

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

REPORT AND TENTATIVE 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

September 1994

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN November 7, 1994.**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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## SUMMARY OF TENTATIVE RECOMMENDATIONS

This set of tentative 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 tentative recommendation provides implementing legislation and proposes some additional technical revisions in the Attachment Law.

**Exemptions from enforcement of judgments.** Following its decennial review of the dollar amounts of exemptions from enforcement of judgments, the Commission recommends addition of a \$5000 wildcard exemption to provide more flexible protection for debtors and to account for the change in the value of the dollar since the Enforcement of Judgments Law was enacted in 1982.

**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.

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

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

**Background**

5 The Attachment Law<sup>2</sup> was enacted in 1974 on recommendation of the  
6 Commission and has been amended on Commission recommendation several  
7 times since then.<sup>3</sup> In 1990, a bill sponsored by the California State Bar amended  
8 the Attachment Law to permit attachment where the plaintiff's claim is secured by  
9 personal property or fixtures.<sup>4</sup> The amendments eliminated the former rule that  
10 limited attachment in claims secured by personal property to cases where the  
11 plaintiff could show that the security had decreased in value or become valueless  
12 without fault of the plaintiff. Under the new rule, the existence of personal  
13 property security is irrelevant to the right to attach, but the amount of the  
14 attachment is reduced by the present value of the security plus the amount of any  
15 decrease in value caused by the plaintiff or prior holders of the security interest.  
16 The 1990 amendments were designed to give an *undersecured* creditor the same  
17 attachment remedy as an *unsecured* creditor, to the extent that the debt is not  
18 secured.<sup>5</sup>

19 The new rule will expire on January 1, 1996, by operation of statutory sunset  
20 clauses, unless the Legislature takes action before that date. If there is no

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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 Attachment Law*, 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.

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).

1 legislative action to preserve the 1990 amendments, the former rule would come  
2 back into force.<sup>6</sup>

### Experience Under 1990 Amendments

3 The Law Revision Commission was directed to study the impact of the 1990  
4 amendments on the attachment process during 1991-1993 and to report to the  
5 Legislature any recommendations concerning continuation or modification of the  
6 1990 changes.

7 The Commission solicited comments on the experience under the new rule from  
8 superior courts in ten of the most populous counties. In addition, letters were sent  
9 to all persons on the Commission's mailing list who have expressed an interest in  
10 debtor-creditor relations and to about 30 other potentially interested organizations  
11 that maintain registered lobbyists. The State Bar liaisons were notified of the study  
12 and the opinions of relevant State Bar sections were requested.

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

- 17 • Judge Joe S. Gray of the Sacramento County Superior Court reported that  
18 he and Judge Morrison, who handle almost all attachments in that county,  
19 have not perceived any difficulties with or any effect from the new rule.
- 20 • Judge Ronald L. Bauer of the Orange County Superior Court reported no  
21 observable impact of the 1990 amendments in over 700 cases considered  
22 since enactment of the new rule.
- 23 • Judge Arthur W. Jones of the San Diego County Superior Court reported  
24 that the new rule appears to be working well and that it has had no unusual  
25 or adverse affect on the number or dollar amount of attachments. Judge  
26 Jones concluded that evaluation of security is generally an easy task and  
27 saw no reason not to extend the new rule.
- 28 • The Debtor/Creditor Relations and Bankruptcy Committee of the Business  
29 Law Section of the State Bar wrote that, based on anecdotal history  
30 available to the members of the committee, the new rule "works effectively  
31 and should remain in operation."
- 32 • The Commercial Law League of America believes that the attachment  
33 provisions "should be allowed to remain in effect."

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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).

7. See letters attached to Memorandum 94-16 (on file with California Law Revision Commission); letter from Leo G. O'Biecnas, 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).

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

### Commission Recommendation

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

### Technical Issues

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

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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).

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

1 The Commission is charged with the responsibility of reviewing the dollar  
2 amount of debtors' exemptions under the Enforcement of Judgments Law<sup>13</sup> every  
3 10 years and recommending any changes in amounts "that appear proper."<sup>14</sup>

**Background**

4 Existing law provides seven personal property exemptions that are subject to  
5 dollar limitations. Whether an exemption may be increased in the case of marital  
6 property depends on the applicable statute. The general rule is that married persons  
7 are not entitled to double dollar amount exemptions, whether one or both of the  
8 spouses are debtors and regardless of the separate or community nature of the  
9 property.<sup>15</sup>

10 The dollar exemptions are as follows:

CCP	Type of Property	Amount	Increase for Married Debtors?
§ 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 also engaged in trade, business, or profession
§ 704.080	Social Security direct deposits	\$500	\$750 if more than one depositor
§ 704.090	Inmate trust funds	\$1000	Not increased
§ 704.100	Life insurance loan value	\$4000	May be doubled

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

13 Exemptions based on need or on the type of property are immune from inflation  
14 and price changes.<sup>16</sup> Exemptions in fixed dollar amounts are subject to degradation  
15 as the purchasing power of a dollar shrinks. It is difficult to determine a dollar

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, 2075-100 (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. Section 703.110(a).

16. 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).

1 amount that is appropriate in all circumstances. But once a dollar amount has been  
2 set by the Legislature, it follows that exempt amounts should be revised from time  
3 to time to take account of inflation. Otherwise, the protection enacted at one point  
4 in time will erode significantly over the years.

5 Depending on the index used, it appears that the purchasing value of the dollar  
6 since 1983 has declined by one-third or more. In other words, a dollar amount set  
7 in 1983 would need to be multiplied by a factor of from 1.5 to 1.67 to adjust for  
8 changes reflected in the consumer price index.<sup>17</sup>

9 The homestead exemption has been increased and supplemented several times  
10 since its enactment in 1982. Originally, the basic homestead exemption in Code of  
11 Civil Procedure Section 704.730 was \$30,000, for a single resident, with a special  
12 exemption of \$45,000 for family units and persons over 65. In 1986, the  
13 exemption for a person over 65 was set at \$60,000 and applied to disabled persons.  
14 In 1988, this third tier exemption was increased from \$60,000 to \$75,000. In 1990,  
15 all three tiers were increased, to \$50,000, \$75,000, and \$100,000, respectively. As  
16 a result of this legislative activity, the basic homestead protection has been  
17 increased so that it is effectively the same as it was in 1982, as measured by the  
18 home ownership component of the Consumer Price Index for western states.<sup>18</sup>

19 The exemptions under the Federal Bankruptcy Code are currently the subject of  
20 reform efforts in Congress.<sup>19</sup> Although California has opted out of the federal  
21 exemption scheme,<sup>20</sup> the California alternative bankruptcy exemptions parallel the  
22 federal amounts.<sup>21</sup> At this point, it is premature to consider increasing the  
23 alternative bankruptcy exemptions, because final action on the federal level has  
24 not taken place.

### Commission Recommendation

25 The Commission has reviewed the dollar amount of exemptions under California  
26 law and concludes that the best approach is to provide a "wildcard" exemption that  
27 a judgment debtor may apply to any property.<sup>22</sup> This new exemption would  
28 achieve the goal of compensating for inflation. A wildcard exemption also

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

18. See U.S. Department of Labor, CPI Detailed Report Data for November 1993, Table 11. Using a factor 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 factor, would be \$99,600.

19. See, e.g., H.R. 1998.

20. Section 703.130.

21. See Section 703.140.

22. Many states and the federal Bankruptcy Code provide wildcard exemptions. See, e.g., [Alabama, Arizona, Illinois, Indiana, Kentucky, Maine, Maryland, Michigan, Nebraska, New Mexico, North Dakota, Virginia, Washington]; 11 U.S.C. § 522. The California bankruptcy alternative exemptions also provide a wildcard exemption. Section 703.140(b)(5).

1 provides greater flexibility in the exemption statutes and relieves the relatively  
2 rigid categories of the existing monetary exemptions.<sup>23</sup>

3 The Commission recommends that the wildcard exemption be set at \$5000. This  
4 amount is approximately equal to the total amount by which the existing  
5 exemptions for a (1) motor vehicle, (2) tools of a trade, business, or profession, (3)  
6 jewelry, heirlooms, and works of art, and (4) life insurance would need to be  
7 increased to compensate for inflation since the amounts of these exemptions were  
8 set in 1982.<sup>24</sup>

9 The wildcard exemption would not be doubled for married debtors. This is  
10 consistent with the general policy of the exemption statutes.<sup>25</sup>

### ORDER OF SALE IN HOMESTEAD EXEMPTION PROCEEDINGS<sup>26</sup>

11 A recent case held the court hearing a petition for an order to sell a dwelling was  
12 required to order a sale of the dwelling even though the court's fair market value  
13 determination at the initial hearing indicated that the amount of liens plus the  
14 homestead exemption exceeded the estimated fair market value.<sup>27</sup> The  
15 Commission is informed that, in practice, courts generally do not make an order  
16 for sale under these conditions.<sup>28</sup> It is argued that ordering a sale may intimidate a  
17 debtor with the threatened loss of the debtor's home even though the creditor has  
18 reason to believe that the property will not actually be sold at auction because no  
19 bid will exceed the amount of liens plus the exemption.<sup>29</sup>

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23. For the implementation of this recommendation, see Section 704.220 *infra*.

24. The total amount of these exemptions is \$10,000. If the inflation factor is 1.5, the required increase is \$5000.

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

26. 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 (1980).

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

28. 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).

29. 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.

1 The language at issue in the case — “shall make an order for sale of the  
2 dwelling” — is a fragment of an earlier proposal that was not enacted.<sup>30</sup> This  
3 leftover rule should be modified. The Commission recommends that the statute be  
4 amended to conform to the better practice of avoiding orders for sale where it is  
5 not likely that an amount will be bid sufficient to satisfy part of the judgment.

#### ENFORCEMENT OF JUDGMENTS UNDER FAMILY CODE

6 **Background.** When the Enforcement of Judgments Law was enacted in 1982, it  
7 established a 10-year period of enforcement for money judgments and judgments  
8 for possession or sale of property.<sup>31</sup> This 10-year period was not tolled for any  
9 reason and when it expired the judgment became unenforceable. However, the  
10 judgment was renewable by a simple procedure for filing an application for  
11 renewal with the court and giving notice and an opportunity to the debtor to  
12 petition to vacate or modify the renewal. In addition, the statute preserved the  
13 ancient right to bring an action on the judgment subject to the 10-year rule of  
14 Section 337.5 and its exceptions and tolling features. In the case of a money  
15 judgment payable in installments, the 10-year period of enforceability and the  
16 renewal scheme treated each installment as if it were a judgment entered on the

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30. 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 *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.

31. See generally Sections 683.010-683.620, as enacted by 1982 Cal. Stat. ch. 1634, § 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).

1 date the installment fell due.<sup>32</sup> This structure was intended to provide certainty as a  
2 foundation for the various enforcement procedures. It was intended to eliminate  
3 the doubt about when a judgment or part thereof was enforceable and to regularize  
4 the process of determining how much was still owing on a judgment.

5 This scheme was not applied to judgments enforceable under the Family Law  
6 Act.<sup>33</sup> The Enforcement of Judgments Law did not affect the rule in family law  
7 that the court had discretion as to the manner of enforcement of judgments.<sup>34</sup>  
8 However, some of the benefits of the scheme in the Enforcement of Judgments  
9 Law were extended to the Family Law Act by providing that judgments for child  
10 or spousal support were enforceable by a writ of execution without the need for a  
11 court order if the amounts owing were not more than 10 years overdue — after 10  
12 years, overdue support payments were enforceable only in the court's discretion,  
13 and lack of diligence was to be considered in determining whether to permit  
14 enforcement.<sup>35</sup> The 10-year period ran as to each installment when it fell due.<sup>36</sup>

15 **Revisions of the Original Scheme.** In 1986, Section 4384.5 was added to the Civil  
16 Code providing that a judgment for child or spousal support could be renewed by  
17 application under the general procedures in the Enforcement of Judgments Law.<sup>37</sup>  
18 This section created the situation whereby the Enforcement of Judgments Law  
19 provided that the general rules on renewal did not apply to the Family Law Act  
20 and the Family Law Act provided that they did apply to enforcement of child or  
21 spousal support by execution.

22 In 1987, Civil Code Section 4383 was amended to permit enforcement of child  
23 or family support by execution, without prior court approval, until five years after  
24 the child reaches the age of majority, and thereafter for amounts not more than 10  
25 years overdue.<sup>38</sup> The 10-year rule was retained for enforcement of spousal support  
26 by a writ of execution.

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

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32. Section 683.030.

33. See Section 683.310, as enacted by 1982 Cal. Stat. ch. 1634, § 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.

34. See former Civ. Code. § 4380.

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

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

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

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

1 did not apply to such judgments made under the Family Law Act, although there  
2 was no exception for enforcement by writ as in the case of support.

3 This situation changed dramatically in 1992 when Civil Code Section 4384.5  
4 was replaced by a new rule that judgments for child or spousal support or for  
5 arrearages are completely exempt from any renewal requirement and are  
6 enforceable until paid in full.<sup>39</sup> In 1993, the law was again revised to provide for  
7 the optional renewal of support judgments.<sup>40</sup> The rules concerning nonmoney  
8 judgments were not revised.

9 **Current Law.** In 1992 and 1993, this area of the law was reorganized in the  
10 course of creating the new Family Code.<sup>41</sup> As a first step, the former cross-  
11 referenced provisions were carried over into the new code without substantive  
12 review.<sup>42</sup> At the same time, confusing an already complicated situation, many of  
13 these rules were amended to eliminate the last vestige of the 10-year rule.<sup>43</sup>  
14 Attempts were made to coordinate the Family Code with the ongoing revisions  
15 occurring around it, but the situation remained confused.<sup>44</sup>

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39. 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.

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

41. 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).

42. 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 5100-5104 without substantive change. See *infra* note 43.

43. 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.

44. 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 (repealed). Period for enforcement of installment payments**

1 The Commission proposes to reconcile the relationship between the  
2 Enforcement of Judgments Law and the Family Code. Accordingly, the vestiges of  
3 the 10-year renewal rule as applicable to support judgments should be deleted  
4 from the Family Code<sup>45</sup> and the obsolete cross-reference to the Family Code in the  
5 Enforcement of Judgments Law should be deleted.<sup>46</sup>

6 The Commission also recommends making clear that *nonmoney* judgments  
7 under the Family Code are subject to the general rules governing the period of  
8 enforceability and renewal, on a mandatory basis, not on an optional basis as in the  
9 case of support judgments. The general renewal scheme in the Enforcement of  
10 Judgments Law applies to judgments for possession or sale of property.<sup>47</sup> In recent  
11 years, the revisions of the law concerning enforcement and renewal of judgments  
12 under the Family Law Act, or now the Family Code, have focused on support  
13 judgments. It appears that the policies supporting that legislation do not apply to  
14 enforcement of judgments for sale or possession of property. Thus, it is  
15 appropriate to clarify the law by applying the orderly renewal procedure to such  
16 judgments.<sup>48</sup>

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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.

(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.

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

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

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

48. 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.

1     **Commission Recommendations.** In summary, the Commission recommends  
2 several technical revisions to clarify the law concerning enforcement of Family  
3 Code judgments:

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

RECOMMENDED LEGISLATION

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

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

4 483.010. (a) Except as otherwise provided by statute, an attachment may be  
5 issued only in an action on a claim or claims for money, each of which is based  
6 upon a contract, express or implied, where the total amount of the claim or claims  
7 is a fixed or readily ascertainable amount not less than five hundred dollars (\$500)  
8 exclusive of costs, interest, and attorney's fees.

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

22 (c) If the action is against a defendant who is a natural person, an attachment  
23 may be issued only on a claim which arises out of the conduct by the defendant of  
24 a trade, business, or profession. An attachment may not be issued on a claim  
25 against a defendant who is a natural person if the claim is based on the sale or  
26 lease of property, a license to use property, the furnishing of services, or the loan  
27 of money where the property sold or leased, or licensed for use, the services  
28 furnished, or the money loaned was used by the defendant primarily for personal,  
29 family, or household purposes.

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

32 ~~(e) This section shall remain in effect only until January 1, 1996, and as of that~~  
33 ~~date is repealed, unless a later enacted statute, which is enacted before January 1,~~  
34 ~~1996, deletes or extends that date.~~

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

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

40 **Background Comment (1974-90 revised).** Section 483.010 is based on subdivision (a) of  
41 former Section 537.1. Subdivision (a) of former Section 537.1 was designed to limit attachment

1 to cases arising out of commercial transactions. (The title to the 1972 enactment provides that it is  
 2 one "relating to attachment in commercial actions.") Section 483.010 continues this purpose.  
 3 Subdivision (a) limits the claims on which an attachment may be issued to those based on a  
 4 contract, express or implied, where the total amount claimed is \$500 or more, exclusive of costs,  
 5 interest, and attorney's fees. Subdivision (c) further carries out this purpose by providing that, if  
 6 the defendant is an individual, an attachment may be issued only if the contract claim "arises out  
 7 of the conduct by the individual of a trade, business, or profession" and only if the goods,  
 8 services, or money furnished were not used primarily for the defendant's personal, family, or  
 9 household purposes. *Cf.* *Advance Transformer Co. v. Superior Court*, 44 Cal. App. 3d 127, 142,  
 10 118 Cal. Rptr 350, 360 (1974) (construing former Sections 537.1 and 537.2 as "limiting the  
 11 attachment to situations in which the claim arises out of defendant's conduct of his business").  
 12 Compare Civil Code Section 1802.1 (retail sales). However, Section 483.010 is intended to  
 13 encompass each of the situations described in paragraphs (1) through (4) of subdivision (a) of  
 14 former Section 537.1. In this respect, it should be noted that the term "contract" used in  
 15 subdivision (a) includes a lease of either real or personal property. See *Stanford Hotel Co. v. M.*  
 16 *Schwind Co.*, 180 Cal. 348, 181 P 780 (1919) (realty); *Walker v. Phillips*, 205 Cal. App. 2d 26,  
 17 22 Cal. Rptr 727 (1962) (personalty). In addition, unlike former Section 537.2, Section 483.010  
 18 permits attachment on such claims against corporations and partnerships and other unincorporated  
 19 associations which are not organized for profit or engaged in an activity for profit. Under Section  
 20 483.010, the court is not faced with the potentially difficult and complex problem of determining  
 21 whether a corporation, partnership, or association is engaged in a trade, business, or profession.

22 Claims may be aggregated, but the total amount claimed in the action must be not less than  
 23 \$500. Generally an expeditious remedy will be available for lesser amounts under the small  
 24 claims procedure. See Section 116.110 *et seq.* The claim must be for a "fixed or readily  
 25 ascertainable" amount. This provision continues former law. *E.g.*, *Lewis v. Steifel*, 98 Cal. App.  
 26 2d 648, 220 P.2d 769 (1950).

27 The introductory clause of Section 483.010 recognizes the authority to attach granted by other  
 28 miscellaneous statutory provisions. See, *e.g.*, Civ. Code §§ 3065a, 3152; Fin. Code § 3144; Food  
 29 & Agric. Code § 281; Harb. & Nav. Code § 495.1; Health & Safety Code § 11501; Lab. Code §  
 30 5600; Rev. & Tax. Code §§ 6713, 7864, 8972, 11472, 12680, 18833, 26251, 30302, 32352. See  
 31 also Section 492.010 (nonresident attachment).

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

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

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

40 ~~483.010. (a) Except as otherwise provided by statute, an attachment may be~~  
 41 ~~issued only in an action on a claim or claims for money, each of which is based~~  
 42 ~~upon a contract, express or implied, where the total amount of the claim or claims~~  
 43 ~~is a fixed or readily ascertainable amount not less than five hundred dollars (\$500)~~  
 44 ~~exclusive of costs, interest, and attorney's fees.~~

45 ~~(b) An attachment may not be issued on a claim which is secured by any interest~~  
 46 ~~in real or personal property arising from agreement, statute, or other rule of law~~  
 47 ~~(including any mortgage or deed of trust of realty, any security interest subject to~~  
 48 ~~Division 9 (commencing with Section 9101) of the Commercial Code, and any~~  
 49 ~~statutory, common law, or equitable lien). However, an attachment may be issued~~

1 ~~(1) where the claim was originally so secured but, without any act of the plaintiff~~  
2 ~~or the person to whom the security was given, the security has become valueless or~~  
3 ~~has decreased in value to less than the amount then owing on the claim, in which~~  
4 ~~event the amount for which the attachment may issue shall not exceed the lesser of~~  
5 ~~the amount of the decrease or the difference between the value of the security and~~  
6 ~~the amount then owing on the claim, or (2) where the claim was secured by a~~  
7 ~~nonconsensual possessory lien but the lien has been relinquished by the surrender~~  
8 ~~of the possession of the property.~~

9 ~~(c) If the action is against a defendant who is a natural person, an attachment~~  
10 ~~may be issued only on a claim which arises out of the conduct by the defendant of~~  
11 ~~a trade, business, or profession. An attachment may not be issued on a claim~~  
12 ~~against a defendant who is a natural person if the claim is based on the sale or~~  
13 ~~lease of property, a license to use property, the furnishing of services, or the loan~~  
14 ~~of money where the property sold or leased, or licensed for use, the services~~  
15 ~~furnished, or the money loaned was used by the defendant primarily for personal,~~  
16 ~~family, or household purposes.~~

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

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

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

23 **SEC. 3.** Section 483.015 of the Code of Civil Procedure, as amended by Section  
24 27 of Chapter 589 of the Statutes of 1993, is amended to read:

25 483.015. (a) Subject to subdivision (b) and to Section 483.020, the amount to be  
26 secured by an attachment is the sum of the following:

- 27 (1) The amount of the defendant's indebtedness claimed by the plaintiff.  
28 (2) Any additional amount included by the court under Section 482.110.

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

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

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

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

40 (4) The value of any security interest in the property of the defendant held by the  
41 plaintiff to secure the defendant's indebtedness claimed by the plaintiff, together  
42 with the amount by which the value of the security interest has decreased due to

1 the act of the plaintiff or any person to whom a prior holder of the security interest  
2 was transferred.

3 ~~(e) This section shall remain in effect only until January 1, 1996, and as of that~~  
4 ~~date is repealed, unless a later enacted statute, which is enacted before January 1,~~  
5 ~~1996, deletes or extends that date.~~

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

10 **Background Comment (1982-83 revised).** Section 483.015 governs the amount for which an  
11 attachment may issue. Subdivision (b) clarifies the nature of claims that will reduce the amount to  
12 be secured by attachment. This subdivision makes clear, for example, that the amount to be  
13 secured by the attachment is not reduced by a tort claim that has not been reduced to judgment.  
14 The defendant may seek to have the amount secured by the attachment reduced as provided in  
15 Sections 484.060 and 485.240. Under subdivision (b), if a claim may be offset only if it is "one  
16 upon which an attachment could be issued," the claim must meet the requirements of Section  
17 483.010 as to amount and nature of the claim.

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

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

21 ~~483.015. (a) Subject to subdivision (b) and to Section 483.020, the amount to be~~  
22 ~~secured by an attachment is the sum of the following:~~

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

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

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

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

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

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

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

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

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

42 483.020. (a) Subject to subdivisions (d) and (e), the amount to be secured by the  
43 attachment in an unlawful detainer proceeding is the sum of the following:

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

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

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

5 (b) In an unlawful detainer proceeding, the plaintiff's application for a right to  
6 attach order and a writ of attachment pursuant to this title may include (in addition  
7 to the rent due and unpaid as of the date of the filing of the complaint and any  
8 additional estimated amount authorized by Section 482.110) an amount equal to  
9 the rent for the period from the date the complaint is filed until the estimated date  
10 of judgment or such earlier estimated date as possession has been or is likely to be  
11 delivered to the plaintiff, such amount to be computed at the rate provided in the  
12 lease.

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

19 ~~(d) Notwithstanding subdivision (b) of Section 483.010, an attachment may be~~  
20 ~~issued in an unlawful detainer proceeding where~~ Except as provided in subdivision  
21 (e), the amount to be secured by the attachment as otherwise determined under this  
22 section shall be reduced by the amounts described in subdivision (b) of Section  
23 483.015.

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

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

36 **Comment.** Section 483.020 is amended to conform this section to Sections 483.010 and  
37 483.015, as amended in 1990. The "notwithstanding" clause formerly in subdivision (d) is  
38 unnecessary, since Section 483.010 has been amended to eliminate the categorical restriction on  
39 attachment where a claim is secured by personal property. See 1990 Cal. Stat. ch. 943, § 1.  
40 Former subdivision (e) is deleted as surplus, since the appropriate reduction in the amount of the  
41 attachment is covered by subdivision (d), which incorporates the reduction factors in Section  
42 483.015. See 1990 Cal. Stat. ch. 943, § 2, which added paragraph (4) to Section 483.015(b).

43 As revised, this section is consistent with the rule that an attachment is available where a claim  
44 is partially secured by personal property (Section 483.010(b)), with the amount of the attachment  
45 reduced by the value of any security interest (Section 483.015(b)(4)) that is applicable exclusively

1 to the rental obligation. If the security may be applied to any obligation other than rent,  
2 subdivision (e) makes clear that the amount of the attachment is not reduced by the amount of the  
3 security.

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

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

20 Subdivision (d) makes clear that the amount of a deposit (such as a deposit described in Civil  
21 Code Section 1950.7) held by the plaintiff solely to secure the payment of rent is to be subtracted  
22 in determining the amount to be secured by the attachment. However, the amount of the deposit is  
23 not subtracted in determining the amount to be secured by the attachment where, for example, the  
24 deposit is to secure both the payment of rent and the repair and cleaning of the premises on  
25 termination of the tenancy. Under former law, it was held that a deposit in connection with a lease  
26 of real property was not "security" such as to preclude an attachment under former Section  
27 537(4), superseded by Section 483.010(b).

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

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

31 484.050. The notice of application and hearing shall inform the defendant of all  
32 of the following:

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

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

41 (c) The amount to be secured by the attachment is ~~the amount of the defendant's~~  
42 ~~indebtedness claimed by the plaintiff over and above the sum of (1) the amount of~~  
43 ~~any money judgment in favor of the defendant and against the plaintiff that~~  
44 ~~remains unsatisfied and is enforceable, (2) the amount of any indebtedness of the~~  
45 ~~plaintiff claimed by the defendant in a cross-complaint filed in the action if the~~  
46 ~~defendant's claim is one upon which an attachment could be issued, and (3) the~~  
47 ~~amount of any claim of the defendant asserted as a defense in the answer pursuant~~

1 to Section 431.70 if the defendant's claim is one upon which an attachment could  
2 be issued had an action been brought on the claim when it was not barred by the  
3 statute of limitations determined pursuant to Sections 482.110, 483.010, 483.015,  
4 and 483.020, which statutes shall be summarized in the notice.

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

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

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

22 (g) The defendant may obtain a determination at the hearing whether real or  
23 personal property not described in the application or real property described in the  
24 application is exempt from attachment by including the claim in the notice of  
25 opposition filed and served pursuant to Section 484.060 or by filing and serving a  
26 separate claim of exemption with respect to the property as provided in Section  
27 484.070, but the failure to so claim that the property is exempt from attachment  
28 will not preclude the defendant from making a claim of exemption with respect to  
29 the property at a later time.

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

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

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

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

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

42 484.090. (a) At the hearing, the court shall consider the showing made by the  
43 parties appearing and shall issue a right to attach order, which shall state the

1 amount to be secured by the attachment determined by the court in accordance  
2 with Section 483.015 or 483.020, if it finds all of the following:

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

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

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

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

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

14 (c) If the court determines that property of the defendant is exempt from  
15 attachment, in whole or in part, the right to attach order shall describe the exempt  
16 property and prohibit attachment of the property.(d) The court's determinations  
17 shall be made upon the basis of the pleadings and other papers in the record; but,  
18 upon good cause shown, the court may receive and consider at the hearing  
19 additional evidence, oral or documentary, and additional points and authorities, or  
20 it may continue the hearing for the production of the additional evidence or points  
21 and authorities.

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

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

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

35 485.220. (a) The court shall examine the application and supporting affidavit  
36 and, except as provided in Section 486.030, shall issue a right to attach order,  
37 which shall state the amount to be secured by the attachment, and order a writ of  
38 attachment to be issued upon the filing of an undertaking as provided by Sections  
39 489.210 and 489.220, if it finds all of the following:

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

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

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

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

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

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

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

16 **Comment.** Paragraph (6) is added to subdivision (a) of Section 485.220 to make clear that the  
17 court is not to issue a right to attach order and writ of attachment if there is no amount to be  
18 secured by the attachment. This amendment is consistent with Section 484.090. See Section  
19 484.090 Comment.

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

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

22 492.030. (a) The court shall examine the application and supporting affidavit and  
23 shall issue a right to attach order, which shall state the amount to be secured by the  
24 attachment, and order a writ of attachment to be issued upon the filing of an  
25 undertaking as provided by Sections 489.210 and 489.220, if it finds all of the  
26 following:

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

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

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

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

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

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

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

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

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

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

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

9 683.310. Except as otherwise provided in ~~Section 4502 of the Family Code~~, this  
10 chapter does not apply to a judgment or order made or entered pursuant to the  
11 Family Code.

12 **Comment.** Section 683.310 is amended for consistency with Section 683.130 and Family Code  
13 Section 4502, as revised in 1993. See 1993 Cal. Stat. ch. 219, §§ 142-143; 1993 Cal. Stat. ch.  
14 876, § 8; 1992 Cal. Stat. ch. 162, § 10. This is a technical, nonsubstantive change. For a specific  
15 provision in this chapter applicable to enforcement of support judgments under the Family Code,  
16 see Section 683.130. For a provision in the Family Code making this chapter applicable to  
17 enforceability and renewal of judgments for possession or sale, see Family Code Section 292.

18 **Code Civ. Proc. § 704.220 (added). Wildcard exemption**

19 SEC. 11. Section 704.220 is added to the Code of Civil Procedure, to read:

20 704.220. In addition to or in combination with any other property exempt under  
21 this article, the aggregate equity in real or personal property is exempt in the  
22 amount of five thousand dollars (\$5,000).

23 **Comment.** Section 704.220 is new. This section provides a wildcard exemption for judgment  
24 debtors that may be added to other exemptions in whole or in part or applied to any property not  
25 otherwise exempt. The exemption is not doubled in the case of married debtors. See Section  
26 703.110 (application of exemptions to marital property).

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

28 SEC. 12. Section 704.780 of the Code of Civil Procedure is amended to read:

29 704.780. (a) The burden of proof at the hearing is determined in the following  
30 manner:

31 (1) If the records of the county tax assessor indicate that there is a current  
32 homeowner's exemption or disabled veteran's exemption for the dwelling claimed  
33 by the judgment debtor or the judgment debtor's spouse, the judgment creditor has  
34 the burden of proof that the dwelling is not a homestead. If the records of the  
35 county tax assessor indicate that there is not a current homeowner's exemption or  
36 disabled veteran's exemption for the dwelling claimed by the judgment debtor or  
37 the judgment debtor's spouse, the burden of proof that the dwelling is a homestead  
38 is on the person who claims that the dwelling is a homestead.

39 (2) If the application states the amount of the homestead exemption, the person  
40 claiming the homestead exemption has the burden of proof that the amount of the  
41 exemption is other than the amount stated in the application.

1 (b) The court shall determine whether the dwelling is exempt. If the court  
2 determines that the dwelling is exempt, the court shall determine the amount of the  
3 homestead exemption and the fair market value of the dwelling and The court  
4 shall make an order for sale of the dwelling subject to the homestead exemption,  
5 unless the court determines that the sale of the dwelling would not be likely to  
6 produce a bid sufficient to satisfy any part of the amount due on the judgment. The  
7 order for sale of the dwelling subject to the homestead exemption shall specify the  
8 amount of the proceeds of the sale that is to be distributed to each person having a  
9 lien or encumbrance on the dwelling and shall include the name and address of  
10 each such person. Subject to the provisions of this article, the sale is governed by  
11 Article 6 (commencing with Section 701.510) of Chapter 3. If the court determines  
12 that the dwelling is not exempt, the court shall make an order for sale of the  
13 property in the manner provided in Article 6 (commencing with Section 701.510)  
14 of Chapter 3.

15 (c) The court clerk shall transmit a certified copy of the court order (1) to the  
16 levying officer and (2) if the court making the order is not the court in which the  
17 judgment was entered, to the clerk of the court in which the judgment was entered.

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

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

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

30 SEC. 13. Section 290 of the Family Code is amended to read:

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

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

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

42 SEC. 14. Section 291 of the Family Code is repealed.

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

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

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

9 SEC. 15. Section 292 is added to the Family Code, to read:

10 292. A judgment or order for possession or sale of property made or entered  
11 pursuant to this code is subject to the period of enforceability and the procedure  
12 for renewal provided by Chapter 2 (commencing with Section 681.010) of Title 9  
13 of Division 1 of Part 2 of the Code of Civil Procedure.

14 **Comment.** Section 292 is amended to apply the general rules concerning the period of  
15 enforceability and renewal of judgments in the Enforcement of Judgments Law to judgments for  
16 the sale or possession of property under the Family Code. This amendment does not affect the  
17 rules concerning enforcement of child, family, or spousal support. See, e.g., Sections 4502, 5100-  
18 5104; Code Civ. Proc. § 683.130(c) (optional renewal of support judgments).

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

20 SEC. 16. Section 5102 of the Family Code is repealed.

21 ~~5102. If a support order provides for the payment of support in installments, the~~  
22 ~~period specified pursuant to this chapter runs as to each installment from the date~~  
23 ~~the installment became due.~~

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

26 REVISED COMMENTS

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

28 **Comment.** Section 4502 continues former Civil Code Section 4384.5 without substantive  
29 change. The reference to "family" support is new and is consistent with Section 4501. ~~As to lack~~  
30 ~~of diligence in seeking enforcement of a support order, see Section 291. See also Code Civ. Proc.~~  
31 ~~§ 683.310 (except as provided in Family Code Section 4502, Code of Civil Procedure sections on~~  
32 ~~enforcement and renewal of judgments are inapplicable to judgment made or entered under~~  
33 ~~Family Code). See also Code Civ. Proc. § 683.130(c) (optional renewal of support judgments).~~