

Memorandum 77-57

Subject: Study 39.200 - Enforcement of Judgments (Comprehensive Statute
--Miscellaneous Policy Problems)

This memorandum discusses several problem areas in the draft of the Enforcement of Judgments Law. The relevant sections from the draft are attached hereto.

I. Judgment Lien
(§§ 674, 674.5, 674.7)

Background

Since 1851, California law has provided for a judgment lien on the judgment debtor's real property not exempt from execution which is owned by the debtor in the county where the judgment is recorded or which is thereafter acquired. From 1851 until 1923, the duration of the judgment lien was only two years although a writ of execution could be issued without prior court approval for five years after entry of the judgment. In 1955, both the duration of the judgment lien (see Section 674 in Exhibit 2) and the automatic issuance of a writ of execution were raised to 10 years.

At the February 1977 meeting, the Commission decided that the duration of the judgment lien should be coextensive with the period of enforceability of a money judgment (proposed to be 20 years with a possible maximum extension of one year--see Part II of this memorandum). The following discussion raises some issues pertaining to the judgment lien provisions. The drafting of the revised provision will have to await the consultant's study on the homestead exemption, but it is useful to consider the other issues and to have the judgment lien provisions in mind during the consideration of the other liens and their relation to one another (see Part III of this memorandum).

Type of Judgment Resulting in Lien

Section 674 refers to the "abstract of the judgment or decree" of several specified courts. The staff recommends that, when redrafted, this provision specify that it is a judgment for the payment of money that provides the basis for a judgment lien. Only a judgment which is entitled to be satisfied by the levy of execution may give rise to a

judgment lien. See 2 A. Freeman, Law of Judgments §§ 929-930 (5th ed. 1925); 4 B. Witkin, California Procedure Judgment § 139, at 3286 (2d ed. 1971).

As just indicated, Section 674 refers to a "judgment or decree." The staff proposes to define judgment for the purposes of this section to include a judgment, order, or decree for the payment of money. Section 1007 of the Code of Civil Procedure provides that an order for the payment of money made pursuant to the provisions of the Code of Civil Procedure "may be enforced by execution in the same manner as if it were a judgment." The reference to "decree," a traditional term describing the judgment of a court of equity, could be omitted since it has no special legal significance. See 4 B. Witkin, California Procedure Judgment § 1, at 3182 (2d ed. 1971). However, the term is still used. See Cal. R. Ct. 40.

A judgment for money on a claim against an executor or administrator does not give rise to a judgment lien. See 7 B. Witkin, Summary of California Law Wills and Probate § 439, at 5883 (8th ed. 1974). Such a judgment is paid in the due course of administration of the estate. See Prob. Code § 730; Estate of Dow, 149 Cal. App.2d 47, 58, 308 P.2d 475 (1957). Although this is an aspect of the principle that only judgments which are enforceable by a writ of execution give rise to judgment liens, the staff thinks it is useful to specifically exclude such judgments from the ambit of Section 674.

Subdivision (b) of Section 674 provides that an order made pursuant to Section 908(b) of the Welfare and Institutions Code (orders to reimburse county for legal services, probation supervision, or support in a county institution, of wards and dependent children) is a judgment under Section 674. The staff would delete this special reference since it would be included in the general definition which includes orders for the payment of money. Furthermore, Welfare and Institutions Code Section 908(b) also provides that such orders are considered as judgments for purposes of Section 674.

Judgments of Which Courts

Section 674 provides that judgments of the following courts may result in judgment liens:

1. Judgments of any court of this state.
2. Judgments entered pursuant to Section 1710.10 et seq. based on judgments of a sister state court.
3. Judgments of any court of this state sitting as a small claims court.
4. Judgments of any court of record of the United States.

The staff proposes to include these specifics in the definition of judgment.

The reference to small claims courts seems unnecessary, but we do not propose to delete it.

The reference to judgments of "any court of record of the United States" is overbroad. This should be restricted to United States district courts sitting in California. See 28 U.S.C. § 1962 (1970) (which provides that district court judgments may be recorded to create judgment liens in a state in the same manner and with the same effect as judgments of that state's courts). In view of the federal statute, this provision is also unnecessary, but it provides an informative function. Consequently, we do not propose its deletion.

Duration and Extension of Judgment Lien

Under Section 674, the judgment lien lasts for 10 years from the date of entry of the judgment which is the basis of the lien (exclusive of the time the judgment is stayed on appeal). The judgment lien is enforced through a writ of execution although a judgment lien is not a prerequisite to levy of execution upon real property. In fact, under existing law, where there is a homestead declared on real property, the judgment is not a lien even on the excess value over the exempt amount and the creditor may proceed only by way of execution. See Civil Code §§ 1243-1259; *Southern Pac. Milling Co. v. Milligan*, 15 Cal.2d 729, 104 P.2d 654 (1940); *Lean v. Givens*, 146 Cal. 739, 81 P. 128 (1905); *Swearingen v. Byrne*, 67 Cal. App.3d. 580, 136 Cal. Rptr. 736 (1977).

After the 10 years has run, the judgment may still be enforced by a writ of execution issued upon noticed motion pursuant to Section 685 (revival); however, in California, the judgment lien is not extended in this manner. This situation is different where the judgment creditor brings an action on the judgment which gave rise to the judgment lien

(renewal). If the abstract of the second judgment is recorded before the lien of the first judgment has expired, the second judgment lien relates back to the entry of the first judgment. See *Provisor v. Nelson*, 234 Cal. App.2d Supp. 876, 879-80, 44 Cal. Rptr. 894 (1964) (renewal judgment recorded before expiration of first judgment lien preserved creditor's priority over homestead declaration recorded during first lien period). Hence, under existing law, a creditor may, by renewing the judgment every 10 years, extend the judgment lien indefinitely.

The draft statute will avoid this awkward scheme resulting from the interplay between writs of execution and judgments liens and between renewal and revival. The 20-year period of enforceability will run concurrently for both the judgment lien and enforcement by execution. (This will require that stays of enforcement, as well as stays on appeal, toll the running of the judgment lien.) The possibility of renewing the enforceability of a judgment will be eliminated. See draft Section 702.150 (action on judgment precluded) attached hereto. Revival will also be eliminated because it will be unnecessary to make any special showing within the 20-year period of enforceability.

If the Commission reaffirms its decision to permit a maximum one-year additional period of enforceability beyond the 20-year period (see the discussion in Part II), a procedure for extending the judgment lien for the same period will have to be devised. This would probably take the form of recording a writ of execution or some other paper during the 20th year of enforceability.

Type of Property Subject to Judgment Lien

Section 674 states that the judgment is a lien on the real property of the judgment debtor in the county where the abstract is recorded. The term "real property" has been strictly construed by California courts. The lien does not reach an estate for years. See *Summerville v. Stockton Milling Co.*, 142 Cal. 529, 537, 76 P. 243 (1904); *Arnett v. Peterson*, 15 Cal. App.3d 170, 173, 92 Cal. Rptr. 913 (1971) (over 90 years left of 99-year lease). It appears that Kansas, Oklahoma, and Pennsylvania similarly exclude leasehold interests while they are reached by judgment liens in Connecticut, Illinois, Indiana, Iowa, Maryland, and New York. See S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 113 (2d ed. 1975). It has been stated without

citation to authority directly on point that a lease for an indefinite term would be real property subject to a judgment lien. See 2 A. Bowman, Ogden's Revised California Real Property Law § 19.19 (1975) (citing *Dabney v. Edwards*, 5 Cal.2d 1, 53 P.2d 962 (1935), which held that an oil and gas lease for an indefinite term in a dispute over a broker's fees under an oral contract was subject to attack under the Statute of Frauds to the extent leases were real property). Personal property is reached by a judgment lien only in Alabama, Georgia, and Mississippi. *Id.* at 95. The judgment lien does not reach equitable interests. See *Belieu v. Power*, 54 Cal. App. 244, 246, 201 P. 620 (1921) (interest under executory contract of purchaser in possession); *Poindexter v. Los Angeles Stone Co.*, 60 Cal. App. 686, 687, 214 P. 241 (1923) (interest of beneficiary of trust in land); *Helvey v. Bank of America*, 43 Cal. App.2d 532, 535, 111 P.2d 390 (1941) (right of redemption of tax deeded property). The lien does not attach to "naked title." Compare *Iknoian v. Winter*, 94 Cal. App. 223, 225, 270 P. 999 (1928) (fully paid vendor under installment land contract neglected to give deed but lien did not attach against vendor), with *Parsons v. Robinson*, 206 Cal. 378, 379, 274 P. 528 (1929) (temporary conveyance to wife as surety for husband's bail bond not naked title and therefore subject to lien against wife). The nature of "naked title" or "bare title," or of being a conduit, is not always easily discernable. See, e.g., *Majewsky v. Empire Constr. Co.*, 2 Cal.3d 478, 467 P.2d 547, 85 Cal. Rptr. 819 (1970) (a 5-2 decision involving a middleman escrow--where A sold to B through X and B sold to C through X at the same time, held that B's interest was reached by judgment lien).

The property reachable by a judgment lien in California is the product of common law notions about chattels real, the respective reach of law and equity, and the interpretation of particular statutes. The cases do not reveal any strong policy reasons for the current extent of the judgment lien. Nor does the staff detect any strong reasons for changing the current situation although it would be a salutary accomplishment if the law in this area could be made clear. We only suggest at this time that the Commission consider making all leases subject to the judgment lien.

Increased Value

The increase in value of property subject to a judgment lien is also subject to the lien. This is true even where community property awarded the wife has increased in value after a final divorce decree, and the property, which was liable for damages in a tort action against the husband, was subjected to a judgment lien before the final decree. See Kinney v. Vallentyne, 15 Cal.3d 475, 541 P.2d 537, 124 Cal. Rptr. 897 (1975). The court in Kinney stated that, during the life of the lien, a transferee, as well as a divorced spouse, contributed to the equity in the property at his or her peril. The staff does not propose to change this rule.

After-Acquired Property

Section 674 specifically covers property acquired by the debtor in the county after the judgment lien has arisen. The lien on such property arises when the property is acquired so that, if there are two or more judgment liens on the debtor's property which are recorded at different times, they all attach to the new property at the same time. See Hertweck v. Fearon, 180 Cal. 71, 179 P. 190 (1919). However, Hertweck permitted the creditor who acted first by levying and selling the property under execution to do so free of the equal liens on the property on the theory that the diligent creditor deserved a priority. During its discussion of redemption at the May 1977 meeting, the Commission tentatively decided to recommend that proceeds of a sale of property subject to liens of equal rank should be prorated. This would change the rule in Hertweck.

Installment Judgments

Until changed by statute, the rule was that a judgment payable in installments for an indefinite period could not create a judgment lien at least as to amounts not due, in the absence of a provision in the judgment to that effect. See Moniz v. Moniz, 142 Cal. App.2d 641, 646, 299 P.2d 329 (1956); Bird v. Murphy, 82 Cal. App. 691, 694-95, 256 P. 258 (1927). In the situation of judgments for child or spousal support, the concern of the courts was that the total amount of the judgment is unknown so that the lien cannot be satisfied. As Freeman puts it, an installment judgment "should not be made a lien, since this would amount

to charging the property with an annuity and would embarrass its alienation, and furthermore the amount is uncertain and impossible of computation." 2 A. Freeman, Law of Judgments § 932, at 1965 (5th ed. 1925).

In California, this rule has been changed by statute where the installment judgment is for child or spousal support (see Section 674.5 in Exhibit 2) or for damages under Section 667.7 for future medical treatment, care, custody, loss of future earnings, loss of bodily function, or future pain and suffering exceeding \$50,000 (see Section 674.7 in Exhibit 2). These sections provide for a judgment lien lasting 10 years, running from the time of recording the abstract rather than from the date of entry of the judgment as is provided in Section 674. The court in Heller Properties v. Rothschild, 11 Cal. App.3d 705, 712, 90 Cal. Rptr. 133 (1970), stated that Section 674.5 satisfied the concern expressed in earlier cases by making clear that the amounts not due are not a lien on the property. A procedure is provided by Sections 674.5 and 674.7 whereby the judgment debtor may record a certificate that all due amounts have been paid. This certificate is prima facie evidence of payment and is conclusive in favor of a person dealing in good faith for a valuable consideration. Presumably, the judgment lien as to the particular parcel of property is annihilated when the debtor records the appropriate certificate and sells the property to a bona fide purchaser. The property no longer belongs to the debtor so, when the next installment becomes due, the lien which would arise at that time does not do so because there is nothing to which it may attach.

There is no special procedure for obtaining judgment liens on the basis of other types of installment judgments. See Code Civ. Proc. § 85 (municipal or justice court may prescribe installment payments for payment of money judgment); Labor Code § 5801 (installment payments for worker's compensation award); Veh. Code § 16380 (installment payment of vehicle accident damage judgment). Presumably, where the total amount is not uncertain, the judgment would be a lien on real property but, if the amount is uncertain, the old rule would preclude the creation of a lien under Section 674.

The staff recommends that the principles of Sections 674.5 and 674.7 be applied to other installment judgments where the total amount is uncertain. In addition, it should be made clear that, where the

total amount of the judgment is certain but the judgment is payable in installments (as under Code of Civil Procedure Section 85), the judgment may give rise to a lien.

The staff also recommends that the duration of the lien be made consistent with the duration of enforceability of each installment by execution. This would mean that the lien would last 20 years on each installment from the time it became due. See draft Section 702.140 (time for enforcement of installment judgments) attached hereto.

Effect of Increased Duration on Existing Judgment Liens

The increase of the duration of judgment liens from 10 to 20 years would have the effect of increasing the duration of all existing liens. See *Provisor v. Nelson*, 234 Cal. App.2d Supp. 876, 877, 44 Cal. Rptr. 894 (1965). This will have the effect of postponing what would have been intervening liens if the judgment creditor had let the judgment lien lapse before renewing the judgment. However, since the creditor may, under existing law, extend the judgment lien by renewing the judgment by an action during the term of the first judgment lien, the consequence of this extension is not something entirely new.

II. Time for Enforcement of Judgments (§§ 702.120-702.140, 705.230)

Tentative Commission Decision

At the February 1977 meeting, the Commission decided to adopt the rule in *Alonso Inv. Corp. v. Doff*, 17 Cal.3d 539, 551 P.2d 1243, 131 Cal. Rptr. 411 (1976), wherein it was held that a writ of execution which was issued within the 10-year period of enforceability provided by Section 681 could be enforced after the expiration of the 10-year period, without the need to resort to the motion procedure of Section 685, subject to the one-year limitation on the life of the writ and the requirement that the writ be returned within 60 days after its delivery to the levying officer. Sections 702.130 and 705.230 (attached hereto) implement this decision, not only with regard to writs of execution but also for the other enforcement procedures provided in the Enforcement of Judgments Law.

Background

At one time, the statute was drafted to provide for an initial 10-year period of enforceability, followed by a second 10-year period,

after which the judgment could no longer be enforced. A later draft rejected the Alonso rule and provided for a single 20-year period of enforceability. Professor Riesenfeld has prepared a brief summary of the law in several other states which limit the life of judgments to specified periods. See Exhibit 1. Washington is particularly strict in cutting off the enforceability of a judgment at the end of six years. In *Ferry County Title & Escrow Co. v. Fogle's Garage, Inc.*, 4 Wash. App. 874, 484 P.2d 458 (1971), for example, a sale of real property was enjoined because the six-year period was due to expire two days after the sale was scheduled, and the statute required court confirmation of sale 10 days after the sale.

The staff still favors the absolute 20-year period of enforceability. It is simple, clear, and easy to administer. Permitting up to another year of enforceability in accordance with Alonso is not too much more difficult to implement so long as we are concerned only with a writ of execution. But when this principle is extended beyond writs of execution, the situation becomes rather complex.

Some differences between the provisions concerning the issuance, delivery, return, and lien of execution under current law (upon which basis Alonso was decided) and the corresponding provisions of the draft statute should be noted since they bear on the question of the usefulness of codifying Alonso. Under the draft statute, the writ would always be issuable by the clerk (except in the special case of enforcement of support orders) whereas under Sections 681 and 685 the writ is issuable by the clerk for 10 years and thereafter only on noticed motion. Under the draft, a levy may be made under the writ for 90 days after issuance, the lien of execution runs for a year from levy, and the writ is returnable as late as one year from the last levy thereunder. Under existing law, however, a levy may be made under the writ for 60 days after it is delivered to the levying officer (subject to the one-year limitation on the life of the writ), the lien of execution runs from levy until the expiration of one year after its issuance, and the writ must be returned between 10 and 60 days after delivery to the levying officer.

Much of the Alonso decision is concerned with determining legislative intent as expressed in the conflicting provisions of Sections 681

and 685. Inasmuch as these sections will be repealed upon the enactment of a new law, we need not be concerned with this aspect of the decision unless it reflects a desirable underlying policy. The court termed the interpretation that Section 685 always required application by noticed motion after the expiration of 10 years "complicated and unnecessary". Id. at 543. This conclusion is not relevant to the draft statute, however, since the draft statute does not provide for any extensions, on noticed motion or otherwise. The court also suggests that a writ once issued should remain enforceable because otherwise the levying officer would not know from the face of the writ whether the 10-year period (excluding times during which enforcement was stayed) had run. Id. at 545. However, this minor problem may be remedied by noting the aggregate duration of past stays of enforcement on the writ itself.

Under Alonso, if the writ is issued within the 10-year period, it is enforceable during its one-year life. This does not extend the period of enforceability of the judgment but merely avoids the necessity of first obtaining court approval at a hearing on noticed motion for issuance of a writ pursuant to Section 685. The court's concern seems to be more with avoiding the situation where invalid writs are in circulation than in vindicating any overriding policy concerning the proper and best procedures for enforcing judgments. We are concerned in the draft statute with the time during which a judgment should be enforceable, which is a matter of much greater importance than the relatively technical issue of how the levying officer might know that the writ in his hands should not be levied.

Consequently, a different rationale must be discovered to support the one-year extension of enforceability, especially if it is to apply to all types of enforcement process. In the view of the staff, if one type of enforcement process may extend past the 20-year mark, then procedures to enforce the judgment against any type of property should also have this effect. Otherwise, we might have the situation where a money judgment could be satisfied against a debtor's bank account in the 21st year but not against that debtor's interest in specific partnership property which requires resort to the charging order procedure.

The policy that appears to be advanced by draft Section 703.130 is to provide one more chance to a creditor who is still trying to enforce

the judgment where this creditor has obtained a lien on some of the debtor's property during the 20th year. Instead of seeking to avoid invalid writs as in Alonso, we would be seeking to avoid nugatory liens. The staff is not persuaded that providing one more year--a five-percent increase in the otherwise available time for enforcement--offers significant benefits. Allowing up to an additional year does not guarantee that additional property will be reached, that the judgment will be satisfied, or that all uncompleted procedures will come to a conclusion. It does result in a much more complicated statute.

Alternatives

The principle of Alonso may be applied to varying degrees. Consider the following alternatives:

1. Permit extensions of enforceability only for sale or seizure under a writ. Hence, in the case of a money judgment, only a writ of execution could be levied with the effect of extending enforceability. (The creation of a lien is the act required to extend enforceability in Section 702.130 and in these other alternatives.)

2. Permit extensions of enforceability by the levy of a writ or service of other process that creates a lien but, during the added time, permit the pursuit of only the enforcement procedure which resulted in the extension.

3. Permit extensions of enforceability by the levy of a writ or service of other process that creates a lien, and allow the initiation of other enforcement procedures during the added time, subject to being finally cut off at the end of the year from the date of the levy or service that resulted in the extension.

4. Permit extensions and the initiation of other enforcement procedures as in the third alternative but permit some procedures, such as creditors' suits, to extend beyond the year from the date of levy or service that resulted in the extension.

5. Permit extensions by the creation of new liens during each additional period of enforceability, ad infinitum.

The draft of Section 702.130 reflects the fourth alternative. The exception in the case of a creditor's suit does not subject the judgment debtor to any more than the 21-year period, but it does make garnishment

effective by permitting a creditor's suit to continue. (See draft Section 705.230.) Otherwise, a third person, being aware that the time for enforcement of the judgment was ready to expire, could deny the debt in the garnishee's answer to the levy or in examination proceedings, in the hope that a creditor's suit could not be concluded before the time for enforcement had expired.

III. Relation Back of Liens (§ 702.160 etc.)

With the exception of the judgment lien (Section 674), the lien of execution (Section 688(d)), and the lien on a cause of action and judgment (Section 688.1), existing statutory law is silent concerning the creation of liens by various postjudgment creditor's remedies and the relationship between the liens. The Commission has decided that the law pertaining to the liens of various enforcement procedures should be more explicit and uniform. We have drafted sections specifying the time of creation of a lien by each of the procedures in Chapter 5 (Miscellaneous Procedures for Enforcement of Money Judgment) (see attached draft Sections 705.120, 705.130, 705.250, 705.330, 705.480, 705.520, 705.610, 705.720). The execution lien provision (Section 703.250) is contained in the draft attached to Memorandum 77-56. The judgment lien is discussed in Part I, supra, and Sections 674, 674.5, and 674.7 are in Exhibit 2.

Section 702.160 (attached hereto) provides for the merger and relation back of these various liens and merely attempts to state the basic principle that has long been applied in the cases.

The staff has no particular issues to raise concerning these provisions but thought you should see them together at this time rather than scattered throughout the draft of Title 9.

Respectfully submitted,

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New York

In New York the life of domestic judgments, judgment liens and the enforceability of money judgments are governed by CPLR §§ 211(b) (presumption of payment after 20 years), 5014 (action on judgment), 5203 (judgment lien and levy lien on land) and 5230(b) (issuance of executions).

According to these provisions a money judgment is presumed to be paid "after the expiration of twenty years from the time when the party recovering it was first entitled to enforce it." The presumption is conclusive except with respect to a person who within the twenty years' period acknowledges the judgment debt or makes a payment. A levy of an execution constitutes payment within the meaning of that section dispelling the presumption.

Although the statute does not spell it out it has been held that an action on the judgment commenced within the 20 years' period has the same effect.

Levine v. Bronson, 4 N.Y.2d 241, 173 N.Y.S. 2d 599 (1958)

Matter of Murray's Estate, 272 N.Y. 228, 5 N.E.2d 717 (1936)

Hence New York still permits renewal of judgments beyond the 20 years' period.

An action upon a domestic judgment is permitted after ten years from its docketing. The purpose of this section is to permit a judgment creditor to get a new judgment lien on realty as the original judgment lien expires within 10 years from the filing of the judgment roll, unless extended

by order of the court to permit completion of an execution, CPLR §§ 5014(1), 5203(a) and (b).

A writ of execution may issue at any time before the expiration of the 20 years' period, § 5230. Hence New York would follow the Alonso rule.

New York abolished a provision paralleling Cal. CCP § 685. A creditor who seeks collection after 20 years must have obtained a renewal judgment by commencing an action on the judgment prior to the expiration of the 20 years' period. He may repeat the renewal every 20 years (minus some days) as often as he likes despite the presumption of CPLR § 211(b).

Oregon

In Oregon the life of domestic judgments is governed by Ore. Rev. Stat. § 18-360, as amended in 1943. According to that provision a judgment creates a lien and is exigible for a period of ten years from the entry. It may be extended, by motion before the expiration of the ten year period, for another ten years. After that it may not be extended again. In re Miller's Estate, 189 Ore. 246, 218 P.2d 966 (1950), Newhouse v. Newhouse, 271 Ore. 109, 530 P.2d 848 (1975). Whether a registered sister-state judgment (O.R.S. § 24.020 and 24.070) could ~~have been~~ extended beyond the original 10 years' period is still an open question. At any rate no domestic judgment can be renewed by action thereon under O.R.S. § 12-070, Mason v. Mason, 148 Ore. 34, 34 P.2d 326 (1934). Hence the maximum life on a domestic judgment is 20 years.

Washington

In Washington the maximum life of a domestic judgment and lien thereof is 6 years. It may not be revived or renewed, Wash. Rev. Code § 4.56.210, § 4.56.190, St. Germain v. St. Germain, 22 W.2d 747, 157 P.2d 981 (1945) and no execution can be completed outside that period, Ferry County Title & Escrow Co. v. Fogle's Garage, Inc., 8 Wash. App. 874, 484 P.2d 458 (1971), Weyerhaeuser Pulp Emp. Fed. Cred. U. v. Damewood, 11 Wash. App. 12, 521 P.2d 953 (1974) (recognizing extension during injunction subsequently dissolved, cf. Hensen v. Peter, 95 Wash. 628, 164 P. 512 (1917)).

North Dakota

North Dakota has two sets of provisions for renewal of judgments, N.D. Cent. Code § 28-01-15 et seq. and § 28-20-21 et seq. The first set deals with renewal by action upon the judgment, the second set deals with renewal by affidavit. Generally speaking, a judgment and judgment lien are valid for ten years unless renewed before expiration, § 28-01-15 (ten year limitation for action on judgment), § 28-20-13 (judgment lien on realty valid for 10 years) § 28-20-22 and 23 (extension of life of judgment and of judgment lien). The remedies of renewal by action and by affidavit are concurrent, Union Nat. Bank of Grand Forks, 23 N.D. 482, 137 N.W. 449 (1914).

In 1955 N.D. enacted § 28-20-35 which provides that "after 20 years after the entry of a judgment that has been

renewed the judgment shall be cancelled of record."

Apparently this section applies and limits the life of renewed judgments whether renewed by action or application. In Berg v. Torgerson, 100 N.W.2d 153 (N.D. 1959), the court referring to § 28-20-35 stated:

"[this statute] deals primarily with canceling judgments of records and is only indirectly related to the continuation of liens of judgments"

It would seem therefore that in North Dakota a judgment loses any effect after 20 years after its first entry in North Dakota.

Thus Oregon, Washington and North Dakota do no longer permit unlimited periodic renewal or extension of judgments. New York has a presumption of payment after 20 years, but the courts have permitted the dispelling thereof by action upon the judgment.

EXHIBIT 2

CODE CIV. PROC. §§ 674, 674.5, 674.7, 681, 685

§ 674. Abstract of judgment; recording; lien of judgment; scope; duration; contents

Text of section operative July 1, 1977

(a) An abstract of the judgment or decree of any court of this state, including a judgment entered pursuant to Chapter 1 (commencing with Section 1710.10) of Title 11 of Part 3, or a judgment of any court sitting as a small claims court, or any court of record of the United States, the enforcement of which has not been stayed on appeal or pursuant to Section 1710.60, certified by the clerk, judge or justice of the court where such judgment or decree was rendered, may be recorded with the recorder of any county and from such recording the judgment or decree becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterward and before the lien expires, acquire. Such lien continues for 10 years from the date of entry of the judgment or decree unless the enforcement of the judgment or decree is stayed on appeal or pursuant to Section 1710.60 by the execution of a sufficient undertaking or the deposit in court of the requisite amount of money as provided in this code, or by the statutes of the United States, in which case the lien of the judgment or decree, and any lien or liability now existing or hereafter created by virtue of an attachment that has been issued and levied in the action, unless otherwise by statute of the United States provided, ceases, or upon an undertaking on release of attachment, or unless the judgment or decree is previously satisfied, or the lien otherwise discharged. The abstract above mentioned shall contain the following: title of the court and cause and number of the action; date of entry of the judgment or decree; names of the judgment debtor and of the judgment creditor; amount of the judgment or decree, and where entered in judgment book, where entry in a judgment book is required, minutes or docket in the justice court.

(b) An order made pursuant to subdivision (b) of Section 908 of the Welfare and Institutions Code shall be considered a judgment for the purposes of subdivision (a) of this section.

(c) With respect to real property containing a dwelling house judicially determined to be exempt from levy of execution pursuant to the provisions of Section 690.31, as distinguished from property subject to a declared homestead created pursuant to Title 6 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code, a judgment lien created pursuant to subdivision (a) of this section shall attach to such real property notwithstanding the exemption provided by Section 690.31.

(Amended by Stats.1973, c. 797, p. 1413, § 1; Stats.1974, c. 211, p. 405, § 1; Stats.1974, c. 1169, p. 2503, § 3; Stats.1976, c. 1000, p. —, § 1, operative July 1, 1977.

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§ 674.5 Lien of judgment or order for spousal or child support; duration; effect

A certified copy of any judgment or order of the superior court of this state for spousal or child support, when recorded with the recorder of any county, shall from such recording become a lien upon all real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterwards and before the lien expires, acquire, for the respective amounts and installments as they mature (but shall not become a lien for any sum or sums prior to the date they severally become due and payable) which lien shall have, to the extent herein provided and for the period of 10 years from such recording, the same force, effect and priority as the lien created by recordation of an abstract of a money judgment pursuant to Section 674.

The certificate of the judgment debtor, or in the event of legal disability, the affidavit of the personal representative of the judgment debtor, certified by him under penalty of perjury, that all amounts and installments which have matured under said judgment prior to the date of such certificate have been fully paid and satisfied shall, when acknowledged and recorded, be prima facie evidence of such payment and satisfaction and conclusive in favor of any person dealing in good faith and for a valuable consideration with the judgment debtor or his successors in interest; however, if any amount of child support provided in a support order has been directed to be made to an officer designated by the court pursuant to Section 4702 of the Civil Code or any other provision of law and such directive is set forth in the copy of the recorded judgment or order, or in a recorded certified copy of an amended or supplemental order, such certificate shall not affect the lien unless also approved in writing by such designated officer.

Whenever a certified copy of any judgment or order of the superior court for spousal or child support has been recorded with the recorder of any county, the expiration or satisfaction thereof made in the manner of an acknowledgment of a conveyance of real property may be recorded.

(Amended by Stats.1976, c. 612, p. —, § 1.)

§ 674.7 Lien of periodic payment judgment; duration; effect

A certified copy of any judgment or order of the superior court of this state issued pursuant to Section 667.7, when recorded with the recorder of any county, shall from such recording become a lien upon all real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterwards and before the lien expires, acquire, for the respective amounts and installments as they mature (but shall not become a lien for any sum or sums prior to the date they severally become due and payable) which liens shall have, to the extent herein provided and for the period of 10 years from such recording, the same force, effect and priority as the lien created by recordation of an abstract of a money judgment pursuant to Section 674.

The certificate of judgment debtor, or in the event of legal disability, the affidavit of the personal representative of the judgment debtor, certified by him under penalty of perjury, that all amounts and installments which have matured under said judgment prior to the date of such certificate have been fully paid and satisfied shall, when acknowledged and recorded, be prima facie evidence of such payment and satisfaction and conclusive in favor of any person dealing in good faith and for a valuable consideration with the judgment debtor or his successors in interest.

Whenever a certified copy of any judgment or order of the superior court issued pursuant to Section 667.7 has been recorded with the recorder of any county, the expiration or satisfaction thereof made in the manner of an acknowledgment of a conveyance of real property may be recorded.

(Added by Stats.1975, 2nd Ex.Sess., c. 1, p. —, § 26.4. Amended by Stats.1976, c. 612, p. —, § 1.5.)

§ 681. Time for issuance; exclusion of time stayed or enjoined

The party in whose favor judgment is given may, at any time within 10 years after the entry thereof, have a writ or order issued for the execution or enforcement of the judgment. If, after the entry of the judgment, the issuing of such writ or order is stayed or enjoined by any judgment or order of court, or by operation of law, the time during which it is so stayed or enjoined must be excluded from the computation of the 10 years within which execution or order may issue. (Enacted 1872. As amended Stats.1907, c. 360, p. 682, § 1; Stats.1955, c. 754, p. 1248, § 1.)

§ 685. Execution after ten years; leave of court, procedure; judgment upon supplemental proceedings

In all cases the judgment may be enforced or carried into execution after the lapse of 10 years from the date of its entry, by leave of the court, upon motion, and after due notice to the judgment debtor accompanied by an affidavit or affidavits setting forth the reasons for failure to proceed in compliance with the provisions of Section 681 of this code. The failure to set forth such reasons as shall, in the discretion of the court, be sufficient, shall be ground for the denial of the motion. This section does not limit the jurisdiction of the court to order issuance of such writ prior to the lapse of said 10-year period in cases where the party in whose favor judgment is given is not entitled to a writ under Section 681 of this code.

Judgment in all cases may also be enforced or carried into execution after the lapse of 10 years from the date of its entry, by judgment for that purpose founded upon supplemental proceedings; but nothing in this section shall be construed to revive a judgment for the recovery of money which shall have been barred by limitation at the time of the passage of this act. (Enacted 1872. As amended Stats. 1895, c. 33, p. 38, § 1; Stats.1933, c. 971, p. 2499, § 1; Stats.1955, c. 754, p. 1248, § 2; Stats.1957, c. 910, p. 2120, § 1.)

Selected Sections From the Draft Enforcement of Judgments
Law for Consideration With Memorandum 77-57

(Sections 702.120-702.160, 705.120, 705.130,
705.230, 705.250, 705.330, 705.480,
705.520, 705.610, 705.720)

§ 702.120. Time for enforcement of judgment

702.120. (a) Except as otherwise provided in subdivision (b) and in Sections 702.130 and 702.140, no judgment for the payment of money or for the possession or sale of real or personal property may be enforced, no sale, collection, or delivery pursuant to the judgment or to a writ or order issued pursuant to the judgment may take place, and no lien created by the enforcement of the judgment may be enforced more than 20 years after the date of entry of the judgment.

(b) The time during which enforcement is stayed or enjoined by court order or by operation of law shall not be counted in the computation of the 20 years under subdivision (a).

Comment. Section 702.120 prescribes a basic 20-year period for enforcement of a judgment and supersedes former Section 681 which provided a 10-year enforcement period subject to discretionary enforcement by motion thereafter pursuant to former Section 685. The introductory clause of subdivision (a) recognizes that the period of enforceability may be longer than the 20 years therein prescribed in three situations. Subdivision (b) provides for the exclusion of any time during which enforcement of the judgment is stayed or enjoined by court order or by operation of law. Section 702.130 permits the enforcement of a judgment for an additional period of up to one year when enforcement process has been issued within the 20-year period. Section 702.140 provides special rules applicable to money judgments payable in installments. It should be noted, however, that the tolling provision of subdivision (b) of Section 702.120 does not apply to the additional year of enforceability permissible under Section 702.130.

Section 702.120 applies the same period of enforceability to money judgments and judgments for the possession or sale of real or personal property. The former law was unclear. See, e.g., former Sections 681, 684, 685; *Laubisch v. Roberdo*, 43 Cal.2d 702, 277 P.2d 9 (1954); *Knapp*

v. Rose, 32 Cal.2d 530, 197 P.2d 7 (1948); Southern Cal. Lumber Co. v. Ocean Beach Hotel Co., 94 Cal. 217, 29 P. 627 (1892); Dorland v. Hansen, 81 Cal. 202, 22 P. 552 (1889); Bank of America v. Katz, 45 Cal. App.2d 138, 113 P.2d 759 (1941). For special rules applicable to money judgments payable in installments, see Section 702.140. A judgment, or portion thereof, which is not enforced within the applicable period is in effect discharged.

Judgments enforceable directly by contempt, such as those governed by Chapter 11 (commencing with Section 711.110), are not subject to the 20-year rule of Section 702.120.

29215 (968/674)

§ 702.130. Extension of time for enforcement

702.130. The levy under a writ, or the service of other process which creates a lien under this title, during the twentieth year of the time for enforcement of the judgment provided by subdivision (a) of Section 702.120 extends the time for enforcement for one year from the date of the creation of the last lien by such levy or service within the twentieth year.

Comment. Section 702.130 is derived from *Alonso Inv. Corp. v. Doff*, 17 Cal.3d 539, 551 P.2d 1243, 131 Cal. Rptr. 411 (1976), which held that a writ of execution issued within the 10-year period of enforceability without resort to a noticed motion, formerly applicable to money judgments was enforceable thereafter during the life of the writ (one year from issuance). Section 702.130 requires the creation of a lien, rather than the mere issuance of a writ, and also extends this principle to all other enforcement process provided by this title. The levy under a writ or the service of process creating a lien at some time during the twentieth year of enforceability makes the judgment enforceable for an additional year dating from the creation of the last lien within the twentieth year, not from the expiration of the twentieth year. An additional year of enforceability is obtained pursuant to this section only if the lien is created not later than the last day of the twentieth year.

If an extension is obtained pursuant to this section, the judgment creditor is not limited to pursuing only the particular enforcement

procedure under which levy was made or process was served in order to obtain the extension but may take advantage of all other enforcement procedures during the additional period of enforceability.

The tolling provision of subdivision (b) of Section 702.120 does not apply to the period during which the enforceability of the judgment is extended pursuant to this section.

29216 (968/675)

§ 702.140. Time for enforcement of installment judgments

702.140. Where a judgment for the payment of money is payable in installments, the 20-year period provided by Section 702.120 for the enforcement of a judgment runs as to each installment from the date such installment becomes due.

Comment. Section 702.140 codifies case law concerning the time within which installment judgments may be enforced. See, e.g., Wolfe v. Wolfe, 30 Cal.2d 1, 180 P.2d 345 (1947); Lohman v. Lohman, 29 Cal.2d 144, 173 P.2d 657 (1946); Nutt v. Nutt, 247 Cal. App.2d 166, 55 Cal. Rptr. 380 (1966). The most common form of installment judgments are for spousal or child support. See Civil Code §§ 4700 (child support) and 4801 (spousal support). See also Code Civ. Proc. § 85 (municipal or justice court may prescribe installment payments for payment of money judgment); Labor Code § 5801 (installment payments for worker's compensation award); Veh. Code § 16380 (installment payment of vehicle accident damage judgment).

3058 (968/677)

§ 702.150. Action on judgment entered in state prohibited

702.150. The enforceability of a judgment that has been entered in this state may not be extended by bringing an action upon it.

Comment. Section 702.150 eliminates the option available under former law of bringing an action on a judgment in order to extend the period of its enforceability. See Atkinson v. Adkins, 92 Cal. App. 424, 426, 268 P. 461, ___ (1928). Sections 702.120 through 702.140 provide exclusively for the period of enforceability of judgments entered in the courts of this state for the payment of money or for the sale or possession of real or personal property. This section does not preclude the

bringing of an action on a judgment of a sister state or for some other purpose. See Section 1710.60 (action on sister state judgment); 5 B. Witkin, California Procedure Enforcement of Judgment § 192, at 3547 (2d ed. 1971) (other situations where actions may be brought on judgments). However, once a judgment has been entered in this state, Section 702.150 makes clear that a later judgment resulting from an action on the first judgment does not extend the period of enforceability.

29217 (968/682)

§ 702.160. Relation back of liens

702.160. Where a lien in favor of the judgment creditor is created on property which is subject to an existing lien in favor of such judgment creditor, the priority of the judgment creditor relates back to the effective date of the earlier lien.

Comment. Section 702.160 states the general rule regarding the relation back of liens which preserves the judgment creditor's priority as of the creation of the first in a series of overlapping liens on the same property. Under prior law, this principle was stated in the decisions. See, e.g., Nordstrom v. Corona City Water Co., 155 Cal. 206, 100 P. 242 (1909); Riley v. Nance, 97 Cal. 203 (1893); Bagley v. Ward, 37 Cal. 121 (1869); Durkin v. Durkin, 133 Cal. App.2d 283, 284 P.2d 185 (1955); Balzano v. Traeger, 93 Cal. App. 640, 270 P. 249 (1928).

Attachment liens, which may exist for as long as five years, are governed by Sections 488.500 and 488.510. The lien of a temporary protective order served in an attachment proceeding is governed by Section 486.110. An attachment lien relates back to the effective date of the lien of a temporary protective order pursuant to Section 488.500(i).

The judgment lien on real property, which may exist for 20 to 21 years, is provided by Section 674.

Various liens are provided by this title. See Sections 703.250 (execution lien), 704.____ (lien of earnings withholding order), 705.120(d) (lien of examination order to judgment debtor), 705.130(c) (lien of examination order to third person), 705.250 (lien of creditor's suit), 705.330 (receiver's lien), 705.480 (lien on money owed judgment debtor as creditor of public entity), 705.520 (lien of charging order), 705.610 (lien on cause of action and judgment), 705.720 (lien of assignment

order), 708.____ (lien of writ of possession of personal property), 709.____ (lien of writ of possession of real property), 710.____ (lien of writ of sale).

General provisions concerning the priority of liens appear in Civil Code Sections 2897-2899. Note that a lien on after-acquired property arises as of the time when the property is acquired by the person whose property is subject to the lien. Civil Code § 2883.

29218 (045/200)

§ 705.120. Examination of judgment debtor

705.120. (a) A judgment creditor may apply for an order from the court requiring the judgment debtor to appear before the court at a time and place specified in the order and answer concerning the judgment debtor's property.

(b) The court shall issue the order if either of the following conditions is satisfied:

(1) The judgment creditor has not caused the judgment debtor to be examined concerning the judgment debtor's property during the preceding 120 days.

(2) The judgment creditor shows by affidavit or otherwise to the satisfaction of the court that the judgment debtor has property which the judgment debtor unjustly refuses to apply toward the satisfaction of the judgment. The affidavit in support of this showing may be based on the affiant's information and belief.

(c) A copy of the order shall be served on the judgment debtor not less than 10 days prior to the date set for the examination.

(d) Service of the order for an examination creates an equitable lien on the property sought to be reached.

(e) The order shall contain the following statement in boldface type: "Failure to appear may subject the party served to arrest and punishment for contempt of court."

Comment. Section 705.120 is derived from former Sections 714 and 715. The judgment creditor may apply for an order for examination at any time that the requirements of subdivision (b) can be satisfied so long as the judgment is enforceable under the provisions of Sections 702.120-702.140.

Subdivision (b) makes clear that the order for an examination of the judgment debtor may be obtained every 120 days or more frequently if there is a showing of a special need for the order. It should be noted that the service of written interrogatories on the judgment debtor pursuant to Section 705.110 does not preclude an examination within the 120-day period. The scope of an examination may be the same whether the order is issued on the grounds stated in subdivision (b)(1) or (b)(2). Former Section 715 required a writ of execution to be issued before applying for an order based on the judgment debtor's refusal to apply property to the satisfaction of the judgment and apparently limited the scope of the examination to such property. The provision for giving an affidavit on information and belief is based on case law. See Collins v. Angell, 72 Cal. 513, 515, 14 P. 235, ___ (1887); Tucker v. Fontes, 70 Cal. App.2d 768, 771, 161 P.2d 697, ___ (1945).

Subdivision (c) is new. Prior law did not prescribe the time within which the judgment debtor was to receive notice.

Subdivision (d) codifies the rule in Canfield v. Security-First Nat'l Bank, 13 Cal.2d 1, 28-30, 87 P.2d 830, ___ (1939), and Nordstrom v. Corona City Water Co., 155 Cal. 206, 212-13, 100 P. 242, ___ (1909). An equitable lien is not enforceable against the property in the hands of a bona fide purchaser. See Jud Whitehead Heater Co. v. Obler, 111 Cal. App.2d 861, 872-74, 245 P.2d 597 (1952); Wagner v. Sariotti, 56 Cal. App.2d 693, 698, ___ P.2d ___, ___ (1943). No duration is specified for the equitable lien; however, it may not be enforced beyond the time for enforcement of the judgment under Sections 702.120-702.140.

Although Section 705.120 no longer specifically so provides, an order requiring a judgment debtor to appear for an examination may still be issued against any one or more of several judgment debtors. Section 705.190 continues the authority of the court to appoint a referee to conduct the examination provided in former Sections 714 and 715.

Subdivision (e) continues the third paragraph of former Section 714.

29346 (045/202)

§ 705.130. Examination of debtor of judgment debtor

705.130. (a) Upon proof by affidavit or otherwise to the satisfaction of the court that any person has property in which the judgment debtor has an interest or is indebted to the judgment debtor in an

amount not less than two hundred fifty dollars (\$250), the court may issue an order requiring such person to appear before the court at a time and place specified in the order and answer concerning the property or indebtedness. The affidavit in support of this showing may be based on the affiant's information and belief.

(b) A copy of the order shall be served on the person to be examined not less than 10 days prior to the date set for the examination. Notice of the time and place of the examination shall be mailed to the judgment debtor.

(c) Service of the order on the person to be examined creates an equitable lien on the property in such person's possession in which the judgment debtor has an interest and on any debt owing by such person to the judgment debtor which property or debt is ordered to be applied to the satisfaction of the judgment.

(d) An order made pursuant to subdivision (a) shall contain the following statement in boldface type: "Failure to appear may subject the party served to arrest and punishment for contempt of court."

(e) An order made pursuant to subdivision (a) is not effective unless, at the time it is served on the person sought to be examined, the person serving the order tenders to the person sought to be examined mileage fees in the amount of twenty cents (\$0.20) per mile necessary to be traveled, one way, from such person's residence to the place of examination. Mileage fees are an item of costs chargeable to the judgment debtor. The court may, pursuant to Section 705.160, order the application of any nonexempt property of the judgment debtor to the satisfaction of such costs.

(f) The spouse of a judgment debtor, to the extent provided by Sections 970 and 971 of the Evidence Code, may not be required to testify pursuant to this section if there has not been a waiver of the privilege in the action giving rise to the judgment.

Comment. Section 705.130 supersedes former Section 717. Subdivision (a) of Section 705.130 provides for the issuance of an order for the examination of the debtor of a judgment debtor or a person holding property of the judgment debtor. The minimum amount of indebtedness required before an examination order may issue has been raised from \$50 to \$250 to reflect change in the value of the dollar since this procedure was originally enacted. The requirement of the first sentence of

former Section 717 that a writ of execution be first issued against the property of the judgment debtor has not been continued. An order may be sought under this section whenever the judgment is enforceable. See Sections 702.120-702.140. The provision for an affidavit based on information and belief codifies the result in *Tucker v. Fontes*, 70 Cal. App.2d 768, 771, 161 P.2d 697, ___ (1945).

Subdivision (b) is new. Prior law did not prescribe the time within which the debtor of the judgment debtor was to be served and did not provide for any notice to the judgment debtor.

Subdivision (d) continues the third paragraph of former Section 717. Subdivision (e) continues the provisions of the second paragraph of former Section 717.1; however, the amount of the mileage fee has been made consistent with that for witnesses generally. See Govt. Code § 68093. Subdivision (f) continues the second sentence of the first paragraph of former Section 717.

For provisions concerning examination by referees, see Section 705.190. The manner of appearance where a corporation is indebted to or holds property of a judgment debtor is prescribed in Section 705.180. Where the debtor of the judgment debtor is a public entity, the judgment creditor must follow the procedures set forth in Article 4 (commencing with Section 705.410).

30178 (968/694)

§ 705.230. Time for bringing creditor's suit

705.230. An action may be brought pursuant to this article at either of the following times:

(a) At any time when the judgment debtor may bring an action against the obligor concerning the property or debt.

(b) Within one year after creation of a lien on the property or debt, if the lien is created within the time specified in subdivision (a), so long as the action is commenced within the period provided by Section 702.120 or a later period provided by Section 702.130 or 702.140.

Comment. Section 705.230 is new. It provides a statute of limitations for bringing a creditor's suit subject, of course, to the general rules concerning enforceability of judgments provided by Sections 702.120-702.140. The basic rule under this section is that the judgment

creditor is in the position of the judgment debtor; the judgment creditor must therefore either commence the creditor's suit at a time when the judgment debtor could bring an action against the obligor or obtain a lien on the judgment debtor's interest in the property or the indebtedness by causing a writ of execution or an order for an examination to be served on the obligor. Where a lien is created within the time described in subdivision (a), the judgment creditor is normally afforded one year thereafter within which to commence the creditor's suit. Under prior law, the general four-year statute of limitations was applicable and began to run from the return of the writ of execution unsatisfied. See *Sherman v. S.K.D. Oil Co.*, 185 Cal. 534, 197 P. 799 (1921). However, the statute of limitations is no longer tied to the return of the writ unsatisfied or the failure of examination proceedings because the judgment creditor is not required to exhaust these remedies before resorting to a creditor's suit. See Section 705.220 and Comment thereto. The one-year extension available under subdivision (b) does not extend the enforceability of the judgment beyond the 20- to 21-year period provided by Sections 702.120 and 702.130. A creditor's suit commenced within the periods prescribed by this section may, however, be pursued to judgment after the judgment is no longer enforceable against the original judgment debtor. The judgment in the creditor's suit may then be enforced as provided in Section 705.250.

30179 (968/692)

§ 705.250. Lien of creditor's suit

705.250. Service of summons on the obligor creates an equitable lien on the property sought to be reached.

Comment. Section 705.250 codifies in general terms the rule stated in the decisions. See *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 28-30, 87 P.2d 830, ___ (1939); *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242, ___ (1909); cf. *Seymour v. McAvoy*, 121 Cal. 438, 441, 53 P. 946, ___ (1898) (filing bill in equity creates equitable lien). See also 3 A. Freeman, *Law of Executions* § 434 (3d ed. 1900); 2 J. Pomeroy, *Equitable Remedies* § 895 (2d ed. 1919). An equitable lien is not enforceable against the property in the hands of a bona fide purchaser. See *Jud Whitehead Heater Co. v. Obler*, 111 Cal. App.2d

861, 872-74, 245 P.2d 597, ___ (1952); Wagner v. Sariotti, 56 Cal. App.2d 693, 698, ___ P.2d ___, ___ (1943). For discussions of the nature of equitable liens, see 1 J. Pomeroy, Equity Jurisprudence §§ 165, 171(4) (5th ed. 1941); 4 id., §§ 1233-1234.

30180

§ 705.330. Receiver's lien

705.330. Service of a copy of the order appointing the receiver in the manner provided for the levy of a writ, or the service of other process which creates a lien under this title, creates a lien on the property in favor of the judgment creditor to the same extent and with the same duration as would be obtained by the service of such writ or other process.

Comment. Section 705.330 provides for a receiver's lien in favor of the judgment creditor. Prior law was unclear. The statutes pertaining to receivers do not specify the effect of the appointment and enforcement activities of the receiver. In *Pacific Bank v. Robinson*, 57 Cal. 520, 522 (1881), the court did not consider the precise question of what the receiver takes upon appointment and qualification but did decide that a court has the power in equity to compel the assignment of a patent right to a receiver appointed in supplementary proceedings. Accord, *Habenicht v. Lissak*, 78 Cal. 351, 20 P. 874 (1889) (seat on stock exchange). Section 705.330 is consistent with the result of these cases and varies from the principles of general law that held that the appointment and qualification of a receiver vested the property of the judgment debtor in the receiver. See 3 A. Freeman, *Law of Executions* § 419, at 2243-46 (3d ed. 1900). Pursuant to Section 702.160, the lien obtained by a receiver under the provisions of this section relate back to the creation of earlier liens, contrary to some early decisions in other states. See id. at 2246.

30181 (968/695)

§ 705.480. Lien

705.480. Filing pursuant to Section 705.430 or 705.440 creates a lien on the money owing and unpaid by the public entity to the judgment debtor, in an amount equal to that which may properly be applied toward

the satisfaction of the judgment, and lasting for one year from the date of filing.

Comment. Section 705.480 provides for the creation of a lien as of the filing with the public entity by the judgment creditor under this article. This principle is consistent with decisions under former law which equated filing with levy and determined priority as of the time of filing. See *Department of Water & Power v. Inyo Chem. Co.*, 16 Cal.2d 744, 108 P.2d 410 (1940); *Ott Hardware Co. v. Davis*, 165 Cal. 795, 800, 134 P. 973, ___ (1913). The duration of the lien is the same as that of an execution lien. See Section 703.250(a).

30182 (968/693)

§ 705.520. Lien of charging order

705.520. Service on the judgment debtor of notice of motion for a charging order creates an equitable lien on the property sought to be reached.

Comment. Section 705.520 is new. Prior law did not explicitly provide for a lien of a charging order. Section 705.520 provides that an equitable lien is created when the judgment debtor first receives notice of proceedings under this article and the applicable provisions of the Corporations Code. This lien is analogous to the equitable lien created by service of an order for an examination (Sections 705.120(d), 705.130(c)) or service of summons in a creditor's suit (Section 705.250). For the effect of an equitable lien, see the Comment to Section 705.120. Under former law, the lien of a charging order was recognized in the decisions, but the time of its creation and its effect were unclear. See *Taylor v. S & M Lamp Co.*, 190 Cal. App.2d 700, 707-12, 12 Cal. Rptr. 323, ___ (1961). The reference to service of notice of motion for the charging order recognizes that charging orders are issued on noticed motion. See *Ribero v. Callaway*, 87 Cal. App.2d 135, 138, 196 P.2d 109, ___ (1948).

Article 6. Liens on Causes of Action and Judgments§ 705.610. Application for lien on cause of action and judgment

705.610. Upon motion of a judgment creditor of any party to an action or special proceeding made in the court in which the action or special proceeding is pending upon written notice to all parties, the court may, in its discretion, order that the judgment creditor be granted a lien upon the cause of action and upon any judgment subsequently procured in the action or special proceeding in favor of the judgment debtor and, during the pendency of the action, may permit the judgment creditor to intervene therein. The lien shall be granted upon the money recovered by the judgment debtor in the action or special proceeding in the amount of the judgment creditor's judgment.

Comment. Section 705.610 continues the substance of the first sentence and a portion of the second sentence of former Section 688.1. See the Comment to the repeal of Section 688.1. The lien detained pursuant to this section is, of course, subject to any prior liens of the same type or of some other type such as an attorney's charging lien. See *Roseburg Loggers, Inc. v. U.S. Plywood-Champion Papers, Inc.*, 14 Cal.3d 742, 748-51, 537 P.2d 399, ___, 122 Cal. Rptr. 567, ___ (1975); cf. *Haupt v. Charlie's Kosher Mkt.*, 17 Cal.2d 843, 846, 121 P.2d 627, ___ (1941) (attorney's lien prevails over subsequent attachment lien under former statute). Although the lien is generally created pursuant to this section as of the time the court makes its order, a creditor may have priority as of the time the application for the order is made in certain cases. See Civil Code § 2897; *Del Conte Masonry Co. v. Lewis*, 16 Cal. App.3d 678, 94 Cal. Rptr. 439 (1971) (application of equitable rule granting priority to first assertion of claim); *Takehara v. H. C. Muddox Co.*, 8 Cal.3d 168, 501 P.2d 913, 104 Cal. Rptr. 345 (1972) (application of general rule granting priority to first in time of creation).

Where the judgment debtor of the judgment debtor does not voluntarily pay the judgment creditor to discharge the lien and the judgment debtor takes no steps to enforce the judgment, the judgment creditor must bring an action to foreclose the lien in order to reach the amount

represented by the judgment. See *Roseburg Loggers, Inc. v. Plywood-Champion Papers, Inc.*, supra at 748, 537 P.2d at ____, 122 Cal. Rptr. at ____ (dictum). Enforcement pursuant to this article is subject to the general rules concerning the time within which judgments may be enforced. See Sections 702.120-702.140.

30184

§ 705.720. Lien of assignment order

705.720. Service of the order to assign the right to future payments creates a lien on the property assigned or to be assigned, lasting for one year from the date the payment becomes due.

Comment. Section 705.720 provides for the creation of a lien of an assignment order. This provision is similar to the lien of execution under Section 703.250 except that it arises for each payment when it becomes due.