

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Third Decennial Review of Exemptions
from Enforcement of Money Judgments

December 2012

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

This report includes an explanatory Comment to each section of the recommended legislation. 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. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

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CALIFORNIA LAW REVISION COMMISSION

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December 13, 2012

To: The Honorable Edmund G. Brown, Jr.
Governor of California, and
The Legislature of California

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

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

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

The Commission has now completed its third decennial review. It finds that the automatic COLA mechanism has been operating as intended. Consequently, the statutory exemption amounts do not require manual adjustment at this time.

Because the COLA mechanism is properly adjusting the exemption amounts to account for inflation, the Commission sees no need for further decennial review of the exemption amounts.

The Commission therefore recommends that the decennial review requirement be repealed.

Respectfully submitted,

Xochitl Carrion
Chairperson

THIRD DECENNIAL REVIEW OF EXEMPTIONS FROM ENFORCEMENT OF MONEY JUDGMENTS

The Enforcement of Judgments Law was enacted on the Commission's recommendation.¹

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

Exemptions that are based on dollar amount limitations need to be periodically adjusted, to avoid an unintended reduction in the value of the exemption over time, as a result of inflation. To provide for continuing review and adjustment of exemption amounts, the Commission recommended the enactment of Code of Civil Procedure Section 703.120(a),³ which provides:

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

Pursuant to that mandate, the Commission conducted its first decennial review of exemption amounts in 1993.⁴ The second decennial review was conducted in 2003.⁵

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

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

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

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

The findings and recommendation set out in this report are the results of the Commission’s third decennial review.

GENERAL BACKGROUND

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

Section 704 Money Judgment Exemptions

The Section 704 money judgment exemptions fall into three categories:

- (1) *Exemptions that protect personal property without regard to the monetary value of the property.*⁶ Because those exemptions are not limited to a specified dollar amount, they are not subject to degradation in value as a result of inflation. Consequently, there is no need to review or adjust any “amounts” in connection with these exemptions.
- (2) *Exemptions that protect personal property up to a specified amount of value.*⁷ Because these exemptions

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

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

7. See Code Civ. Proc. §§ 704.010 (motor vehicle), 704.030 (residential repair materials), 704.040 (jewelry, heirlooms, and works of art), 704.060 (tools of trade), 704.080 (directly deposited Social Security and public benefit payments), 704.090 (inmate trust account), and 704.100 (life insurance policy). Some of the exemption dollar amounts are increased if the judgment debtor is married. See Code Civ. Proc. §§ 704.060 (tools of trade), 704.090 (inmate trust

are based on specified dollar amounts, they require periodic adjustment to maintain their intended value.

- (3) *The “homestead exemption,” which protects part of the value of real property under specified circumstances.*⁸ In its prior decennial reviews, the Commission has not made any recommendation to adjust the amount of the homestead exemption.

Bankruptcy Exemptions

Federal bankruptcy law provides its own set of exemptions that are available in personal bankruptcy.⁹ However, each state may opt out of the federal exemption set, in which case the state’s own judgment enforcement exemptions apply in the state’s bankruptcy proceedings.¹⁰

California has opted out of the federal bankruptcy exemption set.¹¹ This means that the Section 704 money judgment exemptions are available in bankruptcy in California, in lieu of the federal exemption set.

However, when California opted out of the federal bankruptcy exemptions, it also enacted the Section 703 bankruptcy exemptions. Those exemptions were modeled after the federal bankruptcy exemptions. They serve as an optional alternative to the Section 704 money judgment exemptions. Thus, a bankruptcy filer in California may choose between the state’s general money judgment exemptions and an alternative exemption set that mirrors those provided under federal law.

account), 704.100 (life insurance policy). But the general rule is that married persons are not entitled to increased or doubled exemption amounts, regardless of whether one or both of the spouses are debtors and regardless of the separate or community nature of the property. See Code Civ. Proc. § 703.110(a).

8. See Code Civ. Proc. § 704.730.

9. See 11 U.S.C. § 522(d).

10. See 11 U.S.C. § 522(b)(1).

11. See Code Civ. Proc. § 703.130.

SCOPE OF PRIOR DECENNIAL REVIEWS

The Commission's authority is not limited to review of the exemption amounts. Code of Civil Procedure Section 703.120(b) makes clear that the Commission also has general authority to "maintain a continuing review of and submit recommendations concerning enforcement of judgments." The Commission's resolution of authority also provides broad authority to study "enforcement of judgments."¹²

However, the decennial review required by Section 703.120(a) only addresses the exemption "amounts." The Commission is not required to consider other issues as part of that review. Historically, the Commission has not gone beyond that narrow mandate in conducting its decennial reviews. That approach was based on the limited purpose of Section 703.120(a) (to provide a mechanism for periodic review and adjustment of the exemption amounts) and the Commission's view that any major rebalancing of the equities of the existing exemption scheme should be addressed by the Legislature through the political process.

In its prior decennial reviews, the Commission has not made any recommendation to adjust the amount of the homestead exemption. That is because the amount of the homestead exemption receives regular legislative attention, obviating the need for Commission

12. See 2009 Cal. Stat. res. ch. 98. See also ACR 98 (Wagner) (2012). Commission recommendations on enforcement of judgments include: *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980); *Attachment*, 16 Cal. L. Revision Comm'n Reports 701 (1982); *1982 Creditors' Remedies Legislation*, 16 Cal. L. Revision Comm'n Reports 1001 (1982); *Creditors' Remedies*, 17 Cal. L. Revision Comm'n Reports 975 (1984); *Creditors' Remedies*, 19 Cal. L. Revision Comm'n Reports 1251 (1988); *Debtor-Creditor Relations*, 25 Cal. L. Revision Comm'n Reports 1 (1995); *Homestead Exemption*, 26 Cal. L. Revision Comm'n Reports 37 (1996); *Attachment by Undersecured Creditors*, 26 Cal. L. Revision Comm'n Reports 307 (1996); *Debtor-Creditor Law: Technical Revisions*, 31 Cal. L. Revision Comm'n Reports 123 (2001); *Enforcement of Judgments Under the Family Code*, 35 Cal. L. Revision Comm'n Reports 161 (2005).

review. Since 1990, the homestead exemption amount has been adjusted four times (most recently in 2012).¹³

The Commission has also not made any recommendation to change the amount of the inmate trust account exemption, as it applies to victim restitution claims.¹⁴ The extent to which inmate funds should be shielded from court-ordered victim restitution is fundamentally a political question that is best decided by the Legislature and the Governor.

First Decennial Review

At the time of the Commission's first decennial review in 1994, the exemption amounts had not been updated since they became operative in 1983. Between 1983 and 1994, the purchasing value of the dollar had declined by one-third or more. To account for this change in purchasing value due to inflation, the Commission recommended increases in the Section 704 money judgment exemptions. The Commission also recommended increases in the Section 703 bankruptcy exemptions (to keep pace with the federal bankruptcy exemptions).¹⁵ The Commission's recommendations were enacted into law.¹⁶

Second Decennial Review

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

13. See 1990 Cal. Stat. ch. 155, § 1; 1997 Cal. Stat. ch. 82, § 1; 2003 Cal. Stat. ch. 64; 2009 Cal. Stat. ch. 499, § 2; 2012 Cal. Stat. ch. 678, § 3.

14. See Code Civ. Proc. § 704.090(b).

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

16. See 1995 Cal. Stat. ch. 196.

The Commission again recommended that the Section 704 money judgment exemptions be increased to account for inflation.¹⁷ The recommended adjustments were enacted into law.¹⁸

The Commission did not recommend any changes to the Section 703 bankruptcy exemption amounts, because the Legislature had adjusted those amounts in 2001.¹⁹ In the same legislation, the Legislature had also created an automatic triennial Cost of Living Adjustment (“COLA”) for the Section 703 bankruptcy exemptions. It did so by incorporating a COLA mechanism from federal law, which automatically updates the amounts of the federal bankruptcy exemptions.²⁰ This COLA mechanism ensured that the Section 703 bankruptcy exemptions would maintain rough parity with the federal bankruptcy exemption amounts. It was therefore not necessary for the Commission to recommend any other adjustments to the Section 703 bankruptcy exemptions.

Instead, the Commission recommended that the automatic COLA approach be broadened, so that it would also apply to the Section 704 general exemption amounts. This would be done by replacing former Code of Civil Procedure Section 703.140(c) with Code of Civil Procedure Section 703.150, which would govern both sets of exemptions.²¹ The proposed COLA provision would not apply to the homestead exemption or the exemption of inmate trust accounts from victim restitution claims.

Under Code of Civil Procedure Section 703.150, the Judicial Council would have the responsibility of determining and publishing the triennially adjusted amounts, based on the change in the annual California Consumer Price Index for All Urban Consumers, with each adjusted amount rounded to the nearest

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

18. See 2003 Cal. Stat. ch. 379.

19. See 2001 Cal. Stat. ch. 42, § 1.

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

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

twenty-five dollars (\$25). The \$25 rounding factor was drawn from federal law.²²

The recommended COLA mechanism was enacted into law.²³

THIRD DECENNIAL REVIEW

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

Those exemptions do not need to be manually adjusted at this time, because they have been adjusted properly by the statutory COLA mechanism.

The Commission checked all of the adjustments that were required to be made since enactment of the COLA mechanism and confirmed the accuracy of those calculations and of the final adjusted amounts.²⁴ In addition, the Commission confirmed that the adjusted exemption amounts are being published by the Judicial Council as required by law and are readily available to the public.²⁵

The Commission is not aware of any problem with the operation of the COLA mechanism. The Commission found no court decision or secondary source that identified any legal or practical problem with the operation of the COLA mechanism.²⁶ Nor has

22. See 11 U.S.C. § 104(b)(1)(B).

23. See 2003 Cal. Stat. ch. 379.

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

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

26. Commission Staff Memorandum 2012-10, p. 8 (Mar. 19, 2012).

any interested group expressed any concerns about the operation of the COLA mechanism.²⁷

One recent development suggests that the Legislature is satisfied with the operation of the COLA mechanism. In 2009, the application of the COLA mechanism was broadened. It is now used to calculate the effect of inflation on the amount of the homestead exemption.²⁸

RECOMMENDATION

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

For those reasons, the Commission recommends that the decennial review requirement be repealed. The remaining language of Section 703.120, authorizing the Commission to continue to review and submit recommendations concerning enforcement of judgments, should be relocated to the general provisions of the Enforcement of Judgments Law.²⁹

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

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

29. See proposed Code of Civ. Proc. § 681.035.

PROPOSED LEGISLATION

Code Civ. Proc. § 681.035 (added). Law Revision Commission review

SECTION 1. Section 681.035 of the Code of Civil Procedure is added to Chapter 2 of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure, to read:

681.035. The California Law Revision Commission is authorized to maintain a continuing review of and submit recommendations to the Governor and the Legislature concerning enforcement of judgments.

Comment. Section 681.035 continues the last clause of former Section 703.120(b), without substantive change.

Code Civ. Proc. § 703.120 (repealed). Law Revision Commission review

SEC. 2. Section 703.120 of the Code of Civil Procedure is repealed.

Comment. Section 703.120 is repealed. The language generally authorizing the Law Revision Commission to review the Enforcement of Judgments Law is continued in Section 681.035.
