

TEXT OF COMMENTS TO SECTIONS AFFECTED BY
2006 COMMISSION RECOMMENDATIONS

CLRC Staff Note. This document sets out the text of Official Comments to two Commission-sponsored bills enacted in the 2006 legislative session — 2006 Cal. Stat. chs. 86 and 713. The source for each Comment is given in the accompanying Table of Sections Affected by 2006 Commission Legislation.

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CODE OF CIVIL PROCEDURE

Code Civ. Proc. § 580 (amended). Relief granted in limited civil case

Comment. Section 580 is amended to authorize the enforcement of a Family Code judgment in a limited civil case. The change would affect two judgment enforcement procedures: (1) a creditor's suit (Sections 708.210-708.270), and (2) a lien filed against a judgment debtor's interest in a pending case (Sections 708.410-708.480).

Other judgment enforcement procedures, which do not give rise to enforcement in a limited civil case, are not affected by the amendment. Those procedures fall into one of the following categories:

(1) A procedure conducted without a court hearing. See Sections 697.310-697.410 (judgment lien on real property), 697.510-697.670 (judgment lien on personal property), 699.010-701.830 (execution), 708.010-708.030 (written interrogatory or inspection demand), 712.010-716.030 (enforcement of writ of possession or sale).

(2) A procedure conducted in the same court that entered the judgment to be enforced (or in a court of the same or higher jurisdiction). See Sections 708.110-708.205 (debtor examination), 708.310-708.320 (charging order), 708.510-708.560 (assignment order), 708.610-708.630 (appointment of receiver), 708.710-708.795 (enforcement against obligation of public entity), 708.910-708.930 (enforcement against franchise), 709.020 (action against nonvested property interest).

(3) A special proceeding under the Probate Code. See Sections 709.010 (enforcement against debtor's interest as beneficiary of trust), 709.030 (enforcement against debtor's interest in guardianship or conservatorship estate).

The changes to subdivision (a) are nonsubstantive.

FAMILY CODE

Fam. Code § 290 (amended). Enforcement of judgment

Comment. Section 290 is amended to reflect the fact that new Section 291 does not limit the enforcement of a judgment or order made or entered pursuant to this code.

Fam. Code § 291 (repealed). Enforcement of judgment for possession or sale of property

Comment. Section 291 is repealed. New Section 291 provides a general rule for enforcement of a judgment under this code.

Fam. Code § 291 (added). Enforcement of judgment

Comment. Subdivisions (a)-(c) of Section 291 continue the substance of former subdivisions (a)-(b) of Section 4502 and generalize the substance of those provisions so that it applies to any judgment or order for the payment of money or the possession or sale of property that is made or entered under this code.

The reference in former Section 4502(a) to an order for reimbursement under Section 17402 is not continued. This is not a substantive change. Section 291 applies to any judgment or order for payment of money made or entered under this code. This includes an order to pay money under Section 17402.

Subdivision (d) continues former Section 4502(c) without substantive change.

Subdivision (e) is new. It is consistent with a recent appellate decision that stated, in dictum, that Family Code Section 4502 “does not address the procedural requirements for reaching the assets of a judgment debtor after that debtor’s death.” *Embree v. Embree*, 125 Cal. App. 4th 487, 495, 22 Cal. Rptr. 3d 782 (2004).

Subdivision (g) makes clear that the section applies to both judgments and orders.

Fam. Code § 4502 (repealed). Enforcement of support judgment

Comment. Section 4502 is repealed. Its substance is continued in Section 291. New Section 4502 provides a cross-reference to Section 291.

Fam. Code § 4502 (added). Enforcement of support judgment

Comment. Section 4502 provides a cross-reference to the general rule on enforcement of a judgment under the Family Code. Section 291 continues the substance of former Section 4502.

GOVERNMENT CODE

Gov’t Code § 11346.1 (amended). Emergency rulemaking

Comment. Subdivision (a) of Section 11346.1 is amended to make clear that the exemption of emergency rulemaking from the requirements of this chapter only applies to the procedures provided in this article and in Article 6 (commencing with Section 11349). Former subdivision (a) could be read to preclude application of a number of sections that should apply to an emergency regulation. See, e.g., Sections 11340.85(c)(10) (Internet publication of emergency regulation), 11343 (filing regulation with Secretary of State), 11344.1(a)(3) (publication of emergency regulation decisions in California Regulatory Notice Register), 11350 (judicial review of emergency regulation), 11350.3 (judicial review of emergency regulation decisions).

Gov’t Code § 11350 (amended). Judicial review

Comment. Subdivision (a) of Section 11350 is amended to correct a typographical error. Subdivisions (a) and (d)(2) are amended to make clear that it is the entire finding of emergency that is subject to review, and not just the “written statement” that is required as part of the finding of emergency. See Section 11346.1(b). These are nonsubstantive changes.