing whether real or personal property not described in the application or real property described in the application is

exempt from attachment by including the claim in the notice of opposition filed and served pursuant to Section 484.060 or by filing and serving a separate claim of exemption with respect to the property as provided in Section 484.070, but the failure to so claim that the property is exempt from attachment will not preclude the defendant from making a claim of exemption with respect to the property at a later time.

(h) Either the defendant or the defendant's attorney or both of them may be present at the hearing.

(i) The notice shall contain the following statement: "You may seek the advice of an attorney as to any matter connected with the plaintiff's application. The attorney should be consulted promptly so that the attorney may assist you before the time set for hearing."

Comment. Subdivision (c) of Section 484.050 is amended for conformity with the substantive rules governing the amount of an attachment. The notice is required to set out the substance of the rules in Sections 482.110, 483.010, 483.015, and 483.020. See Section 482.030(b) (Judicial Council to prescribe form of notices).

Code Civ. Proc. § 484.090 (amended). Issuance of order and writ on notice

SEC. 7. Section 484.090 of the Code of Civil Procedure is amended to read:

484.090. (a) At the hearing, the court shall consider the showing made by the parties appearing and shall issue a right to attach order, which shall state the amount to be secured by the attachment determined by the court in accordance with Section 483.015 or 483.020, if it finds all of the following:

(1) The claim upon which the attachment is based is one upon which an attachment may be issued.

(2) The plaintiff has established the probable validity of the claim upon which the attachment is based.

(3) The attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.

(4) The amount to be secured by the attachment is greater than zero.

(b) If, in addition to the findings required by subdivision (a), the court finds that the defendant has failed to prove that all the property sought to be attached is exempt from attachment, it shall order a writ of attachment to be issued upon the filing of an undertaking as provided by Sections 489.210 and 489.220.

(c) If the court determines that property of the defendant is exempt from attachment, in whole or in part, the right to attach order shall describe the exempt property and prohibit attachment of the property.

(d) The court's determinations shall be made upon the basis of the pleadings and other papers in the record; but, upon good cause shown, the court may receive and consider at the hearing additional evidence, oral or documentary, and additional points and authorities, or it may continue the hearing for the production of the additional evidence or points and authorities.

Comment. Paragraph (4) is added to subdivision (a) of Section 484.090 to make clear that the court is not to issue a right to attach order and writ of attachment if there is no amount to be secured by the attachment. This amendment establishes the principle that a right to attach order cannot be issued if there is no amount for which a writ of attachment can be issued and avoids the theoretical possibility of the court's making a right to attach order with no amount to be secured by the attachment. Prior to the 1990 amendments to Section 483.015, this was not likely to occur even in theory, but with the change in the rules concerning issuance of attachment where the plaintiff's claim is secured by personal property, the statutes read literally would permit issuance of a right to attach order under Section 484.090 even though the value of the security exceeded the amount of the claim. See Section 483.015(b)(4); see also Section 485.240 (application to set aside right to attach order).

Code Civ. Proc. § 485.220 (technical amendment). Issuance of ex parte order and writ

SEC. 8. Section 485.220 of the Code of Civil Procedure is amended to read:

485.220. (a) The court shall examine the application and supporting affidavit and, except as provided in Section 486.030, shall issue a right to attach order, which shall state the amount to be secured by the attachment, and order a writ of attachment to be issued upon the filing of an undertaking as provided by Sections 489.210 and 489.220, if it finds all of the following:

(1) The claim upon which the attachment is based is one upon which an attachment may be issued.

(2) The plaintiff has established the probable validity of the claim upon which the attachment is based.

(3) The attachment is not sought for a purpose other than the recovery upon the claim upon which the attachment is based.

(4) The affidavit accompanying the application shows that the property sought to be attached, or the portion thereof to be specified in the writ, is not exempt from attachment.

(5) The plaintiff will suffer great or irreparable injury (within the meaning of Section 485.010) if issuance of the order is delayed until the matter can be heard on notice.

(6) The amount to be secured by the attachment is greater than zero.

(b) If the court finds that the application and supporting affidavit do not satisfy the requirements of Section 485.010, it shall so state and deny the order. If denial is solely on the ground that Section 485.010 is not satisfied, the court shall so state and such denial does not preclude the plaintiff from applying for a right to attach order and writ of attachment under Chapter 4 (commencing with Section 484.010) with the same affidavits and supporting papers.

Comment. Paragraph (6) is added to subdivision (a) of Section 485.220 to make clear that the court is not to issue a right to attach order and writ of attachment if there is no amount to be secured by the attachment. This amendment is consistent with Section 484.090. See Section 484.090 Comment.

Code Civ. Proc. § 492.030 (technical amendment). Issuance of foreign attachment order

SEC. 9. Section 492.030 of the Code of Civil Procedure is amended to read:

492.030. (a) The court shall examine the application and supporting affidavit and shall issue a right to attach order, which shall state the amount to be secured by the attachment, and order a writ of attachment to be issued upon the filing of an undertaking as provided by Sections 489.210 and 489.220, if it finds all of the following:

(1) The claim upon which the attachment is based is one upon which an attachment may be issued.

(2) The plaintiff has established the probable validity of the claim upon which the attachment is based.

(3) The defendant is one described in Section 492.010.

(4) The attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.

(5) The affidavit accompanying the application shows that the property sought to be attached, or the portion thereof to be specified in the writ, is subject to attachment pursuant to Section 492.040.

(6) *The amount to be secured by the attachment is greater than zero.*

(b) If the court finds that the application and supporting affidavit do not satisfy the requirements of this chapter, it shall so state and deny the order. If denial is solely on the ground that the defendant is not one described in Section 492.010, the judicial officer shall so state and such denial does not preclude the plaintiff from applying for a right to attach order and writ of attachment under Chapter 4

(commencing with Section 484.010) with the same affidavits and supporting papers.

Comment. Paragraph (6) is added to subdivision (a) of Section 492.030 to make clear that the court is not to issue a right to attach order and writ of attachment if there is no amount to be secured by the attachment. This amendment is consistent with Section 484.090. See Section 484.090 Comment.

Code Civ. Proc. § 683.310 (amended). Time for filing renewal application

SEC. 10. Section 683.310 of the Code of Civil Procedure is amended to read:

683.310. Except as otherwise provided ~~in Section 4502 of the Family Code~~, this chapter does not apply to a judgment or order made or entered pursuant to the Family Code.

Comment. Section 683.310 is amended for consistency with Section 683.130 and Family Code Section 4502, as revised in 1993. See 1993 Cal. Stat. ch. 219, §§ 142-143; 1993 Cal. Stat. ch. 876, § 8; 1992 Cal. Stat. ch. 162, § 10. This is a technical, nonsubstantive change. For a specific provision in this chapter applicable to enforcement of support judgments under the Family Code, see Section 683.130. For a provision in the Family Code making this chapter applicable to enforceability and renewal of judgments for possession or sale, see Family Code Section 292.

Code Civ. Proc. § 703.140 (amended). Election of exemptions if bankruptcy petition is filed

SEC. 11. Section 703.140 of the Code of Civil Procedure is amended to read:

703.140. (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:

(1) If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(2) If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(b) The following exemptions may be elected as provided in subdivision (a):

(1) The debtor's aggregate interest, not to exceed ~~seven thousand five hundred dollars (\$7,500)~~ *fifteen thousand dollars (\$15,000)* in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed ~~one thousand two hundred dollars (\$1,200)~~ *two thousand four hundred dollars (\$2,400)* in value, in one motor vehicle.

(3) The debtor's interest, not to exceed ~~two hundred dollars (\$200)~~ *four hundred dollars (\$400)* in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed ~~five hundred dollars (\$500)~~ *one thousand dollars (\$1,000)* in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed in value ~~four hundred dollars (\$400)~~ *eight hundred dollars (\$800)* plus any unused amount of the exemption provided under paragraph (1), in any property.

(6) The debtor's aggregate interest, not to exceed ~~seven hundred fifty dollars (\$750)~~ *one thousand five hundred dollars (\$1,500)* in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmaturred life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value ~~four thousand dollars (\$4,000)~~ *eight thousand dollars (\$8,000)* in any accrued dividend or interest under, or loan value of, any unmaturred life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive any of the following:

(A) A social security benefit, unemployment compensation, or a local public assistance benefit.

(B) A veterans' benefit.

(C) A disability, illness, or unemployment benefit.

(D) Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(E) A payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:

(i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), *or* 408, ~~or~~ 409 of the Internal Revenue Code of 1954 *1986*.

(11) The debtor's right to receive, or property that is traceable to, any of the following:

(A) An award under a crime victim's reparation law.

(B) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(C) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(D) A payment, not to exceed ~~seven thousand five hundred dollars~~ (\$7,500) *fifteen thousand dollars (\$15,000)*, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.

(E) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a

dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

Comment. Section 703.140 is amended to conform to the amounts in the federal Bankruptcy Code and to correct references to sections in the Internal Revenue Code. See 11 U.S.C. § 522.

Code Civ. Proc. § 704.010 (amended). Motor vehicles exemption

SEC. 12. Section 704.010 of the Code of Civil Procedure is amended to read:

704.010. (a) Any combination of the following is exempt in the amount of ~~one thousand two hundred dollars (\$1,200)~~ *two thousand four hundred dollars (\$2,400)*:

- (1) The aggregate equity in motor vehicles.
- (2) The proceeds of an execution sale of a motor vehicle.
- (3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

(b) Proceeds exempt under subdivision (a) are exempt for a period of 90 days after the time the proceeds are actually received by the judgment debtor.

(c) For the purpose of determining the equity, the fair market value of a 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.

(d) If the judgment debtor has only one motor vehicle and it is sold at an execution sale, the proceeds of the execution sale are exempt in the amount of ~~one thousand two hundred dollars (\$1,200)~~ *two thousand four hundred dollars (\$2,400)* without making a claim. 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. In the case covered by this subdivision, the exemption provided by subdivision (a) is not available.

Comment. Section 704.010 is amended to double the exemption amounts.

Code Civ. Proc. § 704.030 (amended). Materials for repair or improvement of dwelling

SEC. 13. Section 704.030 of the Code of Civil Procedure is amended to read:

704.030. Material that in good faith is about to be applied to the repair or improvement of a residence is exempt if the equity in the material does not exceed ~~one thousand dollars (\$1,000)~~ *two thousand dollars (\$2,000)* 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 is amended to double the exemption amount.

Code Civ. Proc. § 704.040 (amended). Jewelry, heirlooms, works of art

SEC. 14. Section 704.040 of the Code of Civil Procedure is amended to read:

704.040. Jewelry, heirlooms, and works of art are exempt to the extent that the aggregate equity therein does not exceed ~~two thousand five hundred dollars (\$2,500)~~ *five thousand dollars (\$5,000)*.

Comment. Section 704.040 is amended to double the exemption amount.

Code Civ. Proc. § 704.060 (amended). Personal property used in trade, business, or profession

SEC. 15. Section 704.060 of the Code of Civil Procedure is amended to read:

704.060. (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:

(1) ~~Two thousand five hundred dollars (\$2,500)~~ *Five thousand dollars (\$5,000)*, 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) ~~Two thousand five hundred dollars (\$2,500)~~ *Five thousand dollars (\$5,000)*, 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) ~~Five thousand dollars (\$5,000)~~ *Ten thousand dollars (\$10,000)*, 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 exemptions provided in paragraphs (1) and (2) are not available.

(b) If property described in subdivision (a) is sold at an execution sale, or if it has been lost, damaged, or destroyed, the proceeds of the execution sale or of insurance or other indemnification are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor or the judgment debtor's spouse. The amount exempt under this subdivision is the amount specified in subdivision (a) that applies to the particular case less the aggregate equity of any

other property to which the exemption provided by subdivision (a) for the particular case has been applied.

(c) Notwithstanding subdivision (a), a motor vehicle is not exempt under subdivision (a) if there is a motor vehicle exempt under Section 704.010 which is reasonably adequate for use in the trade, business, or profession for which the exemption is claimed under this section.

Comment. Section 704.060 is amended to double the exemption amounts.

Code Civ. Proc. § 704.080 (amended). Deposit account in which social security payments are directly deposited

SEC. 16. Section 704.080 of the Code of Civil Procedure is amended to read:

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)~~ *Two thousand dollars (\$2,000)* where one depositor is the designated payee of the directly deposited payments.

(2) ~~Seven hundred fifty dollars (\$750)~~ *Three thousand dollars (\$3,000)* 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)~~ *two thousand dollars (\$2,000)*.

(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 the exemption claim for the deposit account under subdivision (c), the court shall immediately transmit a certified copy of the order of the court to the financial institution and to the levying officer. If the order determines that all or part of the excess is exempt under subdivision (c), with respect to the amount of the excess which is exempt, the financial institution shall transfer the exempt excess from the suspense account or otherwise release any restrictions on its withdrawal by the judgment debtor. The transfer or release shall be effected within three business days of the receipt of the certified copy of the court order by the financial institution.

(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 is amended to quadruple the exemption amounts.

Code Civ. Proc. § 704.100 (amended). Life insurance, endowment, annuity policies

SEC. 17. Section 704.100 of the Code of Civil Procedure is amended to read:

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 unexpired 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)~~ *eight thousand dollars (\$8,000)*. 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) 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 is amended to double the exemption amounts.

Code Civ. Proc. § 704.780 (amended). Hearing on homestead exemption

SEC. 18. Section 704.780 of the Code of Civil Procedure is amended to read:

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 or disabled veteran'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 whether the dwelling is exempt. If the court determines that the dwelling is exempt, the court shall determine the amount of the homestead exemption and the fair market value of the dwelling and. *The court shall make an order for sale of the dwelling subject to the homestead exemption, unless the court determines that the sale of the dwelling would not be likely to produce a bid sufficient to satisfy any part of the amount due on the judgment.* The order for sale of the dwelling subject to the homestead exemption shall specify the amount of the proceeds of the sale that is to be distributed to each person

having a lien or encumbrance on the dwelling and shall include the name and address of each such person. Subject to the provisions of this article, the sale is governed by Article 6 (commencing with Section 701.510) of Chapter 3. If the court determines that the dwelling is not exempt, the court shall make an order for sale of the property in the manner provided in Article 6 (commencing with Section 701.510) of Chapter 3.

(c) The court clerk shall transmit a certified 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.

(d) The court may appoint a qualified appraiser to assist the court in determining the fair market value of the dwelling. If the court appoints an appraiser, the court shall fix the compensation of the appraiser in an amount determined by the court to be reasonable, not to exceed similar fees for similar services in the community where the dwelling is located.

Comment. Subdivision (b) of Section 704.780 is amended to make clear that the court is not required to order a sale if the proceeds are not likely to be sufficient to satisfy any part of the creditor's judgment. This amendment avoids futile sale orders and is made in response to the court's decision in *Abbett Electric Corp. v. Storek*, 22 Cal. App. 4th 1460, 27 Cal. Rptr. 2d 845 (1994). See also Sections 704.800 (minimum bid), 704.850 (distribution of proceeds of sale of homestead).

Fam. Code § 290 (amended). Methods and time of enforcement

SEC. 19. Section 290 of the Family Code is amended to read:

290. A *Subject to Section 292*, a judgment or order made or entered pursuant to this code may be enforced by the court by execution, the appointment of a receiver, or contempt, or by such other order as the court in its discretion determines from time to time to be necessary.

Comment. Section 290 is amended to apply the general rules concerning the period of enforceability and renewal of judgments in the Enforcement of Judgments Law to judgments for the sale or possession of property under the Family Code. Thus, for example, a judgment for sale would be unenforceable if it is not renewed within the 10-year period of Code of Civil Procedure Section 683.020. This amendment does not affect the rules concerning enforcement of child, family, or spousal support. See, e.g., Sections 4502, 5100-5104.

Fam. Code § 291 (repealed). Effect of lack of diligence in seeking enforcement

SEC. 20. Section 291 of the Family Code is repealed.

~~291. The lack of diligence for more than the period specified in Chapter 7 (commencing with Section 5100) of Part 5 of Division 9 in seeking enforcement of a judgment or order made, entered, or enforceable pursuant to this code that requires the payment of money shall be considered by the court in determining whether to permit enforcement of the judgment or order under Section 290.~~

Comment. Section 291 is repealed because it is surplus. There is no longer any limitation on the period of enforceability of support. See Section 4502 (exception to renewal).

Fam. Code § 292 (added). Time of enforcement of judgment for possession or sale

SEC. 21. Section 292 is added to the Family Code, to read:

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

Comment. Section 292 applies the general rules concerning the period of enforceability and renewal of judgments in the Enforcement of Judgments Law to judgments for the sale or possession of property under the Family Code. This provision does not affect the rules concerning enforcement of child, family, or spousal support. See, e.g., Sections 4502, 5100-5104; Code Civ. Proc. § 683.130(c) (optional renewal of support judgments).

Fam. Code § 5102 (repealed). Period for enforcement of installment payments

SEC. 22. Section 5102 of the Family Code is repealed.

~~5102. If a support order provides for the payment of support in installments, the period specified pursuant to this chapter runs as to each installment from the date the installment became due.~~

Comment. Section 5102 is repealed because it is surplus. There is no longer any limitation on the period of enforceability of support. See Section 4502.

REVISED COMMENTS

Fam. Code § 4502 (revised comment). Exception to renewal requirement

Comment. Section 4502 continues former Civil Code Section 4384.5 without substantive change. The reference to “family” support is new and is consistent with Section 4501. See also Code Civ. Proc. § 683.130(c) (optional renewal of support judgments).
