

Memorandum 77-3

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

A comprehensive draft of the enforcement of judgments title was prepared in 1974. Since that time, the Commission has considered various problems on a chapter by chapter or article by article basis. The staff draft of Title 9, attached to this memorandum, is a compilation of the decisions made by the Commission since the last comprehensive statute was prepared. Also attached is an appendix showing the disposition of existing law. Conforming changes in other laws have not yet been completed, but some provisions that are referred to in the statute and Comments and some Judicial Council forms are attached hereto as Exhibit 1. The remainder of this memorandum discusses additional problems we have noted in the preparation of this draft and reports our research on several questions raised at earlier meetings.

Chapter 1. Short Title; Definitions

§ 701.130 et seq. Definitions

Most of the definitions in this chapter are the same as those used in the Attachment Law. For the time being, since the levy procedures are mainly in the Attachment Law (see Section 703.310, incorporating attachment levy procedures for purposes of this title), the definitions are primarily cross-references. We could incorporate the definitions en masse, but think it preferable to specifically incorporate definitions where appropriate.

§ 701. . Levying officer

The definition of levying officer has been expanded to take care of the special case where an elisor or commissioner sells property pursuant to a judgment foreclosing a mortgage on real property.

Chapter 2. General Provisions

§ 702.170. Time for enforcement of judgment

The Commission previously decided that all aspects of enforcement should be completed within the 10 or 20 years provided. Hence, if

property levied upon were not actually sold within that time, it would have to be released. This decision resolved an ambiguity in the law at the time in favor of certainty. Under the tentative decision, the time for enforcing a judgment ran without ceasing from the time of its entry. Since that decision was made, the California Supreme Court held in Alonso Investment Corp. v. Doff, 17 Cal.3d 539 (1976), that a writ timely issued could be enforced after the 10-year period provided by Section 681. Lt. John V. Matarazzo of the Los Angeles County Marshal's Office has written (letter of September 1, 1976) to suggest that the Commission may want to reconsider the policy expressed in Section 702.170. The staff believes that the earlier decision remains sound.

§ 702.190. Installment judgments; time for enforcement; extension

This section implements an earlier Commission decision; it may seem rather complex upon first reading. Perhaps the Commission should consider making judgments enforceable for 20 years and thereby eliminate the procedures in Section 702.180 and this section for extending the enforceability of the judgment for another 10 years. Note that the extension is not subject to court discretion, but is granted as a matter of course. However, in the case of enforcement of installment judgments for support, the court must issue an order before a writ of execution may be issued. See Section 703.110(d), discussed infra.

§ 702.200. Stay of enforcement without bond

Section 702.200 refers to a "stay of enforcement" rather than a "stay of execution" provided in Section 681a. "Execution" has an ambiguous meaning throughout existing Title 9. In some sections, it clearly refers to enforcement of money judgments as well as judgments for possession or sale of real or personal property (e.g., Sections 682, 684), whereas in other sections it refers only to a writ of execution to enforce a money judgment (e.g., Sections 688, 691, 692, 710b). The draft statute uses the concept of enforcement in its broadest sense. Hence, in the view of the staff, a stay of enforcement should prevent the issuance or enforcement of a writ, the issuance of an order of examination, or the filing of an abstract to obtain a lien on real property. This runs counter to the decision in Industrial Indemnity Co. v. Levine, 49 Cal. App.3d 698, 122 Cal. Rptr. 712 (1975), which held

that recording an abstract of judgment is "not a step in the process of execution upon the judgment." However, it clearly is a step in the enforcement of the judgment since a judgment lien is enforced by a writ of execution. The staff proposes to state in the Comment to Section 702.200 that the section changes the rule in the Industrial Indemnity case.

It was suggested at an earlier meeting that the Comment to this section should note the situations where enforcement of a judgment might be stayed for a longer period without bond, in particular, quasi in rem judgments. As yet, however, the staff has not found any cases to cite as authority for this proposition. Accordingly, the Comment is silent on this point.

§ 702.290. Request for notice of sale

Section 692a permits a person to request notice of sale under "any execution" issued upon a judgment "entered as provided in Section 668." It is not clear whether this section refers only to money judgments and writs of execution issued thereunder and to judgments for the sale of property and writs issued thereunder, or whether it should also apply to judgments for the possession of real or personal property since writs issued to enforce these types of judgment may be levied as writs of execution to collect costs and damages and, in the case of personal property, for the value of the property when the property itself cannot be found. The Comment to Section 702.290 refers to the fact that writs of possession and writs of restitution may be treated as writs of execution. Hence, a person should be able to receive notice where property is sold under such writs. Perhaps this intent would be clearer if the words "of execution or a writ of enforcement" were deleted in subdivisions (a) and (c) of Section 702.290. All the enforcement of judgment forms issued by the Judicial Council under existing law contain a place for indicating that such notice has been requested. See Exhibit 1.

§ 702. . Liability of levying officer

We plan to add a section to Chapter 2 providing that the levying officer is not liable for the performance of a duty under Title 9. This

provision will replace some special provisions in the existing law such as the third paragraph of subdivision (9) of Section 689b.

Chapter 3. Execution

§ 703.110. Application for writ of execution

Subdivision (d) contains an exception to the normal rule that writs of execution are issued as a matter of right upon application to the clerk. Civil Code Section 4380 (see Exhibit 1) has been interpreted to require application to the court for an order that a writ of execution issue to enforce an installment judgment for support. The arguments for this policy are that it is frequently quite difficult to determine the exact amount due when several installments plus interest are due, that the court may wish to modify the support decree (although it may not do so retroactively), that there may have been partial satisfactions or payments in kind that would reduce the amount due, and that the court should have the discretion to determine the manner of enforcement of the support order. (See the cases cited in the Comment to Section 705.110.) Some of these policies are not limited to enforcement of installment judgments for support, but we do not propose to expand the requirement that the judgment creditor apply to the court before a writ of execution may issue.

§ 703.130(b)(5). Nonfinal judgments not subject to execution

This provision and Sections 703.310, 703.510(b), 705.310, and 705.610-705.640 should eliminate, or at least reduce, the confusion under existing law concerning the manner in which judgments in favor of the judgment debtor may be applied to the satisfaction of the judgment creditor's judgment.

Section 703.130(b)(5) makes clear that, until a judgment is final (prior to time for appeal has expired, or if appealed, the appeal is finally determined), it is not subject to execution. In this situation, the judgment may be reached only as provided in Sections 705.610-705.640 (lien on cause of action and judgment). A final judgment may be levied upon as provided in Section 488.420 by filing a copy of the writ in the action in which the judgment was rendered and serving a copy of the writ on the judgment debtor's judgment debtor. This method of levy is incorporated by Section 703.310. The judgment creditor should also be able

to have a receiver appointed to enforce the judgment in favor of the judgment debtor under Section 705.310 (incorporating Sections 564-571 relating to receivers). If levied upon pursuant to Sections 703.310 and 488.420, the judgment may be sold only pursuant to court order under Section 703.510(b).

Although we can find no case directly on point, general principles indicate that a lien on a judgment could be enforced by an equitable action to foreclose the lien. See Hibernia Savings & Loan Society v. London & Lancashire Fire Insurance Co., 138 Cal. 257, 71 P. 334 (1903). Presumably the court in such an action would also be able to resort to a writ of execution (cf. Willen v. Willen, 121 Cal. App. 351, 8 P.2d 942 (1932) (judicially created lien in favor of wife on husband's life insurance policy enforced upon foreclosure of lien by a writ of execution) or to appointment of a receiver (see subdivision 4 of Section 564). Existing law does not indicate the manner in which a lien on a cause of action and judgment is to be enforced if the judgment debtor is unwilling to enforce his judgment against his judgment debtor. See E. Jackson, California Debt Collection Practice § 17.19 (Cal. Cont. Ed. Bar 1968) wherein the author notes that the "vital question of how the judgment creditor of the plaintiff makes effective his lien once it is obtained" has been left open.

It may be useful to provide that a lien on a judgment may be enforced in the manner of a money judgment without the need to resort to an equitable action to foreclose. It would then be clear that the only purpose of the lien on the pending cause of action and judgment, as far as the judgment creditor is concerned, is to establish a priority.

§ 703.310. Levy of execution in manner of levy of attachment

This section incorporates the method of levy provided in the Attachment Law. At the last meeting, the Commission decided to continue the existing levy procedures unless it became clear that they were constitutionally infirm. As a consequence of this scheme, a problem inherent in the use of writs of attachment to assert that property in the name of another is at least in part property of the defendant or that the property was fraudulently transferred (see Civil Code Section 3439.09) lurks in this new law. These procedures put the burden on a third person to assert his interest in the property levied upon even

where the creditor is doubtful about the actual title. Of course, the third person may be able to recover damages in an action for abuse of process, but this remedy is less useful after judgment since the third person must bring a separate action rather than intervene in the action in which the attachment is issued. In addition, the third person will not have any resort to an undertaking for "wrongful execution" as he does under Chapter 10 of the Attachment Law for wrongful attachment. While the release provisions and the wrongful attachment provisions may assuage the constitutional suspicions about this use of a levy to assert title since there has not been at least an ex parte court hearing, the potential constitutional problems have not been eliminated.

As yet, these procedures have not been held unconstitutional in California, nor have they been seriously questioned. However, at least one court has hinted at the unconstitutionality of using a levy to assert a fraudulent conveyance under the principles set forth in Randone v. Appellate Department, 5 Cal.3d 536, 488 P.2d 13, 96 Cal. Rptr. 709 (1971). In Lauer v. Rose, 60 Cal. App.3d 493, 131 Cal. Rptr. 697 (1976), where a former wife caused a writ of execution to be levied on real property which her former husband had quitclaimed to his second wife on the ground that it was a fraudulent conveyance, the opinion concludes with the following discussion:

Assuming that a bidder could be obtained and a sale consummated, recordation of the deed evidencing the sale creates a cloud upon the title which can only be removed by a judicial determination of the interest purchased. In this respect the result is not unlike the prior law which permitted prejudgment attachments depriving a debtor of property before notice or hearing and which was declared invalid by the Supreme Court in Randone v. Appellate Department Although no question of due process arises as to sale under writ of execution of [the former husband's] property since he is the judgment debtor, we conclude that the rationale of Randone authorizes judicial interference with an indiscriminate sale affecting [the second wife's] property without due process of law. Not being a party to the action between [the former wife and husband, the second wife] has had no opportunity to establish that the property was her sole and separate property.

The court also states, however, that no question of lack of due process arises in the case because the former husband (apparently upon receiving notice of sale) moved to quash the writ and restrain the sale, which motion was granted after a noticed hearing.

§ 703.330. Manner of taking custody; keeper for farm or business

Since the Attachment Law became operative on January 1, some confusion has resulted from the relationship between Section 688(b) (incorporating the manner of levy of writ of attachment) and Sections 488.045 (discretion to remove property or place keeper in possession), 488.320(a) (manner of levy on tangible personal property in possession of defendant), and 488.360 (levy on farm products and inventory of going business, permitting keeper to operate business). (This problem is discussed more fully in Memorandum 77-1.) Former law required a two-day keeper (if the judgment debtor consented) when a going business was levied upon, whether under a writ of attachment or a writ of execution. The amendment of Section 688(b) contained in the Attachment Law has eliminated the two-day keeper, although it is arguable that a keeper may still be used to operate the business if the parties consent.

The staff has received telephone calls from several attorneys engaged in collection practice, several levying officers, and an official involved in collecting unemployment insurance taxes from businesses. The official was particularly concerned since, if the business were put out of operation by the levy, they would be harming the interests of the employees of that business--this would defeat the purpose of the unemployment insurance tax. Sentiment seemed generally to favor retention of the keeper, although the two-day minimum was recognized as arbitrary.

Accordingly, the staff has drafted Section 703.330 to make clear that a keeper may operate the business for at least two days (if consented to) or longer if the parties so choose. However, the staff proposes to delete the exception for motor vehicles formerly provided since it seems that, if its he business is to sell vehicles or if the business depends on the use of vehicles which are equipment, the purpose of operating the business would be defeated.

§ 703.340. Levy on deposit account, contents of safe deposit box, not exclusively in name of judgment debtor

The Commission requested the staff to contact some banks to find out how they apply Section 682a (from which Section 703.340 is derived) relating to levying on deposit accounts and safe deposit boxes that do

not stand solely in the name of the debtor. The staff discussed this matter with attorneys from two large banks and it appears that their practice is essentially the same.

Where a writ is delivered to the bank that seeks to levy on an account that turns out to be a joint account and there is no bond given under Section 682a, the bank does not honor the levy but also does not tip off the levying officer that the levy would have been effective if there had been a bond.

If the bond in the proper amount accompanies the writ, the amount sought to be levied upon is transferred to a special account and any amount remaining in the joint account will not be affected by the levy. This differs from the express language of Section 682a ("From the time of said levy and the delivery to it of said bond such bank . . . shall not honor a check or other order for the payment of money drawn against the account or other credit so levied upon . . . for a period of fifteen (15) days from the mailing of said notice or until the levy is sooner released.") Apparently there has not been any problem with third party claims to the amount set aside such as where the judgment debtor withdraws the funds not levied upon without the knowledge of the joint account holder. Section 703.340 codifies the existing practice of holding only so much as is stated in the writ.

The banks give notice both by telephone and by mail to the third person in whose name the account or safe deposit box stands. The banks have also developed detailed policies to handle levies on trust accounts, Totten trusts, partnership accounts, sole proprietors "doing business as" accounts, and the like. We do not propose to deal with these technical problems in the statute.

The bond under Section 682a is required to be in twice the amount of the judgment. This amount has no particular relationship to the amount of damages that might be suffered by a third person. The staff believes that this is probably an appropriate amount for the first levy, but that it is excessive in a situation where the judgment has been largely satisfied and the writ seeks a much smaller amount. Accordingly, Section 703.340 has been drafted to permit bond to be given in twice the lesser amount sought to be levied upon as stated in the writ. This has as much correlation to possible damages as does the figure of twice the amount of the judgment and is not so burdensome on creditors.

We have not changed the safe deposit box levy procedures although ideally it would be preferable to permit the judgment creditor to levy only on particular contents and not the entire box. (Note that Section 682a speaks both of levying on the contents of the box and levying on the box.) The bank personnel we talked to seemed satisfied with the existing law and practice in this matter. However, it should be noted that both banks require a court order before they will open the box. This is not contemplated by Section 682a or Section 703.340.

We have not attempted to devise procedures to deal with any constitutional problems in levying on property of third persons without notice or a hearing.

§ 703.520. Notice of sale

Perhaps interest holders of record should be given notice of sale. Of course, they may require that they be sent notice of sale pursuant to Section 702.290, but this option under existing law is rarely used. Pursuant to Section 703.720, the liens subordinate to that upon which real property is sold are extinguished. It is the intent of this policy to force such lienors to bid at the sale, but they obviously will not do so if they have no notice of the sale. If we require notice to interest holders of record, presumably the failure to give such notice would not void the levy or the sale, but we would make the judgment creditor liable to such persons for actual damages arising from the failure to give the notice.

We have tentatively added subdivision (g) to Section 703.520 to permit notice of sale to be given in classified advertisements in newspapers or in other periodicals. The expense of such advertising would be collectable against the judgment debtor only if he agreed thereto in writing. Is this provision useful?

§ 703.530. Sale without notice; defacing notice; liability

This section has been revised according to the Commission's decisions at the July 1975 meeting. The staff has researched the law relating to the forfeiture provision for defacing a notice but has not discovered anything revealing. There have not been any reported California decisions involving this forfeiture provision since 1851 when this provision was first enacted. The original language was as follows:

An officer selling without the notice prescribed by the last section shall forfeit five hundred dollars to the aggrieved party, in addition to his actual damages; and a person willfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale), shall forfeit five hundred dollars. [Cal. Stats. 1851, Ch. 5, § 222.]

The most likely interpretation of this language is that the forfeiture of the second clause is the same as the first--to the aggrieved party. However, the staff thinks that the purpose of deterring potential notice-defacers is adequately served by the criminal penalty (one month imprisonment or a fine of \$20 to \$100) notice of which could be stated on the notice of sale) making this provision unnecessary and the question of who is to receive the forfeiture of only minor historical interest.

There are several general provisions in the codes regarding forfeitures. Code of Civil Procedure Section 340 prescribes a one-year statute of limitations for an action upon a statute for a penalty or forfeiture. Code of Civil Procedure Section 393 governs venue in such actions. Where a forfeiture is payable to the state or a county, Government Code Section 26521 provides that the district attorney may prosecute the action for recovery of the forfeiture. We have tentatively made the forfeiture in Section 703.530 payable to the county since the enforcement of judgments has traditionally been a county by county matter.

§§ 703.610, 703.620. Possession of property purchased at sale

We have provided in Section 703.610 that the levying officer is to deliver property capable of manual delivery to the purchaser at the sale or assist the purchaser in obtaining possession of property pursuant to court order. No special provisions are included in Section 703.620 pertaining to obtaining possession of real property. The staff has considered amplifying the rights of purchasers to obtain possession of the property purchased at the sale. However, we would prefer not to prescribe any such procedures in detail in the statute. We presume that there is usually no problem in this regard. A common law writ of assistance has been issued where the defendant refuses to surrender possession of real property to the purchaser after execution of the deed at

a foreclosure sale. Rafferty v. Kirkpatrick, 29 Cal. App.2d 503, 85 P.2d 147 (1938).

§§ 703.710-703.790. Redemption

Mr. Hal Coskey has written the Commission concerning a problem with the redemption provisions in existing law. (See Exhibit 2.) Mr. Coskey finds that the one-year redemption period is too long, particularly since the interest rate on the purchaser's money is eight percent under existing law (seven percent under Section 703.750(a)(4)) and he may have had to borrow money at a higher rate. This problem should be minimized by the reduction of the redemption period to 90 days. We do not believe that the interest rate should be higher in this situation, however, than it is for judgments. If the legal rate of interest is to be raised, then the rate applicable to redemptions would be raised.

Mr. Carl Olsen has kindly provided the Commission with some figures from San Francisco County which, in the staff's view, support an earlier suggestion that redemption be eliminated. See Exhibit 3.

§ 703.720. Elimination of liens by sale

We have not dealt with the problem of liens of the same rank as that under which the property is sold. The staff is not sure that this is a significant problem requiring too sophisticated a solution. We are tempted to arbitrarily provide that a lien of the same rank is to be treated as a superior lien (thereby preserving the equal lienor's rights). On the other hand, it makes some sense to treat an equal lien as a subordinate lien (thereby eliminating the lien upon sale) since the lienor may protect himself by purchasing the property like any other subordinate lienor; of course, this would eliminate the lien of the first equal lienor. We do not want to provide that a lienor of equal rank is a redemptioner entitled to redeem the property.

§ 703.730. Persons entitled to redeem

Under existing law, if cotenants have mortgaged the property, any cotenant can redeem the property; however, the entire property must be redeemed, not merely the interest of the cotenant for the reason that the redemption terminated the effect of the sale. See Comment, The Statutory Right of Redemption in California, 52 Cal. L. Rev. 846, 857

(1964). Section 703.730 does not preclude this result, but it does not specifically provide for it either. Perhaps it would be sufficient to note in the Comment to the section that a cotenant judgment debtor can redeem the entire property.

§ 703.765. Request for statement of redemption price]

The draft of the redemption provisions assumes that the purchaser and the person seeking to redeem will generally work out the redemption price. Existing law apparently assumes the same thing. However, if there is a disagreement that the parties cannot resolve and the redemption period is drawing to a close, Section 703.770 provides a procedure whereby the person seeking to redeem can preserve his right to redeem and obtain a determination of the redemption price. The staff considered the possibility of attempting to formalize the process whereby the parties determine the redemption price short of a court hearing under Section 703.770. The following is a possible approach to facilitating agreement by the parties:

§ 703.765. Request for statement of redemption price

703.765. (a) Upon the written request of the person who seeks to redeem the property, the purchaser shall promptly provide a written statement itemizing the amounts that the purchaser believes are required to be paid to redeem the property as of the date the statement is prepared. The purchaser is bound by this statement as of the date of its preparation.

(b) Notwithstanding Section 703.750, if the purchaser fails or refuses to provide a written statement upon a proper request pursuant to subdivision (a), the person seeking to redeem the property is not required to pay any amounts described in subdivision (b) or (c) of Section 703.750 that were paid by the purchaser before the request for a statement was received, and no hearing may be held under Section 703.770 concerning such amounts.

Comment. Section 703.765 is new. It is intended to facilitate agreement on the redemption price. If the purchaser does not provide the statement, the person redeeming the property is required to pay the amount of the purchase price and interest thereon under subdivisions (a) and (d) of Section 703.750.

§ 703.770. Disagreement on redemption price; summary proceeding

Subdivision (a) of Section 703.770 continues existing law concerning the court in which the hearing to determine the redemption price is to be held. The virtue of requiring such hearings to be held in the court from which the writ issued pursuant to which the property

is to be sold is that such court has jurisdiction in the main action and the file is there. However, we can envision situations where it would make much more sense to have the hearing where the property is being sold. Valuation of the use of the property and other components of and setoffs against the redemption price may be more easily determined in the county where the property is located, and the redemption takes place through the levying officer of that county.

§ 704.110 et seq. Wage garnishment

At the last meeting, mention was made of a decision of a United States district court in Florida holding that a hearing was required before wages were garnished after judgment. This decision has been reversed by the Fifth Circuit in Brown v. Liberty Loan Corp., 539 F.2d 1355 (5th Cir. 1976). The circuit court found that the district court had not weighed all of the pertinent interests, in particular, the state's interest in facilitating the enforcement of judgments and the judgment creditor's interest in satisfying the judgment. The court concluded that, given proper weight, those interests appear to outweigh the debtor's interests. The court recognized the possibility of abuse since the creditor was not required to deny the debtor's eligibility for an exemption, but also noted that Florida law provides for a speedy determination of the exemption and liability for malicious levy and that the debtor had notice through the judicial proceedings leading to the judgment that garnishment was a possibility.

Chapter 5. Supplementary Procedures for the
Enforcement of Money Judgments

§ 701.110. et seq.

Several of the procedures included in this chapter have the effect of creating a lien on property. E.g., Sections 705.120 (examination of judgment debtor), 705.130 (examination of debtor of judgment debtor), 705.220 (creditor's suit). We have not attempted to codify the rules concerning the creation, enforcement, extinction, or priority of these liens.

We have also deleted the phrase "whenever a writ of execution against property of a judgment debtor may properly be issued, whether or not a writ has been issued or returned" from the various supplementary

procedures provided in Chapter 5. The Comments make clear that all enforcement procedures are subject to the general rules concerning when enforcement may take place provided in Sections 702.170-702.190.

§ 705.110. Written interrogatories to judgment debtor

Section 705.110 is based on a new provision added by Chapter 308 of the Statutes of 1976. The Comment to Section 705.110 explains the resolution of several ambiguities in the new provision. Note that here and in Section 705.120, we have changed the four-month period to a 120-day period to achieve some precision.

§ 705.160(b). Order applying property to satisfaction judgment precluded where third party makes adverse claim or denies debt

At the last meeting, the Commission declined to adopt the suggestion that third party claims be determined in examination proceedings. The discussion assumed that the third party would be forced to litigate the title in such proceedings, and that such proceedings might be in a different venue from where the third party claim would be determined, thereby making it inconvenient for the third person. However, the Commission did not consider the possibility of permitting (rather than requiring) the third person to have the question of title to the property determined in the examination proceeding. The staff believes that, if the third party, the judgment creditor, and the judgment debtor are willing to try title in the examination proceeding, the statute should permit it.

§ 705.190. Referee to conduct examination

Mr. Raymond Greenberg has written the Commission concerning the problem of setting fees and reference fees in debtor examinations. See Exhibit 3. Taking first the matter of the fee for the services of the referee (\$15 per half hour in Alameda County), the staff concludes that such fees are authorized by Code of Civil Procedure Section 1023 which provides as follows:

The fees of referees are such reasonable sum as the court may fix for the time spent in the business of the reference; but the parties may agree, in writing, upon any other rate of compensation, and thereupon such rates shall be allowed.

However, the staff does not understand why only one half of the creditor's costs are recoverable in Alameda County. (See rule 18 on page 2 of the attachment to Exhibit 3.) See Section 1032.6 (judgment creditor entitled to costs in supplementary proceedings).

As for the \$10.00 fee for setting or continuing the examination (see rules 11, 14, and 15), the law is less clear. Under existing law, the only specific authorization for fees in examinations is in Section 722 which provides a fee of four or six dollars for filing an abstract in a county other than that in which the judgment was entered. Silence concerning any other fee for having a hearing set or for filing first papers could be taken to mean that no such additional fees should be charged, especially in a case where the examination is in another county, but also in a case where the examination is in the same county.

Does the Commission wish to recommend legislation in this area?

§ 705.240. Order forbidding transfer or payment to judgment debtor

This section has been revised to deal with certain constitutional objections voiced at the January 1976 meeting. See the Comment to Section 705.240.

§ 705.320. Receiver to transfer alcoholic beverage license

We have sent the draft of this section to the Department of Alcoholic Beverage Control, but as yet have not received a reply. Mr. Joseph Wein has expressed some concern about this proposed procedure, although we are not certain as to his objection. See page 2 of Exhibit 3 attached to Memorandum 77-1 (to be sent).

§ 705.510. Charging orders

We have added a specific reference to charging orders against limited partnerships. See the Comment to Section 705.510.

§§ 705.610-705.640. Liens on causes of action and judgments

Some concern was expressed at the last meeting about the intent of subdivision (b) of existing Section 688.1 which precludes an assignee by operation of law of a party to a personal injury action from acquiring an interest in or lien on money recovered by the party for general damages. We have not continued this provision on the strength of In re Kanter, 505 F.2d 228 (9th Cir. 1974), aff'g, 345 F.Supp. 1151 (C.D. Cal.

1972). The district court opinion at 1154 quotes from a letter written by Edwin Z'berg, the sponsor of the bill enacting Section 688.1(b), as follows:

In my opinion the phrase ". . . assignee by operation of law . . ." includes only a trustee in bankruptcy. It may be that there might be some other assignee by operation of law, but I was specifically attempting to get at trustees in bankruptcy and was advised by the Legislative Counsel that the language "assignee by operation of law" would accomplish my purpose.

Accordingly, the federal courts held that it was an unconstitutional attempt to limit the authority of the trustee in bankruptcy but that, regardless of its intent, its effect was to prevent the proper administration of the Bankruptcy Act. The Ninth Circuit noted that it was arguable the provision had a broader application, citing Labor Code Section 3852 and Insurance Code Section 11662, but agreed with the finding of the district court based on the Z'berg letter.

§ 705.620. Endorsement of lien on judgment and abstract

If a lien is granted, its existence is noted on the judgment and any abstract of judgment issued thereafter. However, there is a technical problem in that the existence of the lien does not appear on a writ of execution which may be issued to enforce the judgment. The staff proposes to provide for such a notation on the writ.

Chapters 8 and 9. Enforcement of Judgments for Possession of Real and Personal Property

§§ 708.170, 709.150. Return of writs of possession and writs of restitution

The provisions concerning return may not be entirely satisfactory. We have made writs of possession and restitution subject to the same time limits on enforceability (one year) as a writ of execution that has been levied within the first 90 days. However, these writs may also be levied for costs and damages (and in the case of a writ of possession where the property cannot be found, for the value of the property) in the manner of a writ of execution. It follows logically that, in such circumstances, the writ of possession or restitution should not be leviable longer than a writ of execution (90 days). See Section 703.260. This means that a writ of possession may be executed after 90 days to

seize the property that is the subject of the judgment but that, if no property has been levied upon for costs or damages within the first 90 days, the judgment creditor will have to have another writ issued for that purpose. This situation is not really different from that existing under current law, as indicated in Magnaud v. Traeger, 66 Cal. App. 526, 226 P. 990 (1924) (see discussion in Comment to Sections 709.170 and 709.150), but the structure of the return provisions in the draft statute makes the complexity more obvious.

§§ 709.130, 709.140. Execution of writ of restitution; disposition of personal property

The staff has added provisions to Chapter 9 that would make applicable the procedures of Section 1174 (unlawful detainer--see Exhibit 1) in all cases where an occupant is being dispossessed of real property. Similarly, Section 709.140 incorporates the procedures for disposing of personal property. The existing practice regarding disposition of personal property is not clear, but we see no significant distinction between the landlord-tenant situation under Section 1174 and the judgment creditor-occupant situation in Chapter 9 which is intended to cover judgments in ejectment, partition, eminent domain, forceable entry, and the like.

Release of Excessive Levy

Section 488.555 provides for the release of the attachment of property to the extent that the value of the defendant's interest in the property exceeds the amount necessary to satisfy the amount to be secured by the attachment. The length of time during which property is held under a writ of attachment is generally longer than under a writ of execution since property is held under a writ of attachment until the conclusion of the action. Should we add a procedure for releasing an excessive execution upon motion of the judgment debtor?

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1

§ 682

CODE OF CIVIL PROCEDURE

OFFICIAL FORMS

The following forms are approved by the Judicial Council of California for use on an optional basis effective July 1, 1977.

| | | | |
|---|--|---------------|--------------------|
| NAME AND ADDRESS OF ATTORNEY | | TELEPHONE NO. | FOR COURT USE ONLY |
| ATTORNEY FOR | | | |
| Insert name of court, judicial district or branch court, if any, and Post Office and Street Address | | | |
| PLAINTIFF | | | |
| DEFENDANT | | | |
| WRIT OF EXECUTION (MONEY JUDGMENT) | | | Case Number |

- To the Sheriff or any Marshal or Constable of the County of _____
- You are directed to satisfy the judgment described below, with interest and costs, and your costs and disbursements, out of (A) the personal property of judgment debtor, not exempt from execution, and if sufficient personal property cannot be found, then out of debtor's real property, or (B) if the judgment is a lien on real property then out of the real property belonging to debtor on the date the abstract of judgment was filed under CCP 874, or on any date thereafter. Unless this writ is served on debtor at the time of levy, you are also directed to give debtor notice by mail (at address given on the reverse side) of any levy of execution under this writ, and to make return of this writ with what you have done endorsed on it not less than 10 days nor more than 60 days after you receive it.

If your levy is against earnings, the return must be made within 90 days as provided by CCP 882.3

3. Judgment creditor (Name) _____

4. Judgment debtor (Name) _____

5. Total judgment as entered

a. Principal:

\$ _____

b. Attorney fees:

\$ _____

c. Interest:

\$ _____

d. Costs:

\$ _____

e. Total (Add 5a, b, c & d)

\$ _____

6. Total judgment and accruals

a. Interest (on item 5a) as adjusted for payments & partial satisfactions (per filed affidavit CCP 882.2):

\$ _____

b. Costs (per filed memo of costs after judgment):

\$ _____

c. Total (Add 5a, 5a & 6b)

\$ _____

7. Net balance due on judgment

a. Payments & partial satisfactions:

\$ _____

b. Net balance due before issuance of writ (subtract 7a from 6c):

\$ _____

c. Fee for issuance of writ:

\$ _____

d. Net balance due on date of writ (Add 7b & 7c):

\$ _____

8. Levying officer: Add your commission, costs of execution and the following daily interest from date of writ to date of levy (7% per year on 5e or 7b, whichever is less) \$ _____ per day

9. Judgment entered on (Date) _____

(Continued on Reverse Side)

CODE OF CIVIL PROCEDURE

§ 682

10. Judgment entered in (Complete where applicable): Judgment Book Minute Book Docket
Volume No. Page No.

11. Notice of sale under this writ has not been requested
 has been requested by (Name and address.) Additional name and address stated on attachment 10.

(Seal) Date: Clerk, by Deputy

| | | | | | |
|--------------------------|------------------------------------|--------------------------|--------------------------|------------------------------------|--------------------------|
| <input type="checkbox"/> | Mailing Address of Judgment Debtor | <input type="checkbox"/> | <input type="checkbox"/> | Mailing Address of Judgment Debtor | <input type="checkbox"/> |
| <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> |
| <input type="checkbox"/> | Mailing Address of Judgment Debtor | <input type="checkbox"/> | <input type="checkbox"/> | Mailing Address of Judgment Debtor | <input type="checkbox"/> |
| <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> |

NOTICES TO JUDGMENT DEBTOR

NOTICE TO THE JUDGMENT DEBTOR: You may be entitled to file a claim exempting your property from execution. If so, you must do so within 20 days in the case of real property, or 10 days in the case of all other property, from the date your property was levied upon, by delivering to the levying officer an affidavit of exemption, together with a copy thereof, as provided in Section 690.36 of the Code of Civil Procedure. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that an affidavit, if any, may be filed on time.

NOTICE TO THE HOMEOWNER: You may be able to protect the residential real property described in the notice of levy from execution and forced sale if you or your family are now residing on the property. If you or your spouse wish to prevent the forced sale of this property, a claim of exemption must be filed as required by Section 690.30 of the Code of Civil Procedure within 20 days from the date of service of this notice. For your own protection you should seek the advice of an attorney in this matter, and you should do so promptly so that your claim of exemption, if any, may be filed within 20 days of the date of service of this notice.

| | | |
|--|---------------|---------------------|
| NAME AND ADDRESS OF ATTORNEY | TELEPHONE NO. | POP. COURT USE ONLY |
| ATTORNEY FOR | | |
| Insert name of court, judicial district or branch court if any, and Post Office and Street Address | | |
| PLAINTIFF | | |
| DEFENDANT | | |
| WRIT OF EXECUTION (POSSESSION OF REAL PROPERTY) | | Case Number |

1 To the Sheriff or any Marshal or Constable of the County of _____

2 You are directed, in the manner provided by law, to place the judgment creditor in possession of the premises and real property specified in the judgment described below, and to satisfy any money due under that judgment, with interest and costs and your costs and disbursements as follows: out of (A) the personal property of judgment debtor, not exempt from execution and if sufficient personal property cannot be found, then out of debtor's real property, or (B) if the judgment is a lien on real property then out of the real property belonging to debtor on the date the abstract of judgment was filed under CCP §14 or on any date thereafter. Unless this writ is served on debtor at the time of levy, you are also directed to give debtor notice by mail (of address given on the reverse side) of any levy of execution under this writ, and to make return of the writ with what you have done endorsed on it not less than 10 days nor more than 30 days after you receive it.

If your levy is against earnings, the return must be made within 90 days as provided by CCP §82.3

3 Judgment creditor (Name) _____

4 Judgment debtor (Name) _____

5 Total judgment as entered

- a. Principal \$ _____
- b. Attorney fees: \$ _____
- a. Interest \$ _____
- c. Costs: \$ _____
- e. Total (Add 5a, b, c & d): \$ _____

6 Total judgment and accruals

- a. Interest (on item 5e) as adjusted for payments & partial satisfactions (per filed affidavit CCP §82.2): \$ _____
- b. Costs (per filed memo of costs after judgment): \$ _____
- c. Total (Add 5a, 5b & 6b): \$ _____

7 Net balance due on judgment

- a. Payments & partial satisfactions: \$ _____
- b. Net balance due before issuance of writ (subtract 7a from 6c): \$ _____
- c. Fee for issuance of writ: \$ _____
- d. Net balance due on date of writ (Add 7b & 7c): \$ _____

8 Levying officer: Add your commission, costs of execution and the following daily interest from date of writ to date of levy (7% per year on 5d or 7b, whichever is less): \$ _____ per day.

9 Judgment entered on (Date) _____

(Continued on Reverse Side)

Form Approved by the
Judicial Council of California, revised
March 1, 1975

**WRIT OF EXECUTION
(POSSESSION OF REAL PROPERTY)**

14 USC 1475, CCP §§ 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

CODE OF CIVIL PROCEDURE

§ 682

10 Judgment entered in (Complete where applicable): Judgment Book Minute Book Docket
Volume No. Page No.

11 Judgment was entered for restitution and possession of the following premises and real property. (Additional description in attachment 11)

12 Notice of sale under this writ has not been requested
 has been requested by (Name and address) Additional name and address stated on attachment 12.

| | | | |
|--------------------------|------------------------------------|--------------------------|------------------------------------|
| [Seal] | Dated | Clerk, by _____ | Deputy |
| <input type="checkbox"/> | Missing Address of Judgment Debtor | <input type="checkbox"/> | Missing Address of Judgment Debtor |
| <input type="checkbox"/> | | <input type="checkbox"/> | |
| <input type="checkbox"/> | Missing Address of Judgment Debtor | <input type="checkbox"/> | Missing Address of Judgment Debtor |
| <input type="checkbox"/> | | <input type="checkbox"/> | |

NOTICES TO JUDGMENT DEBTOR

NOTICE Personal property remaining on the premises at the time of its restitution to the landlord will be sold or otherwise disposed of in accordance with Section 1174 of the Code of Civil Procedure unless the tenant or the owner pays the landlord the reasonable costs of storage and takes possession of the personal property not later than 15 days after the time the premises are restored to the landlord.

NOTICE TO THE JUDGMENT DEBTOR You may be entitled to file a claim exempting your property from execution. If so, you must do so within 20 days in the case of real property, 10 in the case of all other property from the date your property was levied upon, by delivering to the levying officer an affidavit* of exemption, together with a copy thereof, as provided in Section 690.50 of the Code of Civil Procedure. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that an affidavit, if any, may be filed on time.

NOTICE TO THE HOMEOWNER. (The following notice applies only to real property of the judgment debtor, not specified in item 11 above.) You may be able to protect the residential real property described in the notice of levy from execution and forced sale if you or your family are now residing on the property. If you or your spouse wish to prevent the forced sale of this property, a claim of exemption must be filed as required by Section 690.50 of the Code of Civil Procedure within 20 days from the date of service of this notice. For your own protection you should seek the advice of an attorney in this matter, and you should do so promptly so that your claim of exemption, if any, may be filed within 20 days of the date of service of this notice.

* Declaration signed in California may be used in place of affidavit (CCP 2018.5). Affidavit required when signed outside California.

- 4 -

Name, Address and Telephone No. of Plaintiff

Space Below for Use of Court Clerk Only

Attorney(s) for

COURT OF CALIFORNIA, COUNTY OF

(SUPERIOR, MUNICIPAL, or JUSTICE)

(Name of Municipal or Justice Court District or of branch court, if any)

Plaintiff(s):

CASE NUMBER

Defendant(s):

WRIT OF EXECUTION
(Possession of Personal Property)

(Abbreviated Title)

To the Sheriff or any Marshal or Constable of the County of

You are directed, in the manner provided by law, to deliver to the judgment creditor(s) the possession of the personal property specified in the judgment described below, or if delivery cannot be had, then the value thereof, and to satisfy any money due under that judgment, with interest and costs and your costs and disbursements.

NOTICE TO THE JUDGMENT DEBTOR(S): You may be entitled to file a claim exempting your property from execution. See reverse side.

Judgment Creditor(s): Additional name(s) stated on reverse side

Amount of Total Judgment as Entered

- 1. Principal \$
- 2. Attorney(s) fees \$
- 3. Interest \$
- 4. Costs \$
- 5. Total (add items 1, 2, 3, & 4) \$

Judgment Debtor(s): Additional name(s) stated on reverse side

Add:

- 6. Accrued interest on total judgment (Item 5) as adjusted for payments & partial satisfactions \$
- 7. Accrued costs (per Red Memo of Costs After Judgment) \$
- 8. Total judgment & accruals (add items 5, 6, & 7) \$
- 9. Satisfactory payments & partial satisfactions \$
- 10. Net balance due before issuance of writ \$
- 11. Add fee for issuance of writ \$
- 12. NET BALANCE DUE on date of writ \$

Date of Entry of Judgment:

Entered in: Judgment Book Minute Book Docket
Volume No. Page No. for possession of the personal property described on reverse side (or attached) and incorporated herein.

Notice of sale under this writ has not been requested.
 Notice of sale has been requested by: (See name(s) and address(es) on reverse side)

Laying officer: Add interest at \$ per day from date of writ to date of levy (7% per year on lesser of Item 5 or Item 10) and your commission and costs of execution

Clerk

(SEAL)

Dated

By

Deputy

Mailing Address of Judgment Debtor

Mailing Address of Judgment Debtor

Form Approved by the
National Council of California
Judges July 1, 1971

(See reverse side)
WRIT OF EXECUTION
(Possession of Personal Property)

15 U.S.C. § 1075 OCP 682
002 1 004-001, 000, 000 000
002a, 1002 b, 1002 7, etc

CODE OF CIVIL PROCEDURE

§ 682

NOTICE TO THE JUDGMENT DEBTOR. You may be entitled to file a claim exempting your property from execution if so, you must do so within 10 days from the date your property was levied upon, by delivering to the levying officer an affidavit of exemption together with a copy thereof, as provided in Section 680.50 of the Code of Civil Procedure. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that an affidavit, if any, may be filed on time.

Notice of sale has been requested by:

Name(s):

Address(es):

(Use space below for name(s) or address(es) Judgment Creditor(s) or Judgment Debtor(s).)

Judgment was entered for possession of the following personal property, or if delivery cannot be had, then for the value(s) specified in that judgment or supplemental order(s). (itemize with values ; | pages are attached and incorporated herein.)

441 (1)

COURT OF CALIFORNIA, COUNTY OF

| | | |
|---|-----------|---------------------|
| NAME OF DEBTOR(S) OR JUDICIAL COURT DISTRICT OR OF BRANCH COURT, IF ANY | | FOR COUNTY USE ONLY |
| TITLE OF CASE (ABBREVIATED) | | |
| ATTORNEY(S) NAME AND ADDRESS | | CASE NUMBER |
| ATTORNEY(S) FOR | TELEPHONE | |

WRIT OF EXECUTION (Joint Debtor(s))

To the Sheriff or any Marshal or Constable of the County of

You are directed to satisfy the judgment described below, with interest and costs and your costs and disbursements, as provided by law. (See reverse side.)

NOTICE TO THE JUDGMENT DEBTOR(S): You may be entitled to file a claim exempting your property from execution. See reverse side.

Judgment Creditor(s): Additional names listed on reverse side.

Judgment Debtor(s): Additional names listed on reverse side.

Date of Entry of Judgment:

Entered in: Judgment Book Minute Book Docket
Volume No. ... Page No. ...

Date joint debtor(s) ... was (were) declared bound by the judgment (CCP 682-684):

- Additional costs against certain joint debtor(s) and not others listed on reverse side (or attached) and incorporated herein.
- Notice of sale under this writ has not been requested.
- Notice of sale has been requested by (see name(s) and address(es) on reverse side).

Amount of Total Judgment as Entered:

| | |
|---|----|
| 1. Principal | \$ |
| 2. Attorney(s) fees | \$ |
| 3. Interest | \$ |
| 4. Costs | \$ |
| 5. Total (add items 1, 2, 3, & 4) | \$ |
| Add: | |
| 6. Accrued interest on total judgment (item 5) as adjusted for payments & partial satisfactions | \$ |
| 7. Accrued costs (per filed Memo of Costs After Judgment) | \$ |
| 8. Total judgment & accruals (add items 5, 6, 7) | \$ |
| 9. Subtract payments & partial satisfactions | \$ |
| 10. Net balance due before issuance of writ | \$ |
| 11. Add fee for issuance of writ | \$ |
| 12. NET BALANCE DUE on date of writ | \$ |
| Larrying officer: Add interest at % per day from date of writ to date of levy (7% per year on basis of item 6 or item 10) and your commission and costs of execution. | |

(SEAL) Dated ... By ... Clerk Deputy

Name and Mailing Address of Judgment Debtor

Form Approved by the Judicial Council of California Effective July 1, 1971 Revised March 4, 1972

WRIT OF EXECUTION (Joint Debtor(s))

11 USC § 141, CCP 682
 1961-1962, 1964-1965, 1966-1967, 1968-1969, 1970-1971, 1972-1973
 1974-1975, 1976-1977, 1978-1979, 1980-1981, 1982-1983, 1984-1985, 1986-1987, 1988-1989, 1990-1991, 1992-1993, 1994-1995, 1996-1997, 1998-1999, 2000-2001, 2002-2003, 2004-2005, 2006-2007, 2008-2009, 2010-2011, 2012-2013, 2014-2015, 2016-2017, 2018-2019, 2020-2021, 2022-2023, 2024-2025, 2026-2027, 2028-2029, 2030-2031, 2032-2033, 2034-2035, 2036-2037, 2038-2039, 2040-2041, 2042-2043, 2044-2045, 2046-2047, 2048-2049, 2050-2051, 2052-2053, 2054-2055, 2056-2057, 2058-2059, 2060-2061, 2062-2063, 2064-2065, 2066-2067, 2068-2069, 2070-2071, 2072-2073, 2074-2075, 2076-2077, 2078-2079, 2080-2081, 2082-2083, 2084-2085, 2086-2087, 2088-2089, 2090-2091, 2092-2093, 2094-2095, 2096-2097, 2098-2099, 2100-2101, 2102-2103, 2104-2105, 2106-2107, 2108-2109, 2110-2111, 2112-2113, 2114-2115, 2116-2117, 2118-2119, 2120-2121, 2122-2123, 2124-2125, 2126-2127, 2128-2129, 2130-2131, 2132-2133, 2134-2135, 2136-2137, 2138-2139, 2140-2141, 2142-2143, 2144-2145, 2146-2147, 2148-2149, 2150-2151, 2152-2153, 2154-2155, 2156-2157, 2158-2159, 2160-2161, 2162-2163, 2164-2165, 2166-2167, 2168-2169, 2170-2171, 2172-2173, 2174-2175, 2176-2177, 2178-2179, 2180-2181, 2182-2183, 2184-2185, 2186-2187, 2188-2189, 2190-2191, 2192-2193, 2194-2195, 2196-2197, 2198-2199, 2200-2201, 2202-2203, 2204-2205, 2206-2207, 2208-2209, 2210-2211, 2212-2213, 2214-2215, 2216-2217, 2218-2219, 2220-2221, 2222-2223, 2224-2225, 2226-2227, 2228-2229, 2230-2231, 2232-2233, 2234-2235, 2236-2237, 2238-2239, 2240-2241, 2242-2243, 2244-2245, 2246-2247, 2248-2249, 2250-2251, 2252-2253, 2254-2255, 2256-2257, 2258-2259, 2260-2261, 2262-2263, 2264-2265, 2266-2267, 2268-2269, 2270-2271, 2272-2273, 2274-2275, 2276-2277, 2278-2279, 2280-2281, 2282-2283, 2284-2285, 2286-2287, 2288-2289, 2290-2291, 2292-2293, 2294-2295, 2296-2297, 2298-2299, 2300-2301, 2302-2303, 2304-2305, 2306-2307, 2308-2309, 2310-2311, 2312-2313, 2314-2315, 2316-2317, 2318-2319, 2320-2321, 2322-2323, 2324-2325, 2326-2327, 2328-2329, 2330-2331, 2332-2333, 2334-2335, 2336-2337, 2338-2339, 2340-2341, 2342-2343, 2344-2345, 2346-2347, 2348-2349, 2350-2351, 2352-2353, 2354-2355, 2356-2357, 2358-2359, 2360-2361, 2362-2363, 2364-2365, 2366-2367, 2368-2369, 2370-2371, 2372-2373, 2374-2375, 2376-2377, 2378-2379, 2380-2381, 2382-2383, 2384-2385, 2386-2387, 2388-2389, 2390-2391, 2392-2393, 2394-2395, 2396-2397, 2398-2399, 2400-2401, 2402-2403, 2404-2405, 2406-2407, 2408-2409, 2410-2411, 2412-2413, 2414-2415, 2416-2417, 2418-2419, 2420-2421, 2422-2423, 2424-2425, 2426-2427, 2428-2429, 2430-2431, 2432-2433, 2434-2435, 2436-2437, 2438-2439, 2440-2441, 2442-2443, 2444-2445, 2446-2447, 2448-2449, 2450-2451, 2452-2453, 2454-2455, 2456-2457, 2458-2459, 2460-2461, 2462-2463, 2464-2465, 2466-2467, 2468-2469, 2470-2471, 2472-2473, 2474-2475, 2476-2477, 2478-2479, 2480-2481, 2482-2483, 2484-2485, 2486-2487, 2488-2489, 2490-2491, 2492-2493, 2494-2495, 2496-2497, 2498-2499, 2500-2501, 2502-2503, 2504-2505, 2506-2507, 2508-2509, 2510-2511, 2512-2513, 2514-2515, 2516-2517, 2518-2519, 2520-2521, 2522-2523, 2524-2525, 2526-2527, 2528-2529, 2530-2531, 2532-2533, 2534-2535, 2536-2537, 2538-2539, 2540-2541, 2542-2543, 2544-2545, 2546-2547, 2548-2549, 2550-2551, 2552-2553, 2554-2555, 2556-2557, 2558-2559, 2560-2561, 2562-2563, 2564-2565, 2566-2567, 2568-2569, 2570-2571, 2572-2573, 2574-2575, 2576-2577, 2578-2579, 2580-2581, 2582-2583, 2584-2585, 2586-2587, 2588-2589, 2590-2591, 2592-2593, 2594-2595, 2596-2597, 2598-2599, 2600-2601, 2602-2603, 2604-2605, 2606-2607, 2608-2609, 2610-2611, 2612-2613, 2614-2615, 2616-2617, 2618-2619, 2620-2621, 2622-2623, 2624-2625, 2626-2627, 2628-2629, 2630-2631, 2632-2633, 2634-2635, 2636-2637, 2638-2639, 2640-2641, 2642-2643, 2644-2645, 2646-2647, 2648-2649, 2650-2651, 2652-2653, 2654-2655, 2656-2657, 2658-2659, 2660-2661, 2662-2663, 2664-2665, 2666-2667, 2668-2669, 2670-2671, 2672-2673, 2674-2675, 2676-2677, 2678-2679, 2680-2681, 2682-2683, 2684-2685, 2686-2687, 2688-2689, 2690-2691, 2692-2693, 2694-2695, 2696-2697, 2698-2699, 2700-2701, 2702-2703, 2704-2705, 2706-2707, 2708-2709, 2710-2711, 2712-2713, 2714-2715, 2716-2717, 2718-2719, 2720-2721, 2722-2723, 2724-2725, 2726-2727, 2728-2729, 2730-2731, 2732-2733, 2734-2735, 2736-2737, 2738-2739, 2740-2741, 2742-2743, 2744-2745, 2746-2747, 2748-2749, 2750-2751, 2752-2753, 2754-2755, 2756-2757, 2758-2759, 2760-2761, 2762-2763, 2764-2765, 2766-2767, 2768-2769, 2770-2771, 2772-2773, 2774-2775, 2776-2777, 2778-2779, 2780-2781, 2782-2783, 2784-2785, 2786-2787, 2788-2789, 2790-2791, 2792-2793, 2794-2795, 2796-2797, 2798-2799, 2800-2801, 2802-2803, 2804-2805, 2806-2807, 2808-2809, 2810-2811, 2812-2813, 2814-2815, 2816-2817, 2818-2819, 2820-2821, 2822-2823, 2824-2825, 2826-2827, 2828-2829, 2830-2831, 2832-2833, 2834-2835, 2836-2837, 2838-2839, 2840-2841, 2842-2843, 2844-2845, 2846-2847, 2848-2849, 2850-2851, 2852-2853, 2854-2855, 2856-2857, 2858-2859, 2860-2861, 2862-2863, 2864-2865, 2866-2867, 2868-2869, 2870-2871, 2872-2873, 2874-2875, 2876-2877, 2878-2879, 2880-2881, 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CODE OF CIVIL PROCEDURE

§ 682

To the Sheriff, Marshal or Constable:

You are directed to satisfy the judgment described on the reverse side, with interest and costs and your costs and disbursements, out of (1) the personal property of judgment debtor(s), not exempt from execution, and if sufficient personal property cannot be found, then out of debtor(s) real property, or (2) if the judgment is a lien on real property, then out of the real property belonging to debtor(s) on the date the abstract of judgment was filed under CCP 674, or on any date hereafter. Unless this writ is served on debtor(s) at the time of levy, you are also directed to give debtor(s) notice by mail (at addresses) given on the reverse side and below, if any, of any levy of execution under this writ, and to deliver return of the writ with what you have done endorsed on it not less than 10 days nor more than 30 days after you receive it.

If your levy is against earnings, the return must be made within 30 days as provided by CCP 685.5.

NOTICE TO THE JUDGMENT DEBTOR: You may be entitled to file a claim exempting your property from execution. If so, you must do so within 10 days from the date your property was levied upon, by delivering to the levying officer an affidavit of exemption, together with a copy thereof, as provided in Section 685.5b of the Code of Civil Procedure. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that an affidavit, if any, may be filed on time.

Notice of sale has been requested by:

Name(s):

Address(es):

Use space below for names of additional Judgment Creditors or Judgment Debtors, and for Revised additional costs against each (all debtors.)

Initial

§ 24074. Escrow

Before the filing of such a transfer application with the department, if the intended transfer of the business or license involves a purchase price or consideration, the licensee and the intended transferee shall establish an escrow with some person, corporation, or association not a party to the transfer acting as escrow holder, and the intended transferee shall deposit with the escrow holder the full amount of the purchase price or consideration. The transfer application shall be accompanied by a description of the entire consideration. Such description shall include a designation of cash, checks, promissory notes, and tangible and intangible property, and the amount of each thereof. The licensee and intended transferee shall also enter into an agreement, which agreement shall be deposited with the escrow holder, directing the escrow holder, after the requirements for transfer as provided in Section 24049 are satisfied, to pay out of the purchase price or consideration, the claims of the bona fide creditors of the licensee who file their claims with the escrow holder before the escrow holder is notified by the department of its approval of the transfer of the license or if the purchase price or consideration is not sufficient to pay the claims in full, to distribute the consideration as follows:

First, to the payment of claims for wages, salaries, or fringe benefits of employees of the seller or transferor earned or accruing * * * prior to the sale, transfer, or opening of an escrow for the sale thereof;

Second, to the payment of claims of secured creditors to the extent of the proceeds which arise from the sale of the security;

Third, to the United States for claims based on income or withholding taxes; and thereafter for claims based on any tax other than taxes specified in Section 24049;

Fourth, to the payment of claims on mechanics' liens;

Fifth, to the payment of escrow fees and the payment of claims for prevailing brokerage fees for services rendered and claims for reasonable attorney's fees for services rendered;

Sixth, to the payment of claims for goods sold and delivered to the transferor for resale at his licensed premises and the payment of claims for services rendered, performed, or supplied in connection with the operation of the licensed business.

Seventh, to the payment of all other claims. The payment of these claims if sufficient assets are not available for the payment of the claim in full shall be paid pro rata.

If the transferor licensee disputes any claim, the escrow holder shall notify the claimant, and the amount or pro rata amount thereof shall be retained by the escrow holder for a period of 25 days, and if not attached shall be paid to the transferor licensee. The agreement shall also provide that the escrow holder shall make the payment or distribution within a reasonable time after the completion of the transfer of the license.

(Amended by Stats.1987, c. 753, p. 2130, § 1; Stats.1988, c. 459, p. 1081, § 1; Stats. 1989, c. 524, p. 1140, § 2; Stats.1989, c. 1083, p. 2070, § 2. Stats.1970, c. 402, p. 973, § 1; Stats.1972, c. 1000, p. 1826, § 1.)

§ 3439.09 Creditors' rights; matured claims

(a) Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser or encumbrancer for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or mediate from such a purchaser or encumbrancer:

(1) Have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim, or

(2) Disregard the conveyance and attach or levy execution upon the property conveyed.

(b) A purchaser or encumbrancer who without actual fraudulent intent has given less than a fair consideration for the conveyance or obligation, may retain the property or obligation as security for repayment.

§ 4366. Methods

Text of section operative Jan. 1, 1877.

Any judgment, order, or decree of the court made or entered pursuant to this part may be enforced by the court by execution, * * * the appointment of a receiver, contempt, or by such other order or orders as the court in its discretion may from time to time deem necessary.

(Added by Stats.1870, c. 811, p. 700, § 1, urgency, eff. July 6, 1870. Amended by Stats.1874, c. 1516, p. 8337, § 6, operative Jan. 1, 1877.)

§ 564. Appointment; cases in which authorized

A receiver may be appointed, in the manner provided in this chapter, by the court in which an action or proceeding is pending in any case in which such court is empowered by law to appoint a receiver.

In superior courts a receiver may be appointed by the court in which an action or proceeding is pending, or by a judge thereof, in the following cases:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured;

2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt;

3. After judgment, to carry the judgment into effect;

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment; or after sale of real property under execution of a judgment or pursuant to a decree of foreclosure and sale, during the period provided by law for the redemption thereof from sale, to collect rents thereon, and to expend and disburse such rents as may be directed by the court or otherwise provided by law;

5. In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights;

6. In an action of unlawful detainer;

7. In all other cases where receivers have heretofore been appointed by the usages of courts of equity. (Enacted 1872. As amended Stats.1919, c. 166, p. 251, § 1; Stats.1933, c. 744, p. 1867, § 85a; Stats.1941, c. 444, p. 1736, § 1.)

§ 565. Appointment upon dissolution of corporation

Upon the dissolution of any corporation, the Superior Court of the county in which the corporation carries on its business or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property

that shall remain over among the stockholders or members. (Enacted 1872. As amended Code Am.1880, c. 15, p. 4, § 7.)

§ 566. Persons ineligible to appointment; consent; undertaking on ex parte application

No party, or attorney of a party, or person interested in an action, or related to any judge of the court by consanguinity or affinity within the third degree, can be appointed receiver therein without the written consent of the parties, filed with the clerk. If a receiver is appointed upon an ex parte application, the court, before making the order, must require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause; and the court may, in its discretion, at any time after said appointment, require an additional undertaking. (Enacted 1872. As amended Code Am.1873-74, c. 383, p. 309, § 73; Stats.1897, c. 69, p. 60, § 1; Stats.1907, c. 374, p. 710, § 1.)

§ 567. Oath and undertaking of receiver

Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with two or more sureties, approved by the court or judge, execute an undertaking to the State of California, in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action and obey the orders of the court therein. (Enacted 1872. As amended Stats. 1907, c. 374, p. 710, § 2.)

§ 568. Powers

POWERS OF RECEIVERS. The receiver has, under the control of the Court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the Court may authorize. (Enacted 1872.)

§ 568.1 Deposit of securities in securities depository

Any securities in the hands of a receiver may, under the control of the court, be deposited by the receiver in a securities depository, as defined in Section 30004 of the Financial Code, which is licensed under Section 30200 of the Financial Code or exempted from licensing thereunder by Section 30005 or 30006 of the Financial Code, and such securities may be held by such securities depository in the manner authorized by Section 775 of the Financial Code.

(Added by Stats.1972, c. 1057, p. 1955, § 9.)

§ 568.5 Sales; authority; manner; confirmation; no redemption

A receiver may, pursuant to an order of the court, sell real or personal property in his possession as such receiver, upon the notice and in the manner prescribed by law for the sale of such property under execution. The sale shall not be final until confirmed by the court. Sales made pursuant to this section shall not be subject to redemption.

(Added Stats.1939, c. 374, p. 1709, § 1.)

§ 569. Investments; order; consent

INVESTMENT OF FUNDS. Funds in the hands of a receiver may be invested upon interest, by order of the Court; but no such order can be made, except upon the consent of all the parties to the action.

(Enacted 1872.)

§ 570. Unclaimed funds; publication of notice; payment to state treasury; rights of owner; expense of notice

A receiver having any funds in his hands belonging to a person whose whereabouts are unknown to him, shall, before receiving his discharge as such receiver, publish a notice, in one or more newspapers published in the county, at least once a week for four consecutive weeks, setting forth the name of the owner of any unclaimed funds, the last known place of residence or post office address of such owner and the amount of such unclaimed funds. Any funds remaining in his hands unclaimed for 30 days after the date of the last publication of such notice, shall be reported to the court, and upon order of the court, all such funds must be paid into the State Treasury accompanied with a copy of the order, which must set forth the facts required in the notice herein provided. Such funds shall be deemed to have been received by the State under Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of this code and may be recovered in the manner prescribed therein.

All costs and expenses connected with such advertising shall be paid out of the funds the whereabouts of whose owners are unknown. (Added Stats.1913, c. 87, p. 92, § 1. As amended Stats.1915, c. 83, p. 107, § 1; Stats.1917, c. 138, p. 203, § 1; Stats.1963, c. 1762, p. 3516, § 1.)

§ 571. Provision of order of appointment

Whenever a receiver, referee, or commissioner is appointed by a court of record, and the duties of such receiver, referee, or commissioner will, or are reasonably anticipated to, involve the custody of personal property or the receipt or disbursement of moneys, the order of appointment shall provide that before entering upon his duties, such receiver, referee, or commissioner, with two or more sureties, approved by the court or judge, shall execute an undertaking to the State of California, to the effect that he will faithfully discharge the duties of receiver, referee, or commissioner, as the case may be, and obey the orders of the court therein.

The order of appointment shall specify the amount of the undertaking, but a failure to so specify shall not invalidate the order. (Added Stats.1963, c. 575, p. 1453, § 1.)

§ 667. Personal property; judgment for possession or value; money judgments; specie payments

In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claim a return thereof judgment for the defendant may be for a return of the property or the value thereof, in case a return cannot be had, and damages for taking and withholding the same. In an action on a contract or obligation in writing, for the direct payment of money, made payable in a specified kind of money or currency, judgment for the plaintiff, whether it be by default or after verdict, may follow the contract or obligation, and be made payable in the kind of money or currency specified therein; and in all actions for the recovery of money, if the plaintiff allege in his complaint that the same was understood and agreed by the respective parties to be payable in a specified kind of money or currency, and this fact is admitted by the default of the defendant or established by evidence, the judgment for the plaintiff must be made payable in the kind of money or currency so alleged in the complaint; and in an action against any person for the recovery of money received by such person in a fiduciary capacity, or to the use of another, judgment for the plaintiff must be made payable in the kind of money or currency so received by such person.

§ 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 1710.50 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 statutes 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 5 (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.

§ 726. Form of action; procedure

Form of action; judgment. There can be but one form of action for the recovery of any debt, or the enforcement of any right secured by mortgage upon real property, which action must be in accordance with the provisions of this chapter. In such action the court may, by its judgment, direct the sale of the encumbered property (or so much thereof as may be necessary), and the application of the proceeds of the sale to the payment of the costs of court, and the expenses of the sale, and the amount due plaintiff, including, where the mortgage provides for the payment of attorney's fees, such sum for such fees as the court shall find reasonable, not exceeding the amount named in the mortgage.

Commissioner. The court may, by its judgment, or at any time after judgment, appoint a commissioner to sell the encumbered property. It must require of him an undertaking in an amount fixed by the court, with sufficient sureties, to be approved by the judge, to the effect that the commissioner will faithfully perform the duties of his office according to law. Before entering upon the discharge of his duties he must file such undertaking, so approved, together with his oath that he will faithfully perform the duties of his office.

Decree; deficiencies; appraiser. The decree for the foreclosure of a mortgage or deed of trust secured by real property or any interest therein shall declare the amount of the indebtedness or right so secured and, unless judgment for any deficiency there may be between the sale price and the amount due with costs is waived by the judgment creditor, shall determine the personal liability of any defendant for the payment of the debt secured by such mortgage or deed of trust

and shall name such defendants against whom a deficiency judgment may be ordered following the proceedings hereinafter prescribed. In the event of such waiver the decree shall so declare and there shall be no judgment for a deficiency. In the event that a deficiency is not waived and it is decreed that any defendant is personally liable for such debt, then upon application of the plaintiff filed at any time within three months of the date of the foreclosure sale and after a hearing thereon at which the court shall take evidence and at which hearing either party may present evidence as to the fair value of the property or the interest therein sold as of the date of sale, the court shall render a money judgment against such defendant or defendants for the amount by which the amount of the indebtedness with interest and costs of sale and of action exceeds the fair value of the property or interest therein sold as of the date of sale; provided, however, that in no event shall the amount of said judgment, exclusive of interest from the date of sale and of costs exceed the difference between the amount for which the property was sold and the entire amount of the indebtedness secured by said mortgage or deed of trust. Notice of such hearing must be served upon all defendants who have appeared in the action and against whom a deficiency judgment is sought, or upon their attorneys of record, at least 15 days before the date set for such hearing. Upon application of any party made at least 10 days before the date set for such hearing the court shall, and upon its own motion the court at any time may, appoint one of the inheritance tax appraisers provided for by law to appraise the property or the interest therein sold as of the time of sale. Such appraiser shall file his appraisal with the clerk and the same shall be admissible in evidence. Such appraiser shall take and subscribe an oath to be attached to the appraisal that he has truly, honestly and impartially appraised the property to the best of his knowledge and ability. Any appraiser so appointed may be called and examined as a witness by any party or by the court itself. The court must fix the compensation, not to exceed \$5 per day, and expenses for the time actually engaged in such appraisal, which may be taxed and allowed in like manner as other costs.

Unrecorded claim. No person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action need be made a party to such action, and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been a party to the action.

Sale by commissioner. If the court appoint a commissioner for the sale of the property, he must sell it in the manner provided by law for the sale of like property by the sheriff upon execution; and the provisions of Chapter 1, Title 9, Part 2, of this code are hereby made applicable to sale made by such commissioner, and the powers therein given and the duties therein imposed on sheriffs are extended to such commissioner.

Ellsor. In all cases heretofore, now or hereafter pending in the courts of this State, in the event of the death, absence from the State, other disability or disqualification of the commissioner appointed to sell encumbered property under the foregoing provisions of this section, the court may, upon the happening of either the death, absence from the State, other disability or disqualification of the commissioner, appoint an ellsor to perform the duties of such commissioner which are then to be performed in such action. The ellsor so appointed shall give the undertaking, and take the oath hereinbefore provided to be given and taken by a commissioner, before entering upon the discharge of his duties, and shall thereafter perform all duties left unperformed by the commissioner whom he is appointed to succeed, with like effect as if such duties had been performed by the commissioner.

Property in two or more counties. If the land mortgaged consists of a single parcel, or two or more contiguous parcels, situated in two or more counties, the court may, in its judgment, direct the whole thereof to be sold in one of such counties by the sheriff, commissioner or ellsor, as the case may be, and upon such proceedings, and with like effect, as if the whole of the property were situated in that county. (Enacted 1872. As amended Stats.1893, c. 101, p. 118, § 1; Stats. 1895, c. 108, p. 99, § 1; Stats.1901, c. 43, p. 48, § 1; Stats.1933, c. 793, p. 2118, § 1; Stats.1937, c. 353, p. 770, § 1; Stats.1963, c. 819, p. 2007, § 26, urgency eff. Jan. 1, 1965.)

§ 875. Judgment against two or more defendants; contribution; subrogation by insurer; right of indemnity; satisfaction of judgment in full

(a) Where a money judgment has been rendered jointly against two or more defendants in a tort action there shall be a right of contribution among them as hereinafter provided.

(b) Such right of contribution shall be administered in accordance with the principles of equity.

(c) Such right of contribution may be enforced only after one tortfeasor has, by payment, discharged the joint judgment or has paid more than his pro rata share thereof. It shall be limited to the excess so paid over the pro rata share of the person so paying and in no event shall any tortfeasor be compelled to make contribution beyond his own pro rata share of the entire judgment.

(d) There shall be no right of contribution in favor of any tortfeasor who has intentionally injured the injured person.

(e) A liability insurer who by payment has discharged the liability of a tortfeasor judgment debtor shall be subrogated to his right of contribution.

(f) This title shall not impair any right of indemnity under existing law, and where one tortfeasor judgment debtor is entitled to indemnity from another there shall be no right of contribution between them.

(g) This title shall not impair the right of a plaintiff to satisfy a judgment in full as against any tortfeasor judgment debtor. (Added Stats.1957, c. 1700, p. 3076, § 1.)

§ 876. Determination of pro rata share

(a) The pro rata share of each tortfeasor judgment debtor shall be determined by dividing the entire judgment equally among all of them.

(b) Where one or more persons are held liable solely for the tort of one of them or of another, as in the case of the liability of a master for the tort of his servant, they shall contribute a single pro rata share, as to which there may be indemnity between them. (Added Stats.1957, c. 1700, p. 3077, § 1.)

§ 877. Release of one or more joint tortfeasors; effect upon liability of others

Where a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment is given in good faith before verdict or judgment to one or more of a number of tortfeasors claimed to be liable for the same tort—

(a) It shall not discharge any other such tortfeasor from liability unless its terms so provide, but it shall reduce the claims against the others in the amount stipulated by the release, the dismissal or the covenant, or in the amount of the consideration paid for it whichever is the greater; and

(b) It shall discharge the tortfeasor to whom it is given from all liability for any contribution to any other tortfeasors. (Added Stats. 1957, c. 1700, p. 3077, § 1.)

§ 878. Judgment for contribution; notice of motion; affidavit; contents

Judgment for contribution may be entered by one tortfeasor judgment debtor against other tortfeasor judgment debtors by motion upon notice. Notice of such motion shall be given to all parties in the action, including the plaintiff or plaintiffs, at least 10 days before the hearing thereon. Such notice shall be accompanied by an affidavit setting forth any information which the moving party may have as to the assets of defendants available for satisfaction of the judgment or claim for contribution. (Added Stats.1957, c. 1700, p. 3077, § 1.)

§ 879. Partial invalidity

If any provision of this title or the application thereof to any person is held invalid, such invalidity shall not affect other provisions or applications of the title which can be given effect without the invalid provision or application and to this end the provisions of this title are declared to be severable. (Added Stats.1957, c. 1700, p. 3077, § 1.)

§ 880. Effective date

This title shall become effective as to causes of action accruing on or after January 1, 1958. (Added Stats.1957, c. 1700, p. 3077, § 1.)

§ 916. Stay on perfection of appeal; release from levy; proceeding upon matters not affected by appeal

(a) Except as provided in Sections 917.1 through 917.9 and in Section 117ha, the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order.

(b) A stay of proceedings shall release from levy property which has been levied upon under execution issued upon such judgment.

(c) When there is a stay of proceedings other than the enforcement of the judgment, the trial court shall have jurisdiction of proceedings related to the enforcement of the judgment as well as any other matter embraced in the action and not affected by the judgment or order appealed from.

§ 917.1 Appeal from money judgment; undertaking to stay enforcement; amount; sureties affidavit of justification; judgment against sureties

The perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment or order is for money or directs the payment of money, whether consisting of a special fund or not, and whether payable by the appellant or another party to the action, unless an undertaking is given on condition that if the judgment or order or any part of it is affirmed or the appeal is withdrawn or dismissed, the party ordered to pay shall pay the amount of the judgment or order, or the part of it as to which the judgment or order is affirmed, as entered after the receipt of the remittitur, together with any interest which may have accrued pending the appeal and entry of the remittitur, and costs which may be awarded against the appellant on appeal. Such undertaking shall be for double the amount of the judgment or order unless given by a corporate surety authorized to execute the same by Section 1056 in which event it shall be for one and one-half times the amount of the judgment or order. If the party ordered to pay does not make such payment within 80 days after the filing of the remittitur from the reviewing court and the trial court, on motion of the respondent judgment may be entered in his favor on the undertaking for such amount as is appropriate hereunder. However, the surety shall not be held liable for an amount in excess of the undertaking.

If the judgment or order appealed from be for an amount in excess of two thousand dollars (\$2,000) and the sureties do not state in their affidavits of justification accompanying the undertaking that they are each worth the amount specified in the undertaking, the stipulation may be that the judgment to be entered against the sureties shall be for such amounts only as in their affidavits they may state that they are severally worth, and judgment may be entered against the sureties by the court from which the appeal is taken, pursuant to the stipulations herein designated.

§ 917.2 Judgment or order directing assignment or delivery of personal property or sale on foreclosure; stay; custody of court officer; undertaking; perishables

The perfecting of an appeal shall not stay enforcement of the judgment or order of the trial court if the judgment or order appealed from directs the assignment or delivery of personal property, including documents, whether by the appellant or another party to the action, or the sale of personal property upon the foreclosure of a mortgage, or other lien thereon, unless an undertaking in a sum and upon conditions fixed by the trial court, is given that the appellant or party ordered to assign or deliver the property will obey and satisfy the order of the reviewing court, and will not commit or suffer to be committed any damage to the property, and that if the judgment or order appealed from is affirmed, or the appeal is withdrawn or dismissed, the appellant shall pay the damage suffered to such property and the value of the use of such property for the period of the delay caused by the appeal. The appellant may cause the property to be placed in the custody of an officer designated by the court to abide the order of the reviewing court, and such fact shall be considered by the court in fixing the amount of the undertaking. If the judgment or order appealed from directs the sale of perishable property the trial court may order such property to be sold and the proceeds thereof to be deposited with the clerk of the trial court to abide the order of the reviewing court; such fact shall be considered by the court in fixing the amount of the undertaking.

§ 917.3 Judgment or order directing execution of instrument; stay on execution and deposit with clerk of court

The perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment or order appealed from directs the execution of one or more instruments unless the instrument or instruments are executed and deposited in the office of the clerk of the court where the original judgment or order is entered to abide the order of the reviewing court.

§ 917.4 Judgment or order directing sale or delivery of realty; undertaking to stay enforcement; conditions

The perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment or order appealed from directs the sale, conveyance or delivery of possession of real property which is in the possession or control of the appellant or the party ordered to sell, convey or deliver possession of such property, unless an undertaking in a sum fixed by the trial court is given that the appellant or party ordered to sell, convey or deliver possession of such property will not commit or suffer to be committed any waste thereon and that if the judgment or order appealed from is affirmed, or the appeal is withdrawn or dismissed, the appellant shall pay the damage suffered by such waste and the value of the use and occupancy of such property, or the part of it as to which the judgment or order is affirmed, from the time of the taking of the appeal until the delivery of the possession of the property. If such judgment or order directs the sale of mortgaged real property and the payment of any deficiency, the undertaking shall also provide for the payment of any deficiency. However, the surety shall not be held liable for an amount in excess of the undertaking.

§ 917.5 Judgment or order appointing receiver; undertaking to stay enforcement

The perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment or order appealed from appoints a receiver, unless an undertaking in a sum fixed by the trial court is given on condition that if the judgment or order is affirmed or the appeal is withdrawn, or dismissed, the appellant will pay all damages which the respondent may sustain by reason of such stay in the enforcement of the judgment. However, the surety shall not be held liable for an amount in excess of the undertaking.

§ 917.6 Judgment or order directing performance of two or more acts specified in sections 917.1 to 917.5; compliance with each section

The perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment or order appealed from directs the performance of two or more of the acts specified in Sections 917.1 through 917.5, unless the appellant complies with the requirements of each applicable section.

§ 917.7 Child custody provisions, or provisions for temporary exclusion from family dwelling, as not stayed by appeal; exception

The perfecting of an appeal shall not stay proceedings as to those provisions of a judgment or order which award, change or otherwise affect the custody, including the right of visitation, of a minor child in any civil action, in an action filed under the Juvenile Court Law, or in a special proceeding, or the provisions of a judgment or order for the temporary exclusion of a party from the family dwelling or the dwelling of the other party, as provided in Section 5102 of the Civil Code; provided, the trial court may in its discretion stay execution of such provisions pending review on appeal or for such other period or periods as to it may appear appropriate; provided further, that in the absence of a writ or order of a reviewing court providing otherwise, the provisions of such judgment or order allowing, or eliminating restrictions against, removal of the minor child from the state are stayed by operation of law for a period of 30 days from the entry of the judgment or order and are subject to any further stays ordered by the trial court, as herein provided.

§ 917.8 Necessity of order of trial court or writ of supersedeas to stay enforcement of judgment or order in certain cases

The perfecting of an appeal shall not stay proceedings, in the absence of an order of the trial court providing otherwise or of a writ of supersedeas, where a party to the proceeding has been adjudged guilty of usurping, or intruding into, or unlawfully holding a public office, civil or military within this state, or where the judgment or order directs a corporation or its officers or agents, or any of them, to give to a person adjudged to be a director, stockholder or member of such corporation a reasonable opportunity to inspect or make copies of such books, papers or documents of the corporation as the trial court finds that such director, stockholder or member is entitled by law to inspect or copy, or where the judgment or order adjudges a building or place to be a nuisance, and as part of such judgment or order directs the closing or discontinuance of any specific use of the building or place for any period of time.

§ 917.9 Cases not provided for in sections 917.1 to 917.8; judgment or order as not stayed by appeal when undertaking required in discretion of court not given

The perfecting of an appeal shall not stay enforcement of the judgment or order in cases not provided for in Sections 917.1 through 917.8 if the trial court, in its discretion, requires an undertaking and such undertaking is not given. The undertaking shall be in the sum fixed by the court; it shall be conditioned upon the performance of the judgment or order appealed from if the same is affirmed or the appeal is withdrawn or dismissed, and it shall provide that if the judgment or order appealed from or any part of it is affirmed, or the appeal is withdrawn or dismissed, the appellant will pay all damages which the respondent may sustain by reason of such stay in the enforcement of the judgment. However, the surety shall not be held liable for an amount in excess of the undertaking.

For the purpose of this section, "damages" means reasonable compensation for the loss of use of the money or property.

§ 918. Power of court to stay enforcement of any judgment or order; time limitation

The trial court may stay the enforcement of any judgment or order; provided that if the enforcement of such judgment or order would be stayed on appeal only by the giving of an undertaking, a trial court shall not have power, without the consent of the adverse party, to stay the enforcement thereof pursuant to this section for a period which extends for more than 10 days beyond the last date on which a notice of appeal could be filed.

§ 919. Discretion of court to limit or dispense with required security when appellant executor, administrator, trustee, guardian, etc.

The trial court may, in its discretion, dispense with or limit the security required by any section in this chapter, when the appellant is an executor, administrator, trustee, guardian, conservator or other person acting in another's right.

§ 920. Deposit in lieu of undertaking

In all cases where an undertaking is required or permitted by the provisions of this title, a deposit in the trial court of the amount of the undertaking provided for by any section of this title, or where the amount of such undertaking is to be fixed by the court, then of the amount so fixed, shall be equivalent to filing the undertaking. Any undertaking required in this title may be waived in writing by the party to be benefited thereby.

§ 921. Continuance of attachment; undertaking; amount; justification of sureties

Text of section operative until Jan. 1, 1977

An appeal by a party who has levied an attachment shall not continue in force the attachment, unless an undertaking be executed and filed on the part of the appellant that the appellant will pay all costs and damages which the respondent may sustain by reason of the attachment, in case the order of the court below be sustained in favor of the respondent; and unless, within five days after written notice of the entry of the order appealed from, such appeal shall be perfected. The amount of the undertaking on appeal required by this section shall be such amount as is fixed by the trial court on motion of the respondent as provided in Section 553 of this code and if no such order shall have been made, the undertaking shall be in double the amount of the debt claimed by the appellant. If

the respondent is not satisfied with the undertaking in double the amount of the debt or the amount fixed by order under Section 653, the trial court upon motion of the respondent made within 60 days after perfecting the appeal may order an increase in the amount of the undertaking in such amount as is justified by the detriment reasonably to be anticipated by continuing the attachment. If such an order be made, the attachment shall be discharged and the property released therefrom, unless the undertaking shall be executed and filed within 10 days after the order is made. The sureties on any undertaking required for the purpose of continuing an attachment may be required to justify as provided in Section 922 and if they fail to do so, the order of attachment shall be discharged.

§ 921. Continuance of attachment; undertaking; amount; justification of sureties

Text of section operative Jan. 1, 1977

An appeal by a party who has levied an attachment shall not continue in force the attachment, unless an undertaking be executed and filed on the part of the appellant that the appellant will pay all costs and damages which the respondent may sustain by reason of the attachment, in case the order of the court below be sustained in favor of the respondent; and unless, within five days after written notice of the entry of the order appealed from, such appeal shall be perfected. The amount of the undertaking on appeal required by this section shall be such amount as is fixed by the trial court on motion of the respondent as provided in Section 489.410 and if no such order shall have been made, the undertaking shall be in double the amount of the debt claimed by the appellant. If the respondent is not satisfied with the undertaking in double the amount of the debt or the amount fixed by order under Section 489.410, the trial court upon motion of the respondent made within 60 days after perfecting the appeal may order an increase in the amount of the undertaking in such amount as is justified by the detriment reasonably to be anticipated by continuing the attachment. If such an order be made, the attachment shall be discharged and the property released therefrom, unless the undertaking shall be executed and filed within 10 days after the order is made. The sureties on any undertaking required for the purpose of continuing an attachment may be required to justify as provided in Section 922 and if they fail to do so, the order of attachment shall be discharged.

§ 922. Undertaking; sureties; exception to sufficiency; justification; bond in excessive amount; restriction of recovery

An undertaking required or permitted by this title shall be entered into by two or more sureties. A respondent may except to the sufficiency of the sureties at any time within 10 days after notice of the filing of such undertaking; and unless they or other sureties, within 10 days after the appellant has been served with notice of such exception, justify before a judge of the trial court, upon 5 days notice to the respondent of the time and place of justification, enforcement of the judgment or order appealed from is no longer stayed and property which has been levied upon under execution issued upon such judgment shall not be released from levy. When a bond or undertaking required by law or order of any court is executed in an amount greater than that required, the surety shall be liable upon such bond or undertaking in the same manner and to the same extent as though it had been executed in the amount required by such law or order of the court.

**§ 923. Power of reviewing court to stay proceedings, issue writ of super-
sedeas, suspend or modify injunction, etc., not limited by chap-
ter provisions**

The provisions of this chapter shall not limit the power of a reviewing court or of a judge thereof to stay proceedings during the pendency of an appeal or to issue a writ of superedeas or to suspend or modify an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo, the effectiveness of the judgment subsequently to be entered, or otherwise in aid of its jurisdiction.

**§ 1174. Judgment; restitution of premises; forfeiture of lease; treble
damages; stay of execution; payment into court; enforce-
ment; disposition of personal property; notice; costs of
storage; liability of landlord**

(a) If upon the trial, the verdict of the jury, or, if the case be tried without a jury, the findings of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceedings be for an unlawful detainer after neglect, or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement if the notice required by Section 1161 of the code states the election of the landlord to declare the forfeiture thereof, but if such notice does not so state such election, the lease or agreement shall not be forfeited.

(b) The jury or the court, if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent. If the defendant is found guilty of forcible entry, or forcible or unlawful detainer, and malice is shown, the plaintiff may be awarded either damages and rent found due or punitive damages in an amount which does not exceed three times the amount of damages and rent found due. The trier of fact shall determine whether damages and rent found due or punitive damages shall be awarded, and judgment shall be entered accordingly.

(c) When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, and the notice required by Section 1161 has not stated the election of the landlord to declare the forfeiture thereof, the court may, and, if the lease or agreement is in writing, is for a term of more than one year, and does not contain a forfeiture clause, shall order that execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant, or any subtenant, or any mortgagee of the term, or any other party interested in its continuance, may pay into the court, for the landlord, the amount found due as rent, with interest thereon, and the amount of the damages found by the jury or the court for the unlawful detainer, and the costs of the proceedings, and thereupon the judgment shall be satisfied and the tenant be restored to his estate.

But if payment as here provided be not made within five days, the judgment may be enforced for its full amount, and for the possession of

the premises. In all other cases the judgment may be enforced immediately.

(d) A plaintiff, having obtained a writ of restitution of the premises pursuant to an action for unlawful detainer, shall be entitled to have the premises restored to him by officers charged with the enforcement of such writs. Promptly upon payment of reasonable costs of service, the enforcing officer shall serve an occupant or post a copy of the writ in the same manner as upon levy of writ of attachment pursuant to subdivision (d) of Section 488.310. In addition, where the copy is posted on the property, another copy of the writ shall thereafter be mailed to the defendant at his business or residence address last known to the plaintiff or his attorney or, if no such address is known, at the premises. The writ of restitution of the premises shall include a statement that personal property remaining on the premises at the time of its restitution to the landlord will be sold or otherwise disposed of in accordance with Section 1174 of the Code of Civil Procedure unless the tenant or the owner pays the landlord the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the premises are restored to the landlord. If the tenant does not vacate the premises within five days from the date of service, or, if the copy of the writ is posted, within five days from the date of mailing of the additional notice, the enforcing officer shall remove the tenant from the premises and place the plaintiff in possession thereof. It shall be the duty of the party delivering the writ to the officer for execution to furnish the information required by the officer to comply with this section.

(e) Personal property remaining on the premises which the landlord reasonably believes to have been lost shall be disposed of pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Title 6 of Part 4 of Division 3 of the Civil Code. The landlord is not liable to the owner of any property which he disposes of in this manner. If the appropriate police or sheriff's department refuses to accept such property, it shall be deemed not to have been lost for the purposes of this subdivision.

(f) The landlord shall give notice pursuant to Section 1983 of the Civil Code to any person (other than the tenant) reasonably believed by the landlord to be the owner of personal property remaining on the premises.

(g) The landlord shall store the personal property in a place of safekeeping until it is either released pursuant to subdivision (h) or disposed of pursuant to subdivision (i).

(h) The landlord shall release the personal property to the tenant or, at the landlord's option, to a person reasonably believed by the landlord to be its owner if such tenant or other person pays the costs of storage as provided in Section 1990 of the Civil Code and claims the property not later than the date specified in the writ of restitution before which the tenant must make his claim or the date specified in the notice before which a person other than the tenant must make his claim.

(i) Personal property not released pursuant to subdivision (h) shall be disposed of pursuant to Section 1988 of the Civil Code.

(j) Where the landlord releases personal property to the tenant pursuant to subdivision (h), the landlord is not liable with respect to that property to any person.

(k) Where the landlord releases personal property pursuant to subdivision (h) to a person (other than the tenant) reasonably believed by the landlord to be its owner, the landlord is not liable with respect to that property to:

(1) The tenant or to any person to whom notice was given pursuant to subdivision (f); or

(2) Any other person, unless such person proves that, prior to releasing the property, the landlord believed or reasonably should have believed that such person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of such person.

(l) Where personal property is disposed of pursuant to Section 1988 of the Civil Code, the landlord is not liable

(1) The tenant or to any person to whom notice was given pursuant to subdivision (f); or

(2) Any other person, unless such person proves that, prior to disposing of the property pursuant to Section 1988 of the Civil Code, the landlord believed or reasonably should have believed that such person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of such person.

(m) For the purposes of subdivisions (e), (f), (h), (k), and (l), the terms "owner," "premises," and "reasonable belief" have the same meaning as provided in Section 1980 of the Civil Code.

§ 15028. Creditor's remedy to reach partner's interest in partnership

(1) **Application by judgment creditor; charge on partner's interest; appointment of receiver.** On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts, and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

(2) **Redemption; purchase at judicial sale.** The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) With separate property, by any one or more of the partners, or

(b) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) **Application of exemption laws.** Nothing in this act shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership. (Added Stats.1949, c. 383, p. 681, § 1.)

§ 15522. Creditors' remedy to reach limited partner's interest in partnership

(1) **Charge on interest; appointment of receiver.** On due application to a court of competent jurisdiction by any creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of such claim; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require.

(2) **Redemption.** The interest may be redeemed with the separate property of any general partner, but may not be redeemed with the partnership property.

(3) **Non-exclusive remedy.** The remedies conferred by paragraph one shall not be deemed exclusive of others which may exist.

(4) **Statutory exemption.** Nothing in this act shall be held to deprive a limited partner of his statutory exemption. (Added Stats. 1949, c. 383, p. 694, § 1.)

§ 732. Judgment; entry before death; execution; filing as claim; property previously levied upon, sale and accounting for surplus; redemption

When a judgment has been rendered against the testator or intestate, no execution shall issue thereon after his death, except as provided in the Code of Civil Procedure. A judgment against the decedent for the recovery of money must be filed or presented in the same manner as other claims. If execution is actually levied upon any property of the decedent before his death, the same may be sold for the satisfaction thereof; and the officer making the sale must account to the executor or administrator for any surplus in his hands. A judgment creditor having a judgment which was rendered against the testator or intestate in his lifetime, may redeem any real property of the decedent from any sale under foreclosure or execution, in like manner and with like effect as if the judgment debtor were still living. (Stats. 1931, c. 281, p. 633, § 732.)

EXHIBIT 2

COSKEY, COSKEY & BOXER

ATTORNEYS AT LAW
1100 GLENDON AVENUE
LOS ANGELES, CALIFORNIA 90024
TELEPHONE (213) 477-5505, 679-9588

TOBIAS COSKEY (1888-1974)
HAL L. COSKEY
SANDOR T. BOXER
SAMUEL W. GORDON

October 14, 1975

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Re: Enforcement of Judgments

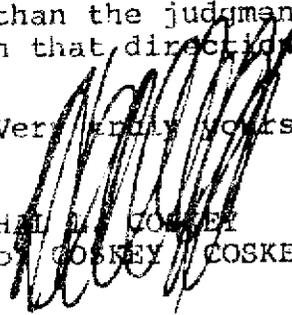
Gentlemen:

The present system for the enforcement of judgment liens against real property almost guarantees a judgment creditor will have to wait one year after his sale in order to collect anything on the judgment. The present right of redemption, coupled with high interest rates, makes it economically impossible for a third party to ever bid in on real estate. If there is a redemption, the purchaser will receive 7% interest on his money. He has probably paid in excess of 10% interest for that money.

On the other hand, the debtor, during the one year redemption period, is really borrowing money at 7% interest, which is less than he can obtain money for anywhere. He is allowed the possession of the property and has absolutely no incentive to do anything about paying off his "loan" until the redemption period has expired.

If a redemption period is going to be continued, either there must be a substantial increase in the interest rate which the debtor must pay during the redemption period, or there must be some other incentive inserted to cause a pay-off faster than the one year redemption period. The judgment creditor may very well be as necessitous or more so than the judgment debtor. There must be protection flowing in that direction also in this situation.

Very truly yours,


HAL L. COSKEY
OF COSKEY, COSKEY & BOXER

HLC/bh

CITY AND COUNTY OF SAN FRANCISCO

October 20, 1975

COUNTY CLERK
CLERK OF THE SUPERIOR COURT

California Law Revision Commission
Stanford Law School

Stanford, California 94305
Attention: Stan G. Ulrich

Re: Real Property Redemptions

Dear Mr. Ulrich:

In accordance with a request made by Chairman Marc Sandstrom at the last meeting, I have reviewed the records of the San Francisco Sheriff's Department for the last five fiscal years to determine the number of Real Property Redemptions processed by that department. Also included are other figures relating to real property sales which should be of interest.

In connection with the figures for sales scheduled and sales held, you will note a great many sales were never held since the parties settled their differences before the sale date or the judgment debtor voluntarily paid the amount due to the Sheriff. Almost half of the sales scheduled were for amounts of \$1,000.00 or less.

The figures for deeds and redemptions are small in comparison to the number of sales held. No explanation is possible from the figures except the parties could have reconciled their differences and issued quit claim deeds, which are not required to be filed with the levying officer. Also, some litigants forget they are entitled to a deed after the one year redemption period expires.

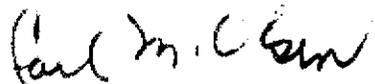
The figures follow:

| Fiscal Year | Real Property Sales Scheduled | Sales Held | Deeds Issued | Redemptions |
|-------------|-------------------------------|------------|--------------|-------------|
| 1970 - 71 | 29 | 11 | - | - |
| 1971 - 72 | 38 | 17 | 5 | - |
| 1972 - 73 | 51 | 20 | 3 | 1 |
| 1973 - 74 | 35 | 20 | 1 | 2 |
| 1974 - 75 | 64 | 18 | 5 | - |
| | <u>217</u> | <u>86</u> | <u>14</u> | <u>3</u> |

JMD

Thus out of eighty six (86) real property sales actually held, only three (3) redemptions were processed through the San Francisco Sheriff's Department during the last five years.

Very truly yours,

A handwritten signature in cursive script that reads "Carl M. Olsen".

CARL M. OLSEN
County Clerk

EXHIBIT 4

LAW OFFICES
OF
Raymond A. Greenberg

8383 WILSHIRE BOULEVARD
SUITE 214

Beverly Hills, California 90211

(213) 851-0280

December 13, 1976

RAYMOND A. GREENBERG
BRUCE ROBERT KAY

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Attention: Stan Ulrich

Gentlemen:

I am writing to you at the suggestion of a staff attorney of the State Bar of California in the Los Angeles office. I understand from that attorney that the Law Revision Commission is conducting an examination of Sections 714 et. seq. of the California Code of Civil Procedure, concerning supplemental examination of judgment debtors.

Recently, I encountered a novel situation in Alameda County Superior Court. In that court I recovered a judgment in favor of a client in the sum of \$16,500.00. In that I believe that it was my client's privilege to conduct an examination of the judgment debtor, I contacted the clerk of the court to ascertain the days on which that court conducts supplemental proceedings. My normal procedure would be to clear a date in court for those proceedings, prepare an Order for issuance and send the Order out for service.

I was told by the court clerk that an outside private attorney was sitting as a referee, and conducted all such hearings on behalf of the Superior Court.

I thereupon contacted that attorney's office and was told that an instruction sheet would be sent to me concerning that attorney's procedure. Enclosed herewith is a copy of that instruction sheet sent to me.

As I was also told, and as confirmed by the instruction sheet, there are certain charges made by this attorney for the privilege of conducting a statutory examination.

California Law Revision Commission
School of Law
December 13, 1976
Page 2

I thereupon called the State Bar of California and at their suggestion sent a letter to the presiding judge, asking for an explanation and submitting my objection.

I have now heard from a staff attorney at the State Bar who indicated to me that although the procedures are questionable, they are not barred by statute.

Apparently, Alameda County Superior Court has a standing order which was issued in 1973 appointing this private attorney as a referee. Further, the standing order allows the referee to charge a setting fee and also to charge a fee for his services. You will note in the instructional information that only 50% of the costs are recoverable. I was informed by the State Bar staff attorney that all such orders have been made pursuant to CCP Sections 1023 et. seq.

Although there is no statutory prohibition for these procedures, there is also no statutory permission for all of them.

The net effect, however, of the practice being conducted in Alameda Superior Court would be to discourage using the legal process in attempts to recover judgments. This particular point would apply regardless of the nature of the underlying action which resulted in the judgment, be it tort, contract or otherwise.

From reading the instructions, it would appear that those instructions were drawn with parties in pro. per. in mind. I believe that the incidence of parties in pro. per. having cases in Superior Court would be somewhat rare.

It seems to me that the purposes behind CCP Sections 714 et. seq. would be to allow judgment creditors to discover whether a judgment debtor has assets, whether those assets are sufficient to satisfy in any way a judgment, and where those assets are located for the purpose of execution. Thus, supplemental examinations are not proceedings to bludgeon a debtor into paying a judgment but rather to discover whether the debtor has assets and where they are in order that legal process be used to obtain satisfaction.

I believe that in the vast majority of cases, the judgment debtor does not have sufficient assets. Usually, the judgment creditor finds it unlikely that it would recover even the costs of service of the Order requiring Appearance of Judgment Debtor, let alone anything on its judgment.

One of the virtues of the present system as practiced in most courts of this State in my experience, with the exception of Alameda Superior Court, is that it is inexpensive. For the costs of service of an Order, usually no more than \$8.50, the judgment creditor can have his discovery.

Under the procedures set forth in Oakland, however, effectively such discovery is frustrated and discouraged. In order for the judgment creditor to even "get his foot in the door", he has to pay \$10.00 which is non-refundable. Thus, if by some good fortune the judgment debtor agrees to pay or settle the judgment, thus allowing the hearing to go off calendar, the judgment creditor cannot recover that money.

If the examination must be held, it is very easy to see where the costs would become extremely burdensome. The referee's instructions envision a one-half hour examination for which is charged \$15.00. Quite often, I have found that with dealing with corporate judgment debtors, or judgment debtors who have been at one time prosperous, a thorough examination may take a number of hours. Sometimes just to work through personal transfers can take a number of hours. Certainly, this type of investigation would be warranted if a creditor is trying to ascertain whether or not there has been a fraudulent conveyance as defined in the Civil Code.

Additionally, quite often such time is necessary to determine whether or not there are any debtors of the judgment debtor, and if so, the amount and the due date of the debts.

At a rate of \$30.00 per hour for the referee's time, I could easily foresee a judgment creditor spending \$100.00 or more for such an examination, excluding its own attorneys fees. All of this would be incurred with very little hope for the recovery of such money, or any part thereof.

Additionally, if such an examination is being conducted, the judgment creditor may wish to have the examination continued to allow the judgment debtor to bring in certain books and records, if necessary. For each continuance there

is an additional charge. For each setting there is an additional charge. It is conceivable that a judgment creditor can have the matter set for one day, but not effect service of the court Order, thus requiring a new date and new service. Under the Alameda County rule, each setting would cost the creditor some money, with no gain. Additionally, since according to the Alameda County rule, only 50% of such costs could be added to the judgment, at most, and still a court can decide whether to allow such costs; I could foresee a court not allowing any such costs without a showing of attempted service which then opens the issue of whether or not there was sufficient attempts.

Further, using the Alameda County procedure, I can see nothing but abuse. Although I am not casting any aspersions on the integrity of either the court or the referee, I can see where the whole procedure is capable of abuse. Certainly, to be appointed a referee in such a matter, with assured fees and little if any overhead, could be extremely enticing. It could open the door in no small way to a great deal of corruption. It would seem that anybody would want to be the selected attorney. In the criminal area, private counsel appointed by reason of conflicts are rotated. Thus, favoritism and undue influence are avoided. Here, favoritism and undue influence are encouraged. Again, I am not making any accusation in this particular matter, in that I have been assured by the State Bar that there appear to be no improprieties. I am just suggesting that the opportunity for improprieties, using such a system, not only exists but would be encouraged.

Further, I question an entire system which requires the litigants directly to pay for a court's time. Under the California practice, courts may use commissioners, referees and judges pro tem to assist the courts in their duties. These personnel either volunteer their time as in the case of judges pro tem or are appointed and paid by the court.

Further, since a litigant does have a right to peremptorily challenge a judge, or to stipulate to a referee or commissioner, I submit that no litigant in its right mind would agree to a judge or other personnel for whom payment must be made.

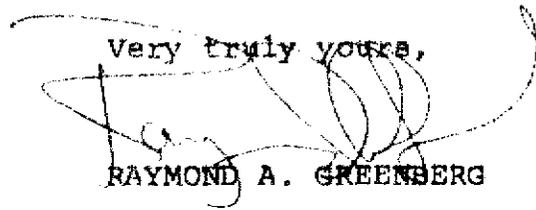
In short, the procedure presently practiced in Alameda County is oppressive, expensive, subject to corruption and would certainly prevent a litigant easy access to the courts to enforce rights and privileges given by law.

California Law Revision Commission
School of Law
December 13, 1976
Page 5

Although there apparently is presently no statutory prohibition against the foregoing practice, there should be, and I recommend such prohibition immediately.

If you have any further questions or comments concerning this matter, please do not hesitate to contact the undersigned.

Very truly yours,



RAYMOND A. GREENSBERG

RAG/msb

Enclosures

- ALAMEDA SUPERIOR COURT -
PROCEDURE on ORDERS of EXAMINATION
REFEREE ALAN H. DAVIDSON
1419 Broadway, Suite 810
Oakland, California 94612
451-6782

1. Alameda Superior Court does not have its own forms. Use forms from any other court, provided that they are modified to suit Alameda Superior.
2. The upper left hand corner of the order must contain the name, address and phone number of the person who signs as declarant. If you are not an attorney, be sure that you write in the phrase 'pro per' by your name.
3. The heading of the order must read Alameda Superior Court, County of Alameda, State of California. If you are using a court form, be sure that the heading is changed to read correctly. This goes for any other place the name of the court appears.
4. The number requested directly below the heading should be the Alameda Superior Court action number. If you do not have one, you must get one. If the judgement is in another county in a court of similar jurisdiction (i.e. a superior court) an affidavit pursuant to CCP 722 must be filed with Alameda Superior. If you are in 'pro per' the referee suggests you consult with an attorney. If you are an attorney, refer to the above mentioned statute.
5. Orders of Examination are heard on Friday afternoons and are scheduled every 1/2 hour from 2:30 p.m. to 3:30 p.m. Please call the referee's office to arrange for a date and time, unless the date for the examination will be more than a month away from the date we receive your application.
6. The examinations are heard in Room 207 at 1225 Fallon Street, Oakland, CA. Be sure that this is changed on forms.
7. The application for order of examination must state (a) the date on which the judgement against the debtor was entered in Superior Court, (b) that the judgement has not been satisfied, (c) and that debtor's place of residence or business is within Alameda County or 150 miles of Alameda County, (d) that execution may be properly issued at this time, (e) how many times, if ever, the debtor has been previously examined and the date of the last examination, (f) and whether affidavits in support of application for order pursuant to CCP 717 or 545 are filed, as applicable. If you are using forms check the appropriate boxes and fill in the appropriate blanks. (Note Pursuant to CCP 714, a judgement debtor may not be required to appear and answer more often than every four months.)
8. Be sure that declarant signs and dates the application for order of examination.
9. Alameda Superior Court requires that an application for order appointing person to serve the order be submitted and signed by the judge. If you are going to have the order served by the sheriff or marshall or by a registered process server, please state this on the application above the place for the judge's signature. If an individual is to serve the order, you must state that person's name and that they are over 18 years of age, a U.S. citizen, and not a party to the action. If you are using forms that do not have a space for the order appointing person to serve, you must either squeeze it in above the judge's signature or attach it separately. This application must be signed and dated by the declarant.

10. There is no statute stating when the order of examination must be served. There is no requirement that it be served 10 days in advance of the date to appear.

11. Three copies of the order should be mailed directly to the referee's office with (a) a \$10.00 check made out to Mr. Alan H. Davidson to cover the setting fee. (b) a postage-paid, self-addressed envelope for return of the order.

12. Orders received in the referee's office will be checked for acceptability, signed by the judge and returned to the declarant for service.

13. Orders need not be filed with Alameda Superior Court prior to the examination. However, if CCP 722 applies, the affidavit should be filed prior to the examination.

14. The \$10.00 setting fee is not refundable or transferrable under any circumstances. It is required every time a new date is secured.

15. A continuance for the examination may be obtained without reissuance of the order if the declarant and the debtor so agree. It must then be confirmed with the referee by both parties preferably by a stipulation signed by both parties and submitted to the referee's office. A \$10.00 check must accompany the stipulation.

~~16. A \$15.00 per 1/2 hour or fraction thereof fee for time consumed at the examination is also charged. It is payable at the time of the hearing to Referee Alan H. Davidson. The declarant should be sure to have either a checkbook or cash on hand at the time of the hearing to cover this cost.~~

~~17. If the debtor does not appear at the time of the examination and the referee orders it so, the declarant may then proceed for a contempt, pursuant to CCP 717. This is handled through Alameda Superior Court, Department number One and not through the referee or his office.~~

18. 1/2 of the declarant's costs are recoverable.

PLEASE BE ADVISED THAT YOUR ORDERS WILL BE RETURNED TO YOU UNSIGNED BY THE JUDGE IF THEY DO NOT COMPLY WITH THESE INSTRUCTIONS. THIS IS THE ONLY INFORMATION THIS OFFICE SUPPLIES. IF YOU DO NOT UNDERSTAND THESE INSTRUCTIONS AND YOU ARE NOT AN ATTORNEY, THE REFEREE SUGGEST YOU CONSULT ONE. IF YOU ARE AN ATTORNEY AND YOU HAVE A QUESTION, THE REFEREE ASKS THAT YOU CONSULT CALIFORNIA CIVIL CODES 714 THROUGH 722.

STAFF DRAFT

TENTATIVE RECOMMENDATION

relating to

ENFORCEMENT OF JUDGMENTS

Title 9 (Commencing With Section 701.110)
of Part 2 of the Code of Civil Procedure

January 20, 1977

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford, California 94305

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APPENDIX

10/357

TITLE 9. ENFORCEMENT OF JUDGMENTS

CHAPTER 1. SHORT TITLE; DEFINITIONS

§ 701.110. Short title

701.110. This title shall be known and may be cited as the Enforcement of Judgments Law.

10/358

§ 701.120. Application of definitions

701.120. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this title.

Comment. Section 701.120 is a standard provision found in the definitional portion of several California codes and laws. E.g., Code Civ. Proc. §§ 481.010, 1235.110; Evid. Code § 100; Veh. Code § 100.

Additional definitions are provided in the preliminary provisions of the Code of Civil Procedure. See Section 17.

10/370

§ 701. . . Court

701. . . "Court" means the court where the judgment sought to be enforced was entered.

10/900

§ 701. . . Account receivable

701. . . "Account receivable" means an "account receivable" as defined by Section 481.030.

Comment. See the Comment to Section 481.030.

10/901

§ 701. . . Chattel paper

701. . . "Chattel paper" means "chattel paper" as defined by Section 481.040.

Comment. See the Comment to Section 481.040.

10/902

§ 701. . Chose in action

701.____. "Chose in action" means a "chose in action" as defined by Section 481.050.

Comment. See the Comment to Section 481.050.

10/906

§ 701. . Deposit account

701.____. "Deposit account" means a "deposit account" as defined by Section 481.080.

10/907

§ 701. . Judgment creditor

701.____. "Judgment creditor" means the person in whose favor a judgment enforceable pursuant to this title (other than Chapter 11 (commencing with Section 711.110)) is rendered or such person's assignee or successor in interest.

Comment. "Judgment creditor" is defined by Section 701.____ so as to include the person in whose favor the following types of judgments are rendered: judgments for the payment of money, judgments for the possession of personal property, judgments for the possession of real property, and judgments for the sale of real or personal property. The term is not used in Chapter 11 (commencing with Section 711.110) pertaining to enforcement of other types of judgments directly through the contempt power.

10/908

§ 701. . Judgment debtor

701.____. "Judgment debtor" means the person against whom a judgment enforceable pursuant to this title (other than Chapter 11 (commencing with Section 711.110)) is rendered.

Comment. "Judgment debtor" is defined by Section 701.____ so as to include the persons against whom the following types of judgments are

rendered: judgments for the payment of money, judgments for the possession of personal property, judgments for the possession of real property, and judgments for the sale of real or personal property. The term is not used in Chapter 11 (commencing with Section 711.110) pertaining to enforcement of other types of judgments directly through the contempt power.

10/913

§ 701. . Levying officer

701.____. "Levying officer" means the sheriff, constable, or marshal who is directed to execute a writ or order under this title and, in the case of a sale of real property pursuant to a judgment foreclosing a mortgage, includes a commissioner or elisor appointed pursuant to Section 726.

Comment. The first portion of Section 701.____ is the same as Section 481.140 applicable to Title 6.5. The latter portion reflects the special provisions of Section 726. See also Govt. Code § 27469 (coroner discharges duties of sheriff where sheriff is party to action or proceeding).

10/915

§ 701. . Motor vehicle

701.____. "Motor vehicle" means a "motor vehicle" as defined by Section 415 of the Vehicle Code.

Comment. Section 701.____ is the same as Section 481.150 defining motor vehicle for purposes of the Attachment Law. See the Comment to Section 481.150.

10/916

§ 701. . Negotiable instrument

701.____. "Negotiable instrument" means a "negotiable instrument" as defined by Section 3104 of the Commercial Code.

Comment. Section 701.____ is the same as Section 481.160 defining "negotiable instrument" for purposes of the Attachment Law.

10/917

§ 701. . Person

701.____. "Person" includes an individual, a corporation, a partnership or other unincorporated association, and a public entity.

Comment. Section 701.____ is the same as Section 481.170 defining "person" for purposes of the Attachment Law. See also Section 705.410 ("public entity" defined for purposes of collection of money judgment where judgment debtor is creditor of public entity).

10/919

§ 701. . Security agreement

701.____. "Security agreement" means a "security agreement" as defined by Section 9105 of the Commercial Code.

Comment. Section 701.____ is the same as Section 481.220 defining "security agreement" for purposes of the Attachment Law. See paragraph (h) of subdivision (1) of Commercial Code Section 9105.

CHAPTER 2. GENERAL PROVISIONS

§ 702.110. Enforcement of judgment for the payment of money

702.110. A judgment for the payment of money may be enforced pursuant to Chapters 3 (commencing with Section 703.110), 4 (commencing with Section 704.110), and 5 (commencing with Section 705.110).

Comment. Section 702.110 refers to the chapters in this title which provide the various means available to a judgment creditor to enforce a money judgment. See also Title 11 (commencing with Section 1710.10) (enforcement of sister state and foreign money judgments).

29/634

§ 702.120. Enforcement of judgment for the possession of personal property

702.120. A judgment for the possession of personal property may be enforced as provided in Chapter 8 (commencing with Section 708.110).

Comment. Section 702.120 refers to the portion of this title that provides the means for enforcing a judgment for the possession of personal property.

29/635

§ 702.130. Enforcement of judgment for the possession of real property

702.130. A judgment for the possession of real property may be enforced as provided in Chapter 9 (commencing with Section 709.110).

Comment. Section 702.130 refers to the portion of this title that provides for the enforcement of judgments for the possession of real property.

29/636

§ 702.140. Enforcement of judgment for the sale of property

702.140. A judgment for the sale of real or personal property may be enforced as provided in Chapter 10 (commencing with Section 710.110).

Comment. Section 702.140 refers to the portion of this title that provides the means for enforcing a judgment for the sale of real or personal property.

29/637

§ 702.150. Enforcement of judgments by contempt.

702.150. A judgment requiring the performance of any act not described in Sections 702.110 through 702.140 may be enforced as provided in Chapter 11 (commencing with Section 711.110).

Comment. Section 702.150 refers to the chapter that provides for enforcement through exercise of the contempt power.

29/638

§ 702.160. Property subject to judgment lien or attachment lien

702.160. In addition to the property of the judgment debtor that may be subjected to enforcement of a judgment for the payment of money as provided in Chapters 3 (commencing with Section 703.110), 4 (commencing with Section 704.110), and 5 (commencing with Section 705.110), and except as provided in Chapter 7 (commencing with Section 707.110), the following property is subject to the enforcement of a judgment for the payment of money:

(a) Real property no longer owned by the judgment debtor but subject to a judgment lien when owned by the judgment debtor.

(b) Property no longer owned by the judgment debtor but subject to an attachment lien when owned by the judgment debtor.

Comment. Section 702.160 states the general principle that, unless it is exempt from enforcement of a money judgment, all the judgment debtor's property, any real property which has been transferred but was subject to a judgment lien or attachment lien when owned by the judgment debtor, and any other property which has been transferred but was subject to an attachment lien when owned by the judgment debtor may be reached to satisfy a money judgment. The various procedures available for reaching different types of property are provided in Chapters 3 (commencing with Section 703.110) (writ of execution), 4 (commencing with Section 704.110) (wage garnishment), and 5 (commencing with Section

705.110) (examination, creditor's suit, receiver, collection where public entity is debtor of judgment debtor, charging order, lien on cause of action and judgment, assignment order). Of course, the procedure followed will depend on the property sought to be applied to the satisfaction of the judgment and the circumstances of a particular case. Subdivision (a) continues the substance of provisions found in subdivision 1 of former Section 682. See also Sections 674, 674.5 (judgment lien). Subdivision (b) codifies prior law. See Riley v. Nance, 97 Cal. 203, 31 P. 1126 (1893); Everett v. Hayes, 94 Cal. App. 31, 270 P. 458 (1928); Sections 488.500, 488.510 (attachment lien). See also Civil Code § 3439.09(a)(2) (levy of execution on fraudulently conveyed property).

29/639

§ 702.170. Time for enforcement of judgment

702.170. (a) Except as otherwise provided in subdivision (b) and in Sections 702.180 and 702.190, no judgment may be enforced and no sale, collection, or delivery pursuant to the judgment or to a writ or order issued pursuant to the judgment shall take place, and no lien created by the enforcement of the judgment may be enforced more than 10 years after the date of entry of the judgment.

(b) Subdivision (a) does not apply to the enforcement of judgments that are enforceable only by contempt.

Comment. Section 702.170 provides a basic 10-year period for enforcement of a judgment and supersedes former Section 681. Section 702.180 provides a simple and exclusive procedure that permits the extension of the period of effectiveness of a judgment for an additional 10 years. Sections 702.170 and 702.180 apply the same principles 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 California 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 702.190.

Two changes in former law should be noted. First, former Section 681 has been interpreted to provide that a writ or order could be issued within 10 years and, if thus timely issued, could be enforced after the expiration of the 10-year period. Alonso Investment Corp. v. Doff, 17 Cal.3d 539, ___ P.2d ___, ___ Cal. Rptr. ___ (1976). Section 702.170 provides, however, that, if the enforceability of the judgment is not extended, all aspects of enforcement not completed within the basic 10-year period are barred. At the end of the 10-year period, unless the judgment has been extended pursuant to Section 702.180, process previously issued becomes void.

Second, unlike former Section 681, Section 702.170 does not provide for tolling of the 10-year period for any reason. Ten years should provide ample time to enforce most judgments; moreover, Section 702.180 provides a simple procedure enabling the judgment creditor to extend the life of the judgment for an additional 10 years. A judgment, or portion thereof, which is not enforced within the 10- or 20-year period is in effect discharged.

Subdivision (b) makes clear that judgments enforceable directly by contempt, such as those governed by Chapter 11 (commencing with Section 711.110), are not subject to the 10-year rule of Section 702.170.

29/640

§ 702.180. Extension of judgment; action on judgment prohibited

702.180. (a) Except as provided in Section 702.190, within one year prior to the expiration of the 10-year period provided by Section 702.170, the judgment creditor may extend the time during which the judgment may be enforced by filing a judgment extension notice in the court which rendered the judgment.

(b) The judgment extension notice shall contain the following:

(1) The title of the court where the judgment was rendered and the cause and number of the action.

(2) The date of entry of the judgment.

(3) The names of the judgment debtor, the judgment creditor, and, if different, the original judgment creditor.

(4) The amount of the judgment or a description of the property to be sold or whose possession is to be delivered or restored and where entered in the judgment book, minutes, or docket.

(5) A statement that the enforceability of the judgment is extended until the expiration of 20 years after the date of entry of the judgment.

(c) The court clerk shall file the judgment extension notice in the file of the action and enter the extension in the same manner as is provided for entry of judgments in that court.

(d) If the judgment extension notice is timely filed by the judgment creditor, the judgment may be enforced or continued to be enforced until the expiration of 20 years after the date of entry of the judgment.

(e) No judgment that has previously been entered in this state may be extended by bringing an action upon it.

Comment. Section 702.180 is new. It provides a general procedure for extending the enforceability of judgments for a 10-year period beyond the 10-year period provided by Section 702.170 upon the filing of a judgment extension notice in the court where the judgment was rendered. For special rules applicable to the extension of a money judgment payable in installments, see Section 702.190.

Sections 702.180 and 702.190 provide the exclusive means for extending judgments entered in California courts. Subdivision (e) of this section makes clear that a judgment entered in this state may no longer be renewed by bringing an action on it. See Section 1710.60 (action on sister state judgment authorized).

Sections 702.180 and 702.190 also replace the noticed motion procedure of former Section 685. Under that section, a judgment could be enforced after the expiration of 10 years in the discretion of the court upon a noticed motion accompanied by an affidavit showing the reasons for failure to enforce the judgment during the first 10 years after entry. The procedure under Section 702.180 differs from the former procedure in several respects. First, Section 702.180 permits extension of the judgment by filing a judgment extension notice with the clerk of the court where the judgment was rendered. Former Section 685 required

an application on noticed motion. Where the applicant is an assignee or successor in interest of the original judgment creditor, the judgment extension notice must contain both names. See Section 702.180(a) and (b)(3). See also Section 701. (judgment creditor defined). Second, Section 702.180 provides for the automatic extension of the judgment when a judgment extension notice is properly filed whereas, under former Section 685, the court had discretion to deny the motion for failure to set forth adequate reasons for failure to enforce the judgment during the first 10 years. Third, subdivision (a) of Section 702.180 provides that the judgment extension notice must be filed during the last year of the 10-year period after the judgment was entered, whereas the motion under former Section 685 could be made at any time after 10 years from the date of entry of the judgment. See also Section 337.5 (10-year statute of limitations on action on a judgment of a court of the United States or any state within the United States). Fourth, once a judgment is extended under Section 702.180, the judgment creditor has an additional 10-year period (beginning at the expiration of the first 10-year period provided by Section 702.170) during which time the judgment creditor may pursue whatever enforcement remedies are available. Former Section 685 seemed to require a separate application to the court each time the judgment creditor sought enforcement after the first 10 years had expired. See also Section 702.300(b) (Judicial Council to prescribe forms).

If a judgment is not extended in the manner provided, it is in effect discharged at the expiration of 10 years after its date of entry except in the case of installment judgments to which a special rule stated in Section 702.190 applies. If the judgment is extended, but not satisfied before the end of the 20th year after its entry, the judgment is in effect discharged and any process previously issued becomes void. See also Section 674 (judgment lien extended for additional 10-year period upon filing of certified judgment renewal statement with recorder).

§ 702.190. Installment judgments; time for enforcement; extension

702.190. (a) Where a judgment for the payment of money is payable in installments, the period provided by Section 702.170 for the enforcement of a judgment runs as to each installment from the date such installment becomes due.

(b) Within one year prior to the expiration of the 10-year period provided by subdivision (a) and Section 702.170, the judgment creditor may extend the time during which an installment may be enforced by filing an installment judgment extension notice in the court which rendered the judgment.

(c) The installment judgment extension notice shall contain the following:

(1) The title of the court where the judgment was rendered and the cause and number of the action.

(2) The date of entry of the judgment.

(3) The names of the judgment debtor, the judgment creditor, and, if different, the original judgment creditor.

(4) The amount of the judgment and where entered in the judgment book, minutes, or docket.

(5) The amount of each unpaid installment, the enforceability of which is to be extended, and the date when each such installment became due.

(6) A statement that the enforceability of the installments described in the installment judgment extension notice is extended until the expiration of 20 years from the date the earliest such due but unpaid installment became due.

(d) The court clerk shall file the installment judgment extension notice in the file of the action and enter the extension in the same manner as is provided for entry of judgments in that court.

(e) If the installment judgment extension notice is timely filed by the judgment creditor, the installments that are due but unpaid and are described in the notice may be enforced or continued to be enforced until the expiration of 20 years after the date the earliest such due but unpaid installment became due.

Comment. Section 702.190 is new. It prescribes the time within which installment judgments may be enforced and the procedure for extending the enforceability of due but unpaid installments. 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).

Subdivision (a) codifies existing law. 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).

Subdivisions (b) through (e) provide a new procedure for extension of the enforceability of accrued installments. Like the procedure provided by Section 702.180 for judgments generally, subdivisions (b) through (e) permit the extension of the enforceability of an installment due under a money judgment for an additional 10 years upon the filing of an installment judgment extension notice. No application to the court is required and the court has no discretion to deny the extension of enforceability. Section 702.180(d) and Comment thereto. The procedure provided by this section differs from that provided by Section 702.180 in several respects. The judgment creditor may file an installment judgment extension notice during the tenth year after each delinquent installment has accrued in order to extend the enforceability of that installment. However, to avoid the burden of filing separately for each installment, the judgment creditor may list in the notice all unpaid installments accruing during the preceding 10 years so long as at least one such installment is in its 10th year of delinquency. Paragraphs (5) and (6) of subdivision (c). The enforceability of all such installments is thereby extended for a period ending 20 years after the date of accrual of the oldest unpaid installment. Subdivision (e). See also Section 702.300(b) (Judicial Council to prescribe forms).

Consider the following examples:

(1) A judgment debtor has been ordered to pay the judgment in 10 annual installments due on January 1 beginning in 1976. If he defaults

on all of the payments, the judgment creditor may wish to extend the enforceability of each installment during the 10th year after each becomes due. Hence, the first installment (due in 1976) would be extended to December 31, 1995, by filing a notice sometime during 1985. Each successive installment could be extended in a similar manner. The 10th installment (due in 1985) would be extended to December 31, 2004, by filing notice sometime during 1994.

(2) As an alternative, the judgment creditor could extend all 10 delinquent installments by listing them in the notice filed during 1985 (the 10th year after the first installment accrued). The first installment (due in 1976) would be extended until December 31, 1995—a full 20-year term of enforceability. The 10th installment (due in 1985) would also be extended until December 31, 1995, resulting in only an 11-year term. The terms during which the other installments could be enforced would range from 19 years for the second installment (due in 1977) down to 12 years for the ninth installment (due in 1984).

(3) Finally, the judgment creditor could file a notice in 1985 listing only the first five delinquent installments, thereby extending their enforceability until December 31, 1995, and resulting in terms of enforceability ranging from 20 years for the first installment to 16 years for the fifth installment. Then, during 1990, the 10th year after the accrual of the sixth unpaid installment (due in 1981), the judgment creditor could renew the last five installments until December 31, 2000. This would result in terms of enforceability ranging from 20 years for the sixth installment to 16 years for the 10th installment. Of course, other variations are possible, particularly so when installments accrue monthly or weekly.

29/645
§ 702.200. Stay of enforcement without bond

(a) Upon the ex parte application of the judgment debtor or, if the court so orders, after a noticed hearing, the court may, without bond, stay the enforcement of the judgment as follows:

(1) Where enforcement of the judgment would be stayed on appeal only if a bond were given, enforcement may be stayed for not more than 10 days in a justice court or 30 days in any other court after the stay order is made.

(2) Notwithstanding paragraph (1), where a motion for a new trial or for judgment notwithstanding the verdict is pending, enforcement of the judgment may be stayed for not more than 10 days after the determination of the motion.

(b) Notwithstanding subdivision (a), the court may stay the enforcement of any judgment for a time and on terms consented to by the parties.

Comment. Section 702.200 is based on former Section 681a. See also 5 B. Witkin, California Procedure Enforcement of Judgment § 84, at 3453 (2d ed. 1971); E. Jackson, California Debt Collection Practice § 17.65 (Cal. Cont. Ed. Bar 1968). Subdivision (a) of Section 702.200, however, provides that the stay order may be granted ex parte unless the court orders otherwise. The reference to the stay of an order in former Section 681a has not been continued, the reference being unnecessary since Section 702.200 by its terms applies to enforcement of a judgment which would include enforcement of an order issued in the process of enforcing the judgment. Paragraph (1) of subdivision (a) makes clear that the 10-day or 30-day period during which enforcement of a judgment may be stayed begins on the day the stay order is made. This codifies the rule in Garrett v. Garrett, 31 Cal. App. 173, 181, 159 P. 1050, _____ (1916). Paragraph (2) continues the substance of the last sentence of former Section 681a. Subdivision (b) recognizes that the parties may stipulate to a stay for a longer period than is provided by subdivision (a) and may also include other terms such as whether a bond is required. See Rio Grande Oil Co. v. Seaboard Surety Corp., 139 Cal. App. 164, 33 P.2d 887 (1934). If a judgment debtor appeals from a judgment, a stay of enforcement may be obtained pending appeal pursuant to Code of Civil Procedure Sections 916-923 which usually require the giving of a bond. See also Section 1174(c) (mandatory five-day stay under certain circumstances in unlawful detainer proceedings).

§ 702.210. Enforcement after death of judgment creditor

702.210. Where the judgment creditor dies after entry of a judgment, the judgment may be enforced as provided in this title upon the application of the judgment creditor's executor or administrator or successor in interest.

Comment. Section 702.210 reenacts without substantive change subdivision 1 of former Section 686. The executor or administrator must qualify under the applicable statutory provisions. See, e.g., Fin. Code § 1503; Prob. Code §§ 401, 405.1.

§ 702.220. Enforcement after death of judgment debtor

702.220. (a) After the death of the judgment debtor, a judgment for the payment of money may be enforced only as provided by Probate Code Section 732.

(b) Notwithstanding subdivision (a), a judgment creditor may enforce by foreclosure any judgment lien acquired prior to the death of the judgment debtor and any attachment lien on property that is transferred by the judgment debtor prior to death.

(c) After the death of the judgment debtor, a judgment for the possession or for the sale of real or personal property may be enforced against the executor or administrator in the manner provided by this title.

Comment. Section 702.220 continues the substance of prior law. Subdivision (a) incorporates the provisions of Probate Code Section 732, which provides that, after the death of the judgment debtor, a money judgment is enforced by making a claim against the estate of the judgment debtor. See Prob. Code § 716. If the claim is rejected, the judgment creditor may enforce the money judgment by bringing an action against the estate. See Taylor v. George, 34 Cal.2d 552, 212 P.2d 505 (1950). Under Probate Code Section 732, property levied upon before death may be sold under the writ of execution; however, under subdivision (a) of this section, a new writ of execution may not be issued nor may any writ of execution be levied after death. The same rule should

apply to other enforcement procedures provided in this title. Subdivision (b), based on part of subdivision 2 of former Section 686, continues two rules that mitigate the effect of subdivision (a): First, prior law recognized a right in a judgment lien creditor to bring an equitable action to foreclose the lien on the death of the judgment debtor.

Corporation of America v. Marks, 10 Cal.2d 218, 73 P.2d 1215 (1937).

Second, prior law also permitted a judgment creditor to enforce an attachment lien acquired prior to the judgment debtor's death against property which had been transferred to a third person by the judgment debtor. See Everett v. Hayes, 94 Cal. App. 31, 270 P. 458 (1928). See also Hibernia Savings & Loan Society v. London & Lancashire Fire Insurance Co., 138 Cal. 257, 71 P. 334 (1903).

Subdivision (c), insofar as it provides for the enforcement of judgments for the possession of real or personal property, continues part of subdivision 2 of former Section 686. In addition, subdivision (c) provides that judgments for the sale of real or personal property may be enforced against the judgment debtor's executor or administrator. Subdivision 2 of former Section 686 provided for the enforcement of judgments for the "recovery of real or personal property" but not judgments for the sale of real or personal property.

29/648

§ 702.230. Contribution among judgment debtors; repayment of surety by principal; enforcement; notice, filing, and entry

702.230. (a) Where a joint judgment debtor satisfies more than such debtor's share of a judgment for the payment of money, such debtor may compel contribution from the other joint judgment debtors.

(b) Where a judgment for the payment of money is against several joint judgment debtors upon an obligation of one of them as security for another and the surety pays the judgment or any part thereof, the surety may compel repayment from the principal.

(c) A person entitled to contribution or repayment pursuant to subdivision (a) or (b) may apply on noticed motion to the court which entered the original judgment for a judgment against the other joint judgment debtors. At the hearing on the motion, the court shall determine the liability of the other joint judgment debtors and have judgment entered accordingly. Such judgment may be enforced in the same manner as any other judgment for the payment of money.

(d) This section does not apply to contribution among joint tortfeasors governed by Title 11 (commencing with Section 875).

Comment. Section 702.230 provides a motion procedure for determining a joint judgment debtor's right to contribution. It is based on former Section 709. Subdivisions (a) and (b) continue the substance of the first sentence of former Section 709. Subdivision (a) permits contribution where a joint judgment debtor satisfies more than his share of the judgment, either voluntarily by payment, or involuntarily through levy on and sale of his property, wage garnishment, examination proceedings, or some other procedure. The joint judgment debtor's "share" depends on the circumstances of the case. See Stowers v. Fletcher, 84 Cal. App.2d Supp. 845, 190 P.2d 338 (1948). For example, the share for which comakers of a note given for the purchase price of land are liable is presumptively proportionate to their respective interests in the land; but this presumption may be overcome by a showing of the insolvency of a co-obligor to the effect that the loss arising therefrom is to be borne proportionately by the solvent co-obligors. Tucker v. Nicholson, 12 Cal.2d 427, 84 P.2d 1045 (1938). There is an implied contract of each obligor with the others that they will share the burden equally. Pacific Freight Lines v. Pioneer Express Co., 39 Cal. App.2d 609, 103 P.2d 1056 (1940). See Woolley v. Seijo, 224 Cal. App.2d 615, 36 Cal. Rptr. 762 (1964); Jackson v. Lacy, 37 Cal. App.2d 551, 100 P.2d 313 (1940).

The term "joint judgment debtor" includes both judgment debtors who are jointly liable and those who are jointly and severally liable; it does not include those who are only severally liable. See Civil Code § 1432; Hurlburt v. Quigley, 180 Cal. 265, 180 P. 613 (1919) (right of contribution where obligation is joint and several); Garcia v. Superior Court, 45 Cal. App.2d 31, 113 P.2d 470 (1941) (no right to contribution where liability is merely several). See also Section 1059 (right to subrogation of surety on appeal bond).

Subdivision (c) codifies the prior practice of determining the right to contribution only after a hearing on noticed motion. See Stowers v. Fletcher, *supra*; 5 B. Witkin, California Procedure Enforcement of Judgment § 211, at 3564 (2d ed. 1971). Subdivision (c) does not

continue the requirement of former Section 709 that the motion be made within 10 days after the joint judgment debtor pays more than his share. The last sentence of former Section 709, providing for the clerk to make an entry in the margin of the docket, is superseded by the provision in subdivision (c) that judgment is entered against the other joint judgment debtors.

Subdivision (d) clarifies the relationship between the general provisions of Section 702.230 and the provisions of Title 11 (commencing with Section 875) applicable to contribution among joint tortfeasors. This continues existing law. Cf. Adams v. White Bus Line, 184 Cal. 710, 195 P. 389 (1921) (prior to enactment of Title 11, rule against contribution between joint tortfeasors not changed by former Section 709).

29/325

§ 702.240. Remedies of agency issuing warrant; jurisdiction

702.240. (a) Whenever a warrant may properly be issued pursuant to Section 1785 of the Unemployment Insurance Code or Section 6776, 7881, 9001, 10111, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code to enforce any lien arising under the provisions of the Unemployment Insurance Code or the Revenue and Taxation Code, the state agency authorized to issue the warrant may use any of the remedies available to judgment creditors.

(b) Where jurisdiction of any court is required for enforcement of such remedies, jurisdiction is conferred upon the superior court of the county where the person against whom enforcement is sought resides or the property against which enforcement is sought is situated, or if the person does not reside in this state, in any county of this state.

Comment. Section 702.240 is the same in substance as former Section 722.5.

29/326

§ 702.250. Manner of mailing notice

702.250. Unless otherwise expressly provided, whenever in this title notice is required or permitted to be mailed, it shall be sent by registered or certified mail, postage prepaid.

Comment. Section 702.250 provides the manner of mailing notice under this title. See, e.g., Sections 705.130(b),

§ 702.260. Judgment creditor's instructions to levying officer

702.260. The judgment creditor shall give the levying officer instructions in writing, signed by the judgment creditor or the judgment creditor's attorney of record, which contain the information needed by the levying officer to comply with the provisions of this title.

Comment. Section 702.260 is a general provision based on part of former Section 542 (levy) and on parts of subdivisions 2 and 3 of former Section 692 (sale of personal and real property). See also Sections 262 (levying officer not liable for carrying out signed instructions of plaintiff), 703.210 (writ of execution), 708.130 (writ of possession), 709.130 (writ of restitution), 710.130 (writ of enforcement).

§ 702.270. Deposit of fees prior to execution of writ

702.270. Except as otherwise provided by law:

(a) As a prerequisite to the performance by the levying officer of a duty under this title, the judgment creditor shall deposit a sum of money with the levying officer sufficient to pay the costs of performance of the duty.

(b) As a prerequisite to the taking of possession of property by the levying officer, whether by keeper or otherwise, the judgment creditor shall deposit with the levying officer a sum of money sufficient to pay the expenses of taking and keeping safely the property for a period not to exceed 15 days. In the event that further detention of the property is required, the levying officer shall, from time to time, make written demand upon the judgment creditor or the judgment creditor's attorney of record for further deposits to cover estimated expenses for periods not to exceed 30 days each. The demand shall be served as provided in Section 1011 or by depositing such notice in a post office in a sealed envelope, as first-class mail, postage prepaid, addressed to the person on whom it is served at such person's last known office or place of residence. In the event that the money so demanded is not paid within the time specified in the demand, the levying officer shall release the property in the manner provided by Section 488.560.

Comment. Section 702.270 simply makes more specific the general authority to demand fees in advance. See Govt. Code §§ 6100, 24350.5. The introductory clause recognizes that there are exceptions to the general rule, such as where a governmental agency is the judgment creditor. See Govt. Code § 6103.

29/334

§ 702.280. Entry on writ of amount of interest and costs; additional interest

702.280. (a) Before the court clerk issues a writ under this title, the following information, where appropriate, shall be entered on the writ:

(1) The amounts of any costs determined pursuant to the applicable procedure which have accrued from the date of entry of the judgment to the date of the issuance of the writ.

(2) If the judgment creditor has filed an affidavit stating the amount of interest which has accrued from the date of entry of the judgment to the date of issuance of the writ, the amount of such interest.

(3) The amount of interest which accrues daily, from the date of issuance of the writ, on the amount due on the judgment as entered.

(b) Interest on the amount of the judgment remaining unpaid as shown on the writ, from the date of issuance of the writ to the date of levy of execution, shall be computed by the levying officer and this amount plus the commissions and costs of the levying officer shall be added to the net balance actually due on the date of the issuance of the writ, as stated therein, in determining the total amount to be satisfied.

Comment. Section 702.280 is similar to former Section 682.2, but is not limited to execution as was the former provision. Subdivision (a) does not require that the clerk or judge enter the amount of costs and interest to accrue on the face of the writ as did former law. Subdivision (a) requires only that costs and interest be entered; this change recognizes the practice under former law whereby the judgment creditor's attorney filled in the form for the writ which the clerk then

issued. See E. Jackson, California Debt Collection Practice § 17.17 (Cal. Cont. Ed. Bar 1968). Whether costs may properly be entered on the writ depends on whether the procedures for ascertaining costs have been satisfied. See, e.g., Sections 1033.7 (memorandum of costs), 1710.15 (costs incurred in collection of sister state judgment). Note that in the case of a judgment for the possession of personal property the enforceability of some items described in this section depends on whether the property can be found. See Sections 708.130, 708.160.

29/335

§ 702.290. Request for notice of sale; filing; contents; notation on writ; mailing notice

702.290. (a) After judgment has been entered, any person may file with the clerk a written request for notice by mail of any sale pursuant to a writ of execution or a writ of enforcement issued upon the judgment. In such request, the person shall specify the title of the court, case and number of the action in which such judgment was rendered, and the date of entry thereof and shall give the address to which such notice of sale is to be mailed.

(b) Whenever a writ of execution or writ of enforcement is issued upon a judgment, the clerk shall note upon such writ the fact that notice by mail has or has not been requested. If notice has been requested, the clerk shall note upon the writ the name and address of the person requesting notice.

(c) The officer conducting a sale under any writ of execution or writ of enforcement upon which appears a notation that notice has been requested shall mail a copy of the notice of time and place of sale to such person at the address noted upon the writ. The copy of the notice shall be mailed at the time notice is posted pursuant to Section 703.520.

Comment. Section 702.290 continues the substance of former Section 692a and makes clear that a request for notice of sale or the lack thereof is to be noted on a writ of enforcement as well as on a writ of execution. Cf. Hamilton v. Carpenter, 52 Cal. App.2d 447, 448, 126 P.2d 395 (1942). Sales of property take place under writs of execution and writs of enforcement as a matter of course (see Sections 703.510, 710.130) and under writs of possession and writs of restitution as an ancillary matter (see Sections 708.130, 708.160, 709.130).

§ 702.300. Rules for practice and procedure; forms

702.300. (a) The Judicial Council may provide by rule for the practice and procedure in proceedings under this title.

(b) The Judicial Council shall prescribe the form of the application, notices, orders, writs, and other documents required by this title.

Comment. Section 702.300 imposes certain duties on the Judicial Council. Subdivision (b) requires the Judicial Council to prescribe the forms necessary for the purposes of this title. The Judicial Council has authority to adopt and revise forms as necessary but must act in a manner consistent with the provisions of this title. For a similar provision in the Attachment Law, see Section 482.030. More detailed authority is provided in Chapter 4 relating to wage garnishment. Section [704.710].

§ 702.310. Clerk's duties performed by judge

702.310. The duties assigned to the clerk of court by this title may be performed by the judge if there is no clerk.

Comment. Section 702.310 is a general provision which replaces similar language in several sections of former law. E.g., former Sections 682, 682.2.

CHAPTER 3. EXECUTION

Article 1. Writ of Execution; Property Subject to Execution§ 703.110. Application for writ; several writs; successive writs

703.110. (a) After the entry of a judgment for the payment of money, upon application of the judgment creditor, the court clerk shall issue a writ of execution.

(b) Two or more writs may be issued to obtain execution in different counties. A separate writ shall be issued for each county in which execution is sought.

(c) Successive writs may be issued upon further application until the judgment is satisfied; however, no writ may be issued to obtain execution of the judgment in a county until any prior writ of execution issued for that county is returned unsatisfied.

(d) Notwithstanding subdivision (a), where the judgment creditor seeks a writ of execution to enforce a judgment or order for the support of a child or spouse, the judgment creditor shall apply to the court ex parte or, if the court so orders, on noticed motion, for an order directing issuance of a writ of execution.

Comment. Subdivision (a) of Section 703.110 is derived from the first sentence of former Section 681. Subdivision (b) is based on the first and last sentences of former Section 687. Subdivision (c) is based on the second paragraph of former Section 683. Subdivisions (b) and (c) make clear that a writ may be issued to each county in which execution of the judgment is sought but that only one writ may be outstanding in any county. This continues former law. See 32 Op. Cal. Atty. Gen. 22 (1958). Where writs are issued to two or more counties, the judgment creditor has a special duty to see that an excessive levy is not made. Cf. White Lighting Co. v. Wolfson, 68 Cal.2d 336, 347-350, 438 P.2d 345, ___-___, 66 Cal. Rptr. 697, ___-___ (1968) (excessive attachment). The provisions of this section are, of course, subject to limitations provided elsewhere. See, e.g., Sections 702.170-702.190 (time for enforcement), 702.200 (stay of execution), 702.220 (enforcement after death of judgment debtor).

Subdivision (d) continues the practice developed pursuant to Civil Code Section 4380 (formerly Civil Code Section 139 and then Civil Code Section 4540) which provides that courts have discretion in determining the manner of enforcing installment decrees for support. Messenger v. Messenger, 46 Cal.2d 619, 630, 297 P.2d 988; ___ (1956); Jackson v. Jackson, 51 Cal. App.3d 363, 124 Cal. Rptr. 101 (1975); Slevats v. Feustal, 213 Cal. App.2d 113, 28 Cal. Rptr. 517 (1963). It appears that the usual practice has been to apply ex parte to the court for an order directing the issuance of the writ of execution (see 2 B. Witkin, California Procedure Enforcement of Judgment § 9, at 3394 (2d ed. 1971); Simonet v. Simonet, 263 Cal. App.2d 612, 616, 69 Cal. Rptr. 806, ___ (1968)), but some courts have indicated a preference for application on noticed motion (Martin v. Martin, 5 Cal. App.3d 749, 755, 85 Cal. Rptr. 339, ___ (1970); Cochrane v. Cochrane, 57 Cal. App.2d 937, 939, 135 P.2d 714, ___ (1943)). Subdivision (d) anticipates that applications normally will be made ex parte but recognizes that notice may be required in the discretion of the court.

29/331

§ 703.120. Contents of writ of execution

703.120. (a) The writ of execution shall state the amount of the judgment and the amount actually due thereon and shall require the levying officer to satisfy the judgment, with any accrued costs and interest and the levying officer's commissions and costs entered on the writ as provided by Section 702.280, out of the property subject to execution as provided in Section 703.150.

(b) The writ of execution shall inform the person upon whom it is served of the person's rights and duties under the writ of execution, including any right to make a third-party claim pursuant to Chapter 6 (commencing with Section 706.110) and any right to claim an exemption pursuant to Chapter 7 (commencing with Section 707.110).

Comment. Section 703.120 prescribes the essential elements of a writ of execution. It is derived from a portion of the introductory paragraph and subdivision 1 of Section 682 and of former Sections 682.2

and 684. Section 703.150, referred to in subdivision (a), is a comprehensive statement of the property that is subject to execution.

The technical requirements for the writ provided in former Sections 682 and 682.1 have not been continued in Section 703.120. See also Sections 702.300(b) (Judicial Council to prescribe forms), 702.290 (notification of request for notice of sale). The requirement that the writ state the kind of money or currency in which the judgment is payable is not continued; Section 667 has been revised to require all money judgments to be made payable in dollars. The reference to earnings has been deleted. Levy on earnings of an employee must be made pursuant to Chapter 4 (commencing with Section 704.110). The statute no longer requires levy first on personalty. The judgment creditor is permitted to designate the order of levy in the instructions to the levying officer. See Sections 702.260 and 703.210. Former law required satisfaction of the judgment first out of property previously attached in the action, then out of personalty, and finally out of realty. See former Section 550 and subdivision 1 of former Section 682.

29/332

§ 703.130. Property subject to execution; exceptions

703.130. (a) Except as otherwise provided in subdivision (b) and in Chapter 7 (commencing with Section 707.110), the following property is subject to execution:

(1) Property owned by the judgment debtor at the time of levy of a writ of execution.

(2) Real property no longer owned by the judgment debtor but subject to a judgment lien when owned by the judgment debtor.

(3) Property no longer owned by the judgment debtor but subject to an attachment lien when owned by the judgment debtor.

(b) The following types of property are not subject to execution:

(1) An alcoholic beverage license that is transferable under Article 5 (commencing with Business and Professions Code Section 24070) of Chapter 6 of the Alcoholic Beverage Control Act.

(2) Money (other than wages) owing and unpaid by a public entity to the judgment debtor.

(3) The interest of a partner in specific partnership property where the partner, but not the partnership, is a judgment debtor.

(4) A cause of action that is the subject of a pending action or special proceeding.

(5) A judgment in favor of the judgment debtor, prior to its entry as a final judgment and the time for appeal from such judgment has expired, or if an appeal is filed, prior to the final determination of the appeal.

(6) A right to future payments.

Comment. Section 703.130 is new. It differs substantially from provisions of former law which purported to prescribe the property subject to execution. See subdivision 1 of former Section 682 (personal property, earnings, real property, and real property subject to judgment lien) and former Section 688 ("All goods, chattels, moneys or other property, both real and personal, or any interest therein, of the judgment debtor, not exempt by law, and all property and rights of property levied upon under attachment in the action, are subject to execution."). Subdivision (a) prescribes the general classes of property which may be reached by a writ of execution. See also Section 702.160 and Comment thereto.

The classes of property described in subdivision (a) are subject to the exceptions provided in subdivision (b) and in Chapter 7 (commencing with Section 707.110) (property exempt from enforcement of a money judgment). [Property which is exempt without making a claim under Chapter 7 is never subject to execution. Property which is exempt only if a claim is made therefor under Chapter 7 is subject to execution until it is shown to be exempt.] See also Article 3 (commencing with Section 703.310) for levy procedures for particular types of property and Chapter 4 (commencing with Section 704.110) for provisions applicable to wage garnishment.

Subdivision (b) prescribes certain types of property which are not subject to execution; they are, however, subject to enforcement of a money judgment through some other procedure in Chapter 5. In Chapter 5, see Section 705.320 (receiver to transfer alcoholic beverage license), Article 4 (commencing with Section 705.410) (money, other than wages,

owing and unpaid by a public entity to the judgment debtor), Article 5 (commencing with Section 705.510) (charging orders against interest of debtor-partner in partnership property), Article 6 (commencing with Section 705.610) (lien on cause of action and judgment), Article 7 (commencing with Section 705.710) (rights to future payments, including payments and wages due from the federal government, rents, commissions, surplus amount of spendthrift trusts, payments due from patent or copyright). See also Govt. Code §§ 965-965.4 (payment of judgments against state), 970-978.8 (payment of tort judgments against local public entities).

Article 2. Levy Procedures

§ 703.210. Delivery and execution of writ; instructions

703.210. (a) The judgment creditor shall deliver the writ of execution to the levying officer to whom the writ is directed, together with written instructions containing a description of the property to be levied upon.

(b) The levying officer shall execute the writ of execution without delay in the manner provided by law.

Comment. Subdivision (a) of Section 703.210 is based on the first portion of the first sentence of former Section 691. See also subdivision (b) of Section 488.030. Section 703.210 is a general provision which reflects the former practice, i.e., the levying officer will not act until the judgment creditor delivers to him the writ of execution and written instructions to levy upon specific property. See Section 262 (sheriff not liable for following written instructions of a party or his attorney). In addition, the judgment creditor's instructions may designate the order of levy. See Section 702.260. The statutory order of levy in subdivision 1 of former Section 682 has not been continued. See Section 703.120.

§ 703.220. Levy on property in private place

703.220. If any property sought to be levied upon is located in a private place, the judgment creditor shall apply *ex parte* to the court from which the writ of execution was issued for an order directing the levying officer to seize the property in such place. The court may issue such order only if the judgment creditor establishes that there is probable cause to believe that property subject to levy is located there.

Comment. Section 703.220 is new. It is based on comparable provisions set forth in Sections 512.060 and 512.080 relating to claim and delivery. See Comment to Section 512.010(b) concerning "private place."

§ 703.230. Order requiring either release of attached property or its application to the satisfaction of the judgment

703.230. Where any property of the judgment debtor is held under a writ of attachment, the judgment debtor may apply to the court from which the writ of execution was issued upon noticed motion for an order requiring that such property either be executed against and applied to the satisfaction of the judgment or be released from the levy and lien of attachment.

Comment. Section 703.230 is designed to avoid a potential problem that might arise from the elimination from this title of a fixed order for levy on different types of property. Under former law, a judgment was satisfied first out of property previously attached in the action, then out of personalty, and finally out of realty. See subdivision 1 of former Section 682 and former Section 684.2. To avoid the danger that the judgment creditor might hold attached property for extended periods while searching for other property, Section 703.230 provides a means by which the judgment debtor can compel either the application of the attached property to the satisfaction of the judgment or its release.

§ 703.240. Property not affected until levy is made

703.240. Until levy, no property is affected by issuance of a writ of execution or the delivery of a writ of execution to the levying officer.

Comment. Section 703.240 is the same as subdivision (c) of former Section 688.

§ 703.250. Levy on property in possession of third person or debts owing by third person; duties; liability

703.250. (a) A levy of a writ of execution by service of notice on a person other than the judgment debtor is effective only as to property of the judgment debtor in the possession of the person served and debts due and owing to the judgment debtor by the person served at the time of service.

(b) Within 10 days after the levy, the person served shall deliver possession of any property belonging to the judgment debtor concerning which the person served claims no right of possession, shall pay to the levying officer any debt due and owing to the judgment debtor, and shall execute any documents necessary to effect the transfer or payment. The receipt of the levying officer is a sufficient discharge for the amount paid.

(c) The levying officer, at the time of service, shall request the person served to give the levying officer a memorandum describing any property in the person's possession or control in which the person knows or has reason to believe the judgment debtor has an interest and any debt which the person knows or has reason to believe is or will become due and owing to the judgment debtor. Upon the request of the levying officer, the person served shall mail or deliver the memorandum to the levying officer within 10 days after service. Upon receipt of the memorandum, the levying officer shall promptly mail a copy thereof to the judgment creditor.

(d) If the person served fails to comply with the requirements of subdivision (b) or (c), the levying officer shall state such fact at the time the writ is returned pursuant to Section 703.260, and such person may, in the court's discretion, be required to pay the costs of any proceedings taken for the purpose of obtaining payment of the debt or possession of the judgment debtor's property or the information required by this section.

Comment. Section 703.250 prescribes the duties and liability of a garnishee under levy of a writ of execution. As a general rule, the garnishee must promptly deliver property belonging to the judgment debtor and pay over money owing to the judgment debtor to the levying officer. However, subdivision (a) makes clear that the levy is effective only as to property in the possession or under the control of the garnishee and debts due and owing at the time of service. Subdivision (b) requires delivery only of property to which the garnishee claims no right of possession. The garnishee may, of course, also deliver property in which he claims some interest, but the disposition of such third-party claims and property subject thereto is dealt with in Chapter 6 (commencing with Section 706.110).

Subdivision (c) requires the garnishee to provide a sworn statement describing any property in which the garnishee knows or has reason to believe the judgment debtor has an interest as well as any debt which the garnishee also knows or has reason to believe is or will become due and owing to the judgment debtor. This is analogous to a written interrogatory and supplements the interrogatories and examination procedures provided by Article 1 (commencing with Section 705.110) of Chapter 8. Under subdivision (d), a garnishee who fails to deliver property, to pay over money due and owing, or to provide the required information may be assessed the costs of proceedings instituted to compel such action. See Sections 705.130 and 705.160 (examination of third person indebted to judgment debtor and order directing application of debt to satisfaction of judgment creditor's judgment), 705.210-705.270 (enforcement of garnishee's liability by suit). Pending such enforcement proceedings, the levy of execution creates a lien on the property or debt owed which preserves the judgment creditor's priority. See Nordstrom v. Corona City Water Co., 155 Cal. 206, 100 P. 242 (1909). See also Section 703.270 (lien of execution).

29/343

§ 703.260. Return of writ of execution

703.260. (a) Except as otherwise provided in subdivision (b), the levying officer to whom the writ of execution is directed shall return the writ of execution to the court from which it was issued at the earliest of the following times:

- (1) One year from the date the of execution writ was issued.
- (2) Not later than 15 days after a sale is made under the writ of execution.
- (3) When requested to do so by the judgment creditor in writing.
- (4) If the writ of execution is not levied within 90 days after issuance, promptly after the expiration of 90 days after issuance of the writ of execution.

(b) If an earnings withholding order has been issued and served upon the employer as provided in Chapter 4 (commencing with Section 704.110) prior to the time the writ of execution is made returnable

under subdivision (a), the writ of execution is returnable as provided in Section [704.270].

Comment. Section 703.260 supersedes subdivisions (a) and (e) of former Section 683 [as amended in Recommendation Relating to Wage Garnishment] and makes several significant changes in former law. Section 703.260 counts the period upon the expiration of which the writ must be returned from the date of issuance of the writ rather than the date the writ was delivered to the levying officer. The provision of former Section 683 that the writ could not be returned before the expiration of 10 days has not been continued. If the writ is levied within 90 days, any sale of property must be completed before the expiration of a year from the date of issuance. See paragraphs (1) and (4) of subdivision (a).

Note that the provisions of this section are incorporated by Sections 708.170(b) and 709.150(b).

29/344

§ 703.270. Lien of execution

703.270. (a) The levy of a writ of execution creates a lien on the property levied upon from the time of levy. The lien expires one year from the date of issuance of the writ under which levy was made.

(b) Notwithstanding subdivision (a), a levy made in the manner provided by Section [488.430] upon an interest in personal property in the estate of a decedent is effective until the decree distributing the interest has become final.

Comment. Section 703.270 is derived from the first sentence of subdivision (d) of former Section 688. The second sentence of that subdivision pertaining to alias writs is not continued. See Section 703.110.

§ 703.280. Order directing transfer of property or documents by judgment debtor

703.280. (a) If a writ of execution is issued, the court may also issue an order directing the judgment debtor to transfer to the levying officer:

(1) Possession of the property to be levied upon where such property is sought to be levied upon by taking it into custody.

(2) Possession of any documentary evidence of title to any property of or any debt owed to the judgment debtor which is sought to be levied upon. An order for the transfer of possession of documentary evidence of title issued pursuant to this paragraph may be enforced by the levying officer when the property or debt is levied upon or at any time thereafter.

(b) The order shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court.

Comment. Section 703.280 is analogous to Section 482.080 which applies before judgment.

§ 703.290. Execution of certain commercial paper by levying officer

703.290. When a check, draft, money order, or other order for the withdrawal of money from a banking corporation or association, the United States, any state, or any public entity within any state, payable to the judgment debtor on demand, comes into the possession of a levying officer under a writ of execution, the provisions of Section 488.520 are applicable. For the purpose of this section, "writ of attachment" in Section 488.520 shall be deemed references to a writ of execution, and "defendant" shall be deemed references to the judgment debtor.

Comment. Section 703.290 is the same as subdivision (f) of former Section 688.

10/017

§ 703.300. Release from levy

703.300. Property levied upon under this title may be released from levy in like manner as like property may be released from attachment pursuant to Section 488.560.

Comment. Section 703.300 continues the substance of a portion of subdivision (b) of Section 688.

10/019

Article 3. Method of Levy

§ 703.310. Levy of execution in manner of levy of attachment;
exception

703.310. (a) A writ of execution shall be levied upon property subject to execution in like manner as a writ of attachment would be levied on like property pursuant to Article 2 (commencing with Section 488.310) of Chapter 8 of Title 6.5, except that tangible personal property in the possession of the judgment debtor shall be levied upon by taking such property into custody.

(b) Notwithstanding the provisions of Title 6.5 (commencing with Section 481.010), the judgment debtor shall be served with a copy of the writ of execution either by personal delivery or by mail to the judgment debtor at the address furnished by the judgment creditor.

Comment. Section 703.310 continues the substance of the first and second sentences of subdivision (b) of former Section 688. See also Section 703.330 (manner of taking custody of property).

10/020

§ 703.320. Method of levy of execution where no special method
applicable

703.320. If a method is not provided by Section 703.310 for levying upon any property or debt that is subject to execution, a writ of execution shall be levied upon such property by serving upon the person in possession of such property or owing such debt, or the agent of such person, (1) a copy of the writ of execution and (2) a notice that such property or debt is levied upon pursuant to the writ of execution.

Comment. Section 703.320 continues the substance of the last sentence of subdivision (b) of former Section 688. Note that Section 703.320 applies only to property that is subject to execution (Section 703.130) but for which a method of levy is not specifically provided by Section 703.310 and the incorporated provisions of Article 2 (commencing with Section 488.310) of Chapter 8 of Title 6.5.

§ 703.330. Manner of taking custody; keeper for farm or business

703.330. (a) Except as otherwise provided by statute, where a levying officer is directed to take property into custody, the levying officer may do so either by removing the property to a place of safe-keeping or by installing a keeper.

(b) Where a writ of execution is levied upon personal property of a farm or business, other than money [or a motor vehicle required to be registered under the Vehicle Code], the levying officer shall, upon the election and the instructions of the judgment creditor and with the consent of the judgment debtor, place a keeper in charge of such property for a two-day period. During such period, the judgment debtor may continue to operate the farm or business at the judgment debtor's own expense provided all sales are final and are for cash or the equivalent of cash. For the purposes of this subdivision, payment by check is the equivalent of cash payment. The levying officer is not liable for accepting payment in the form of a cash equivalent. The proceeds from all sales shall be given to the keeper for the purposes of the levy unless otherwise authorized by the judgment creditor. At the conclusion of the period during which the farm or business may continue to operate, the levying officer shall take the property levied upon into exclusive custody unless other disposition is agreed upon by the judgment creditor and judgment debtor.

Comment. Subdivision (a) of Section 703.330 is similar to Section 488.045, applicable to levy of a writ of attachment.

Subdivision (b) is based upon a portion of subdivision 3 of former Section 542 (repealed by Cal. Stats. 1974, Ch. 1516, § 12) which was applicable to keepers under writs of execution and attachment and subdivision (a) of Section 488.360 which is applicable to keepers under writs of attachment. Under subdivision (b), a keeper may be installed to take charge of the farm or business which continues to operate for two days with the consent of the judgment debtor. The operation of the farm or business under the charge of the keeper may be extended beyond the two-day minimum provided by the statute if the judgment creditor and judgment debtor agree to do so. See also Section 702.270 (deposit of fees before performance of levying officer's duties).

§ 703.340. Levy on deposit account, contents of safe deposit box,
not exclusively in name of judgment debtor

703.340. (a) As used in this section, "financial institution" includes a bank, trust company, savings and loan association, credit union, or other corporation authorized and empowered to conduct a safe deposit business.

(b) In addition to any other statute, the provisions of this section shall be complied with where any of the following property is sought to be levied upon:

(1) A deposit account, or interest therein, not standing solely in the name of the judgment debtor.

(2) Property in a safe deposit vault or box maintained by a financial institution and rented by it not solely to the judgment debtor.

(c) The judgment creditor shall provide, and the levying officer shall deliver to the financial institution, a bond in an amount not less than twice the amount of the judgment or, if a lesser amount is sought to be levied upon, not less than twice such amount. The bond shall indemnify any person (other than the judgment debtor whose interest is sought to be levied upon) rightfully entitled to the property against actual damage by reason of the levy on the property and shall assure to such person the return of the property upon proof of such person's right thereto. The bond need not name such person specifically but may refer to such person generally in the same manner as in this subdivision.

(d) Upon delivery of the bond to the financial institution, the financial institution shall immediately notify any person (other than the judgment debtor) in whose name the deposit account stands or to whom the safe deposit box is rented by registered mail, addressed to the last address of such person known to the financial institution, of the fact of the service of the writ of execution and the delivery of the bond.

(e) From the time of levy and the delivery to the financial institution of the bond until 15 days after the mailing of notice under subdivision (d) or until the levy is sooner released, the financial institution shall not honor a check or other order for the payment of

money drawn against, or any withdrawals from, the deposit account levied upon that would reduce the deposit account to less than the amount to be satisfied as stated in the writ of execution, and shall not permit the removal of any of the contents of the safe deposit vault or box levied upon.

(f) After the expiration of 15 days from the levy of the writ of execution and the delivery of the bond, if no proceedings excepting to the sufficiency of the sureties have been commenced or, if such proceedings have been commenced, when the sureties have justified, the financial institution shall comply with the levy unless it has been sooner released. The financial institution is not liable to any person by reason of such compliance, by reason of the nonpayment of any check or other order for the payment of money drawn against the deposit account levied upon that is presented while the levy is in force, or by reason of the removal, pursuant to the levy, of any of the contents of the safe deposit vault or box or the refusal of the financial institution to permit access to the safe deposit vault or box by the renter thereof.

(g) The bond described in subdivision (c) shall be executed, exceptions to the sufficiency of the sureties may be taken by any person claiming to be the rightful owner of the property levied upon, and, when excepted to, the sureties shall justify in the same manner as is provided with respect to an undertaking on attachment.

(h) The financial institution to which a bond is delivered shall deliver it as directed by the obligees thereof.

(i) Before giving access to any safe deposit vault or box, the financial institution may demand payment to it of all the expense of opening the safe deposit vault or box and the expense of repairing any damage to the safe deposit vault or box caused by the opening thereof.

(j) A purported levy that does not comply with this section is ineffectual and shall be disregarded.

Comment. Section 703.340 continues the substance of former Section 682a subject to several changes. Subdivision (a) specifically refers to credit unions which were not covered by the former provision. Subdivisions (b) and (j) continue the substance of the first sentence of former

Section 682a. See Section 701.____ (deposit account defined). Subdivision (c) continues the substance of the second sentence of former Section 682a except that the bond is permitted to be twice the amount sought to be levied upon rather than twice the amount of the entire judgment in every case. Hence, for example, where the judgment has been partially satisfied, the judgment creditor is not required to give such a large undertaking. Subdivision (d) continues the third sentence of the former provision. Subdivision (e) continues the substance of the fourth sentence of former Section 682a except that subdivision (e) recognizes the former practice of holding only so much of the account as is necessary to satisfy the amount stated in the writ. Subdivisions (f), (g), and (i) continue the substance of the fifth through the ninth sentences of former Section 682a. See also Article 1 (commencing with Section 489.010) of Chapter 9 of Title 6.5 (undertakings under attachment): Sections 1054a (deposit of money or bearer bonds or notes instead of undertaking), 1056 (single corporate surety may execute bond in place of two or more personal sureties).

Article 4. Sale§ 703.510. Sale of property levied upon

703.510. (a) Upon receipt of written instructions from the judgment creditor or the judgment creditor's attorney of record, the levying officer shall sell any personal property which comes into the levying officer's actual custody after levy and any real property. The sale shall be conducted in the manner provided by this article. The levying officer shall apply the proceeds of the sale as provided in Section 703.640.

(b) Notwithstanding subdivision (a), no chattel paper, negotiable instrument, account receivable, chose in action, judgment, or other right to payment may be sold except pursuant to a court order. Such order may be issued only after a noticed hearing and on such terms and conditions as shall insure that a fair consideration is obtained by the sale.

Comment. Section 703.510 continues the authority of the levying officer to sell property after levy of execution on a judgment for money. Such property may include such assets as securities and negotiable documents of title as well as goods, equipment, and other tangibles. See former Section 691. Subdivision (a) makes clear that sale generally shall be conducted in the manner provided by this article and that the levying officer must apply the proceeds in the manner provided by Section 703.640.

Subdivision (b), however, makes clear that rights to payment, as evidenced by various means, may not be sold without prior court approval. Such judicial review, after a noticed hearing, is intended to ensure that sale will obtain a fair price. Subdivision (b) does not attempt to limit the court's discretion in this regard. In some circumstances, lack of interested buyers or other causes may require that sale not be permitted at all. In other situations, the court may wish to set a minimum price or require court confirmation. Sales pursuant to subdivision (b) may be conducted in the same manner as other execution sales

vision (b) may be conducted in the same manner as other execution sales or may be made by other means, e.g., a negotiated private sale through a broker or other commercial channel. It should be noted that, even where sale is not permitted, the judgment creditor is not remediless, for the judgment creditor may still have the obligation collected as it becomes payable. See Section 705.310 (appointment of receiver to enforce judgment). Subdivision (b) also clarifies the manner of applying a judgment in favor of the judgment debtor to the satisfaction of the judgment creditor's money judgment. Prior law provided for attachment of final judgments (Section 488.420 and subdivision 5 of former Section 542) but seemed to forbid levy and sale under execution (former Section 688(e)). Although the judgment creditor might obtain a lien on a cause of action and judgment under former Section 688.1, the manner of enforcing such lien was not clear, nor did the former law explicitly provide for the manner of applying a final judgment that was not subject to a lien to the satisfaction of the judgment creditor's judgment.

15/109

§ 703.520. Notice of sale.

703.520. (a) Before the sale of property, the levying officer shall give notice of sale as provided in this section.

(b) The notice of sale shall be in writing and shall describe the property to be sold and state the time and place of sale. In the case of real property, the notice shall describe the property by giving its street address or other common designation, if any. If a legal description of the real property is given, the validity of the notice is not affected by the fact that the street address or other common designation given is erroneous or omitted.

(c) Where this section requires notice of sale of personal property to be posted, it shall be posted in three public places in the city where the personal property is to be sold, if it is to be sold in a city or, if not, then in three public places in the judicial district in which the property is to be sold.

(d) If personal property to be sold is perishable, the notice of sale shall be posted for a reasonable time, considering the character and condition of the property.

(e) If personal property not described in subdivision (d) is to be sold, the notice of sale shall be posted for not less than 10 days. Not less than 10 days before the sale, the notice shall be mailed to any person who has requested notice pursuant to Section 702.290 and shall be delivered personally to the judgment debtor or mailed to the judgment debtor at the judgment debtor's business or residence address last known to the judgment creditor or mailed to the judgment debtor's attorney.

(f) If an interest in real property is to be sold, not less than 20 days before the date of sale, the notice of sale shall be posted (1) in one public place in the city where the interest in the real property is to be sold, if it is to be sold in a city or, if not, then in one public place in the judicial district in which the interest in the real property is to be sold and (2) in some conspicuous place on the real property. A copy of the notice shall be published once a week for the same period in a newspaper of general circulation published in the city in which the real property or a part thereof is situated if any part thereof is situated in a city, or, if not, then in a newspaper of general circulation published in the judicial district in which the real property or a part thereof is situated. In case no newspaper of general circulation is published in the city or judicial district, a copy of the notice shall be published for such time in the county in which the real property or a part thereof is situated. Not less than 20 days before the date of sale, notice of the sale shall be mailed to any person who has requested notice pursuant to Section 702.290 and shall be delivered personally to the judgment debtor or mailed to the judgment debtor at the judgment debtor's business or residence address last known to the judgment creditor or mailed to the judgment debtor's attorney. The term "newspaper of general circulation" as used in this subdivision is defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code. The term "judgment debtor" does not include a trustor or mortgagor.

(g) In addition to the notice required by this section, the judgment creditor may advertise the sale in the classified or other advertising section of a newspaper of general circulation or other periodical publication. The expense of such advertising is as collectable as a cost of enforcing the judgment if the judgment debtor is notified of such expense and consents thereto in writing.

Comment. Subdivisions (a) to (f) of Section 703.520 are the same in substance as the first three subdivisions of former Section 692. Section 703.520 provides for notice to the judgment debtor except where perishable property is to be sold. It should be noted, however, that other persons may request pursuant to Section 702.290 that notice be sent to them. The judgment creditor is responsible for supplying the information to the levying officer that is needed to comply with this section. Section 702.260.

Subdivision (g) is new. It provides for the publication of advertisements concerning the sale of the property in other periodicals. Such notice would be particularly appropriate where certain types of property with a specialized market are to be sold, such as stamps, coins, and old and rare books. Note that the expense of advertising in this manner is a collectable cost under Section 1033.7.

15/111

§ 703.530. Sale without notice; defacing notice; liability

703.530. (a) A levying officer who sells property without giving the notice prescribed by Section 703.520 is liable to the judgment creditor, the judgment debtor, and any person who has requested notice of sale pursuant to Section 702.290 for the actual damages caused by the failure to give such notice.

(b) Any person who willfully takes down or defaces a notice posted pursuant to Section 703.520 before the sale announced by the notice or, if the judgment is satisfied before the announced sale, before the satisfaction, shall forfeit to the county the sum of five hundred dollars (\$500).

Comment. Subdivision (a) of Section 703.530 continues the levying officer's liability for actual damages for failure to give proper notice of sale provided by former Section 693. Subdivision (a) provides that the levying officer is liable to the judgment creditor, the judgment debtor, and any person who has requested notice of sale, whereas former Section 693 provided for liability to the "aggrieved party." Except for the addition of the party requesting notice of sale, this continues prior law. See Sheehy v. Graves, 58 Cal. 449 (1881) (judgment creditor

as aggrieved party); Bellmer v. Blessington, 136 Cal. 3, 68 P. 111 (1902) (judgment debtor as aggrieved party); Kelley v. Desmond, 63 Cal. 517 (1883) (purchaser at execution sale not aggrieved party). The forfeiture of \$100 by the levying officer to the aggrieved party provided in former Section 693 is not continued.

Subdivision (b) continues the forfeiture provision for willfully taking down or defacing a notice provided by former Section 693. However, subdivision (b) provides that \$500 is forfeited to the county where the notice was posted; former law was unclear concerning the recipient of the forfeited amount. See also Penal Code § 616 (criminal penalty for defacing a legal notice).

15/112

§ 703.540. Time and place of sale; exhibition of personalty; sale of items or parcels separately or together; directions of judgment debtor

703.540. (a) Unless otherwise ordered by the court from which the writ was issued, all sales of property shall be held in the county where the property or some part thereof is situated and shall be made at auction, to the highest bidder, between the hours of nine in the morning and five in the afternoon.

(b) When the sale is of personal property capable of manual delivery, it shall be within view of those who attend the sale unless, upon application of either the judgment creditor or the judgment debtor, the court from which the writ was issued orders otherwise.

(c) All property shall be sold separately or in such groups or lots as are likely to bring the highest price.

(d) Notwithstanding subdivision (c), the judgment debtor, if present at the sale or, if not present, by written directions, may direct that property be sold separately or together and may direct the order in which property shall be sold, and the levying officer shall follow such directions.

(e) After sufficient property has been sold to satisfy the amount stated in the writ, no more may be sold.

Comment. Section 703.540 is based on portions of the first paragraph of former Section 694. Subdivision (c) makes clear that all property should be sold in the manner which will bring the best price, whether this requires sale of separate items or parcels or sale en masse, including personal and real property together, such as, for example, the sale of a motel including land, improvements, and furnishings. Although former Section 694 appeared to require that real property be sold in separate parcels, the cases interpreting that section suggested that sale en masse constitutes at most an irregularity and that the true test is whether separate sale would produce a higher price. See 5 B. Witkin, California Procedure Enforcement of Judgment § 80, at 3451 (2d ed. 1971). Subdivision (d), however, makes clear that the judgment debtor has ultimate control and may not only direct the order in which property may be sold but may also direct that property be sold en masse, separately, or in such groups or parcels as the debtor believes will bring the highest price. Unlike former Section 694, Section 703.540(d) permits the judgment debtor to direct the manner of sale by written instructions when he is not present. It should be noted that a price for property subject to redemption under Article 5 (commencing with Section 703.710) is required to be stated on the certificate of sale regardless of whether such property is sold separately, or in lots, or en masse. See Section 703.630.

15/113

§ 703.550. Postponement of sale

703.550. (a) The judgment debtor and judgment creditor together may request in writing that a sale be postponed to an agreed day and hour. The request shall be delivered to the levying officer conducting the sale, and the levying officer shall, by public declaration at the time and place originally fixed for the sale, postpone the sale to the day and hour fixed in the request.

(b) Notice of any additional postponements shall be given by public declaration by the levying officer at the time and place last appointed for the sale. No other notice of postponed sale need be given.

Comment. Section 703.550 is the same in substance as the last paragraph of former Section 694.

§ 703.560. Cash payment; exception

703.560. (a) The purchaser at a sale shall pay cash or the equivalent of cash.

(b) Notwithstanding subdivision (a), the levying officer conducting the sale shall accept the amount of the bid of a judgment creditor as a credit on the judgment in lieu of a cash payment. In such a case, the judgment creditor shall pay any costs and fees of the levying officer in cash or the equivalent of cash.

Comment. Section 703.560 had no statutory counterpart under former law but generally continues the former practice. Subdivision (a) states the general rule that payment must be in cash. See Kelley v. Barnet, 24 Cal. App. 119, 140 P. 605 (1914). However, a certified check or cashier's check should be accepted as the equivalent of cash. See Marshal's Manual of Procedure § 423.4 (J. Matarazzo ed. n.d.). See also Cal. State Sheriffs' Ass'n, Civil Procedural Manual § 10.39 (1969).

Subdivision (b) states an important exception to subdivision (a). The judgment creditor may, of course, bid at the auction and, under subdivision (b), use the judgment as a credit to pay all or a portion of the bid where the judgment creditor is the high bidder. However, the judgment creditor must pay in cash the proper costs and fees of the officer conducting the sale. The basic exception recognizes that a transfer of cash back and forth between the judgment creditor and the levying officer can be dispensed with, but the rule extends only so far as the reason for the rule. Since the levying officer must be paid for his efforts before the judgment is satisfied, the judgment creditor must pay the levying officer's costs and fees in cash. It should be noted that, under subdivision (b), the levying officer must accept the judgment as a credit; under former law, the levying officer apparently had the discretion to refuse this manner of payment and require cash payment. See Mitchell v. Alpha Hardware & Supply Co., 7 Cal. App.2d 52, 45 P.2d 442 (1935); Kelley v. Barnet, *supra*.

§ 703.570. Persons ineligible to purchase

703.570. Neither the levying officer holding the sale nor a deputy may be a purchaser or be interested in any purchase at a sale.

Comment. Section 703.570 is the same in substance as the third sentence of former Section 694.

§ 703.580. Nonpayment of bid; resale; recovery from defaulting bidder

703.580. (a) If a bidder refuses to pay the amount bid for property struck off to such bidder at a sale, at the request of the judgment creditor, the levying officer shall sell the property either immediately to the next highest bidder who pays the amount bid by such bidder or to the highest bidder at a new sale which satisfies the requirements of notice and time and place provided by this article. Resale is a prerequisite to recovery pursuant to subdivision (b).

(b) Where the high bidder refuses to pay the amount bid, either the judgment creditor or the judgment debtor may recover the amount of any loss, the costs of resale, and attorney's fees reasonably incurred in pursuing such recovery, from the high bidder in an action in any court of competent jurisdiction.

Comment. Section 703.580 is derived from former Section 695. See Bell v. Redwine, 98 Cal. App. 784, 277 P. 1050 (1929) (officer must resell property). However, subdivision (a) now permits either immediate sale, if possible, to the next highest bidder who pays the amount bid or resale at a new sale which satisfies the requirements of notice and time and place as provided in the preceding sections of this article. Sale to the next highest bidder or a high bidder at a new sale is a prerequisite to suit against a refusing bidder. Subdivision (b) makes clear that either the judgment creditor or the judgment debtor is specifically authorized to pursue the refusing bidder directly for the loss occasioned by the latter's refusal. Cf. Meherin v. Saunders, 131 Cal. 681, 689-691, 63 P. 1084, ___ - ___ (1901) (judgment debtor can recover from purchaser at sale who fails to pay amount bid). Former Section 695

provided for an action by the levying officer only. The loss caused now specifically includes the costs of resale and the attorney's fees incurred in pursuing the recovery under this section.

15/117

§ 703.590. Nonpayment of bid; rejection of subsequent bids of defaulting bidder on resale

703.590. Where a bidder refuses to pay the amount bid for property struck off to the bidder at a sale, the levying officer may, in the levying officer's discretion, thereafter reject any subsequent bid of the bidder on the resale of such property.

Comment. Section 703.590 is the same in substance as former Section 696. Section 703.590 makes clear that the levying officer's discretion to reject subsequent bids of a defaulting bidder does not extend to rejection of bids on other property.

15/118

§ 703.600. Nonpayment of bid; resale; liability of officer

703.600. Nothing in Sections 703.580 and 703.590 makes the levying officer who conducts a sale liable for any more than the amount bid by the subsequent purchaser.

Comment. Section 703.600 is based on former Section 697.

15/119

§ 703.610. Personal property capable of manual delivery; delivery; certificate of sale

703.610. (a) When the purchaser of personal property pays the purchase money, the levying officer making the sale shall deliver any of the property capable of manual delivery to the purchaser or, pursuant to a court order, assist the purchaser in obtaining possession of the property and shall execute and deliver a certificate of sale to the purchaser.

(b) The certificate of sale conveys to the purchaser the interest of the judgment debtor in the personal property on, or at any time after, the day the writ of execution or the writ of attachment was levied [or judgment for the sale of personal property was entered].

Comment. Section 703.610 is based on former Sections 698 and 699. However, Section 703.610 requires the officer to deliver a certificate of sale whether or not the purchaser so requests. As to real property, see Section 703.620. Under subdivision (b), the interest of the judgment debtor which is transferred to the purchaser includes the right of immediate possession. In some cases, a writ of possession, or a writ of restitution, may be treated as a writ of execution. See Sections 708.130, 708.160, 709.130.

15/120

§ 703.620. Real property; certificate of sale

703.620. (a) When the purchaser of an interest in real property pays the purchase money, the levying officer making the sale shall execute and deliver to the purchaser a certificate of sale and shall record a duplicate of the certificate in the office of the recorder of the county.

(b) Except as otherwise provided by Article 5 (commencing with Section 703.710), the certificate of sale conveys to the purchaser the interest which the judgment debtor had in the real property on, or at any time after, the day the writ of execution or writ of attachment was levied and, if the judgment is a lien upon the real property, the interest which the debtor had on, or at any time after, the day the judgment became a lien on the real property.

Comment. Section 703.620 continues the former law. Subdivision (a) continues a portion of the third sentence of subdivision (a) of former Section 700a. As to the contents of the certificate of sale, see Section 703.630. Subdivision (b) continues the substance of former Section 700. Subdivision (b) makes clear that the sale on execution conveys the interest which the judgment debtor has on the date of levy or date that the judgment became a lien and any interest that the judgment debtor thereafter acquires up to the date of sale (assuming the lien has been maintained throughout such period). See Kenyon v. Quinn, 41 Cal. 325 (1871); Frink v. Roe, 70 Cal. 296, 11 P. 820 (1886). The introductory clause to subdivision (b) recognizes that the purchaser's title may be defeasible, i.e., may be subject to redemption, and that,

in such case, the judgment debtor may be entitled to remain in possession during the redemption period. See Article 5 (commencing with Section 703.710). In some cases, a writ of possession or a writ of restitution may be treated as a writ of execution. See Sections 708.130, 708.160, 709.130.

15/121

§ 703.630. Certificate of sale; form

703.630. The certificate of sale shall identify the judgment under which the sale was made and shall contain the following:

(a) A description of the property sold.

(b) The price paid for the property. Where property is sold in groups or lots pursuant to Section 703.540, the price paid for the entire group or lot may be stated, except that the price of property that is subject to the right of redemption shall be separately stated. Where the property is not sold in groups or lots, the price paid for each item or parcel of property shall be separately stated.

(c) Where the property is subject to the right of redemption, a statement to that effect.

Comment. Section 703.630 generalizes the requirements for the certificate of sale provided by subdivision (a) of former Section 700a which provided only for a certificate of sale of real property. Subdivision (b) retains the aspect inherent in former law that the price of property subject to the right of redemption be separately stated. This provision facilitates redemption which requires deposit of the price paid for the property at the sale. See Section 703.750(a)(1).

15/122

§ 703.640. Disposition of proceeds from sale

703.640. (a) Following the sale, the proceeds of the sale shall be applied in the following order of priority:

(1) To the levying officer or to the judgment creditor for the reimbursement of any costs incurred in executing the writ under which sale was made or in making the sale.

(2) To the seller or holder of a purchase money security interest in the property sold.

(3) To the holder of any lien or encumbrance, other than one described in paragraph (2), which is prior to the lien under which the sale was made.

(4) To the judgment debtor or other exemption claimant in an amount equal to exemptions under Sections [listed here will be sections under which the debtor is entitled to a certain minimum dollar amount] where the property is subject to such exemptions.

(5) To the judgment creditor.

(6) To the holder of any lien or encumbrance which is subsequent to the lien under which the sale was made if the lien or encumbrance is to be paid.

(7) To the judgment debtor or other exemption claimant.

(b) Notwithstanding subdivision (a), the levying officer making the sale is not liable for failing to distribute the proceeds to any third person who has not made a claim therefor pursuant to Chapter 6 (commencing with Section 706.110) or whose interest is not evidenced by a notice of levy served upon the levying officer.

Comment. Section 703.640 is derived from prior law. It is based in part on former Section 689c, the second paragraph of former Section 690.2, and portions of former Section 691.

15/123

§ 703.650. Sale set aside; recovery of price and interest; revival of judgment

703.650. (a) If a sale is set aside because the judgment on which it was based is reversed or discharged, the purchaser or a successor in interest of the purchaser may recover the price paid, with interest, from the judgment creditor. A judgment for this purpose may be entered against the judgment creditor and in favor of the purchaser or a successor in interest of the purchaser by the court which issued the writ under which the sale was made on motion of the purchaser or the successor in interest and after notice to the judgment creditor.

(b) If a sale is set aside because of irregularities in the proceedings concerning the sale or because the property sold was not subject to execution and sale [or was exempt without making a claim], the purchaser or a successor in interest of the purchaser may recover the price paid, with interest, from either the judgment creditor or the judgment debtor. To recover from the judgment debtor, the purchaser may have the judgment revived in the purchaser's name as provided in subdivision (c). Where the purchaser recovers any amount from the judgment creditor pursuant to this subdivision, the judgment creditor may have the judgment revived as provided in subdivision (c) to recover the amount paid to the purchaser, with interest, from the judgment debtor.

(c) After notice to the parties to the action, and on motion of a person authorized by subdivision (b), the court from which the writ was issued under which the sale was made shall revive the original judgment in the name of such person for the amount which such person is entitled to recover from the judgment debtor. The revived judgment has the same force and effect as would an original judgment made on the date of revival.

Comment. Section 703.650 is based on former Section 708. Subdivision (a) of Section 703.650 applies where real or personal property was sold whereas the first sentence of former Section 708 referred only to sales of real property. Under former Section 708, a third person who purchased at an execution sale which was later set aside because, for example, the property attempted to be sold was exempt or belonged to a person other than the judgment debtor was authorized to pursue only the judgment debtor for his recovery. This was unfair since the judgment debtor may be unable to satisfy a judgment; hence, subdivision (b) in these circumstances permits the third person purchaser to recover from either the judgment debtor or the judgment creditor. Recovery from the judgment creditor restores the original parties to the relative positions they were in before the execution sale, and the judgment creditor is therefore authorized to pursue the judgment debtor afresh. The time for enforcing a judgment under this section runs pursuant to Sections 702.170 and 702.180 from the time the judgment is entered; it does not run from the time the original judgment was entered.

§ 703.660. Absolute sales

703.660. Sales of personal property and of leasehold estates with unexpired terms of less than two years are absolute.

Comment. Section 703.660 continues the substance of the first sentence of subdivision (a) of former Section 700a. See Article 5 (commencing with Section 703.710) (redemption of real property from sale).

Article 5. Redemption§ 703.710. Property subject to redemption

703.710. Except as provided by Section 568.5, real property, other than a leasehold estate with an unexpired term of less than two years, sold as provided in Article 4 (commencing with Section 703.510), is subject to the right of redemption as provided in this article.

Comment. Section 703.710 continues the substance of prior law concerning the property that is subject to redemption. See the first two sentences of subdivision (a) of former Section 700a and the last sentence of Section 568.5 (sales by receiver pursuant to procedure for execution sales are final when confirmed by the court). It should be noted, however, that the procedures for redemption provided by this article depart significantly from the former law. The sales procedures of Article 4, and hence the right of redemption, apply where property is sold pursuant to an order issued after an examination (Section 705.160), a judgment in a creditor's suit (Section 705.250), or a writ of enforcement issued to enforce a judgment for the sale of real property (Section 710.110 et seq.). Enactment of this article is not intended to eliminate the equitable right of redemption. See Webb v. Vercoe, 201 Cal. 754, 760-765, 258 P. 1099, ___ - ___ (1927); Smith v. Kessler, 43 Cal. App.3d 26, 31, 117 Cal. Rptr. 470, ___ (1974).

405/843

§ 703.720. Elimination of liens by sale

703.720. (a) Whether or not the property is redeemed, neither the lien on which the property is sold nor any other lien subordinate to that on which the property is sold continues in effect after the sale.

(b) If a lien has been extinguished pursuant to subdivision (a), the property which was subject to the extinguished lien may not be applied to the satisfaction of the claim or judgment which permitted the creation of the lien.

Comment. Section 703.720 is new. By preserving only liens that are superior to the lien on which the property is sold, subdivision (a) encourages the judgment creditor and subordinate lienholders to protect their interests by looking to the property sold. This should increase the likelihood that the property will be sold at a price nearer its fair market value. This section changes the prior rule that liens subordinate to that under which the sale was held reattach upon redemption by the judgment debtor or his successor in interest. See Call v. Thunderbird Mortgage Co., 58 Cal.2d 542, 548, 375 P.2d 169, ___, 25 Cal. Rptr. 265, ___ (1962). This section also changes the prior rule that upon redemption by the judgment debtor the judgment lien under which the property was sold reattaches for the amount of the deficiency. See Moore v. Hall, 250 Cal. App.2d 25, 29, 58 Cal. Rptr. 70, ___ (1967).

Subdivision (b) makes clear that, once a lien is extinguished, a lien may not be created on the same property to enforce the same claim or judgment. Hence, a judgment creditor whose judgment lien is extinguished pursuant to subdivision (a) may not again record the judgment to create a lien on the same property, nor can the judgment creditor obtain an execution lien by levy of a writ of execution thereon.

406/158

§ 703.730. Persons entitled to redeem

703.730. Property sold subject to the right of redemption may be redeemed only by the judgment debtor or the successor in interest of the judgment debtor. For the purpose of this article, the purchaser at the sale under Article 4 (commencing with Section 703.510) is not a successor in interest.

Comment. Section 703.730 changes the former law by restricting the right of redemption to the judgment debtor and any successor in interest. See former Section 701. Successors in interest may include a new owner who purchased the property from the judgment debtor after a judgment lien was acquired but before the sale, an assignee after the sale of the debtor's right of redemption as part of a transfer of the debtor's reversionary interest, a trustee in bankruptcy, or a junior lienholder who has acquired the judgment debtor's interest in the property through a prior foreclosure. The last sentence makes clear that it does not include the purchaser at a sale under this chapter.

§ 703.740. Notice of right of redemption; liability of officer

703.740. Where property is sold subject to the right of redemption, the levying officer who conducted the sale shall, promptly after the sale, give the judgment debtor written notice of the right of redemption by mail or by personal service.

Comment. Section 703.740 is based on the first sentence of subdivision (b) of former Section 700a.

§ 703.750. Deposit of redemption price; time for deposit

703.750. (a) Within 90 days after the date the certificate of sale is recorded pursuant to Section 703.620, a person who seeks to redeem property shall deposit the redemption price with the levying officer who conducted the sale. The redemption price is comprised of the following amounts:

- (1) The purchase price at the sale.
- (2) The amount of any assessments or taxes and reasonable amounts for fire insurance, maintenance, upkeep, and repair of improvements on the real property.
- (3) Any amount paid by the purchaser on a prior obligation secured by the property to the extent that the payment was necessary for the protection of the purchaser's interest.
- (4) Interest on the amounts described in paragraphs (1), (2), and (3) at the legal rate from the time such amount was paid until the date the deposit is made.

(b) Rents and profits from the property paid to the purchaser or the value of the use and occupation of the property to the purchaser may be set off against the redemption price.

Comment. Subdivision (a) of Section 703.750 continues the substance of the first paragraph of former Section 702 with several changes. The redemption period under this section is 90 days whereas under former law it was 12 months. The redemption price must be deposited with the levying officer; formerly the judgment debtor or redemptioner could pay the redemption price directly to the purchaser or earlier redemptioner.

See former Sections 702-704. Under paragraph (4) of subdivision (a), interest on the amounts comprising the redemption price is at the legal rate (seven percent per year) whereas it was two-thirds of one percent per month in the case of redemption from the purchaser under former Section 702.

Subdivision (b) is derived from the second sentence of former Section 707 pertaining to rents and profits and codifies the rule in House v. Lala, 214 Cal. App.2d 238, 245-246, 29 Cal. Rptr. 450, ___-___ (1963), pertaining to the value to the purchaser of the use of the premises. If these amounts are not set off, they may be recovered as provided in Section 703.790.

If there is a dispute about the redemption price, the deposit is made with the court clerk, not the levying officer, and the redemption period is extended. Section 703.770.

405/849

§ 703.760. Evidence of interest of successor in interest

703.760. If a successor in interest to the judgment debtor redeems the property, the successor in interest shall, at the time the deposit is made pursuant to Section 703.750, file with the levying officer a certified copy of the judgment under which the right to redeem is claimed or of a recorded conveyance, or a copy of an assignment or any other evidence of the interest, verified by an affidavit of the successor in interest or of a subscribing witness thereto.

Comment. Section 703.760 is derived from portions of former Section 705 which was applicable to redemptioners.

404/338

§ 703.770. Disagreement on redemption price; summary proceeding

703.770. (a) If the purchaser and the person seeking to redeem the property disagree as to whether any amount is properly included in the redemption price or whether any amount is properly set off against the redemption price, the person seeking to redeem shall, within the time provided by Section 703.750, file a petition for an order determining the redemption price with the court from which the writ was issued under

which the property was sold. At the time the petition is filed, the petitioner shall deposit the undisputed amount of the redemption price with the levying officer, if deposit has not previously been made, and give written notice to the levying officer of the filing of the petition.

(b) The petition for an order determining the redemption price shall be in writing and shall specifically set forth the amounts demanded to which the person seeking to redeem objects and the reason therefor, and the amounts set off to which the purchaser objects and the justification for such setoff.

(c) The clerk shall immediately fix the date for the hearing on the petition which shall be not less than five nor more than 10 days after the date the petition is filed.

(d) Not later than two days before the date set for the hearing, the person seeking to redeem the property shall serve on the purchaser a copy of the petition together with a notice of the time and place of the hearing.

(e) At the hearing on the petition, the court shall determine the amount required to redeem the property and make an order to that effect. The determination shall be made upon affidavit or evidence satisfactory to the court.

(f) If an amount in addition to that deposited with the levying officer is required to redeem the property, the person seeking to redeem shall, within five days of the issuance of the order, pay such additional amount to the levying officer.

Comment. Section 703.770 is derived from the second paragraph of former Section 702 but makes several modifications of the former procedure made necessary by the provision for offsetting certain amounts under Section 703.750(b) and the elimination of the option of paying the redemption price directly to the purchaser. See Section 703.750 and Comment thereto. Under Section 703.770, the redemption price is deposited with the levying officer just as under Section 703.750, whereas, under former Section 702, the deposit was made with the clerk in the case of a disagreement. Notice of the filing of the petition must be given to the levying officer to prevent issuance of a deed of sale under Section 703.780 at the expiration of the redemption period.

§ 703.780. Issuance of deed of sale or certificate of redemption;
tender of deposit

703.780. (a) As used in this section and in Section 703.790, the "redemption period" means the 90-day period commencing with the recording of the certificate of sale.

(b) If no deposit is made pursuant to Section 703.750 or subdivision (a) of Section 703.770 before the expiration of the redemption period, or if no additional deposit is made pursuant to subdivision (f) of Section 703.770 before the expiration of the time therein provided, the levying officer who conducted the sale shall forthwith execute and deliver a deed of sale to the purchaser.

(c) If the person seeking to redeem deposits the redemption price pursuant to Section 703.750 or 703.770 during the redemption period, the levying officer who conducted the sale shall tender the deposit to the purchaser. If the tender is accepted by the purchaser or if the tender is of the redemption price determined by court order, the levying officer shall forthwith execute and deliver a certificate of redemption to the person seeking to redeem and shall immediately thereafter record a duplicate of the certificate in the office of the recorder of the county where the property is located.

(d) Tender of the redemption price determined by court order or agreed upon by the purchaser and the person seeking to redeem the property is equivalent to payment. If the tender by the levying officer of such amount is refused, the amount tendered shall be deposited with the county treasurer of the county where the property is located, payable to the order of the purchaser.

(e) Except as otherwise provided by Section 703.720, upon redemption the effect of the sale is terminated and the judgment debtor or the successor in interest of the judgment debtor is restored to the estate sold at the sale.

Comment. Section 703.780 is new. If no redemption takes place within the time permitted by Section 703.750 or as extended by Section 705.770(f), subdivision (b) requires the officer who conducted the sale to issue a deed to the purchaser. If the property is redeemed, subdivision (c) requires the officer to tender the deposit to the purchaser

and issue a certificate of redemption if the tender is accepted or is in the amount of the redemption price as determined by the court under Section 703.770. This differs from former law in several respects. Formerly, redemption could take place without going through the levying officer, although written notice of redemption was required to be given to the levying officer and recorded. See the third paragraph of former Section 703 and former Section 704. Formerly, where the judgment debtor redeemed, the person receiving payment issued and recorded a certificate of redemption. See the sixth paragraph of former Section 703. The last redemptioner was formerly "entitled to a sheriff's deed." See the fourth paragraph of former Section 703.

The first sentence of subdivision (d) continues the former rule that tender was payment specifically applicable where the judgment was payable in a specified kind of money. See the last clause of the last sentence of former Section 704. However, under subdivision (d), tender is not equivalent to payment where the parties disagree on the redemption price and the price has not been determined by a court order. The second sentence of subdivision (d) is new.

Subdivision (e) continues the substance of the last sentence of the fifth paragraph of former Section 703, with the exception noted.

4456

§ 703.790. Possession during redemption period; rents and profits; entry of purchaser; waste

703.790. (a) From the time of the sale until a redemption, the purchaser is entitled to receive from the person in possession, the rents and profits from the property or the value of the use and occupation thereof.

(b) Notwithstanding subdivision (a), the purchaser is liable to the person who redeems for any rents or profits which have been received by a purchaser pursuant to subdivision (a). The person who redeems may demand in writing a written and verified statement of the rents and profits received.

(c) The purchaser, from the time of sale until redemption, is entitled to enter the property during reasonable hours to repair and

maintain the premises and is entitled to an order restraining waste on the property from the court which issued the writ upon which the sale was based. Such order may be granted with or without notice in the discretion of the court.

Comment. Section 703.790 is based on former Sections 706 and 707 and the second sentence of the first paragraph of former Section 702. The importance of these provisions is, however, significantly reduced since the judgment debtor (or successor in interest) is generally entitled to remain in possession of the property only for a period of 90 days after the sale. Under former law, the period of possession was one year. First National Trust & Savings Bank v. Staley, 219 Cal. 225, 25 P.2d 982 (1933). Of course, if there is a tenant on the property under a lease which preceded the lien under which the property was sold, the purchaser at the sale acquires only the lessor's reversionary interest and right to rents, and the tenant may remain in possession during the term of the lease. However, the purchaser is entitled to receive the rents from the property or the reasonable value of the use of the property. Such amounts are a credit on the redemption price or may be recovered after redemption as provided in subdivision (b). If the purchaser is in possession of the property between the time of the sale and the redemption, the person who redeems is entitled to receive the reasonable value of the occupation and use of the property. House v. Lala, 214 Cal. App.2d 238, 245-246, 29 Cal. Rptr. 450, ___-___ (1963). Christensen v. Forst, 153 Cal. App.2d 465, 471-472, 314 P.2d 746, ___-___ (1957). The provisions of former Section 707 extending the redemption period pending the determination of rents and profits are not continued. Former Section 707 provided a special procedure to resolve disputes concerning the existence and amount of a similar credit but provided for ultimate resort to an action for an accounting. Under this article, rents and profits which are not set off pursuant to Section 703.750(b) or determined pursuant to Section 703.770 may be recovered in an action.

Subdivision (c) is derived from former Section 706 and the second sentence of former Section 702. The determination of what constitutes

waste is no longer specified in the statute. This determination should be made by a court in light of the facts of the case. The person in possession may be liable for waste. Cf. Section 732 (liability of tenant for waste); American Savings & Loan Association v. Leeds, 68 Cal.2d 611, 614 n.2, 440 P.2d 933, ___ n.2, 68 Cal. Rptr. 453, ___ n.2 (1968).

CHAPTER 4. WAGE GARNISHMENT

Note. Wage garnishment is the subject of a separate recommendation and will eventually comprise Chapter 4. If the Recommendation Relating to Wage Garnishment does not pass, existing law will be revised to fit into Chapter 4.

CHAPTER 5. SUPPLEMENTARY PROCEDURES FOR THE
ENFORCEMENT OF A MONEY JUDGMENT

Comment. Chapter 5 makes available to the judgment creditor a variety of procedures for the enforcement of a money judgment. It is anticipated that the writ of execution will remain the primary enforcement tool. In some circumstances, however, execution operates in a less than satisfactory way and sometimes it is not effective at all, making resort to supplementary procedures necessary to satisfy the money judgment. Article 1 continues the substance of former Sections 714-715, 717-722, and 723 relating to the examination of the judgment debtor and the examination of a third person indebted to the judgment debtor. Article 2 authorizes the judgment creditor to bring suit against third persons indebted to or in possession of property belonging to the judgment debtor. Article 3 provides for the appointment of a receiver to aid in the enforcement and satisfaction of a judgment. Article 4 provides a procedure for collection of money judgments where the judgment debtor is a creditor of a public entity. Article 5 provides for charging orders against the interest of a debtor-partner in partnership property. Article 6 provides for a lien on a cause of action and judgment. Article 7 provides for assignment of assets which are not subject to levy, i.e., patents, copyrights, trademarks, and most wages under the control of the federal government.

Article 1. Interrogatories to Judgment Debtor; Examination
of Judgment Debtor, Third Person Indebted to
Judgment Debtor, and Additional Witnesses

§ 705.110. Written interrogatories to judgment debtor

705.110. (a) The judgment creditor may propound written interrogatories to a judgment debtor represented by counsel in the manner set forth in Section 2030. The judgment debtor shall answer the interrogatories in the same manner and within the same time as provided by Section 2030.

(b) If, within the preceding 120 days, the judgment creditor has served interrogatories or the judgment debtor has been examined pursuant to this article, the judgment creditor may not serve interrogatories and the judgment debtor is not required to respond to interrogatories.

(c) Interrogatories served pursuant to this section may be enforced, to the extent practicable, in the same manner as interrogatories in a civil action.

Comment. Section 705.110 supersedes former Section 714.5. Subdivision (a) is the same in substance as the first sentence of former Section 714.5. Subdivision (b) makes clear that the interrogatory procedure may not be used if interrogatories have been served or an examination under Section 705.120 held within the preceding 120 days. See Section 705.120(b)(2) (examination may be ordered on the grounds that the debtor unjustly refuses to apply property to the satisfaction of the judgment despite the normal 120-day rule). Subdivision (b) thus resolves the apparent conflict between the last two sentences of former Section 714.5 which provided that the interrogatory procedure could be used "in conjunction with" the examination procedure and also that the judgment debtor could not be required to respond to interrogatories "more frequently than once in any four-month period or within any four-month period during which he has been subject to an examination." The former four-month period has been changed to 120 days which is approximately the same length of time but is more precise. Subdivision (c) is the same in substance as the third sentence of former Section 714.5.

§ 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 provided in subdivision (a) 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 and has not served written interrogatories on the judgment debtor pursuant to Section 705.110 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) 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."

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 702.170, 702.180, and 702.190.

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 has the same effect of precluding an examination under the 120-day rule except as provided in subdivision (b)(2). 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.

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

Service of the order for an examination under this section or Section 705.130 creates a lien on any property discovered thereby and ordered to be applied to the satisfaction of the judgment. See Canfield v. Security-First National Bank, 13 Cal.2d 1, 28-30, 87 P.2d 830, ___-___ (1939); Nordstrom v. Corona City Water Co., 155 Cal. 206, 212-213, 100 P. 242, ___-___ (1909). 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. The authority of the court to order the application of the property of the judgment debtor to the satisfaction of the judgment is continued in Section 705.160. The provision for an affidavit on information and belief codifies the result in Tucker v. Fontes, 70 Cal. App.2d 768, 161 P.2d 697 (1945).

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 of the judgment debtor 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) The court clerk shall send notice of the time and place of the examination to the judgment debtor at an address to be provided by the judgment creditor.

(c) 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."

(d) An order made pursuant to subdivision (a) is not effective unless, at the time it is served on the person alleged to have property of judgment debtor or to be indebted to the judgment debtor, the person serving the order tenders to the person alleged to have property of the judgment debtor or to be indebted to the judgment debtor 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. Such 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.

(e) 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 702.170-702.190.

Subdivision (b) is new. Subdivision (c) continues the third paragraph of former Section 717. Subdivision (d) 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 (e) continues the second sentence of the first paragraph of former Section 717.

It should be noted that service of the order for an examination under this section creates a lien on property that is discovered and ordered to be applied to the satisfaction of the judgment at the examination

or in a later creditor's suit under Sections 705.210-705.270. See Canfield v. Security-First National Bank, 13 Cal.2d 1, 28-30, 87 P.2d 830, ___ (1939); Nordstrom v. Corona City Water Co., 155 Cal. 206, 212-213, 100 P. 242, ___-___ (1909).

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).

404/336

§ 705.140. Witnesses

705.140. Witnesses may be required to appear and testify before the court in an examination proceeding under this article in the same manner as upon the trial of an issue.

Comment. Section 705.140 continues the substance of former Section 718. Although Section 705.140 does not specifically refer to referees, the proceedings authorized by this article may be conducted by such officers. See Section 705.190 and Comment thereto.

968/993

§ 705.150. Attendance at examination outside county of residence or place of business; examinations in other counties

705.150. (a) Neither the judgment debtor nor a person holding property of or indebted to the judgment debtor may be required to attend an examination before a court located outside the county in which the person resides or has a place of business unless the distance from the person's place of residence or place of business to the court is less than 150 miles.

(b) If a person sought to be examined does not reside or have a place of business in the county where the judgment roll is filed, or where the judgment is entered in the docket in the justice court, the judgment creditor may apply to a court of similar jurisdiction in the county where the person sought to be examined resides or has a place of

business for an order for an examination. If there is no court of similar jurisdiction in the county, application shall be made to a court of higher jurisdiction. In addition to satisfying the requirements of Section 705.120 or 705.130, the judgment creditor shall file with the clerk of the court in such county an abstract of judgment in the form prescribed by Section 674 and an affidavit showing the place of residence or place of business of the person sought to be examined and the filing of the abstract of judgment.

Comment. Subdivision (a) of Section 705.150 is substantively identical to the first paragraph of former Section 717.1. Subdivision (b) is the same in substance as the first sentence of former Section 722.

405/439

§ 705.160. Order applying property to satisfaction of judgment

705.160. (a) Except as provided in subdivision (b), after an examination pursuant to this article, the court may order any nonexempt property of the judgment debtor in the possession or under the control of the judgment debtor or any other person examined or any nonexempt debt due from such person to the judgment debtor to be applied toward the satisfaction of the judgment.

(b) If a person alleged to have property of the judgment debtor or to be indebted to the judgment debtor claims an interest in the property adverse to the judgment debtor or denies the debt, the court may not order that the alleged property or alleged debt be applied toward the satisfaction of the judgment.

Comment. Section 705.160 continues the substance of former Section 719. See also Section 705.190 (authority of referee). It should be noted that, where the third person denies possession of the judgment debtor's property or the indebtedness to the judgment debtor, the judgment creditor may apply for an order under Section 705.240 restraining the transfer of the property to the judgment debtor or payment of the indebtedness to the judgment debtor until the judgment creditor can obtain a judgment in a creditor's suit under Article 2 (commencing with Section 705.210).

§ 705.170. Arrest of person ordered to appear

705.170. (a) If a person ordered to appear for an examination fails to appear, the court may, pursuant to a warrant, have the person brought before the court to answer for the failure to appear only if the order requiring the person's appearance was served by a levying officer, some person specially appointed by the court in the order, or a registered process server.

(b) Where a person ordered to appear for an examination fails to appear and has been served by a person described in subdivision (a), reasonable attorney's fees incurred in the examination proceedings are a recoverable item of costs against the person who failed to appear.

(c) A person who willfully makes an improper service of an order for an examination which subsequently results in the arrest pursuant to subdivision (a) of the person who fails to appear is guilty of a misdemeanor.

Comment. Subdivision (a) of Section 705.170 continues the substance of the second paragraph of former Section 714 and the second paragraph of former Section 717. Subdivision (b), providing for the award of reasonable attorney's fees against a person who improperly fails to appear for an examination, is new. Subdivision (c) continues the last paragraphs of former Sections 714 and 717. The authority provided by former Section 715 for having the judgment debtor arrested where there is a danger of the debtor absconding and for imprisoning the judgment debtor for failure to give an undertaking when ordered to do so is not continued. This section is not intended to limit in any way the contempt power of the court under Section 1209 et seq.

405/184

§ 705.180. Appearance at examination by representatives of corporation, partnership, or association

705.180. Where a corporation or a partnership or other unincorporated association is to be examined, it shall designate one or more officers, directors, managing agents, or other persons who are familiar with the property held, or the debts owed by, the corporation or partnership or other unincorporated association, to appear and be examined.

Comment. Section 705.180 is new. It is derived from Rule 30(b)(6) of the Federal Rules of Civil Procedure.

§ 705.190. Powers of referee; qualifications

705.190. (a) The examination proceedings authorized by this article may be conducted by a referee appointed by the court. The referee may issue, modify, or vacate an order authorized by Section 705.160 or 705.240 or issue a warrant authorized by Section 705.170 and has the same powers as the court to grant adjournments, to preserve order, and to subpoena witnesses to attend the examination, but only the court that ordered the reference has power to punish for contempt for disobeying an order of the referee.

(b) A person is eligible for appointment as a referee pursuant to this article only if such person has been a member of the State Bar of this state for at least five years prior to the date of appointment.

Comment. Subdivision (a) continues the authority of a referee appointed by the court provided in former Sections 714-715 and 717-721. The authority to modify and vacate orders have been generalized from former Section 720. The authority to compel the appearance of a person at the examination and to control the proceeding generalizes the authority of a referee appointed by a superior court formerly provided by Section 723. The limitation on the power to punish for contempt provided in subdivision (a) continues former Section 721.

Subdivision (b) makes applicable to all referees the qualifications formerly required of a referee appointed by a superior court in a county or city and county having a population of one million or more. See former Section 723.

Article 2. Creditor's Suit§ 705.210. "Obligor" defined

705.210. As used in this article, "obligor" means a person who the judgment creditor claims is indebted to the judgment debtor or possesses or controls personal property in which the judgment debtor has an interest.

Comment. Section 705.210, defining "obligor" for the purpose of the provisions concerning creditors' suits, is new. See also Section 488.550(a) ("obligor" defined for purposes of enforcing liability of garnishee under Attachment Law).

968/680

§ 705.220. Creditor's suit; venue; joinder of judgment debtor

705.220. (a) A judgment creditor may bring an action against an obligor for the application of the judgment debtor's interest in the personal property held by the obligor or the payment of the debt owed to the judgment debtor to satisfy the judgment creditor's judgment against the judgment debtor.

(b) The judgment debtor shall be joined in an action brought pursuant to this article. The residence of the judgment debtor shall not be considered in the determination of proper venue.

Comment. Section 705.220 supersedes a portion of former Section 720. Subdivision (a) authorizes suit by a judgment creditor to apply the judgment debtor's interest in personal property held by the obligor or to collect a debt owed by the obligor to the judgment debtor. See Section 705.210 ("obligor" defined). An action may be brought under this article without the necessity of first levying a writ of execution, examining the obligor, or resorting to any other procedure for the satisfaction of the judgment. The normal rule under former law requiring the exhaustion of "legal" remedies before the "equitable" remedy of the creditor's suit could be employed has not been continued. For the former rule, see Farmers' & Merchants' Bank v. Bank of Italy, 216 Cal. 452, 14 P.2d 527 (1932) (resort to supplemental proceedings required); Bond v. Bulgheroni, 215 Cal. 7, 8 P.2d 130 (1932) (resort to statutory proceedings not required where inadequate or futile). It is anticipated, however, that the less expensive and less cumbersome enforcement procedures will be used in the normal case and that the creditor's suit

will be used where the third person has failed to perform the duties under Section 703.260 (duties of garnishee under levy of execution), where the third person has denied the interest or debt in an examination proceeding under Section 705.130, or where for some other reason the judgment creditor believes that the third person will not cooperate or will claim an adverse interest. It should also be noted that costs will not be awarded against a defendant in a creditor's suit if the defendant has not disputed the judgment debtor's interest in the property or the indebtedness.

Subdivision (b) is new. For a comparable provision requiring the joinder of the defendant in the main action in a similar action before judgment, see Section 488.550(c).

Disputes concerning the interests of a third person and a judgment debtor in personal property may also be resolved through the third-party claims procedure. See Chapter 6 (commencing with Section 706.110).

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 four years after service of a writ or order under this title on the obligor if the writ or order creates a lien on the property or debt and is served within the time specified in subdivision (a).

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 702.170-702.190. 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 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 afforded four years 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 can no longer be 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.

968/676

§ 705.240. Order forbidding transfer or payment to judgment debtor

705.240. (a) Upon application of the judgment creditor, the court may issue an order forbidding transfer of the property in which the judgment debtor is claimed to have an interest or the payment of money by the obligor to the judgment debtor for a reasonable time not to exceed 60 days until an action against the obligor can be commenced under this article. If an action is commenced within the time allowed in the order, the order may be extended until the action can be prosecuted to judgment.

(b) An order issued under subdivision (a) may be modified or vacated by the court which issued it or the court in which the action under this article is brought. The court, in its discretion, may modify or vacate the order at any time, with or without a hearing, upon such terms as are just.

Comment. Section 705.240 is based on former Section 720; however, an application under Section 705.240 is not limited as under former law to situations where the third person has denied the debt or claimed an adverse interest in the property at an examination proceeding. The judgment creditor may apply for an order forbidding transfer or payment to the judgment debtor at any time after judgment in the main action when it is thought necessary to preserve the status quo between the judgment debtor and the third person. It would be appropriate to seek

an order under this section where the third person has denied the debt or the judgment debtor's interest in property in a return on garnishment under Section 703.260, where the third person makes a denial at examination proceedings, or where the judgment creditor otherwise believes that the third person is likely to make such a denial. An order issued under subdivision (a) is good for not more than 60 days unless an action is commenced within the time allowed, in which case the order may be extended until judgment in the creditor's suit. Former law did not prescribe any time limits.

The scope of the order issuable under this section is more limited than that provided under former Section 720. Under Section 705.240, the order restrains only a transfer to the judgment debtor, whereas under former Section 720, the order restrained any transfer of the property or debt. Such a sweeping order, issuable without a hearing and without bond and directed to a person who is not a formal party, is constitutionally suspect. Cf. North Georgia Finishing, Inc., v. Di-Chem, Inc., 419 U.S. 601 (1975); Randone v. Appellate Dep't, 5 Cal.3d 536, 547-552, 488 P.2d 13, 96 Cal. Rptr. 709 (1971).

Subdivision (b) is similar to the last sentence of former Section 720. A referee may issue an order under this section. Section 705.190.

045/207

§ 705.250. Judgment in creditor's suit; application of property to judgment

705.250. (a) If the judgment creditor establishes that the obligor is indebted to the judgment debtor or possesses or controls personal property in which the judgment debtor has an interest, the court shall render judgment accordingly. The property may be applied to the satisfaction of the judgment creditor's judgment against the judgment debtor in the manner provided by Chapter 3 (commencing with Section 703.110) and by this chapter.

(b) Where it is determined that the obligor possesses or controls personal property in which the judgment debtor has an interest, the court may order the obligor to retain the property until it can be levied upon or otherwise applied to the satisfaction of the judgment.

Comment. Section 705.250 is new. Subdivision (a) makes clear that the same enforcement procedures are used at the conclusion of a creditor's suit as are used in the absence of a creditor's suit. The judgment creditor normally will cause a writ of execution to be levied on the property or debt that has been determined in the creditor's suit to belong to or to be owing to the judgment debtor. If the judgment creditor does not have a valid writ of execution, the judgment creditor may apply for an order under subdivision (b) requiring the obligor to retain possession of personal property until it can be levied upon. In some situations, where a writ of execution will not reach the property, the appropriate manner of enforcement should be followed. For example, where the disputed property is a patent right, the enforcement procedure provided by Article 7 (commencing with Section 705.710) of this chapter would be followed.

045/191

§ 705.260. Costs

705.260. Costs in the creditor's suit may not be awarded against the obligor if the obligor has not disputed the judgment debtor's interest in personal property in the possession or under the control of the obligor or the indebtedness to the judgment debtor.

Comment. Section 705.260 is new. The intent of this section is to encourage judgment creditors to use the creditor's suit as a last resort and to protect obligors who would respond to the writ of execution or examination proceedings without the necessity of a creditor's suit.

404/982

§ 705.270. Disposition of property or proceeds remaining after judgment satisfied

705.270. Any property or proceeds remaining after the judgment is satisfied shall be returned to the judgment debtor and the obligor in accordance with their respective interests unless some other disposition is required by law.

Comment. Section 705.270 is new. It makes clear that, after the interests in personal property have been determined in a creditor's suit, any property or proceeds from the sale of property remaining after the judgment creditor's judgment against the judgment debtor is satisfied is to be returned in accordance with the interests as determined in the creditor's suit. This general rule is subject to the exception that another disposition may be required by law, such as where there has been a later levy of attachment or execution on the property.

Article 3. Receiver to Enforce Judgment

§ 705.310. Appointment of receiver

705.310. (a) The court may appoint a receiver to enforce the judgment where the judgment creditor shows that, considering the interests of both the judgment creditor and the judgment debtor, the appointment of a receiver is the most reasonable method to obtain a fair and orderly satisfaction of the judgment.

(b) Except as otherwise provided in subdivision (a), the provisions of Chapter 5 (commencing with Section 564) and Chapter 5a (commencing with Section 571) of Title 7 govern the appointment, qualifications, powers, rights, and duties of a receiver appointed under this section.

Comment. Section 705.310 provides for the appointment of a receiver to enforce the judgment where it is shown to be the most fair and orderly manner of enforcement. Hence, a receiver may be appointed where a writ of execution would not reach certain nonexempt property and other remedies appear inadequate. Section 705.310 eliminates as a prerequisite to the appointment of a receiver a showing that a writ of execution has been returned unsatisfied or that the judgment debtor refuses to apply his property in satisfaction of the judgment formerly required by Section 564. The appointment of a receiver is subject to the general rules concerning the time within which judgments may be enforced. See Sections 702.170-702.190. A receiver may be appointed in examination proceedings under Article 1 (commencing with Section 705.110) where the requisite showing is made under this section. Cf. Tucker v. Fontes, 70 Cal. App.2d 768, 161 P.2d 697 (1945) and Medical Finance Ass'n v. Short, 36 Cal. App.2d Supp. 745, 92 P.2d 961 (1939) (appointment of receiver in examination proceedings under former law). Note also that a receiver may be appointed to enforce a charging order against a partnership under Corporations Code Section 15028 or 15522. See Section 705.510 (charging orders).

§ 705.320. Receiver to transfer alcoholic beverage license

705.320. (a) A receiver may be appointed pursuant to Section 705.310 for the purpose of transferring an alcoholic beverage license held by the judgment debtor which is transferable under Article 5 (commencing with Business and Professions Code Section 24070) of Chapter 6 of the Alcoholic Beverage Control Act.

(b) If, at the hearing for the appointment of a receiver, the judgment debtor shows that claims of creditors with priority over the judgment creditor as provided by Business and Professions Code Section 24074 exceed the probable sale price of the license, the court may not authorize the appointment of a receiver for the purpose of transferring the license.

(c) The receiver may exercise the powers of the licensee as necessary, and shall comply with the applicable provisions of Article 5 (commencing with Business and Professions Code Section 24070) of Chapter 6 of the Alcoholic Beverage Control Act and any applicable regulations of the Department of Alcoholic Beverage Control.

(d) An alcoholic beverage license may be applied to the satisfaction of a judgment for the payment of money only as provided in this section.

Comment. Section 705.320 allows the judgment creditor to force the sale by a receiver of an alcoholic beverage license held by the judgment debtor. Alcoholic beverage licenses are not subject to levy of writ of execution. See Section [707.120]. The Alcoholic Beverage Control Act (commencing with Business and Professions Code Section 23000) provides detailed procedures for the sale of alcoholic beverage licenses which make use of a receiver appropriate. Cf. Mollis v. Jiffy-Stitcher Co., 125 Cal. App.2d 236, 270 P.2d 25 (1954). Apparently, after the amendment of former Section 688 in 1959 (Cal. Stats. 1959, Ch. 2140, § 1), alcoholic beverage licenses were not reachable by any state enforcement process. See 37 Ops. Cal. Atty. Gen. 4 (1961).

In order to prevent punitive forced sales of the judgment debtor's license, subdivision (b) of Section 705.320 allows the judgment debtor to show that it is unlikely that the judgment held by the judgment creditor would be satisfied in whole or in part if the license were sold because claims of creditors with priority over the judgment creditor pursuant to Business and Professions Code Section 24074 exceed the probable sale price of the license. The scheme of priorities set out in Section 24074 is "mandatory and exclusive." See Grover Escrow Corp. v. Gole, 71 Cal.2d 61, 453 P.2d 461, 77 Cal. Rptr. 21 (1969); Bus. & Prof. Code § 24076.

Subdivision (c) enables the receiver to exercise the powers of the licensee necessary to comply with the transfer provisions of the Alcoholic Beverage Control Act. The strict regulation of all aspects of alcoholic beverage licenses by the Alcoholic Beverage Control Act requires that the receiver comply with the procedures set out in Article 5 (commencing with Business and Professions Code Section 24074) of Chapter 6 of the act and the regulations of the Department of Alcoholic Beverage Control.

Article 4. Collection of Judgment Where Judgment
Debtor Is Creditor of Public Entity

§ 705.410. "Public entity," "state," and "local public entity" defined

705.410. (a) The definitions provided in this section govern the construction of this article.

(b) "Local public entity" means any public entity other than the state.

(c) "Public entity" means the state, a county, city, district, public authority, public agency, and any other political subdivision in the state.

(d) "State" means the State of California and includes the Regents of the State of California.

Comment. Section 705.410 defines several terms used in this article but makes no substantive change in former law. See former Section 710.

§ 705.420. Collection of judgment where judgment debtor is creditor
of state or political subdivision

705.420. (a) Whenever a judgment for the payment of money is rendered against a person to whom money is owing and unpaid by a public entity, the judgment creditor may file a duly authenticated abstract or transcript of such judgment together with an affidavit which states that the judgment creditor desires to avail himself of the relief provided by this article and states the exact amount then due, owing, and unpaid on the judgment. The judgment creditor may state in the affidavit any fact tending to establish the identity of the judgment debtor..

(b) A judgment for the payment of money against a person to whom money is owing and unpaid by a public entity may only be enforced against such entity in the manner provided by this article and by Chapter 4 (commencing with Section 704.110).

Comment. Subdivision (a) continues the substance of the introductory paragraph of subdivision (a) and the first sentence of subdivision (e) of former Section 710. Subdivision (b) makes clear what was implicit under former law.

§ 705.430. Collection where judgment debtor is creditor of state

705.430. (a) If the money is owing and unpaid by the state to the judgment debtor, the judgment creditor shall file the abstract or transcript and affidavit with the state department, board, office, or commission owing the money to the judgment debtor prior to the time the department, board, office, or commission presents the claim of the judgment debtor therefor to the State Controller.

(b) The department, board, office, or commission in presenting the claim of the judgment debtor to the State Controller shall note thereunder the fact of the filing of the abstract or transcript and affidavit and state the amount unpaid on the judgment as shown by the affidavit and shall also note any amounts advanced to the judgment debtor by, or owed by the judgment debtor to, the state by reason of advances for expenses or for any other purpose.

(c) The State Controller, to discharge the claim of the judgment debtor, shall pay into the court which issued the abstract or transcript, by a warrant or check payable to the court, the whole or such portion of the amount due the judgment debtor on the claim, after deducting from the claim an amount sufficient to reimburse the department, board, office, or commission for any amounts advanced to the judgment debtor or owed by the judgment debtor to the state, as will satisfy in full or to the greatest extent the amount unpaid on the judgment and pay the balance thereof, if any, to the judgment debtor.

Comment. Section 705.430 continues the substance of paragraph 1 of subdivision (a) of former Section 710.

§ 705.440. Collection where judgment debtor is creditor of local public entity

705.440. (a) If the money is owing and unpaid to the judgment debtor by any local public entity, the judgment creditor shall file the abstract or transcript and affidavit with the auditor of such local public entity (and in case there be no auditor then with the official whose duty corresponds to that of auditor).

(b) The auditor (or other official), to discharge the claim of the judgment debtor, shall pay into the court which issued the abstract or transcript, by a warrant to check payable to the court, the whole or such portion of the amount due the judgment debtor on the claim, after deducting from the claim an amount sufficient to reimburse the local public entity for any amounts advanced to the judgment debtor or owed by the judgment debtor to the public entity, as will satisfy in full or to the greatest extent the amount unpaid on the judgment and pay the balance thereof, if any, to the judgment debtor.

Comment. Section 705.440 continues the substance of paragraph 2 of subdivision (a) of former Section 710.

30/194

§ 705.450. Collection where money owed is condemnation award

705.450. (a) In the event the money owing to a judgment debtor by any public entity is owing by reason of an award made in a condemnation proceeding brought by the public entity, the public entity may pay the amount of the award to the clerk of the court in which the condemnation proceeding was tried and shall file therewith the abstract or transcript of judgment and the affidavit filed with it by the judgment creditor. Such payment into court shall constitute payment of the condemnation award within the meaning of Section 1268.010.

(b) Upon payment into court and the filing with the county clerk of the abstract or transcript of judgment and affidavit, the county clerk shall notify by mail, through their attorneys, if any, all parties interested in the award of the time and place at which the court which tried the condemnation proceeding will determine the conflicting claims to the award. At such time and place, the court shall make such determination and order the distribution of the money held by the county clerk in accordance therewith.

Comment. Section 705.450 continues the provisions of subdivision (d) of former Section 710.

§ 705.460. Collection of judgment where judgment debtor is contractor on public work; subordination to claims of laborers and materialmen

705.460. (a) Where the judgment debtor named in any abstract or transcript of judgment filed under Section 705.430 is a contractor upon any public work, the cost of which is to be paid out of any public moneys voted, appropriated, or otherwise set apart for the purpose of paying therefor, only so much of the contract price shall be deemed owing to the contractor, within the meaning of Section 705.430, as may remain payable to him under the terms of his contract, upon the completion thereof, after the sums severally due and to become due to all persons who perform labor upon such work or who bestow skill or other necessary services or furnish materials, appliances, teams, or power used or consumed in the performance of such work have been ascertained and paid.

(b) In ascertaining the sums severally due or to become due to the persons who perform labor upon public works or other necessary services or furnish materials, appliances, teams, or power used or consumed in the performance of such work, only such claims shall be considered as are filed against the moneys due or to become due to the judgment debtor in accordance with the provisions of Chapter 4 (commencing with Section 3179) of Title 15 of Part 4 of Division 3 of the Civil Code.

(c) The controller, auditor, or other public disbursing officer whose duty it is to make payments under the provisions of the contract shall not draw his warrant in favor of the court which issued the abstract or transcript until the contract is completed and the payments above specified are made and then only for the excess, if any, of the contract price over the aggregate of the sums so paid.

Comment. Section 705.460 is substantively identical to former Section 710a.

§ 705.470. Exemptions; procedure

705.470. Whenever a court receives any money under this article, it shall pay as much thereof as is not exempt from enforcement to the

judgment creditor and the balance thereof, if any, to the judgment debtor. The procedure for determining the exemption shall be governed by the procedure set forth in Chapter 7 (commencing with Section 707.010) and the court rendering the judgment shall be considered the levying officer for this purpose.

Comment. Section 705.470 continues the substance of subdivision (c) of former Section 710.

30/197

§ 705.480. Filing fee; deposit of fees collected by state

705.480. (a) The judgment creditor upon filing the abstract or transcript and affidavit shall pay a fee of six dollars (\$6) to the person or agency with whom it is filed.

(b) Fees received by a state agency under this article shall be deposited to the credit of the fund from which payments were, or would be, made on account of collection under this section.

Comment. Subdivision (a) of Section 705.480 continues subdivision (b) of former Section 710. Subdivision (b) continues subdivision (g) of former Section 710.

30/198

§ 705.490. Liability of public officer

705.490. No public officer or employee is liable for failure to perform a duty imposed by this article unless sufficient information is furnished by the abstract or transcript together with the affidavit to enable the officer or employee in the exercise of reasonable diligence to ascertain the identity of the judgment debtor therefrom and from the papers and records on file in the office in which the officer or employee works. The word "office" as used in this section does not include any branch or subordinate office located in a different city.

Comment. Section 705.490 continues the substance of the last two sentences of subdivision (e) of former Section 710. See Section 705.420(a) (judgment creditor may state additional information in affidavit to establish identity of judgment debtor).

§ 705.495. Limitations on procedure of this article

705.495. (a) This article does not authorize the withholding of earnings of a public officer or employee. The earnings of a public officer or employee may be withheld only pursuant to Chapter 4 (commencing with Section 704.110).

(b) Nothing in this article authorizes the filing of any abstract or transcript and affidavit against any overpayment of tax, penalty, or interest, or interest allowable with respect to such overpayment, under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

Comment. Subdivision (a) of Section 705.495 continues subdivision (h) of former Section 710. Subdivision (b) continues subdivision (f) of former Section 710.

Article 5. Charging Orders§ 705.510. Charging orders

705.510. (a) The judgment creditor of a judgment debtor who is a partner may apply for an order charging the judgment debtor's interest in the partnership pursuant to Section 15028 or 15522 of the Corporations Code.

(b) Except on a claim against the partnership, the right of a partner in specific partnership property may be applied to the satisfaction of a judgment only as provided in subdivision (a).

Comment. Subdivision (a) of Section 705.510 incorporates the charging order provisions of Corporations Code Sections 15028 and 15522. Subdivision (b) makes clear that the charging order is the exclusive manner for applying the interest of a partner in specific partnership property or the partnership to the satisfaction of a judgment against a judgment debtor who is a partner. See Baum v. Baum, 51 Cal.2d 610, 612-613, 335 P.2d 481 (1959); Evans v. Galardi, 16 Cal.3d 300, 310, 546 P.2d 313, 128 Cal. Rptr. 215 (1976). Enforcement pursuant to this section is subject to the general rules concerning the time within which judgments may be enforced. See Sections 702.170-702.190. For a discussion of the lien of a charging order, see Taylor v. S & M Lamp Co., 190 Cal. App.2d 700, 707-712, 12 Cal. Rptr. 323, ___ - ___ (1961).

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. 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). Enforcement pursuant to this article is subject to the general rules concerning the time within which judgments may be enforced. See Sections 702.170-702.190.

29/627

§ 705.620. Endorsement of lien on judgment and abstract

705.620. (a) The clerk shall endorse upon the judgment recovered in the action or special proceeding in which the judgment debtor is a party a statement of the existence of the lien, the date of entry of the order creating the lien, and the place where entered.

(b) Any abstract issued upon the judgment shall contain, in addition to the matters set forth in Section 674, a statement of the lien in favor of the judgment creditor.

Comment. Section 705.620 continues the substance of the third sentence of former Section 688.1.

29/628

§ 705.630. Compromise, settlement, satisfaction before judgment

705.630. No compromise, settlement, or satisfaction may be entered into by or on behalf of the judgment debtor without the consent of the judgment creditor unless the lien is first satisfied or discharged.

Comment. Section 705.630 continues the substance of a portion of the second sentence of former Section 688.1.

29/629

§ 705.640. Exclusive procedure provided by this article; other liens preserved

705.640. (a) When an action or special proceeding is pending in which the judgment debtor is a party, this article provides the exclusive procedure by which the judgment creditor may obtain a lien upon the cause of action and any judgment subsequently obtained.

(b) A lien on the cause of action obtained before the action or special proceeding was commenced is continued and is superior to the lien provided by this article.

Comment. Subdivision (a) of Section 705.640 continues the rule of former law (see former Sections 688(e), 688.1) that, once an action or special proceeding in which the judgment debtor is a party has been commenced, the judgment creditor may (subject to the court's discretion) compel the creation of a lien on the cause of action and any judgment eventually obtained by the judgment debtor only by following the procedure set out in Section 705.610. See Roseburg Loggers, Inc. v. U. S. Plywood-Champion Papers, Inc., 14 Cal.3d 742, 749-751, 537 P.2d 399, 122 Cal. Rptr. 567 (1975). Prior liens are continued as provided in subdivision (b).

Article 7. Assignment Orders

§ 705.710. Order assigning rights to future payments

705.710. (a) Except as otherwise provided by law, upon application of the judgment creditor and after a noticed hearing, the court may order the judgment debtor to assign to the judgment creditor or to a receiver appointed pursuant to Article 3 (commencing with Section 705.310) all or part of any right to future payments, including, but not limited to, payments and wages due from the federal government, rents, commissions, surplus amounts from a spendthrift trust, and payments due from a patent or copyright.

(b) In the determination of whether to order an assignment or of the amount of an assignment of part of a right to future payments, the court shall take into consideration the reasonable requirements of the judgment debtor and persons supported in whole or in part by the judgment debtor, any payments the judgment debtor is required to make or that are deducted from the money the judgment debtor would otherwise receive in satisfaction of other judgments and wage assignments, the amount remaining due on the judgment, and the amount being or to be received, or, if the judgment debtor is attempting to impede the satisfaction of the judgment by rendering services without adequate compensation, the reasonable value of the services rendered.

Comment. Section 705.710 provides a new procedure for reaching certain forms of property that cannot be reached by levy of a writ of execution and sale. The introductory clause of subdivision (a) recognizes that certain rights to future payments, such as pension benefits, which are protected by law from assignment. E.g., 5 U.S.C. § 8346 (1970) (federal government employees' retirement benefits); 45 U.S.C. § 231m (Supp. V 1975) (railroad employees' annuities). Patents and copyrights have been reached by creditor's suits and supplementary proceedings where the debtor is ordered to assign patent rights to a receiver. See Pacific Bank v. Robinson, 57 Cal. 520 (1881) (patent rights); Finnegan

v. Finnegan, 64 Cal. App.2d 109, 148 P.2d 37 (1944) (patent rights); Security-First Nat'l Bank v. Republic Pictures Corp., 97 F. Supp. 360 (S.D. Cal. 1951) (copyrights). It should be noted that federal law requires that, to be effective against subsequent purchasers or mortgagees, an assignment of a patent must be recorded in the United States Patent Office (35 U.S.C. § 261 (1970)) and an assignment of a copyright must be recorded in the U.S. Copyright Office (17 U.S.C. § 28 (1970)). The surplus income from a spendthrift trust may be reached by a creditor's suit where it is shown that there is no provision in the trust for accumulation of surplus income and that the income is not at all necessary for the beneficiary's education and support. See Civil Code § 859; Estate of Lawrence, 267 Cal. App.2d 77, 72 Cal. Rptr. 851 (1968); Canfield v. Security-First Nat'l Bank, 13 Cal.2d 1, 87 P.2d 830 (1939). Wages due a federal employee generally may not be garnished but have been reached in supplementary proceedings by an order to the debtor to endorse and deliver paychecks to a receiver. See Sheridan v. Sheridan, 33 Cal. App.3d 917, 109 Cal. Rptr. 466 (1972). However, pursuant to recent federal amendments, the wages of federal employees may be garnished for enforcement of child support and alimony payments "as if the United States were a private person." See 42 U.S.C. § 659 (Supp. V 1975).

29/632

§ 705.720. Modifying or setting aside assignment order

705.720. (a) Upon application of either party and after a noticed hearing where it is shown that there has been a material change in circumstances since the time of the previous hearing on the assignment order, the court may modify or set aside the assignment order, except as provided in subdivision (b).

(b) Where an assignment by a receiver to a third person is confirmed by the court, the assignment order may not be modified or set aside insofar as the assignment to the third person is concerned.

Comment. Subdivision (a) recognizes the court's authority to modify or set aside an assignment order it has made where conditions have changed materially. Subdivision (b) provides an exception in a case where a receiver has been appointed and an assignment of the right to future payments has been made by the receiver and confirmed by the court pursuant to Section 568.5. Normally, it is contemplated that collection of the payments as they accrue is the best method to satisfy the judgment, but there may be circumstances where outright sale of the right to future payments is advantageous to both the judgment debtor and the judgment creditor.

CHAPTER 6. THIRD-PARTY CLAIMS PROCEDURE

Article 1. General Provisions§ 706.110. "Secured party"

706.110. As used in this chapter, "secured party" means a person holding a perfected nonpossessory security interest under Division 9 (commencing with Section 9101) of the Commercial Code.

Comment. Section 706.110 which defines "secured party" reflects the substitution of secured transactions for the former security devices of conditional sales and chattel mortgages referred to in former Section 689b. See Com. Code §§ 1201(37), 9101-9508. A secured party is also a third person, as that term is used in this chapter. The term "secured party" is used in this chapter to distinguish between procedures that are not applicable to third persons who do not hold a perfected security interest.

405/592

§ 706.120. General provisions relating to undertakings

706.120. The provisions of Article 1 (commencing with Section 489.010) of Chapter 9 of Title 6.5 apply to any undertaking given or sought to be given under this chapter.

Comment. Section 706.120 incorporates by reference the general provisions relating to undertakings in attachment proceedings.

404/978

§ 706.130. Third-party claim in proceeding to collect state tax

706.130. Where a warrant or notice of levy is issued by the State of California, or a department or agency thereof, pursuant to Section 1755 or 1785 of the Unemployment Insurance Code or Section 6776, 7881, 9001, 10111, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code, for the collection of a tax liability owed to the state or a department or agency thereof, the procedures provided by this chapter are applicable to third-party claims, and the proceedings provided may be held by the superior court of the county, or city and county, in which the property levied upon is located.

Comment. Section 706.130 continues the substance of former Section 689d.

Article 2. Third-Party Claims

§ 706.210. Manner of making third-party claim

706.210. A third person may claim a superior interest in personal property that has been levied upon by serving upon the levying officer a verified written claim, together with a copy thereof, which contains all of the following:

(a) A description of the interest claimed, including a statement of the facts upon which the interest is based.

(b) A statement of the reasonable value of the interest claimed which, in the case of a security interest, is the total amount due to the secured party under the security agreement, above setoffs, with interest to date of tender.

(c) In the case of a security interest, a statement of the entire amount secured by the property, whether prepayment of the amount to become due is permitted by the security agreement, and, if permitted, the amount of any prepayment penalties.

(d) The address in this state of the third person to which notice may be mailed.

Comment. Section 706.210 is based on part of the first paragraph of former Section 689 and the first sentence of subdivision (2) of former Section 689b. Section 706.210 permits any person claiming a superior interest in the personal property levied upon to use the procedure provided by this chapter. Under former Section 689 the claimant had to show title and right to possession. See Palmquist v. Palmquist, 228 Cal. App.2d 789, 39 Cal. Rptr. 871 (1964) (attaching creditor could not use third-party claim procedure). Under Section 706.210, any interest that is superior to that of the judgment creditor may be claimed, including title, right to possession, a security interest under a security agreement, and a judicial or statutory lien.

Section 706.210 uses the terminology relating to secured transactions which has replaced chattel mortgages and conditional sales. Hence, "seller or mortgagee" in former Section 689b(2) is now "secured party." See Code Civ. Proc. § 706.110; Com. Code § 1201(37); Division 9 (commencing with Com. Code § 9101) (secured transactions).

Subdivision (b) requires the secured party to state the total amount due whereas subdivision (2) of former Section 689b called for a statement of amounts due or to accrue under the contract or mortgage. This change reflects the policy that the secured party should be able to claim only what is due, not what is to accrue. However, if the security agreement contains an acceleration clause which comes into effect when levy occurs, the entire amount will be due under this section.

Subdivision (c) is intended to enable the purchaser at any eventual sale of the property to know the exact interest of the secured party in the property where it is sold subject to the security interest. See Section 706.250(b). It also provides the judgment creditor with information necessary to determine whether to pay off the entire security interest, what is due and what is yet to accrue, plus any prepayment penalties. See Section 706.230. Note that the judgment creditor may not force the secured party to accept payment for amounts not yet due where the security agreement does not permit prepayment.

405/594

§ 706.220. Demand to judgment creditor for undertaking or deposit

706.220. (a) Not later than five days after service upon the levying officer of the claim provided in Section 706.210, the levying officer shall mail to the judgment creditor both of the following:

- (1) A copy of the third-party claim.
- (2) A demand that the judgment creditor elect either (i) to pay the reasonable value of the interest stated in the claim plus interest due to the date of tender or (ii) to give an undertaking as provided in Section 706.270.

(b) The levying officer may mail the claim notwithstanding any defect, informality, or insufficiency thereof.

Comment. Subdivision (a) of Section 706.220 continues portions of the first paragraph of former Section 689 and subdivision (3) of former Section 689b. See also the Comment to Section 706.210. The alternative of giving an undertaking or making a deposit provided in subdivision (3) of former Section 689b is continued and extended to apply to all third-

party claims. The creditor may, of course, deposit money in lieu of an undertaking pursuant to Section 1054a. See also Section 702.250 (manner of mailing notice).

Subdivision (b) continues the substance of the first sentence of the sixth paragraph of former Section 689 and the second sentence of subdivision (2) of former Section 689b.

405/595

§ 706.230. Judgment creditor's undertaking or deposit; release of levy

706.230. (a) Not later than 10 days after a demand is sent pursuant to Section 706.220, the judgment creditor shall deposit the amount demanded or file an undertaking pursuant to Section 706.270. Where the entire amount of the security interest is not due, the judgment creditor may, in lieu of the amount demanded, deposit the entire amount of the security interest, plus any applicable prepayment penalties, if prepayment is permitted by the security agreement.

(b) If the judgment creditor has not complied with subdivision (a) within 10 days after the levying officer sends the demand under Section 706.220, the levying officer shall release the levy and the custody of the property unless it is to be held under another levy or unless otherwise ordered by the court pursuant to Section 706.340.

Comment. Section 706.230 continues the substance of a portion of the first paragraph of former Section 689 and subdivision (4) of former Section 689b. However, Section 706.230 increases the time within which the judgment creditor must either give an undertaking or make a deposit from five days after it is received to 10 days after it is sent. Subdivision (a) permits the judgment creditor to pay off the entire interest of the secured party where the security agreement permits prepayment even though the secured party has demanded only payment of what is due.

405/596

§ 706.240. Payment to third person

706.240. (a) Within five days after the levying officer receives any deposit under Section 706.230, the levying officer shall tender or

pay it to the third person. If the deposit is made by check, the levying officer is allowed a reasonable time for the check to clear.

(b) If the tender is accepted, the interest of the third person in the property levied upon for which payment is made passes to the judgment creditor making the payment.

(c) If the tender is refused, the amount thereof shall be deposited with the county treasurer, payable to the order of the third person.

Comment. Section 706.240 is based on subdivisions (5)-(7) of former Section 689b; however, this section now permits the judgment creditor to acquire the interest of both an unsecured third person as well as a secured party. Where property has been levied upon under a writ of execution, a third person who does not want to sell such person's interest in the property to the judgment creditor may give an undertaking to release the property pursuant to Article 5 (commencing with Section 706.510). See also Section 706.250.

405/597

§ 706.250. Delay of sale until deposit or undertaking; interest of third person in property sold

706.250. (a) If a third-party claim is made pursuant to Section 706.210 prior to sale under the writ, the property described in the claim shall not be sold without the written consent of the third person until a payment or deposit covering the third-party claim is made pursuant to subdivision (b) or (c) of Section 706.240 or the undertaking provided by Section 706.270 is given. After such payment or deposit is made or undertaking is given, the levying officer shall retain the property and execute the writ in the manner provided by law unless, in the case of a judgment for the payment of money, the third person gives an undertaking to release the property as provided in Article 5 (commencing with Section 706.510). Property shall be sold free of all liens or claims of the third person for which a payment or deposit is made or undertaking is given.

(b) If no third-party claim is made pursuant to Section 706.210 prior to sale under the writ, the property sold remains subject to the interest of any third person except as otherwise provided by Article 4 (commencing with Section 706.410).

Comment. Subdivision (a) of Section 706.250 is based on the seventh paragraph of former Section 689 and parts of subdivisions (8) and (9) of former Section 689b. The last sentence of subdivision (a) provides that property is sold free of all liens or claims for which a payment or deposit is made or undertaking is given. However, where the interest of a secured party has not fully accrued--e.g., where there is no acceleration clause in the security agreement and, hence, the interest is not required to be completely paid off--the secured party's interest in the collateral will continue. Moreover, a third person need not generally press a claim immediately. Subdivision (b) makes clear that, if no claim is presented before sale, the property is sold subject to the third person's interest unless the judgment creditor has resorted to the procedure set forth in Sections 706.410 and 706.420.

405/598

§ 706.260. Disposition of released property when judgment debtor cannot be found

706.260. When levy on and custody of the property is released either because the judgment creditor fails to make a deposit or furnish and maintain a sufficient undertaking or because the third person provides a sufficient undertaking pursuant to Article 5 (commencing with Section 706.510) and the levying officer is unable to find the judgment debtor to deliver the property, the levying officer shall notify the judgment debtor in writing at the judgment debtor's last known address. If the judgment debtor fails to demand the property from the levying officer within 10 days thereafter, the levying officer shall deliver the property to the third person.

Comment. Section 706.260 continues the substance of former Section 689.5.

405/599

§ 706.270. Judgment creditor's undertaking; reliance on registered ownership

706.270. (a) Where the judgment creditor provides an undertaking in response to the demand made pursuant to Section 706.220, the undertaking shall be made in favor of the third person in an amount equal to

twice the value of the interest claimed by the third person unless the third person agrees in writing to a lesser amount and shall indemnify the third person against any loss, liability, damages, costs, and attorney's fees by reason of such levy or its enforcement.

(b) Where the property levied upon is required by law to be registered or recorded in the name of the owner and it appears that at the time of the levy the judgment debtor was the registered or record owner of the property and the judgment creditor caused the levy to be made and maintained in good faith and in reliance upon such registered or recorded ownership, neither the judgment creditor, the judgment creditor's sureties, nor the levying officer is liable to the third person for the levy itself.

Comment. Section 706.270 continues and combines the provisions regarding undertakings given by the judgment creditor under the first and second paragraphs of former Section 689 and subdivision (9) of former Section 689b. It should be noted that, where levy has been made upon a good faith reliance upon the registered or recorded ownership, there is no liability for the levy; but, after the third person makes a proper claim, his interest must be recognized and a failure to deal properly with such interest may result in liability to him. For provisions relating to undertakings generally, see Section 706.120. The judgment creditor is not required by this section, as under former Section 689b (9), to claim that the "sales contract or mortgage is void or invalid" as a condition of giving the undertaking.

Article 3. Hearing on Third-Party Claims

§ 706.310. Application for hearing; jurisdiction; stay

706.310. (a) Not later than 15 days after the delivery of the third-party claim to the levying officer, whether or not an undertaking is given or a deposit is made pursuant to Section 706.230, either the judgment creditor or the third person may petition the court from which the writ issued for a hearing to determine the proper disposition of the property that is the subject of the claim.

(b) The court from which the writ issued has original jurisdiction and shall set the matter for hearing within 20 days from the filing of the petition. The court may continue the matter for good cause shown.

Comment. Subdivision (a) of Section 706.310 continues the substance of the first two sentences of the eighth paragraph of former Section 689 and the first two sentences of subdivision (10) of former Section 689(b). Subdivision (b) continues the substance of the third and fifth sentences of the eighth paragraph of former Section 689 and the second and fourth sentences of subdivision (10) of former Section 689b.

§ 706.320. Notice of hearing

706.320. Not less than 10 days before the day set for the hearing, the petitioner shall mail notice of the time and place of the hearing to the judgment debtor and the levying officer, and to the judgment creditor or the third person (whoever is not the petitioner). The notice shall state that the purpose of the hearing is to determine the proper disposition of the property which is the subject of the third-party claim.

Comment. Section 706.320 is based on the fourth sentence of the eighth paragraph of Section 689. See also the second sentence of subdivision (10) of former Section 689b. Section 706.320, however, provides for notice by mail. See Section 702.250 (manner of mailing notice). By requiring notice to be sent to the judgment debtor, this section avoids the problem of misapplication of funds that could occur under former law. See Rubin v. Barash, 275 Cal. App.2d 835, 80 Cal. Rptr. 337 (1969).

§ 706.330. Pleadings; burden of proof; dismissal

706.330. (a) The levying officer shall file with the court the third-party claim delivered under Section 706.310. The third-party claim constitutes the pleading of the third person, subject to the power of the court to permit an amendment in the interest of justice. The claim shall be deemed controverted by the judgment creditor.

(b) Whenever the request for the hearing is made by the third person, neither the request nor the proceedings pursuant thereto may be dismissed without the consent of the judgment creditor.

(c) At the hearing, the third person has the burden of proof as to the nature and extent of the third person's interest.

Comment. Subdivision (a) of Section 706.330 continues the substance of the eleventh sentence of the eighth paragraph of former Section 689. Subdivision (b) continues the substance of the sixth sentence of that paragraph. Subdivision (c) continues the substance of the tenth sentence of that paragraph. See the second sentence of subdivision (10) of former Section 689b.

30/175

§ 706.340. Disposition of property during pendency of proceedings

706.340. (a) Notwithstanding Section 706.250, upon application by the judgment creditor, the judgment debtor, or the third person, made ex parte or, if the court so orders, upon noticed motion, the court may order the sale of any perishable property held by the levying officer and may, by order, stay the release of the property or stay any sale under a writ or restrain any transfer or other disposition of the property until the proceedings under this article are concluded. The court may, as a condition for the issuance of such order, require such bond as the court considers necessary.

(b) An order made pursuant to subdivision (a) may be modified or vacated by the court which issued the order or by the court in which the hearing on the third-party claim is pending at any time prior to the termination of such proceedings upon such terms as may be just.

(c) The proceeds of a sale of perishable property under subdivision (a) shall be deposited with the court until the conclusion of the

proceedings under this article. Any other property which is the subject of such proceedings shall be held under the levy until the conclusion thereof except as provided by Article 5 (commencing with Section 706.510).

Comment. Section 706.340 is derived from the seventh, eighth, and ninth sentences of the eighth paragraph of former Section 689. See also the second sentence of subdivision (10) of former Section 689b. Subdivision (a) clarifies the manner of application for orders for the sale of perishable property or orders staying the sale, release, or transfer of the property. Subdivision (b) continues the substance of the ninth sentence of the eighth paragraph of former Section 689. The first sentence of subdivision (c) continues a portion of the seventh sentence of the eighth paragraph of former Section 689. The provision concerning disposition of the proceeds of the sale of perishable property is continued in Section 706.360. The second sentence of subdivision (c) is a new provision but reflects former practice.

405/604

§ 706.350. Jury trial

706.350. Nothing in this article shall be construed to deprive any person of the right to a jury trial in any case where, by the Constitution, such right is given, but a jury trial may be waived in any such case in a like manner as in the trial of an action.

Comment. Section 706.350 is the same in substance as the twelfth sentence of the eighth paragraph of former Section 689. See also the second sentence of subdivision (10) of former Section 689b.

405/605

§ 706.360. Disposition of property after hearing

706.360. At the conclusion of the hearing, the court shall determine the interests of the parties and shall order such disposition of the property, and the proceeds of any property, as it deems proper. The order is conclusive between the parties to the proceeding.

Comment. Section 706.360 continues the substance of a portion of the seventh and of the fourteenth and fifteenth sentences of the eighth

paragraph of former Section 689 and the third sentence of subdivision (10) of former Section 689b. The proper disposition depends on the interests determined at the hearing. For example, if the third person is found to be the sole owner, such person would be entitled to possession; if the third person has a superior lien, such person would normally be entitled to a share of the proceeds of sale.

405/412

§ 706.370. Findings

706.370. No findings are required in any proceedings under this article.

Comment. Section 706.370 continues the thirteenth sentence of the eighth paragraph of former Section 689. See also the second sentence of subdivision (10) of former Section 689.

405/413

§ 706.380. Appeal

706.380. An appeal may be taken from any judgment determining the interests of the parties under Section 706.360 in the manner provided for appeals from the court in which the proceeding is had.

Comment. Section 706.380 continues the seventeenth sentence of the eighth paragraph of former Section 689.

405/414

§ 706.390. Relevy; additional writs

706.390. If property has been released from levy and custody pursuant to Section 706.230 and the final judgment is in favor of the judgment creditor, the levying officer, upon receipt of instructions from the judgment creditor, shall levy again upon the property if the writ under which the original levy was made is still in the levying officer's possession. If the writ has been returned, another writ may be issued pursuant to which the levying officer may levy upon the property.

Comment. Section 706.390 continues the substance of the sixteenth sentence of the eighth paragraph of former Section 689 and the second paragraph of subdivision (10) of former Section 689b.

Article 4. Judgment Creditor's Demand
for Third-Party Claim

§ 706.410. Judgment creditor's demand for third-party claim

706.410. (a) Upon receipt of the judgment creditor's written request, the levying officer shall serve upon a designated third person a written demand that the third person make a claim pursuant to Section 706.210.

(b) If the third person does not serve a third-party claim within 30 days after the service of the demand, the third person shall be deemed to have waived any superior interest the third person may have in the property levied upon.

Comment. Section 706.410 is based on a procedure provided by subdivision (8) of former Section 689b by which a judgment creditor may demand that a third person file a claim or waive any interest in the property levied upon. It should be noted that, under Section 706.410, this is a complete waiver of any superior interest. The third person must claim the superior interest in the property even though it is contingent or, in the case of a security interest, there are no amounts currently due. Subdivision (a) clarifies prior law by providing that the levying officer serves the demand for a third-party claim pursuant to the judgment creditor's request; under former law, it was unclear how the procedure was instigated.

§ 706.420. Service of demand for claim

706.420. The demand for a third-party claim shall be served in the manner provided for the service of summons and complaint by Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5. The demand may be served by the levying officer or for such levying officer by any other levying officer whose office is closer to the place of service. The fees and mileage of the latter shall be paid out of the prepaid fees in the possession of the levying officer.

Comment. Section 706.420 makes clear that the demand for a third-party claim must be served in the same manner as a summons and complaint. The second and third sentences of this section continue the substance of the second sentence of subdivision (8) of former Section 689b.

Article 5. Third-Party Undertaking
to Release Property

§ 706.510. Third-party undertaking to obtain release of property

706.510. Where personal property has been levied upon under a writ of execution issued on a judgment for the payment of money, a third person may give an undertaking, as provided in Section 706.520, to obtain the release of the levy upon and custody of the personal property described in the undertaking.

Comment. Section 706.510 continues the substance of former Section 710b. Although Section 706.510 does not specifically require that the third person be a claimant to the property, such is the practical result since, if it is determined that the judgment debtor has any interest in the property levied upon, the third person and the sureties will be liable to the judgment creditor for the value of such interest. See Section 706.520.

405/418

§ 706.520. Contents of undertaking

706.520. (a) The undertaking given pursuant to Section 706.510 shall be in an amount equal to whichever of the following is the least:

- (1) Twice the value of the property levied upon.
- (2) Twice the amount for which the writ of execution was levied.
- (3) The amount agreed to in writing by the judgment creditor.

(b) The undertaking shall provide that, if the judgment debtor is finally adjudged to have had an interest in the property levied upon, the third person shall pay in satisfaction of the judgment under which the writ of execution was issued a sum equal to the value of the judgment debtor's interest.

Comment. Section 706.520 is based on former Section 710c. See also Section 706.120 (general provisions relating to undertakings).

§ 706.530. Filing of undertaking.

706.530. The third person shall file the undertaking given pursuant to Section 706.510 in the action with the court from which the writ of execution issued under which levy was made. The third person shall serve a copy of the undertaking on the judgment creditor and the levying officer.

Comment. Section 706.530 continues the substance of former Section 711 and also requires service of a copy of the undertaking on the levying officer.

§ 706.540. Release of property.

706.540. Unless the property is to be held under another levy or unless otherwise ordered by the court in which the undertaking given pursuant to Section 706.510 is filed, the levying officer shall release the levy on and custody of the personal property described in the undertaking 10 days after receipt of the notice of the filing of the undertaking.

Comment. Section 706.540 is based on a portion of the seventh paragraph of former Section 689. The manner of release of property is the same as that provided by Section 488.560. Section 703.300.

CHAPTER 7. EXEMPTIONS

[See Memorandum 77-2]

CHAPTER 8. ENFORCEMENT OF JUDGMENT FOR
POSSESSION OF PERSONAL PROPERTY

§ 708.110. Application for writ of possession; several writs;
successive writs

708.110. (a) After the entry of a judgment for the possession of personal property, upon application of the judgment creditor, the court clerk shall issue a writ of possession.

(b) Two or more writs of possession may be issued to obtain enforcement of the judgment in different counties. A separate writ of possession shall be issued for each county in which property sought to be delivered to the judgment creditor is located.

(c) Successive writs of possession may be issued upon further application until the judgment is satisfied; however, no writ of possession may be issued to obtain enforcement of the judgment in a county until any prior writ of possession issued for that county is returned unsatisfied.

Comment. Section 708.110 is analogous to Section 703.110 relating to writs of execution and is based in part on former Sections 681 and 687. See Section 703.110 and Comment. Subdivision (c), providing for successive writs of possession, is made necessary by the provisions of Section 708.170 concerning the return of a writ of possession.

30/687

§ 708.120. Contents of writ of possession

708.120. (a) The writ of possession shall describe the personal property to be delivered to the judgment creditor and state its value and shall require the levying officer to enforce the judgment in the manner provided by law.

(b) The writ of possession shall require the levying officer to satisfy the following items in the same manner as a writ of execution would be levied:

(1) Any costs, damages, rents, or profits recovered by the judgment.

(2) Any accrued costs and interest and the levying officer's commissions and costs entered on the writ of possession as provided by Section 702.280.

(c) The writ of possession shall inform the judgment debtor of the judgment debtor's rights and duties under the writ of possession, including any right to claim an exemption pursuant to Chapter 7 (commencing with Section 707.110).

Comment. Section 708.120 prescribes the essential elements of a writ of possession issued to enforce a judgment for the possession of personal property. See also Sections 702.300(b) (Judicial Council to prescribe form of writs), 702.290 (notation on writ of request for notice of sale). Section 708.120 is based on portions of subdivision 4 of former Section 682, former Sections 682.2, 684, and 684.1. The term "writ of possession" rather than "writ of execution" is used here to be consistent with the usage in Chapter 2 (commencing with Section 511.010) of Title 7.

Note that the items recoverable under subdivision (b) may be satisfied only from nonexempt property of the judgment debtor. See Section [707.110]. The requirements of subdivision 4 of former Section 682 that costs, damages, rents, or profits be satisfied first from personal property and only then from real property has not been continued. See Sections 703.210-703.[490] (levy procedures and manner of levy on particular types of property under writ of execution).

Subdivision (c) is new; it is based on other comparable provisions. See, e.g., Sections 488.020 (notice of attachment), 512.080 (contents of prejudgment writ of possession), 703.120 (contents of writ of execution).

30/686

§ 708.130. Delivery and execution of writ; instructions

708.130. (a) The judgment creditor shall deliver the writ of possession to the levying officer to whom the writ of possession is directed, together with written instructions.

(b) The levying officer shall execute the writ of possession without delay by (1) searching for and taking custody of the personal property described in the writ of possession in the manner prescribed by Section 514.010, (2) satisfying the amount of costs, damages, rents,

profits, interest, and the levying officer's commissions and costs stated in the writ of possession in the same manner as a writ of execution would be levied, and (3), if the property cannot be taken into custody, complying with Section 708.160.

Comment. Section 708.130 continues the substance of prior law. Subdivision (a) is analogous to Section 703.210(a). Subdivision (b) is derived from subdivision 4 of former Section 682 and former Sections 682.2 and 684.1. A judgment enforced under this chapter is one that entitled the judgment creditor to specific property, i.e., the judgment creditor is not obligated to accept merely the value of the property. Griffith v. Reddick, 41 Cal. App. 458, 461-462, 182 P. 984, ___ - ___ (1919). The value of the property is substituted where delivery is impossible because the property has been destroyed or cannot be found. See Section 667; Drinkhouse v. Van Ness, 202 Cal. 359, 374, 260 P. 869, ___ (1927). See also Section 708.160 (judgment for possession satisfied as if judgment for money). The value of the property is generally alleged and determined in the action. See 3 B. Witkin, California Procedure Pleading §§ 555, 563 (2d ed. 1971).

The requirement of former Section 684.1 that the levying officer place a keeper in charge of personal property occupied as a dwelling for two days is continued in subdivision (b) of Section 514.010, incorporated by subdivision (b) of this section.

30/685

§ 708.140. Property in private place; court order

708.140. If any personal property described in the writ of possession is located in a private place, the judgment creditor shall make an ex parte application to the court from which the writ of possession was issued for an order directing the levying officer to seize the personal property in such place. The court may issue an order for this purpose only if the judgment creditor establishes that there is probable cause to believe that the personal property described in the writ of possession is located there.

Comment. Section 708.140 is new. It is based on portions of Sections 512.060 and 512.080 pertaining to prejudgment writs of possession. See the Comment to Section 512.010 concerning "private place."

§ 708.150. Service of writ of possession and order

708.150. (a) When the levying officer takes custody of the personal property described in the writ of possession, the levying officer shall deliver to the person in possession of the personal property a copy of the writ of possession and, if the personal property is in a private place, a copy of any order issued pursuant to Section 708.140.

(b) If no one is in possession of the personal property when the levying officer takes custody, the levying officer shall subsequently mail a copy of the writ of possession and any order issued pursuant to Section 708.140 to the judgment debtor.

Comment. Section 708.150 is comparable to Section 514.020 relating to service of a prejudgment writ of possession.

§ 708.160. Writ of possession unsatisfied; judgment satisfied as if money judgment

708.160. (a) Where the property described in the writ of possession cannot be taken into custody, the levying officer shall make a demand upon the judgment debtor or the judgment debtor's agent for the property. If the property is not then obtained, the levying officer shall so state on the face of the writ of possession. Thereafter the judgment for the possession of the property may be satisfied for the amount stated in the writ of possession in the same manner as a judgment for the payment of money.

(b) During the first 90 days after its issuance, the writ of possession may, under the circumstances described in subdivision (a), be levied upon other property of the judgment debtor as if the writ of possession is a writ of execution issued pursuant to Chapter 3 (commencing with Section 703.110).

Comment. Section 708.160 generally continues former law and practice. See Section 667 and subdivision 4 of former Section 682; Marshal's Manual of Procedure § 623.1 (J. Matarazzo ed. n.d.); Cal. State Sheriffs' Ass'n, Civil Procedural Manual § 7.26 (rev. 1975). Where the property cannot be found and delivered to the judgment creditor and the demand on the judgment debtor or the judgment debtor's agent has been

made, the second sentence of Section 708.130 makes clear that the judgment for possession of personal property may be satisfied for the value of the property in the manner of a money judgment. See also Section 667. Hence, the judgment creditor may instruct the levying officer to levy on property of the judgment debtor as if the writ of possession were a writ of execution issued under Chapter 3 (commencing with Section 703.110), may seek to garnish the judgment debtor's wages pursuant to Chapter 4 (commencing with Section 704.110), or may employ appropriate supplementary procedures provided by Chapter 5 (commencing with Section 705.110). The exemptions provided by Chapter 7 (commencing with Section 707.110) apply to the collection of the value of the property stated in the writ. The judgment creditor may obtain a writ of execution where the writ of possession has expired or been returned. The 90-day limitation prescribed by the second sentence is a consequence of subdivision (d) of Section 703.260 (return of writ of execution if no levy within 90 days).

30/679

§ 708.170. Return of writ of possession

708.170. (a) The levying officer to whom the writ of possession is directed shall return the writ of possession to the court from which it was issued at the earliest of the following times:

(1) One year from the date the writ of possession was issued.

(2) Not more than 15 days after the property described in the writ of possession is delivered to the judgment creditor.

(3) When return is requested in writing by the judgment creditor.

(b) Insofar as the writ of possession is levied as if it is a writ of execution, as provided in Sections 708.130 and 708.160, it is subject to the return provisions of Section 703.260.

Comment. Section 708.170 is new. Prior statutory law did not explicitly provide for a return date in the case of a writ of possession. See former Section 683. It was held in Magnaud v. Traeger, 66 Cal. App. 526, 530-531, 226 P. 990, ___ - ___ (1924), that a writ of possession for the restitution of real property remained in force insofar as it directed the restitution of the premises although it had expired insofar as it

directed the levying officer to levy on property to satisfy the part of the judgment awarding damages. However, subdivision (a) of Section 708.170 makes the life of the writ of possession analogous to that of the writ of execution. See Sections 703.260 (return of writ of execution) and 709.150 (return of writ of restitution). Under subdivision (a) of Section 708.170, the writ of possession authorizes the levying officer to take the property into custody and deliver it to the judgment creditor as late as one year after its issuance. However, if the writ is levied for costs or is treated as a writ of execution where the property cannot be found, the levying officer may levy on property only during the first 90 days of the life of the writ. See Sections 708.130(b) and 708.160(b). A return on the writ where it is levied for costs must then be made as provided in Section 703.260, but the writ is retained if the levying officer still seeks possession of the property pursuant to the judgment creditor's instructions after 90 days have elapsed. However, if the property cannot then be found after 90 days have elapsed since issuance of the writ of possession, it may not thereafter be levied as a writ of execution and the judgment creditor must obtain a new writ in order to satisfy the judgment for the value of the property or to satisfy costs or other damages. See Section 708.160.

30/678

§ 708.180. Issuance of order directing transfer

708.180. After entry of judgment for the possession of personal property, in addition to a writ of possession, the court may issue an order directing the judgment debtor to transfer possession of the property to the judgment creditor. The order shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court.

Comment. Section 708.180 is based on a comparable provision which is applicable before judgment. See Section 512.070. This section simply makes clear that the court has power to issue a "turnover" order directing the judgment debtor to transfer possession. The order is not issued in lieu of a writ but rather in addition to or in aid of a writ, permitting the person entitled to possession to select a more informal and less expensive means of securing possession.

§ 708.190. Appointment of receiver

708.190. The court may appoint a receiver as provided in Section 705.310 to enforce a judgment for the possession of personal property.

Comment. Section 708.190 makes clear that a receiver may be appointed to enforce a judgment for the possession of personal property. See Sections 564-571, 705.310. The appointment of a receiver is subject to the general rules concerning the time within which judgment may be enforced. See Sections 702.170-702.180. Issuance or return of a writ of possession is not necessarily a prerequisite to appointment of a receiver.

CHAPTER 9. ENFORCEMENT OF JUDGMENT FOR
POSSESSION OF REAL PROPERTY

§ 709.110. Application for writ of restitution; several writs;
successive writs

709.110. (a) After the entry of a judgment for the possession of real property, upon application of the judgment creditor, the court clerk shall issue a writ of restitution.

(b) Two or more writs of restitution may be issued to obtain enforcement of the judgment in different counties. A separate writ of restitution shall be issued for each county in which the property, or some part thereof, is situated.

(c) Successive writs of restitution may be issued upon further application until the judgment is satisfied; however, no writ of restitution may be issued to obtain enforcement of the judgment in a county until any prior writ of restitution issued for that county is returned unsatisfied.

Comment. Section 709.110 is analogous to Section 703.110 relating to writs of execution and is based in part on former Sections 681 and 687. See Section 703.110 and Comment. Subdivision (c), providing for successive writs of restitution, is made necessary by the provisions of Section 709.150 concerning the return of a writ of restitution.

27/648

§ 709.120. Contents of writ of restitution

709.120. (a) The writ of restitution shall describe the real property and shall require the levying officer to enforce the judgment in the manner provided by law.

(b) The writ of restitution shall require the levying officer to satisfy the following items in the same manner as a writ of execution would be levied:

(1) Any costs, damages, rents, or profits recovered by the judgment.

(2) Any accrued costs and interest and the levying officer's commissions and costs entered on the writ of restitution as provided by Section 702.280.

(c) The writ of restitution shall inform the judgment debtor of the following:

(1) If the real property is not vacated within five days from the date of service of a copy of the writ of restitution on the occupant or, if the copy of the writ of restitution is posted, within five days from the date a copy of the writ of restitution is mailed, the levying officer will remove the judgment debtor from the property and place the judgment creditor in possession thereof.

(2) Other rights and duties of the judgment debtor under the writ of restitution including any right to claim an exemption pursuant to Chapter 7 (commencing with Section 707.110).

(d) The writ of restitution shall include a statement that personal property remaining on the real property after the judgment creditor has been placed in possession will be sold or otherwise disposed of in accordance with Section 1174 of the Code of Civil Procedure unless the judgment debtor or the owner pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the real property.

Comment. Section 709.120 prescribes the essential elements of a writ of restitution issued to enforce a judgment for the possession of real property. See also Section 702.300(b) (Judicial Council to prescribe form of writs), 702.290 (notation on writ of request for notice of sale). Section 709.120 is based on portions of subdivision 4 of former Section 682, former Sections 682.2 and 684, and a portion of subdivision (d) of Section 1174. The term "writ of restitution" is used in this chapter to be consistent with the term used in Section 1174 relating to enforcement of a judgment in an action for unlawful detainer.

Note that the items recoverable under subdivision (b) may be satisfied only from nonexempt property of the judgment debtor. See Section 707.110. The requirements of subdivision 4 of former Section 682 that costs, damages, rents, or profits be satisfied first from personal property and only then from real property has not been continued. See Sections 703.210-703.490 (levy procedures and manner of levy on particular types of property under writ of execution).

Subdivision (c) is new. Paragraph (1) is derived from the substantive requirements formerly found in Section 1174(d), continued in Section 709.130. Paragraph (2) is based on other comparable provisions. See, e.g., Sections 488.020 (notice of attachment), 512.080 (contents of prejudgment writ of possession), 703.120 (contents of writ of execution), 708.120 (contents of postjudgment writ of possession).

Subdivision (d) makes applicable to all writs of restitution a feature formerly applicable only to writs served on tenants in unlawful detainer actions under Section 1174(d).

13/617

§ 709.130. Delivery and execution of writ; instructions

709.130. (a) The judgment creditor shall deliver the writ of restitution to the levying officer to whom the writ of restitution is directed, together with written instructions.

(b) The levying officer shall execute the writ of restitution without delay by (1) serving upon an occupant or posting a copy of the writ in the same manner as upon levy of a writ of attachment pursuant to subdivision (d) of Section 488.310 and (2) satisfying the amount of costs, damages, rents, profits, interest, and the levying officer's commissions and costs stated in the writ of restitution in the same manner as a writ of execution would be levied. If a copy of the writ of restitution is posted, the levying officer shall mail a copy of the writ of restitution to the judgment debtor at the judgment debtor's business or residence address last known to the judgment creditor or the judgment creditor's attorney or, if no such address is known, to the address of the real property.

(c) If the judgment debtor does not vacate the real property within five days from the date of service of a copy of the writ of restitution on the occupant or, if the copy of the writ of restitution is posted, within five days from the date a copy of the writ of restitution is mailed, the levying officer shall remove the judgment debtor from the property and place the judgment creditor in possession thereof.

Comment. Section 709.130 is derived from provisions formerly contained in subdivision (d) of Section 1174 relating to writs of restitution to enforce a judgment in an unlawful detainer action after default in payment of rent. The authority to levy the writ of restitution as a writ of execution for the satisfaction of amounts awarded by the judgment and various costs continues portions of subdivision 4 of former Section 682 and of former Section 682.2.

13/618

§ 709.140. Disposition of personal property

709.140. Personal property remaining on the premises after the judgment creditor is placed in possession of the real property shall be disposed of in the manner provided by subdivisions (e) to (m), inclusive, of Section 1174. For this purpose, references in Section 1174 and provisions incorporated by Section 1174 to the "landlord" shall be deemed to be references to the judgment creditor and references to the "tenant" shall be deemed to be references to the judgment debtor.

Comment. Section 709.140 is new. This section makes the procedure for disposition of personal property remaining on the premises where a tenant has vacated in an unlawful detainer action applicable to all situations where personal property remains on the premises after a judgment creditor has obtained possession of the real property pursuant to a writ of restitution.

15/341

§ 709.150. Return of writ of restitution

709.150. (a) The levying officer to whom the writ of restitution is directed shall return the writ to the court from which it was issued at the earliest of the following times:

- (1) One year from the date the writ of restitution was issued.
- (2) Not more than 15 days after the judgment creditor is placed in possession of property described in the writ of restitution.
- (3) When return is requested in writing by the judgment creditor.

(b) Insofar as the writ of restitution is levied as if it is a writ of execution, as provided in Section 709.130, it is subject to the return provisions of Section 703.260.

Comment. Section 709.150 is new. Prior statutory law did not explicitly provide for the return of a writ of restitution. This section retains the essence of the former rule that a writ for the restitution of real property remained in force beyond the 60-day limitation provided by former Section 683 insofar as it directed the restitution of the premises although it had expired insofar as it directed the levying officer to levy on property to satisfy the part of the judgment awarding damages. See Magnaud v. Traeger, 66 Cal. App. 526, 226 P. 990 (1924). However, subdivision (a) of Section 709.150 makes the life of the writ of restitution analogous to that of the writ of execution. See Section 703.260 (return of writ of execution). See also Section 708.170 (return of writ of possession). Under subdivision (a) of Section 709.150, the writ of restitution authorizes the levying officer to place the judgment creditor in possession of the real property up to one year after its issuance. However, under subdivision (b), if the writ is levied for costs or damages, the levying officer may levy on property of the judgment debtor only during the first 90 days of the life of the writ. See Section 709.130(b). A return on the writ where it is levied for costs or damages must then be made as provided in Section 703.260, but the writ is retained if the judgment creditor has not yet been placed in possession of the real property after 90 days has elapsed since the writ was issued. If the judgment creditor has not been placed in possession of the real property before 90 days have elapsed since issuance of the writ of restitution, it may not thereafter be levied as a writ of execution and the judgment creditor must obtain a new writ if costs and damages remain to be satisfied.

12/823

§ 709.160. Appointment of receiver

709.160. The court may appoint a receiver as provided in Section 705.310 to enforce a judgment for the possession of real property.

Comment. Section 709.160 makes clear that a receiver may be appointed to enforce a judgment for the possession of real property. See Sections 564-571, 705.310. The appointment of a receiver is subject to the general rules concerning the time within which judgment may be enforced. See Sections 702.170-702.180.

CHAPTER 10. ENFORCEMENT OF JUDGMENT
FOR SALE OF PROPERTY

§ 710.110. Application for writ of enforcement; several writs;
successive writs

710.110. (a) After the entry of a judgment for the sale of real or personal property, upon application of the judgment creditor, the court clerk shall issue a writ of enforcement.

(b) Two or more writs of enforcement may be issued to obtain enforcement of the judgment in different counties. A separate writ of enforcement shall be issued for each county in which property sought to be sold is located.

(c) Successive writs of enforcement may be issued upon further application until the judgment is satisfied; however, no writ of enforcement may be issued to obtain enforcement of the judgment in a county until any prior writ of enforcement issued for that county is returned unsatisfied.

Comment. Section 710.110 is analogous to Section 703.110 relating to writs of execution and is based in part on former Sections 681 and 687. See Section 703.110 and Comment. Subdivision (c), providing for successive writs of possession, is made necessary by the provisions of Section 710.130 concerning the return of a writ of enforcement. Note that, under this chapter, judgments for the sale of real or personal property are no longer enforced without resort to a writ of enforcement, i.e., the judgment is not enforced through an order of sale as was formerly the practice in some jurisdictions. See Knapp v. Rose, 32 Cal.2d 530, 197 P.2d 7 (1948). The judgment may direct that a single parcel or contiguous parcels of real property situated in two or more counties be sold in one of the counties as if it was all situated therein. Section 726.

09/733

§ 710.120. Contents of writ of enforcement

710.120. (a) The writ of enforcement shall state the material parts of the judgment for the sale of the real or personal property,

describe the property to be sold, and require the levying officer to enforce the judgment in the manner provided by law.

(b) The writ of enforcement shall inform the judgment debtor of the judgment debtor's rights and duties under the writ of enforcement.

Comment. Section 710.120 prescribes the essential elements of a writ of enforcement issued to enforce a judgment for the sale of real or personal property. See also Sections 702.300(b) (Judicial Council to prescribe form of writs), 702.290 (notation on writ of request for notice of sale). This section supersedes a portion of former Section 684. The term "writ of enforcement" has been frequently used by the courts although it did not appear in prior statutes. See, e.g., Laubish v. Roberdo, 43 Cal.2d 702, 277 P.2d 9 (1954); Knapp v. Rose, 32 Cal.2d 530, 197 P.2d 7 (1948). See also Marshal's Manual of Procedure § 450.2 (J. Matarazzo ed. n.d.); Cal. State Sheriff's Ass'n, Civil Procedural Manual § 7.20 (rev. 1972).

Subdivision (b) is comparable to several other provisions. See, e.g., Sections 488.020 (notice of attachment), 512.080 (contents of prejudgment writ of possession), 703.120 (contents of writ of execution).

See also Section 701.____ (levying officer includes a commissioner or elisor pursuant to Section 726).

09/747

§ 710.130. Delivery and execution of writ; instructions

710.130. (a) The judgment creditor shall deliver the writ of enforcement to the levying officer to whom the writ of enforcement is directed together with written instructions.

(b) The levying officer shall execute the writ of enforcement without delay by (1) searching for and taking custody of any personal property described in the writ of enforcement in the manner prescribed by Section 514.010, (2) giving notice and selling the real or personal property described in the writ of enforcement in the manner prescribed by Article 4 (commencing with Section 703.510) of Chapter 3, and (3) applying the proceeds of the sale in conformity with the judgment.

Comment. Section 710.130 generally continues former law and practice regarding enforcement of a judgment for the sale of real or personal property. Subdivision (a) of Section 710.130 is analogous to Section 703.210(a).

Subdivision (b) of Section 710.130 incorporates the provisions of Section 514.010 concerning the manner of taking custody of personal property and the provisions of Sections 703.510-703.660 concerning the manner of sale of the real or personal property. Former law was silent as to these matters, however, the manner of sale appears to have been similar to that provided by subdivision (b). See Johnson v. Tyrell, 77 Cal. App. 179, 182, 246 P. 140, ___ (1926) (foreclosure sale of real property made in same manner as execution sales); Podrat v. Oberndorff, 207 Cal. 457, 459-460, 278 P. 1035, ___ (1929) (foreclosure sale of personal property under chattel mortgage made in same manner as execution sale; personal property capable of manual delivery must be in the possession of the officer to make a sale); Marshal's Manual of Procedure §§ 452.1, 452.2 (J. Matarazzo ed. n.d.); Cal. State Sheriff's Ass'n, Civil Procedural Manual § 7.20 (rev. 1972). This section changes the former practice under which the judgment debtor was requested to bring personal property to the sale; if he refused, the judgment creditor was required to bring a claim and delivery action. See Ely v. Williams, 6 Cal. App. 455, 457-458, 92 P. 393, ___ - ___ (1907); Marshal's Manual of Procedure, supra at §§ 452.1, 452.2; Civil Procedural Manual, supra at § 10.163 (rev. 1973). Court costs, expenses of sale, and attorney's fees, where appropriate, are satisfied out of the proceeds of the sale. Section 726.

09/749

§ 710.140. Property in private place; court order

710.140. If any personal property described in the writ of enforcement is located in a private place, the judgment creditor shall make an ex parte application to the court from which the writ of enforcement was issued for an order directing the levying officer to seize the personal property in such place. The court may issue an order for this purpose only if the judgment creditor establishes that there is probable cause to believe that the personal property described in the writ of enforcement is located there.

Comment. Section 710.140 is new. It is based on portions of Sections 512.060 and 512.080 pertaining to prejudgment writs of possession and is comparable to Section 708.140. See the Comment to Section 512.010 concerning "private place." Under former law, the levying officer did not have authority to seize personal property under a writ of enforcement. See the Comment to Section 710.130.

10/000

§ 710.150. Service of writ of enforcement and order

710.150. (a) When the levying officer takes custody of the personal property described in the writ of enforcement, the levying officer shall deliver to the person in possession of the property a copy of the writ of enforcement and, if the property is in a private place, a copy of any order issued pursuant to Section 710.140. If no one is in possession of the personal property when the levying officer takes custody, the levying officer shall subsequently mail a copy of the writ of enforcement and any order issued pursuant to Section 708.140 to the judgment debtor.

(b) A copy of the writ of enforcement shall be served or posted in the manner prescribed by subdivision (b) of Section 709.130 for service or posting of a writ of restitution.

Comment. Subdivision (a) of Section 710.150 is comparable to Sections 514.020 (service of a prejudgment writ of possession) and 708.150 (service of postjudgment writ of possession). Under former practice, the judgment debtor was given only a notice of sale and, if personal property was to be sold, a request to bring such property to the sale. See Marshal's Manual of Procedure § 452.1 (J. Matarazzo ed. n.d.). See also Cal. State Sheriff's Ass'n, Civil Procedural Manual §§ 10.163, 10.164 (rev. 1973). Note that the judgment debtor is also required to be served with notice of sale pursuant to subdivision (e) of Section 703.520, incorporated for the purposes of this chapter by subdivision (b) of Section 710.130.

Subdivision (b) is new. The writ may be served or posted at the same time the notice of sale is posted.

§ 710.160. Return of writ of enforcement

710.160. The levying officer to whom the writ of enforcement is directed shall return the writ of enforcement to the court from which it was issued at the earliest of the following times:

- (a) One year from the date the writ of enforcement was issued.
- (b) Not more than 15 days after a sale is made under the writ of enforcement.
- (c) When the return is requested in writing by the judgment creditor.

Comment. Section 710.160 is new. Prior statutory law did not provide for the return of a writ of enforcement. The substance of the return provisions under this section is identical to the provisions of Section 703.260 concerning a writ of execution except that, since there is no levy on unspecified property when a judgment for the sale of specified property is enforced, the writ is not required to be returned at the end of 90 days if it is not executed within that time. See Section 703.260(a)(4).

§ 710.170. Order directing transfer of property or documents by defendant

710.170. (a) If a writ of enforcement is issued, the court may also issue an order directing the defendant to transfer to the levying officer:

- (1) Possession of the property to be sold where such property is sought to be taken into custody.
- (2) Possession of any documentary evidence of title to any property of the judgment debtor which is to be sold. An order for the transfer of possession of documentary evidence of title issued pursuant to this paragraph may be enforced by the levying officer when the property is taken into custody or at any time thereafter.

(b) The order shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court.

Comment. Section 710.170 is comparable to Section 703.280.

§ 710.180. Appointment of receiver

710.180. The court may appoint a receiver as provided in Section 705.310 to enforce a judgment for the sale of real or personal property.

Comment. Section 710.180 makes clear that a receiver may be appointed to enforce a judgment for the sale of real or personal property. See also Sections 564-571, 705.310. Under former law, receivers were not expressly authorized to enforce such judgments, i.e., sell the property. Cf. Section 726 (appointment of elisor or commissioner to sell property at conclusion of foreclosure action); Ramsey v. Furlott, 14 Cal. App.2d 145, 148, 57 P.2d 1007, ___ (1936) (appointment of "receiver and commissioner" to gather property and sell it is in effect appointment of commissioner). Receivers have been appointed at the commencement of a foreclosure action and continued in possession until sale. Boyd v. Benneyan, 204 Cal. 23, 25, 266 P. 278, ___ (1928). A receiver may be appointed to collect rents on real property sold pursuant to a decree of foreclosure. Subdivision 4 of Section 564.

The appointment of a receiver is subject to the general rules concerning the time within which judgment may be enforced. See Sections 702.170-702.180.

CHAPTER 11. ENFORCEMENT OF JUDGMENT BY CONTEMPT

§ 711.110. Enforcement by contempt

711.110. Where a judgment requires the performance of any act not described in Sections 702.110 (payment of money), 702.120 (possession or personal property), 702.130 (possession of real property), and 702.140 (sale of real or personal property), a certified copy of the judgment may be served upon the person against whom the judgment is rendered or upon the person or officer required by the judgment or by law to obey the judgment and obedience thereto may be enforced by the power of the court to punish for contempt.

Comment. Section 711.110 continues the substance of a portion of former Section 684. As to the power of the court to punish for contempt generally, see Sections 1209-1222.

APPENDIX

DISPOSITION OF EXISTING TITLE 9

TITLE 9. EXECUTION OF JUDGMENT IN CIVIL ACTIONS

CHAPTER 1. EXECUTION

§ 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.)

Comment. Former Section 681 is superseded by Section 702.170 which provides a basic 10-year period for the enforcement of money judgments and judgments for the possession or sale of real or personal property and by Section 702.190 applicable to money judgments payable in installments. All enforcement must be completed at the conclusion of the 10-year period provided by Section 702.170 if the enforceability of the judgment is not extended pursuant to Section 702.180 or 702.190, whereas, under the first sentence of former Section 681, a writ of execution issued within the 10-year period could be enforced after the expiration of such period. Alonso Investment Corp. v. Doff, 17 Cal.3d 539, ___ P.2d ___, ___ Cal. Rptr. ___ (1976). The second sentence of former Section 681 is not continued. Section 702.170 does not provide for tolling of the 10-year period.

§ 681a. Stay of execution; maximum time

The court, or the judge thereof, may stay the execution of any judgment or order; provided, that no court shall have power, without the consent of the adverse party, to stay the execution of any judgment or order, the execution whereof would be stayed on appeal only by the execution of a stay bond, for a longer period than 10 days in

justice courts, nor for a longer period than 30 days in other courts. If a motion for a new trial or for judgment notwithstanding the verdict is pending, execution may be stayed until 10 days after the determination thereof. (Added Stats.1911, c. 220, p. 400, § 1. As amended Stats.1929, c. 485, p. 847, § 1; Stats.1933, c. 744, p. 1885, § 131; Stats.1951, c. 1737, p. 4120, § 103, operative Jan. 1, 1952; Stats.1961, c. 604, p. 1753, § 4.)

Comment. The substance of the first sentence of former Section 681a is continued in subdivisions (a)(1) and (b) of Section 702.200. The second sentence is continued in subdivision (a)(2) of Section 702.200.

§ 682. Writs; issuance; formalities; contents

The writ of execution must be issued in the name of the people, sealed with the seal of the court, and subscribed by the clerk or judge, and be directed to the sheriff, constable, or marshal, and it must intelligibly refer to the judgment, stating the court, the county, and in municipal and justice courts, the judicial district, where the judgment is entered, and if it be for money, the amount thereof, and the amount actually due thereon, and if made payable in a specified kind of money or currency, as provided in Section 667, the execution must also state the kind of money or currency in which the judgment is payable, and must require the officer to whom it is directed to proceed substantially as follows:

1. Property or earnings of judgment debtor

1. If it be against the property of the judgment debtor, it must require such officer to satisfy the judgment, with interest, out of the personal property of such debtor, or if it is against the earnings of such debtor, such levy shall be made in accordance with Section 682.3, and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the abstract of judgment was filed as provided in Section 674 of this code, or at any time thereafter.

2. Property in hands of heirs, tenants, trustees, etc.

2. If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants, or trustees, it must require such officer to satisfy the judgment, with interest, out of such property.

3. Particular kind of money

3. If it be issued on a judgment made payable in a specified kind of money or currency, as provided in Section 667, it must also require such officer to satisfy the same in the kind of money or currency in which the judgment is made payable, and such officer must refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment debtor, he must refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. Any such officer collecting money or currency in the manner required by this chapter, must pay to the plaintiff or party entitled to recover the same, the same kind of money or currency received by him, and in case of neglect or refusal to do so, he shall be liable on his official bond to the judgment creditor in three times the amount of the money so collected.

4. Possession of property

4. If it be for the delivery of the possession of real or personal property, it must require such officer to deliver the possession of the same, describing

it, to the party entitled thereto, and may at the same time require such officer to satisfy any cost, damages, rents, or profits recovered by the same judgment, out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered to be specified therein if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of the real property, as provided in the first subdivision of this section.

(Amended by Stats.1971, c. 1684, p. 3611, § 1; Stats.1973, c. 20, p. 35, § 8.)

Comment. The first paragraph of former Section 682 is superseded by Section 703.120 (contents of writ of execution). The technical detail which is to be stated in the writ is left to the Judicial Council. Section 702.300(b). See also Sections 708.120 (contents of writ of possession), 709.120 (contents of writ of restitution), 710.120 (contents of writ of enforcement). Subdivision 1 of former Section 682 is superseded by Sections 703.120(a) (contents of writ), 703.130 (property subject to execution), 703.210(b) (execution of writ), and 704.____ (garnishment of earnings). The order of levy specified in former law is not continued. See the Comments to Sections 703.120 and 703.210. Subdivision 2 of former Section 682 is not continued because it is unnecessary. See Section 702.220(a) (enforcement pursuant to Probate Code Section 732 after death of judgment debtor). Subdivision 3 of former Section 682 is not continued. Subdivision 4 of former Section 682 is superseded by Sections 708.120 (contents of writ of possession), 708.130(b) (execution of writ of possession), 708.160 (judgment for possession of personal property satisfied for the value of the property), 709.120 (contents of writ of restitution). The order of levy specified in subdivision 4 is not continued.

§ 682a. Levy on bank account, savings and loan association share or certificate, or contents of safe deposit box not wholly in name of judgment debtor

If the debt, credit, or other personal property sought to be levied upon is (a) any bank account, or interest therein, not standing in the name of the judgment debtor or judgment debtors or standing in the name of such judgment debtor or judgment debtors and one or more other persons who are not judgment debtors, or (b) any savings and loan association share, investment certificate, or account, or interest therein, not standing in the name of the judgment debtor or judgment debtors or standing in the name of such judgment debtor or judgment debtors and in one or more other persons who are not judgment debtors, or (c) property in a safe-deposit vault or box maintained by a bank, trust company, savings and loan association, or other corporation authorized and empowered to conduct a safe-deposit business and rented by it to a person or persons other than such judgment debtor or judgment debtors or rented by it to

one or more such judgment debtors and to one or more other persons who are not judgment debtors, the following provisions of this section also shall be complied with; otherwise the levy shall not be effectual for any purpose and shall be disregarded. The plaintiff shall provide and concurrently with the levy the sheriff, constable, or marshal shall deliver to such bank, trust company, savings and loan association, or safe-deposit corporation a bond in an amount not less than twice the amount of the judgment indemnifying the person or persons, other than the judgment debtor or judgment debtors whose interest is sought to be levied upon, rightfully entitled to such debt, credit, or other personal property (which person or persons need not be named specifically in said bond but may be referred to generally in the same manner as in this sentence), against actual damage by reason of the taking of such debt, credit, or other personal property and assuring to such person or persons the return thereof to him or them upon proof of his or their right thereto. Upon delivery to it of the aforesaid bond such bank, trust company, savings and loan association, or safe-deposit corporation shall immediately notify the person in whose name such account stands, other than the judgment debtor, or the person to whom such safe-deposit box is rented, other than the judgment debtor, by registered mail addressed to the last address of such person known to such bank, trust company, savings and loan association or safe-deposit corporation of the fact of the service of said writ and of the delivery to it of said bond. From the time of said levy and the delivery to it of said bond such bank, trust company, savings and loan association or safe-deposit corporation shall not honor a check or other order for the payment of money drawn against the account or other credit so levied upon, such savings and loan association shall not permit withdrawals in respect of the share, investment certificate, or account so levied upon, and such bank, trust company, savings and loan association or safe-deposit corporation shall not permit the removal of any of the contents of the safe-deposit vault or box levied upon for a period of fifteen (15) days from the mailing of said notice or until the levy is sooner released. After fifteen (15) days from the making of said levy and the delivery of said bond, if no proceedings excepting to the sufficiency of the sureties have been commenced, or if such proceedings have been commenced, when the sureties have justified, said bank, trust company, savings and loan association or safe-deposit corporation shall comply with the levy, unless it has been sooner released, and shall not be liable to any person by reason of such compliance or by reason of the nonpayment of any check or other order for the payment of money drawn against the account or other credit so levied upon and presented while the levy is in force or by reason, while the levy is in force, or refusal to pay any withdrawal in respect of the share, investment certificate or account so levied upon, or by reason of the removal, pursuant to the levy, of any of the contents of such safe-deposit vault or box or by reason of the refusal of such bank, trust company, savings and loan association, or safe-deposit corporation to permit access to such safe-deposit vault or box by the renter thereof. The bond described above shall be executed by the judgment creditor or judgment creditors with two or more sufficient sureties. Exceptions to the sufficiency of the sureties may be taken by any person claiming to be the rightful owner of the debt, credit, or other personal property levied upon, in the same manner as upon an undertaking on attachment and when excepted to the sureties must justify in the same manner as upon an undertaking on attachment. The bank, trust company, savings and loan association, or safe-deposit corporation to whom any such bond is delivered shall deliver it as directed by the obligees thereof. Before giving access to any safe-deposit vault or box the bank, trust company, savings and loan

association, or safe-deposit corporation may demand payment to it of all costs and expenses of opening the safe-deposit vault or box and all costs and expenses of repairing any damage to the safe-deposit vault or box caused by the opening thereof.

(Amended by Stats.1974, c. 1516, p. 3377, § 18, operative Jan. 1, 1977.)

Comment. The substance of former Section 682a is continued in Section 703.340 with several exceptions. The bond provided by the second sentence of former Section 682a may be twice the amount sought to be levied upon under Section 703.340(c). Subdivision (a) of Section 703.340 provides that only so much of the account as is necessary to satisfy the amount stated in the writ is held rather than the entire account as provided in the fourth sentence of former Section 682a.

§ 682b. Levy on property containing dwelling house; notice of homestead rights

(a) Each application for a writ of execution against real property containing a dwelling house, shall be accompanied by the following notice:

"IMPORTANT NOTICE TO THE HOMEOWNER

1. You may be able to protect the real property described in the Notice of Levy from execution and forced sale if you or your family are now residing on the property.

2. If you or your spouse wish to prevent the forced sale of this property, a claim of exemption must be filed as required by Section 690.60 of the Code of Civil Procedure within twenty (20) days from the date of service of this notice.

3. For your own protection you should seek the advice of an attorney in this matter, and you should do so promptly so that your claim of exemption may be filed within twenty (20) days of the date of the service of this notice."

(b) No writ of execution shall issue on this real property unless accompanied by the notice provided for in subdivision (a).

(c) Whenever a writ of execution against real property containing a dwelling house is served upon a judgment debtor, it shall be accompanied by the notice set forth in subdivision (a).

(Added by Stats.1974, c. 1251, p. 2704, § 1, operative July 1, 1975.)

Comment. Former Section 682b is continued by Section _____.

§ 682.1 Form; recovery of money

A writ of execution issued on a judgment for the recovery of money must be substantially in the following form:

(Title of Court)

(Number and abbreviated title of action)

The People of the State of California:

To the Sheriff, Constable or Marshal of
the County of Greeting:

On a judgment was entered by the
above entitled court in the above entitled
* action in favor of as judgment creditor
* and against as judgment debtor
and said judgment was duly entered in (referring to where entered) for

- ** \$ principal,
- ** \$ attorney fees,
- ** \$ interest, and
- ** \$.....costs, making a total amount of
- ** \$ the judgment as entered, and

Whereas, according to an affidavit and/or a memorandum of costs after judgment filed herein, it appears that further sums have accrued since the entry of judgment, to wit:

- ** \$ accrued interest, and
- ** \$.....accrued costs, together with \$..... fee for the issuance of this writ, making a total of
- ** \$..... as accrued costs, accrued interest, and fees.

Credit must be given for payments and partial satisfactions in the amount of \$.....

which is to be first credited against the total accrued costs and accrued interest, with any excess credited against the judgment as entered, leaving a net balance actually due on the date of issuance of this writ of

** \$.....

of which \$..... is due on the judgment as entered and bears interest at 7 percent per annum, in the amount of \$..... per day, from the date of issuance of this writ to the date of levy, to which must be added the commissions and costs of the officer executing this writ.

Notice by mail of any sale under the writ of execution (has) (has not) been requested. The following named persons have requested such notice of sale:

Names

Addresses

After the levy has been made, a copy of this writ of execution shall be mailed by the levying officer to the judgment debtor at the address below unless a copy has been served at the time of the levy:

Name

Address

Notice to the Judgment Debtor: You may be entitled to file a claim exempting your property from execution. You may seek the advice of an attorney or may, within 10 days from the date your property was levied upon, deliver an affidavit to the levying officer seeking to exempt such property, as provided in Section 690.50 of the Code of Civil Procedure.

These presents are therefore to command you to satisfy the said judgment with interest and costs as provided by law and your costs and disbursements out of the personal property of said debtor not exempt from execution, and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the abstract of judgment was filed as provided in Section 674 of the Code of Civil Procedure, or at any time thereafter, make notice by mail of any levy pursuant to this writ of execution, and make return of this writ within not less

than 10 days nor more than 60 days after your receipt thereof, with what you have done endorsed hereon.

Given under my hand (and the seal of) on 19....

Note to printer: where the asterisk (*) appears in the foregoing form, it is intended that the printed form shall have the same arrangement and number of words in the line.

Where the double asterisk (**) appears in the foregoing form, it is intended that the dollar sign characters (\$) shall appear under one another in vertical column.

(Amended by Stats.1970, c. 1523, p. 8067, § 6; Stats.1971, c. 433, p. 858, § 15.)

Comment. Former Section 682.1 is not continued. The Judicial Council is given authority to prescribe the form of writs under the Enforcement of Judgments Law (Sections 701.110-711.110). Section 702.300(b).

§ 682.2 Entry on writ of amount of interest and costs; additional interest

Whenever a writ of execution is issued, the clerk, or, if there is no clerk, then the judge of the court, shall enter on the face of the writ the amounts of any costs and interest which have accrued from the date of entry of the judgment to the date of the issuance of the writ. The amount of interest which has accrued from the date of entry of the judgment to the date of issuance of the writ of execution shall be entered on the face of the writ in a like manner to costs if the judgment creditor has filed an affidavit as to the amount of such interest at the time of the request for the issuance of the writ. The clerk shall also enter the amount of interest which accrues daily, from the date of issuance of the writ, on the amount due on the judgment as entered.

Interest, on the amount of the judgment remaining unpaid as shown on the writ, from the date of issuance of the writ to the date of levy of execution, shall be computed by the levying officer and this amount plus the commissions and costs of the levying officer shall be added to the net balance actually due on the date of the issuance of the writ, as stated therein, in determining the total amount to be satisfied by execution. (Added Stats.1957, c. 1734, p. 3118, § 1. As amended Stats.1959, c. 534, p. 2503, § 2, operative Jan. 1, 1960.)

Comment. The first paragraph of former Section 682.2 is continued in Section 702.280(a). The authorization for the judge to act if there is no clerk is generalized in Section 702.310. The second paragraph of former Section 682.2 is continued in Section 702.280(b).

§ 682.3 Execution against earnings of judgment debtor; withholding by employer; payment to sheriff, constable or marshal; termination of execution

(a) Whenever the levy of execution is against the earnings of a judgment debtor, the employer served with the writ of execution shall withhold the amount specified in the writ from earnings then or thereafter due to the judgment debtor and not exempt under Section 690.6, and shall pay such amount, each time it is withheld, to the sheriff, constable or marshal who served the writ. If such person shall fail to pay each amount to the sheriff, constable or marshal, the judgment creditor may commence a proceeding against him for the amounts not paid. The execution shall terminate and the person served with the writ shall cease withholding sums thereunder when any one of the following events takes place:

(1) Such person receives a direction to release from the levying officer. Such release shall be issued by the levying officer in any of the following cases:

(a) Upon receipt of a written direction from the judgment creditor.

(b) Upon receipt of an order of the court in which the action is pending, or a certified copy of such order, discharging or recalling the execution or releasing the property. This subdivision shall apply only if no appeal is perfected and undertaking executed and filed as provided in Section 917.2 or a certificate to that effect has been issued by the clerk of the court.

(c) In all other cases provided by law.

(2) Such person has withheld the full amount specified in the writ of execution from the judgment debtor's earnings.

(3) The judgment debtor's employment is terminated by a resignation or dismissal at any time after service of the execution and he is not reinstated or reemployed within 90 days after such termination.

(4) A period of 90 days has passed since the time such person was served with the writ of execution.

(b) At any time after a levy on his earnings the judgment debtor may proceed to claim a full exemption of his earnings in accordance with the provisions of Sections 690.6 and 690.50. The exemption so claimed shall extend to any wages withheld pursuant to the levy of execution whether or not withheld after the claim of exemption is filed.

(c) Subject to the provisions of Section 690.50, the sheriff, constable or marshal who serves the writ of execution and receives the amounts withheld from the judgment debtor's earnings, shall account for and pay to the person entitled thereto, all sums collected under the writ, less his lawful fees and expenses at least once every 30 days, and make return on collection thereof to the court.

(Added by Stats.1971, c. 1684, p. 3612, § 2. Amended by Stats.1972, c. 648, p. 1205, § 1, urgency, eff. Aug. 9, 1972.)

Comment. [Former Section 682.3 is superseded by Chapter 4 (commencing with Section 704.110) of Title 9.]

[Existing Law]

§ 683. Return; issue of new writ; redelivery of writ for alias return

The execution may be made returnable, at any time not less than 10 nor more than 60 days after its receipt by the officer to whom it is directed, or, if the execution is upon the earnings of the judgment debtor, upon the termination of the levy of execution as provided in Section 682.3,

to the court in which the judgment is entered. When the execution is returned, the clerk must attach it to the judgment roll, or the judge must make the proper entry in the docket.

If an execution is returned unsatisfied, another may be afterward issued within the time specified in this code.

If property either personal or real be levied upon under such writ of execution but the sale thereunder be postponed beyond or not held within the return date after it is received by the officer to whom it was delivered and which has been returned to the clerk of the court in which the judgment is entered, upon request of the person in whose favor the writ runs the court may direct the clerk to redeliver said execution to the officer to whom it was directed in order to permit the officer to make an alias return of the proceedings of the sale or levy thereon as in the case of an original return of execution.

Whenever a writ of execution issued against real property containing a dwelling house has been returned, proof that notice required by Section 682b has been served shall be indicated on the writ, or separately and attached to the writ.

(Amended by Stats.1971, c. 1664, p. 3613, § 3; Stats.1974, c. 1261, p. 2706, § 2, operative July 1, 1975.)

[From Recommendation Relating to Wage Garnishment]

§ 683 (amended). Return of writ of execution

683. (a) The execution may be made returnable, at any time not less than 10 nor more than 60 days after its receipt by the officer to whom it is directed, ~~or, if the execution is upon the earnings of the judgment debtor, upon the termination of the levy of execution as provided in Section 682.3,~~ to the court in which the judgment is entered. When the execution is returned, the clerk must attach it to the judgment roll, or the judge must make the proper entry in the docket.

(b) If an execution is returned unsatisfied, another may be afterward issued within the time specified in this code.

(c) If property either personal or real be levied upon under such writ of execution but the sale thereunder be postponed beyond or not held within the return date after it is received by the officer to whom it was delivered and which has been returned to the clerk of the court in which the judgment is entered, upon request of the person in whose favor the writ runs the court may direct the clerk to redeliver said execution to the officer to whom it was directed in order to permit the officer to make an alias return of the proceedings of the sale or levy thereon as in the case of an original return of execution.

(d) Whenever a writ of execution issued against real property containing a dwelling house has been returned, proof that notice required by Section 682b has been

served shall be indicated on the writ, or separately and attached to the writ.

(e) If an earnings withholding order has been issued and served upon the employer as provided in Chapter 2.5 (commencing with Section 723.010) prior to the time the writ of execution is made returnable under subdivision (a), the execution is returnable as provided in Section 723.026.

Comment. Subdivision (a) of former Section 683 is superseded by Section 703.260(a) which differs significantly from former law. See the Comment to Section 703.260. The last sentence of subdivision (a) of former Section 683 is not continued. See Section 702.300(a) (Judicial Council may provide by rule for procedure under Title 9). The substance of subdivision (b) is continued in Section 703.110(c) (successive writs of execution). See also Sections 708.110(c) (successive writs of possession), 709.110(c) (successive writs of restitution), and 710.110(c) (successive writs of enforcement). Subdivision (c) is superseded by Section 703.260(a) which provides in effect that, if the writ of execution is levied within 90 days after issuance, the writ may be returned as late as one year after its issuance and the sale of the property must take place within the year. Subdivision (d) is continued in Section _____ . Subdivision (e) is continued in Section 703.260(b).

§ 684. Enforcement of judgment

When the judgment is for money, or the possession of real or personal property, the same may be enforced by a writ of execution; when the judgment requires the sale of property, the same may be enforced by a writ reciting such judgment, or the material parts thereof, and directing the proper officer to execute the judgment, by making the sale and applying the proceeds in conformity therewith; when the judgment requires the performance of any other act than as above designated, a certified copy of the judgment may be served upon the party against whom the same is rendered, or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the court.
(Amended by Stats.1973, c. 20, p. 86, § 9.)

Comment. Section 684 is superseded by various provisions of the Enforcement of Judgments Law, Title 9 (commencing with Section 701.110). See Sections 703.110 (writ of execution to enforce money judgment), 708.110 (writ of possession to enforce judgment for possession of personal property), 709.110 (writ of restitution to enforce judgment for possession of real property), 710.110 (writ of enforcement to enforce

judgment for sale of real or personal property), 711.110 (enforcement of types of judgments by contempt).

§ 684.1 Enforcement of judgment for possession of personal property

The sheriff, constable or marshal shall enforce a judgment for the possession of personal property in the manner prescribed by Section 514.010 or as otherwise prescribed by law; provided that when the execution requires the delivery of possession of property used as a dwelling, such as a house trailer, mobilehome, or boat, then the sheriff, constable or marshal shall, if the property be occupied, place a keeper in charge of the property, at plaintiff's expense, for at least two (2) days, and at the expiration of said period shall remove its occupants and deliver possession to the plaintiff. (Amended by Stats.1975, c. 678, p. —, § 6.)

Comment. Former Section 684.1 is continued in Sections 708.120(b) and 708.130(b). The requirement of a keeper for personal property used as a dwelling is provided by Section 514.010, incorporated by reference in Section 708.130(b).

§ 684.2 Enforcement of judgment first from property under attachment

(a) Where an attachment has previously been issued, and a judgment is recovered in the action in favor of the plaintiff, and an execution is issued thereon and delivered to the sheriff, constable, or marshal, he shall satisfy the judgment out of any property attached by him which is still subject to such attachment. He shall pay to the plaintiff the proceeds of all sales of perishable property sold by him, or of any money collected by him, or so much as is necessary to satisfy the judgment; and, if any balance remains due, he shall levy on and sell under the execution so much of the property, real or personal, as is necessary to satisfy the balance if enough for that purpose remain in his hands. Notices of the sales shall be given and the sales conducted as in other cases of sales on execution.

(b) If, after selling the property attached by him remaining in his hands, deducting his fees, and applying the proceeds, together with the money collected by him, to the payment of the judgment, any balance remains due, the sheriff, constable, or marshal shall proceed to collect such balance as upon an execution in other cases. When the judgment has been paid, the sheriff, constable, or marshal shall release any attached property unapplied on the judgment in the manner provided by Section 488.560.

(Added by Stats.1974, c. 1616, p. 8879, § 14, operative Jan. 1, 1977.)

Comment. The provisions of subdivision (a) and the first sentence of subdivision (b) of former Section 684.2 requiring resort first to attached property before applying other property to the satisfaction of the judgment have not been continued. See Sections 703.120(a) and 703.210(b) (writ of execution to be levied on property subject to execution). Section 703.230 permits the judgment debtor to obtain a court order for the release of property previously attached or its application

to the satisfaction of the judgment. The provision regarding notice of sale in the last sentence of subdivision (a) is not continued since it is unnecessary in light of the elimination of the separate treatment of previously attached property. The portion of the first sentence of subdivision (b) of former Section 684.2 pertaining to application of the proceeds is superseded by Section 703.640. The last sentence of subdivision (b) is superseded by Sections 703.230 (release of property previously attached) and 703.300 (manner of release).

§ 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.)

Comment. Former Section 685 is superseded by Sections 702.170-702.190 which differ significantly from former law. Section 702.170 provides for a basic 10-year period for enforcing judgments for the payment of money or for the possession or sale of real or personal property. See the Comment to Section 702.170. During the last year of the 10-year period, the enforceability of the judgment may be extended pursuant to Section 702.180 for another 10 years--making the judgment enforceable for a total of 20 years--by filing a notice to that effect with the court clerk. No court hearing is required. These rules apply as well to supplemental proceedings. See Section 702.170(a) and the Comment thereto. For special provisions for extending the enforceability of installment judgments, see Section 702.190.

§ 686. Execution after death of party

WHEN EXECUTION MAY ISSUE AGAINST THE PROPERTY OF A PARTY AFTER HIS DEATH. Notwithstanding the death of a party after the judgment, execution thereon may be issued, or it may be enforced, as follows:

1. In case of the death of the judgment creditor, upon the application of his executor or administrator, or successor in interest;
2. In case of the death of the judgment debtor, if the judgment be for the recovery of real or personal property, or the enforcement of a lien thereon. (Enacted 1872.)

Comment. The substance of former Section 686 is continued in Sections 702.210 (enforcement after death of judgment creditor) and 702.220 (enforcement after death of judgment debtor). Unlike subdivision (2) of former Section 686, subdivision (a) of Section 702.220 incorporates the provisions of Probate Code Section 732 regarding the manner of enforcing a money judgment.

§ 687. Officer to whom issued

Where the execution is against the property of the judgment debtor, it may be issued to the sheriff, or any constable, or marshal of any county in the State. Where it requires the delivery of real or personal property, it must be issued to the sheriff, or a constable, or marshal of the county where the property, or some part thereof, is situated. If the judgment directs or authorizes the issuing of any process requiring the sale, or the delivery of possession of, or otherwise affecting specific real property, which is then, or subsequently becomes, a part of a county other than that in which such judgment was entered, such process may be issued to, and executed by, the sheriff, or any constable, or marshal of such other county, as to the property situate therein. Executions may be issued to different counties. (Enacted 1872. As amended Stats.1907, c. 360, p. 682, § 2; Stats.1933, c. 744, p. 1887, § 134.)

Comment. The substance of former Section 687 is continued in Sections 703.110(b) (writ of execution to enforce money judgment), 708.110(b) (writ of possession to enforce judgment for possession of personal property), 709.110(b) (writ of restitution to enforcement for possession of real property), and 710.110(b) (writ of enforcement to enforce judgment for sale of real or personal property).

§ 688. Property liable; manner of levy or release; effective period of levy; exemptions

(a) All goods, chattels, moneys or other property, both real and personal, or any interest therein, of the judgment debtor, not exempt by law, and all property and rights of property levied upon under attachment in the action, are subject to execution.

(b) All property subject to execution may be levied upon or released from levy in like manner as like property may be levied upon or released from attachment, except that tangible personal property in the possession of the judgment debtor shall always be levied upon in the manner provided by Section 488.320. Notwithstanding the provisions of Title 6.5 (commencing with Section 481.010), service on the judgment debtor of a copy of the writ of execution shall be made either by personal delivery or by mail to the judgment debtor at the address furnished by the judgment creditor. To levy upon any property or debt owed to the judgment debtor which is subject to execution but for which a method of levy of attachment is not provided, the levying officer shall serve upon the person in possession of such property or owing such debt, or his agent (1) a copy of the writ of execution and (2) a notice that such property or debt is levied upon in pursuance of such writ.

(c) Until a levy, no property shall be affected by issuance of a writ of execution or its delivery to the levying officer.

(d) No levy shall bind any property for a longer period than one year from the date of the issuance of the execution, except a levy on the interests or claims of heirs, devisees, or legatees in or to assets of deceased persons remaining in the hands of executors or administrators thereof prior to distribution and payment. However, an alias execution may be issued on said judgment and levied on any property not exempt from execution.

(e) Notwithstanding subdivision (a), no cause of action nor judgment as such, nor license issued by this state to engage in any business, profession, or activity, shall be subject to levy or sale on execution.

(f) When a check, draft, money order, or other order for the withdrawal of money from a banking corporation or association, the United States, any state, or any public entity within any state, payable to the defendant on demand, comes into the possession of a levying officer under a writ of execution, the provisions of Section 488.520 are applicable.

(Amended by Stats.1970, c. 1523, p. 3068, § 6.5; Stats.1974, c. 1516, p. 3379, § 16, operative Jan. 1, 1977; Stats.1976, c. 487, p. —, § 46.)

Comment. Subdivision (a) of former Section 688 is superseded by Section 703.130. The substance of subdivision (b) is continued in Sections 703.300 (release from levy), 703.310 (levy of execution in manner of levy of attachment), and 703.320 (method of levy of execution where no special method applicable). Subdivision (c) is continued in Section 703.240. The substance of the first sentence of subdivision (d) is continued in Section 703.270. The last sentence of subdivision (d) is not continued. See Section 703.110 (application for writ, successive writs). Subdivision (e) is superseded by Sections 703.130(b)(1) (alcoholic beverage license not subject to execution), 703.130(b)(4) (pending cause of action not subject to execution), 703.130(b)(5) (nonfinal judgment not subject to execution), 703.510(b) (judgment may be sold only pursuant to a court order), 705.320 (receiver to transfer alcoholic

beverage license), and [707.120 (property that may not be reached to satisfy a money judgment)]. The substance of subdivision (f) is continued in Section 703.290.

§ 688.1 Judgment creditor of plaintiff; order granting lien; notice; intervention; extent of lien; endorsement upon judgment and abstract

(a) Except as provided for in subdivision (b), upon motion of a judgment creditor of any party in an action or special proceeding made in the court in which the action or proceeding is pending upon written notice to all parties, the court or judge thereof may, in his discretion, order that the judgment creditor be granted a lien upon the cause of action, and upon any judgment subsequently procured in such action or proceeding, and, during the pendency of such action, may permit such judgment creditor to intervene therein. Such judgment creditor shall have a lien to the extent of his judgment upon all moneys recovered by his judgment debtor in such action or proceeding and no compromise, settlement or satisfaction shall be entered into by or on behalf of such debtor without the consent of such judgment creditor, unless his lien is sooner satisfied or discharged. The clerk or judge of the court shall endorse upon the judgment recovered in such action or proceeding a statement of the existence of the lien, the date of the entry of the order creating the lien, and the place where entered, and any abstract issued upon the judgment shall contain, in addition to the matters set forth in Section 674 of the Code of Civil Procedure, a statement of the lien in favor of such judgment creditor.

(b) Nothing in this section shall be construed to permit an assignee by operation of law of a party to a personal injury action to acquire any interest in or lien rights upon any moneys recovered by such party for general damages.

(Amended by Stats.1968, c. 1036, p. 2001, § 1; Stats.1970, c. 1245, p. 2335, § 1; Stats.1970, c. 1623, p. 3069, § 7.5.)

Comment. The substance of subdivision (a) of former Section 688.1 is continued in Sections 705.610-705.630. Subdivision (b) is not continued because it has been held to be in conflict with the Bankruptcy Act. See In re Kanter, 505 F.2d 228 (9th Cir. 1974), aff'g, 345 F. Supp. 1151 (C.D. Cal. 1972).

§ 689. Third party claims; release; undertaking by plaintiff; justification of sureties; sufficiency of undertaking; appraisal of property; liability of officer; hearing; notices; continuance; protective orders; jury trial; appeals

If tangible or intangible personal property levied on, whether or not it be in the actual possession of the levying officer, is claimed by a third person as his property by a written claim verified by his oath

or that of his agent, setting out the reasonable value thereof, his title and right to the possession thereof and delivered, together with a copy thereof, to the officer making the levy, such officer must release the property and the levy unless the plaintiff, or the person in whose favor the writ runs, within five days after written demand by such officer, made by registered or certified mail within five days after being served with such verified claim, gives such officer an undertaking executed by at least two good and sufficient sureties, in a sum equal to double the value of the property levied upon.

Such undertaking shall be made in favor of and shall indemnify such third person against loss, liability, damages, costs and counsel fees, by reason of such levy or such seizing, taking, collecting, withholding, or sale of such property by such officer; provided, however, that where the property levied upon is required by law to be registered or recorded in the name of the owner and it appears that at the time of the levy the defendant or judgment debtor was the registered or record owner of such property and the plaintiff, or the person in whose favor the writ runs, caused the levy to be made and maintained in good faith, and in reliance upon such registered or record ownership, there shall be no liability thereunder to the third person by the plaintiff, or the person in whose favor the writ runs, or his sureties, or the levying officer.

Exceptions to the sufficiency of the sureties and their justification may be had and taken in the same manner as upon an undertaking on attachment. If they, or others in their place, fail to justify at the time and place appointed, such officer must release the property and the levy; provided, however, that if no exception is taken within five days after notice of receipt of the undertaking, the third person shall be deemed to have waived any and all objections to the sufficiency of the sureties.

If objection be made to such undertaking, by such third person, on the ground that the amount thereof is not sufficient, or if for any reason it becomes necessary to ascertain the value of the property involved, the property involved may be appraised by one or more disinterested persons, appointed for that purpose by the court in which the action is pending or from which the writ issued, or by a judge thereof, or the court or judge may direct a hearing to determine the value of such property.

If, upon such appraisal or hearing, the court or judge finds that the undertaking given is not sufficient, an order shall be made fixing the amount of such undertaking, and within five days thereafter an undertaking in the amount so fixed may be given in the same form and manner and with the same effect as the original.

The officer making the levy may demand and exact the undertaking herein provided for notwithstanding any defect, informality or insufficiency of the verified claim delivered to him. Such officer shall not be liable for damages to any such third person for the levy upon, or the collection, taking, keeping or sale of such property if no claim is delivered as herein provided, nor, in any event, shall such officer be liable for the levy upon, or the holding, release or other disposition of such property in accordance with the provisions of this section.

If such undertaking be given, the levy shall continue and such officer shall retain any property in his possession for the purposes of the levy under the writ; provided, however, that if an undertaking be given under the provisions of Section 710b of this code, such property and the levy shall be released.

Whenever a verified third party claim is delivered to the officer as herein provided, upon levy of execution or attachment (whether any undertaking hereinabove mentioned be given or not), the plaintiff, or the person in whose favor the writ runs, the third party claimant, or any one or more joint third party claimants, shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining title to the property in question. Such hearing must be granted by the said court upon petition therefor, which must be filed within 15 days after the delivery of the third party claim to the officer. Such hearing must be had within 20 days from the filing of such petition, unless continued as herein provided. Ten days' notice of such hearing must be given to the officer, to the plaintiff or the person in whose favor the writ runs, and to the third party claimant, or their attorneys, which notice must specify that the hearing is for the purpose of determining title to the property in question; provided, that no such notice need to be given to the party filing the petition. The court may continue the hearing beyond the said 20-day period, but good cause must be shown for any such continuance. Whenever the petition for such hearing is filed by the third party claimant, or by any one or more joint third party claimants, neither such petition nor proceedings pursuant thereto may be dismissed without consent of the plaintiff or the person in whose favor the writ runs. The court may order the sale of any perishable property held by such officer and direct the disposition of the proceeds of such sale. The court may, by order, stay execution sale, or forbid a transfer or other disposition of the property involved, until the proceedings for the determination of such title can be commenced and prosecuted to termination, and may require, as a condition of such order, such bond as the court may deem necessary. Such orders may be modified or vacated by the judge granting the same, or by the court in which the proceeding is pending, at any time prior to the termination of such proceedings, upon such terms as may be just. At the hearing had for the purpose of determining title, the third party claimant shall have the burden of the proof. The third party claim delivered to the officer shall be filed by him with the court and shall constitute the pleading of such third party claimant, subject to the power of the court to permit an amendment in the interest of justice, and it shall be deemed controverted by the plaintiff or other person in whose favor the writ runs. Nothing herein contained shall be construed to deprive anybody of the right to a jury trial in any case where, by the Constitution, such right is given, but a jury trial shall be waived in any such case in like manner as in the trial of an action. No findings shall be required in any proceedings under this section. At the conclusion of the hearing the court shall give judgment determining the title to the property in question, which shall be conclusive as to the right of the plaintiff, or other person in whose favor the writ runs, to have said property levied upon, taken, or held, by the officer and to subject said property to payment or other satisfaction of his

judgment. In such judgment the court may make all proper orders for the disposition of such property or the proceeds thereof. If the property or levy shall have been released by the officer for want of an undertaking, and final judgment shall go for the plaintiff or other person in whose favor the writ runs, the officer shall retake or levy upon the property on such writ if the writ is still in his hands, or if the writ shall have been returned, another writ may be issued on which the officer may take or otherwise levy upon such property. An appeal lies from any judgment determining title under this section, such appeal to be taken in the manner provided for appeals from the court in which such proceeding is had. (Enacted 1872. As amended Stats.1891, c. 32, p. 20, § 1; Stats.1907, c. 360, p. 683, § 4; Stats.1925, c. 466, p. 1004, § 1; Stats.1929, c. 341, p. 661, § 1; Stats. 1933, c. 744, p. 1887, § 135; Stats.1935, c. 722, p. 1958, § 15; Stats. 1937, c. 577, p. 1621, § 1; Stats.1951, c. 1737, p. 4122, § 107, operative Jan. 1, 1952; Stats.1957, c. 422, p. 1275, § 1; Stats.1961, c. 322, p. 1363, § 1.)

Comment. The first paragraph of former Section 689 is superseded by Sections 706.210-706.230 and 706.270. Under Section 706.210, the third person may claim only a superior interest and the third person need not claim the property "as his property." Under subdivision (b) of Section 706.230, the property is released if the judgment creditor does not provide an undertaking or make a deposit within 10 days after the levying officer sends the demand rather than within five days after the claim is served on the judgment creditor. Section 706.220(a) requires the levying officer to mail the claim to the judgment creditor within five days after it is served by the third person. See Section 702.250 (manner of mailing notice). The amount of the undertaking is specified in Section 706.270(a). The requirement of two sureties is continued by Section 706.120 which incorporates the general provisions regarding undertakings in Article 1 (commencing with Section 489.010) of Chapter 9 of Title 6.5, the Attachment Law. See Section 489.040.

The substance of the second paragraph of former Section 689 is continued in Section 706.270. The third, fourth, and fifth paragraphs, relating to exceptions to the sufficiency of sureties, are superseded by Article 1 (commencing with Section 489.010) of Chapter 9 of Title 6.5, incorporated by Section 706.120.

The first sentence of the sixth paragraph of former Section 689 is continued in Section 706.220(b). The second sentence is superseded by Section _____.

The substance of the seventh paragraph of former Section 689 is continued in Section 706.250(a); former Section 710b is superseded by Sections 706.310-706.340.

The first, second, third, and fifth sentences of the eighth paragraph of former Section 689 are superseded by Section 706.310. The fourth sentence is continued in Section 706.320. The sixth sentence is continued in Section 706.330(b). The seventh, eighth, and ninth sentences are superseded by Section 706.340 (disposition of property during pendency of proceedings) and 706.360 (disposition of property after hearing). The tenth and eleventh sentences are continued in Section 706.330(a) and (c) (pleadings; burden of proof). The twelfth sentence is continued in Section 706.350 (jury trial). The thirteenth sentence is continued in Section 706.370 (findings). The fourteenth and fifteenth sentences are continued in Section 706.360 (disposition of property after hearing). The sixteenth sentence is continued in Section 706.390 (relief; additional writs). The last sentence is continued in Section 706.380.

§ 689a. Personal property under purchase contract or subject to chattel mortgage

Personal property in possession of the buyer under an executory agreement of sale and property on which there is a chattel mortgage may be taken under attachment or execution issued at the suit of a creditor of the buyer or mortgagor, notwithstanding any provision in the agreement or mortgage for default or forfeiture in case of levy or change of possession. (Added Stats.1921, c. 292, p. 391, § 1. As amended Stats.1945, c. 1311, p. 2461, § 1; Stats.1953, c. 1796, p. 3578, § 2.)

Comment. Former Section 689a is not continued. It is unnecessary in view of Commercial Code Section 9311.

§ 689b. Personal property under purchase contract or mortgage; motor vehicles; claim of seller or mortgagee; tender and deposit; determining validity of contract or mortgage

(1) Vehicle or vessel; notice to legal owner.

(1) Where the property levied upon is a vehicle or a vessel required to be registered with the Department of Motor Vehicles, the officer shall forthwith determine from such department the name and address of the legal owner of the vehicle or vessel and shall notify any such legal owner who is not also the registered owner of such vehicle or vessel of the levy by registered mail or certified mail or personal service.

(2) Claim of seller or mortgagee

(2) A seller or mortgagee may file with the officer levying on personal property a verified written claim, together with a copy thereof, containing a detailed statement of the sales contract or mortgage and the total amount of sums due or to accrue to him under the contract or mortgage, above setoffs, with interest to date of tender, and also stating therein his address within this state for the purpose of permitting service by mail upon him of any notice in connection with said claim. The officer making the levy may demand and exact the payment or undertaking herein provided for, notwithstanding any defect, informality or insufficiency of the verified claim delivered to him.

(3) Demand for claimed debt.

(3) Within five days after being served with such verified claim the officer levying on such property must make demand by registered mail or certified mail on the plaintiff or his attorney for the amount of the claimed debt and interest due to date of tender or the delivery to the officer of an undertaking and statement as hereinafter provided, which demand shall include the copy of such claim.

(4) Deposit or undertaking, release.

(4) Within five days after receipt by the plaintiff or his attorney of such officer's demand the plaintiff shall deposit with the officer the amount of such debt and interest or deliver the undertaking and statement hereinafter provided, or the levying officer must release the property.

(5) Payment or tender.

(5) Within five days after receipt by him of such deposit the officer must pay or tender same to the seller or mortgagee; provided, that should such deposit be made by check the officer shall be allowed a reasonable time for check to clear.

(6) Tender accepted.

(6) If the tender is accepted, all right, title, and interest of the seller or mortgagee in the property levied upon shall pass to the party to the action making the payment.

(7) Tender refused.

(7) If the tender is refused, the amount thereof shall be deposited with the county treasurer, payable to the order of the seller or mortgagee.

(8) Sale, suspension, authorization.

(8) Until such payment or deposit covering such claim is made, or the undertaking and statement herein provided delivered to the officer, the property cannot be sold under the levy; but when made (and also in case the seller or mortgagee fails to render his claim within 30 days after the personal service upon him of a written demand therefor, which service must be attested by the certificate of the serving officer, filed before the sale with the papers of the action wherein the attachment or execution was issued), then the officer must retain the property, and, in the case of an execution sale it in the manner provided by law, free of all liens or claims of the seller or mortgagee. Such written demand of the levying officer may be served by him, or for him by any sheriff, marshal, or constable whose office is closer to the place of service, and whose fees and mileage shall be paid out of the prepaid fees in the possession of the levying officer.

(9) Statement of invalidity, undertaking, retention or sale.

(9) When an attachment or execution creditor presents to the officer, within the time allowed from the officer's demand, a verified statement that

the sales contract or mortgage is void or invalid for the reasons specified therein, and delivers to the officer a good and sufficient undertaking in double the amount of the indebtedness claimed by the seller or mortgagee or double the value of the personal property as the officer may determine and require, the officer shall retain the property and in case of an execution sell it in the manner provided by law, free of all liens or claims of the seller or mortgagee.

Undertaking.

The undertaking shall be made to the seller or mortgagee and shall indemnify him for the taking of the property against loss, liability, damages, costs and counsel fees. Exceptions to the sufficiency of the sureties and their justification may be had and taken in the same manner as upon an undertaking on attachment.

Liability officer.

If such undertaking be given, such officer shall not be liable for damages to any such claimant for the taking, keeping, or sale of such property in accordance with the provisions of this code.

(10) Hearing, judgment, jurisdiction.

(10) Whenever a verified claim herein is delivered to the officer as herein provided, upon levy of execution or attachment (whether any undertaking hereinabove mentioned be given or not), the plaintiff, or the person in whose favor the writ runs, the claimant, or any one or more such joint claimants, shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the validity of such sales contract or chattel mortgage. Such hearing may be had and taken, and stay of execution or other order made in the same manner as on third party claims under Section 689 of this code. At the conclusion of the hearing the court shall give judgment determining the validity of the claim under the sales contract or chattel mortgage which shall be conclusive between the claimant and the plaintiff, or other person in whose favor the writ runs. The court in which the action is pending, or which issued such writ, shall have original jurisdiction in all proceedings under this section.

Retaking of released property.

If the property shall have been released by the officer for want of an undertaking or payment, and final judgment shall go for the plaintiff or other person in whose favor the writ runs, the officer shall retake the property on such writ, if the writ shall still be in his hands, or if the writ shall have been returned, another writ may be issued on which the officer may take such property.

(Amended by Stats.1970, c. 1428, p. 2728, § 1.)

Comment. Subdivision (1) of former Section 689b is superseded by Section 488.____, made applicable after judgment by Section 703.____. The first sentence of subdivision (2) is superseded by Section 706.210 which permits a secured party to claim a superior interest in the property. However, the entire amount of the secured interest is not claimed unless it is due. See the Comment to Section 706.210. See Section 706.110 (secured party defined). The last sentence of subdivision (2)

is continued in Section 706.220(b). Subdivision (3) is superseded by Section 706.220(a). See Section 702.250 (manner of mailing notice). Subdivision (4) is superseded by Section 706.230(a) which dates the time within which the deposit or undertaking must be given to the levying officer from the time of the demand is sent rather than its receipt. Subdivisions (5), (6), and (7) are continued in Section 706.240. Subdivision (8) is superseded by Section 706.250 (delay of sale until deposit or undertaking; interest of third person in property sold) and Sections 706.410 (judgment creditor's demand for third party claim) and 706.420 (service of demand for claim). Under Section 706.250(a), the property remains subject to liens and claims which are not required or permitted to be paid off pursuant to Section 706.230(a). The first paragraph of subdivision (9) is superseded by Section 706.250 except that the third person is not required to deliver a verified statement that the security interest claimed is invalid, and the levying officer does not have the discretion to require an undertaking in the amount of twice the value of the property. The first sentence of the second paragraph of subdivision (9) is continued in Section 706.270(a). The second sentence of the second paragraph of subdivision (9) is continued in Section 706.120. The third paragraph of subdivision (9) is superseded by Section _____. The first sentence of the first paragraph of subdivision (10) is continued in Section 706.310(a). The second sentence of the first paragraph of subdivision (10) is unnecessary because the third party claims procedures formerly contained in Sections 689 and 689b are merged in Chapter 6 (commencing with Section 706.110). The third sentence of subdivision (10) of the first paragraph is continued in Section 706.360. The fourth sentence of the first paragraph of subdivision (10) is superseded by Section 706.310(b). The second paragraph of subdivision (10) is continued in Section 706.390.

§ 689c. Proceeds of sale; application

When the property thus taken is sold under process the officer must apply the proceeds of the sale as follows:

1. To the repayment of the sum paid to the seller or the mortgagee, or deposited to his order, with interest from the date of such payment or deposit.

2. The balance, if any, in like manner as the proceeds of sales under execution are applied in other cases. (Added Stats.1921, c. 292, p. 392, § 3. As amended Stats.1949, c. 368, p. 645, § 1.)

Comment. Former Section 689c is superseded by Sections 706.340 (disposition of property after hearing on third party claim) and 703.640 (disposition of proceeds of sale).

§ 689d. Warrant to collect tax; hearing to determine title

In cases in which a warrant or notice of levy is issued by the State of California, or a department or agency thereof, pursuant to Section 1755 or 1785 of the Unemployment Insurance Code, or Section 6776, 7881, 9001, 10111, 18906, 26191, 30341 or 32365 of the Revenue and Taxation Code, for the collection of tax liability owed to said state, a department or agency thereof, a hearing, for the purpose of determining title to the property in question as provided in Section 689 of this code, may be held by the superior court of the county, or city and county, in which the property levied upon is located.

(Amended by Stats.1971, c. 873, p. 1715, § 1.)

Comment. Former Section 689d is continued in Section 706.130.

§ 689.5 Third party claims; failure to furnish bond; delivery of property to claimant

Whenever, under Section 689 or 689b of this code a claim has been filed as to property levied on and the plaintiff has failed to furnish or maintain a sufficient undertaking to authorize the levying officer to continue to hold the property and such officer is unable to find the defendant to deliver the property, the levying officers shall notify the defendant in writing at his last known address, and if within ten (10) days thereafter the levying officer is unable to locate the defendant he must return the property to the party filing the third party claim. (Added Stats.1941, c. 1111, p. 2815, § 1. As amended Stats.1947, c. 721, p. 1774, § 1; Stats.1953, c. 1796, p. 3577, § 1.)

Comment. The substance of former Section 689.5 is continued in Section 706.260.

* * * * *

[Sections 690-690.52 omitted.]

§ 691. Execution of writ; collection or sale of things in action; sales; excess proceeds; debtor's indication of property to be levied upon

The officer to whom the writ is directed, must execute the writ against the property of the judgment debtor, by levying on a sufficient amount of property, if there be sufficient; collecting or selling

the things in action, and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be returned to the judgment debtor, unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of such officer, he must levy only on such part of the property as the judgment debtor may indicate, if the property indicated be amply sufficient to satisfy the judgment and costs. (Enacted 1872. As amended Code Am.1873-74, c. 383, p. 321, § 93; Stats.1933, c. 744, p. 1888, § 136.)

Comment. The first sentence of former Section 691 is continued in Sections 703.120(a) (contents of writ of execution), 703.210(b) (execution of writ), and 703.640 (disposition of proceeds) except that Section 703.510(b) requires a court order before chattel paper, negotiable instruments, accounts receivable, choses in action, judgments, or other rights to payment may be sold. The second sentence is continued in Sections 703.210(b) and 703.640(a)(7). The last sentence is not continued, but the judgment debtor is permitted to direct the order of sale of property. Section 703.540(d).

§ 892. Sale on execution; notice

Before the sale of property on execution, notice thereof must be given as follows:

(1) Perishable property.

1. In case of perishable property: by posting written notice of the time and place of sale in three public places in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in three public places in the judicial district in which the property is to be sold, for such time as may be reasonable, considering the character and condition of the property.

(2) Personal property generally.

2. In case of other personal property: by posting a similar notice in three public places in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in three public places in the judicial district in which the property is to be sold, for not less than 10 days and also, not less than 10 days prior to the sale, by mailing a notice of the time and place of the sale to the judgment debtor at his business or residence address last known to the judgment creditor or his attorney or delivering such notice to the judgment debtor. It shall be the duty of the party delivering an execution to an officer for levy to furnish the information required by such levying officer to comply with the provisions of this subdivision.

(3) Real estate.

3. In case of real property or a leasehold estate therein: by posting a similar notice particularly describing the property at least 20 days before the date of sale, in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in

the judicial district in which the property is to be sold and publishing a copy thereof once a week for the same period, in some newspaper of general circulation published in the city in which the property or the real property in which such a leasehold estate was demised or some part thereof is situated, if any part thereof is situated in a city, if not, then in some newspaper of general circulation published in the judicial district in which the property or some part thereof is situated, or, in case no newspaper of general circulation is published in the city or judicial district, as the case may be, in some newspaper of general circulation published in the county in which the property or some part thereof is situated and at least 20 days before the date of sale by mailing by certified mail a notice of the time and place of sale to the judgment debtor at his business or residence address last known to the judgment creditor or his attorney or delivering such notice to the judgment debtor. It shall be the duty of the party delivering an execution to an officer for levy to furnish the information required by the levying officer to comply with the provisions of this subdivision. Where real property is to be sold under execution upon a judgment a copy of said notice shall be posted in some conspicuous place on the property to be sold, at least 20 days before date of sale, and where a leasehold estate in real property is to be sold under execution upon a judgment a copy of said notice shall be posted in some conspicuous place on the real property in which such a leasehold estate was demised, at least 20 days before date of sale. In addition to particularly describing the property, the notice shall describe the property by giving its street address, if any, or other common designation, if any; but, if a legal description of the property is given, the validity of the notice shall not be affected by the fact that the street address or other common designation recited is erroneous or that the street address or other common designation is omitted. The term newspaper of general circulation as used herein is as defined in Article 1 (commencing with Section 6000) of Chapter 1, Division 7, Title 1 of the Government Code. The term "judgment debtor" does not include a trustor or mortgagor.

(4) Specie payment.

4. When the judgment under which the property is to be sold is made payable in a specified kind of money or currency, the several notices required by this section must state the kind of money or currency in which bids may be made at such sale, which must be the same as that specified in the judgment.

(Amended by Stats.1967, c. 971, p. 2599, § 1; Stats.1968, c. 248, p. 555, § 1; Stats.1968, c. 391, p. 824, § 1; Stats.1968, c. 1086, p. 2022, § 3; Stats.1969, c. 149, p. 393, § 1; Stats.1970, c. 279, p. 558, § 1; Stats.1971, c. 1312, p. 2612, § 1; Stats.1972, c. 1056, p. 1944, § 6.)

Comment. The introductory clause of former Section 692 is continued in Section 703.520(a). Subdivision 1 of former Section 692 is continued in subdivisions (c) and (d) of Section 703.520. The first sentence of subdivision 2 of former Section 692 is continued in subdivisions (c) and (e) of Section 703.520. The last sentence of subdivision 2 is continued in Sections 702.260 (judgment creditor's instructions to levying officer) and 703.510 (sale of property upon receipt of instructions). Subdivision 3 of former Section 692 is continued in Section 703.520(f). Subdivision 4 of former Section 692 is not continued.

§ 692a. Request for notice of execution sale; filing; contents; notation on writ; mailing notice

In any case in which a judgment has been entered as provided in Section 668 of the Code of Civil Procedure, any person may file with the clerk a written request that he be given notice by mailing of any sale under any execution issued upon said judgment. In any such request such person shall specify the title of the court, case and number of the action in which such judgment was rendered and the date of entry thereof and shall give the address to which he desires such notice of execution sale to be mailed. Whenever a writ of execution is thereafter issued upon such judgment, it shall be the duty of the clerk to note upon such writ the fact that notice by mailing has or has not been requested. If a notice by mailing of any sale under any execution has been requested, the clerk shall also note upon such writ the name and address of such person as set forth in such request. It shall be the duty of any officer conducting a sale under any writ of execution upon which appears such notation to mail a copy of the notice of time and place of sale to such person at the address noted upon the writ. The copy of the notice shall be mailed at the time notice is posted pursuant to Section 692 of the Code of Civil Procedure. (Added Stats.1937, c. 502, p. 1491, § 2. As amended Stats.1957, c. 2081, p. 3698, § 1.)

Comment. The substance of former Section 692a is continued in Section 702.290.

§ 693. Sale without notice; forfeiture and damages; taking down or defacing notice, forfeiture

An officer selling without the notice prescribed by the last section forfeits one hundred dollars (\$100) to the aggrieved party, in addition to his actual damages; and a person wilfully taking down or defacing the notice posted, if done before the sale or the satisfaction of judgment (if the judgment be satisfied before sale), forfeits five hundred dollars (\$500). (Enacted 1872. As amended Stats.1957, c. 1914, p. 3345, § 1.)

Comment. The substance of former Section 693 is continued in Section 703.530 except that the \$100 forfeiture by the levying officer is not continued and the new section provides that the \$500 forfeiture goes to the county where the sale is held.

§ 694. Sale; auction; hours; persons ineligible to purchase; exhibition of personal property; separate parcels of real estate; direction of order in which property sold; postponement

All sales of property under execution must be held in the county where said property or some part thereof is situated, and must be made at auction, to the highest bidder, between the hours of 9 in the morning and 5 in the afternoon. After sufficient property has been sold to satisfy the execution, no more can be sold. Neither the officer holding the execution nor his deputy can become a purchaser or be interested in any purchase, at such sale. When the sale is under execution and is of personal property, capable of manual delivery, it must be within view of those who attend the sale, and

be sold in such parcels as are likely to bring the highest price; and when the sale is under execution and is of real property, consisting of several known lots or parcels, they must be sold separately; or when a portion of said real property is claimed by a third person, and he requires it to be sold separately, such portion can be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately and the sheriff must follow such direction.

Whenever a request in writing signed by the debtor and creditor for a postponement of the sale to an agreed date and hour, is given to the officer conducting the sale under execution, such officer shall thereupon by public declaration postpone the sale to the day and hour so fixed in such request to be held at the place originally fixed by the officer for the sale. In case of postponements, notice of each thereof must be given by public declaration by the officer at the time and place last appointed for the sale. No other notice of postponed sale need be given.

(Amended by Stats.1972, c. 1056, p. 1946, § 7.)

Comment. The first sentence of former Section 694 is continued in Section 703.540(a); however, the new provision permits a variance from the normal rule if so ordered by the court. The second sentence of former Section 694 is continued in Section 703.540(e). The third sentence of former Section 694 is continued in Section 703.570.

The fourth and fifth sentences of former Section 694 are superseded by subdivisions (b), (c), and (d) of Section 703.540. Subdivision (b) permits a sale of personal property capable of manual delivery out of the view of those who attend the sale, if the court so orders. Subdivision (c) states the general rule that property is to be sold in such groups as are likely to bring the highest price, subject to the exception stated in subdivision (d) that the judgment debtor, whether or not present at the sale, may direct the groups and order in which property is sold. The authority of a third person to direct a separate sale of property he claims is not continued. Where a third party claim has been made, however, the property may not be sold without the consent of the third person unless a deposit is made or undertaking is given. Section 706.250.

The second paragraph of former Section 694 is continued in Section 703.550.

§ 695. Nonpayment of bid; resale; recovery from defaulting bidder

If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be

occasioned thereby, the officer may recover the amount of such loss, with costs, from the bidder so refusing, in any Court of competent jurisdiction. (Enacted 1872. As amended Code Am.1873-74, c. 383, p. 323, § 95.)

Comment. The first portion of former Section 695 is superseded by Section 703.580(a) which differs from the former provision in that it makes clear that, where a high bidder defaults, the property may be sold immediately to the next highest bidder or at a new sale. The second portion of former Section 695 is superseded by Section 703.580(b) which provides that the judgment creditor or judgment debtor rather than the levying officer may bring an action for the loss.

§ 696. Nonpayment of bid; rejection of subsequent bids of defaulting bidder on resale

When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such person. (Enacted 1872. As amended Code Am.1873-74, c. 383, p. 323, § 96.)

Comment. Former Section 696 is superseded by Section 703.590 which limits the power of the levying officer to refuse to accept bids from a person who has defaulted on a bid to a later sale of the same property.

§ 697. Nonpayment of bid; resale; liability of officer

THESE TWO SECTIONS NOT TO MAKE OFFICER LIABLE, ETC. The two preceding sections must not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser, and the amount collected from the purchaser refusing to pay. (Enacted 1872.)

Comment. The substance of former Section 697 is continued in Section 703.600 except for the last clause which is not continued because the levying officer is no longer provided with authority to sue the defaulting bidder. See Section 703.580(b).

§ 698. Personal property capable of manual delivery; delivery; certificate of sale

PERSONAL PROPERTY CAPABLE OF MANUAL DELIVERY, HOW DELIVERED TO PURCHASER. When the purchaser of any personal property capable of manual delivery pays the purchase money, the officer making the sale must deliver to the purchaser the property, and, if desired, execute and deliver to him a certificate of the sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied. (Enacted 1872.)

Comment. Former Section 698 is superseded by Section 703.610 which requires the levying officer to execute a certificate of sale in every case rather than at the request of the purchaser.

§ 699. Personal property not capable of manual delivery; certificate of sale

PERSONAL PROPERTY NOT CAPABLE OF MANUAL DELIVERY, HOW SOLD AND DELIVERED. When the purchaser of any personal property not capable of manual delivery pays the purchase money, the officer making the sale must execute and deliver to the purchaser a certificate of sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied. (Enacted 1872.)

Comment. The substance of former Section 699 is continued in Section 703.610 which also provides that the levying officer shall, pursuant to court order, assist the purchaser in obtaining possession of the property.

§ 700. Real estate; title acquired by purchaser

Upon a sale of real property, the purchaser is substituted to and acquires all the right, title, interest, and claim of the judgment debtor thereto on the date of the levy of the execution thereon, where such judgment is not a lien upon such property; If the judgment is a lien upon the real property the purchaser is substituted to and acquires all the right, title, interest, and claim of the judgment debtor on or at any time after the day such judgment became a lien on such property; and in case property, real or personal, has been attached in the action, the purchaser is substituted to and acquires all the right, title, interest and claim of the judgment debtor on or at any time after the day the attachment was levied upon such property. (Enacted 1872. As amended Stats.1907, c. 361, p. 684, § 1.)

Comment. The substance of the provisions of former Section 700 relating to real property is continued in Section 703.620(b). The provision in the last clause concerning the title taken where personal property has been previously attached is continued in Section 703.610(b).

§ 700a. Absolute sales; property subject to redemption; certificate of sale, contents; notice of right of redemption; liability of officer

(a) Sales of personal property, and of real property, when the estate therein is less than a leasehold of two years' unexpired term, are absolute. In all other cases the property is subject to redemption, as provided in this chapter. The officer must give to the purchaser a certificate of sale, and file a duplicate thereof for record in the office of the county recorder of the county, which certificate must state the date of the judgment under which the sale was made and the names of the parties thereto, and contain:

1. A particular description of the real property sold;
2. The price bid for each distinct lot or parcel;
3. The whole price paid;
4. If the property is subject to redemption, the certificate must so declare, and if the redemption can be effected only in a particular kind of money or currency, that fact must be stated.

(b) If the property is subject to redemption the officer shall inform the judgment debtor, by certified mail or personal service, of his right of redemption. Failure to give such notice within one week after the sale shall make the officer liable to the judgment debtor for actual damages, in addition to a penalty of one hundred dollars (\$100).

(Amended by Stats.1971, c. 1312, p. 2613, § 2.)

Comment. The first sentence of subdivision (a) of former Section 700a is continued in Section 703.660. The second sentence is continued in Section 703.710. The provisions of the third sentence concerning the certificate of sale are continued in Sections 703.620(a) (delivery and recording of certificate of sale) and 703.630 (contents of certificate of sale) except that the provision regarding redemption in a particular kind of money in the last portion of the fourth portion of the third sentence is not continued, and the certificate is required to state the price paid rather than the price bid. The first sentence of subdivision (b) of former Section 700a is continued in Section 703.740 [except that the notice may be mailed by first class rather than certified mail. See Section 702.250 (manner of mailing notice)]. The last sentence of subdivision (b) is not continued. See Section 703.740 (notice of right of redemption required to be given promptly after sale).

§ 701. Redemption; persons entitled to; redemptioners defined

REAL PROPERTY SO SOLD, BY WHOM IT MAY BE REDEEMED. Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

1. The judgment debtor, or his successor in interest, in the whole or any part of the property;
2. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are, in this Chapter, termed redemptioners. (Enacted 1872.)

Comment. Former Section 701 is superseded by Section 703.730 which provides for redemption only by the judgment debtor or the successors in interest of the judgment debtor.

§ 702. Redemption; time; payment; disagreement as to amount; proceedings for determination; notice and hearing; certificate

The judgment debtor, or redemptioner, may redeem the property from the purchaser any time within 12 months after the sale on paying the purchaser the amount of his purchase, with two-thirds of 1 percent per month thereon in addition, up to the time of redemption, together with the amount of any assessment or taxes, and any reasonable sum for fire insurance, maintenance, upkeep, or repair of the improvements upon the property, and any sum paid on a prior obligation secured by the property to the extent such payment was necessary for the protection of his interest, which the purchaser may have paid thereon after purchase, and interest on such amounts, and if the purchaser be also a creditor, having a prior lien to that of the redemptioner, other than the judgment under which said purchase was made, the amount of such lien with interest. If judgment debtor, redemptioner, or tenant in possession, refuse the right of entry to the purchaser, his agent or contractor, such purchaser may petition the court, out of which execution or order authorizing the sale, was issued, in the same manner as hereafter provided for determining the amount due to the purchaser in the event of a disagreement, and the court may issue an order authorizing purchaser, his agent or contractor, during reasonable hours, to repair and maintain the premises.

In the event there shall be a disagreement between the purchaser and redemptioner as to whether any sum demanded by the purchaser is a proper charge to be added to the amount required for redemption, the proposed redemptioner shall thereupon pay to the clerk of the court out of which execution, or order authorizing the sale, was issued the amount necessary for redemption, less the amount in dispute, and shall at the same time file with said clerk a petition in writing setting forth specifically the item or items demanded to which he objects, together with his reason for such objections, and asking that such amount be determined by the court; said clerk shall thereupon fix a day, not less than 5 nor more than 10 days from the date of such filing, for the hearing of said objections; a copy of said petition, together with a notice of hearing giving the time and place thereof, shall be served by the person seeking redemption, or his attorney, upon the purchaser not less than two days before the day of hearing; upon the day fixed the court in which the order of sale or execution was originally issued shall determine, by order duly entered in the minutes of said court, the amount required for redemption, either upon affidavit or evidence satisfactory to the court; and when the amount has been so determined, in the event the amount theretofore deposited with the clerk shall be sufficient the same shall be forthwith paid to the purchaser upon his execution of a proper certificate of redemption; in the event an additional amount to that theretofore paid to the clerk is requisite, the redemptioner shall forthwith pay such additional amount to the clerk who shall then pay the whole amount necessary to the purchaser upon his execution of a proper certificate of redemption; the certificate of redemption so issued may be deposited with the clerk for delivery to the

redemption, or given to the redemptioner at the time of payment. (Enacted 1872. As amended Code Am.1875-76, c. 84, p. 96, § 1; Stats. 1895, c. 184, p. 226, § 1; Stats.1897, c. 44, p. 41, § 1; Stats.1933, c. 911, p. 2364, § 1; Stats.1937, c. 175, p. 473, § 1; Stats.1937, c. 584, p. 1628, § 1; Stats.1963, c. 204, p. 941, § 1.)

Comment. The first sentence of former Section 702 is superseded by Sections 703.730 and 703.750. Section 703.730 limits the right of redemption to the judgment debtor and the judgment debtor's successor in interest; redemption by redemptioners is no longer permitted. Section 703.750 reduces the redemption period from 12 months to 90 days. The legal rate of interest is applied to the amounts comprising the redemption price rather than the two-thirds of one percent per month applicable under former law. The redemption price is not paid directly to the purchaser. Section 703.750(a). The substance of the last sentence of the first paragraph of former Section 702 is continued in Section 703.790(c).

The second paragraph of former Section 702 is superseded by Section 703.770. Section 703.770 does not permit payment of the redemption price directly to the purchaser and requires the redemption price to be deposited with the levying officer even if there is a proceeding initiated to resolve a dispute concerning the amount of the redemption price. Section 703.770(a), (f).

§ 703. Redemption; proceedings by second redemptioner; disagreement as to amount; subsequent redemptions; notice; sheriff's deed; certificate

If property be so redeemed by a redemptioner, another redemptioner may, within 60 days after the last redemption, again redeem it from the last redemptioner on paying the sum paid on such last redemption, with 2 percent thereon in addition, and the amount of any assessment or taxes, and any reasonable sum for fire insurance, maintenance, upkeep, or repair of any improvements upon the property, and any sum paid on a prior obligation secured by the property to the extent such payment was necessary for the protection of his interest, which the last redemptioner may have paid thereon after the redemption by him, with interest on such amounts, and, in addition, the amount of any liens held by such redemptioner prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien. In the event there shall be a dispute or disagreement as to whether any sum demanded by the last redemptioner is a proper charge to be added to the amount required to be paid by the subsequent redemptioner, the amount to be paid shall be determined

In a like manner as provided in Section 702 for the determination of such amount in the event of disagreement between the original redemptioner and purchaser.

The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within 60 days after the last redemption, on paying the sum paid on the past previous redemption, with 2 percent thereon in addition, and the amounts of any assessments or taxes, and any reasonable sum for fire insurance, maintenance, upkeep, or repair of any improvements upon the property, and any sum paid on a prior obligation secured by the property to the extent such payment was necessary for the protection of his interest, which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own with interest. In the event there shall be a dispute or disagreement as to whether any sum demanded by the last redemptioner to be added to the amount required to be paid by the subsequent redemptioner, the amount to be paid shall be determined in a like manner as provided in Section 702 for the determination of such amount in the event of disagreement between the original redemptioner and purchaser.

Written notice of redemption must be given to the sheriff and a duplicate recorded with the recorder of the county, and if any taxes or assessments are paid by the redemptioner, or if any sum for fire insurance, maintenance, upkeep, or repair of any improvement upon the property, is paid by the redemptioner, or if any sum is necessarily paid by the redemptioner on a prior obligation secured by the property, or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and recorded with the recorder; and if such notice be not recorded, the property may be redeemed without paying such tax, assessment, sum, or lien.

If no redemption be made within 12 months after the sale, the purchaser, or his assignee, is entitled to a conveyance; or if so redeemed, whenever 60 days have elapsed and no other redemption has been made, and notice thereof given and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to a sheriff's deed; but, in all cases, the judgment debtor shall have the entire period of 12 months from the date of the sale to redeem the property.

If the judgment debtor redeem, he must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and he is restored to his estate.

Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgements of conveyances of real property. Such certificate must be recorded in the office of the recorder of the county in which the property is situated. (Enacted 1872. As amended Code Am.1873-74, c. 383, p. 323, § 97; Stats.1895, c. 184, p. 226, § 2; Stats.1897, c. 44, p. 41, § 2; Stats.1933, c. 911, p. 2365, § 2; Stats.1957, c. 1865, p. 3268, § 10; Stats.1963, c. 204, p. 942, § 2.)

Comment. The provisions of former Section 703 permitting redemption by redemptioners are not continued. See Section 703.730. The provision in the fourth paragraph of former Section 703 to the effect that the purchaser is entitled to a conveyance if the property is not redeemed by the end of the redemption period is continued in Section 703.780(b). The second sentence of the fifth paragraph of former Section 703 is continued in Section 703.780(e). The provisions in the last paragraph of former Section 703 requiring execution of a certificate of redemption by the person to whom payment is made (the levying officer under Sections 703.750 and 703.770) and recording of a certificate in the office of the county recorder are continued in Section 703.770(c).

§ 704. Redemption; persons to whom payments made; specie payments; tender

IN CASES OF REDEMPTION, TO WHOM THE JUDGMENTS ARE TO BE MADE. The payments mentioned in the last two sections may be made to the purchaser or redemptioner, or for him, to the officer who made the sale. When the judgment under which the sale has been made is payable in a specified kind of money or currency, payments must be made in the same kind of money or currency, and a tender of the money is equivalent to payment. (Enacted 1872.)

Comment. The first sentence of former Section 704 is superseded by Section 703.750(a) which provides for deposit of the redemption price only with the levying officer. Deposit directly with the purchaser is no longer permitted and there are no "redemptioners" under Article 5 (commencing with Section 703.710) of Chapter 3 of Title 9. The second sentence of former Section 704 providing for payment in a particular kind of money is not continued. See Section 703.780(c), (d) (effect of tender of redemption price).

§ 705. Redemption; instruments to be produced by redemptioner

A redemptioner must produce to the officer or person from whom he seeks to redeem and serve with his notice to the sheriff making the sale, or his successor in office;

1. A copy of the judgment under which he claims the right to redeem, certified by the clerk of the court, or of the county where the judgment is entered; or, if he redeems upon a mortgage or other lien, a note of the record thereof, certified by the recorder;

2. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto;

3. An affidavit by himself or his agent, showing the amount then actually due on the lien. (Enacted 1872. As amended Stats. 1909, c. 632, p. 967, § 1; Stats. 1945, c. 828, p. 1526, § 4.)

Comment. Former Section 705 is not continued. The right of redemption under Sections 703.710-703.790 is limited to judgment debtors and their successors in interest. Some aspects of this section pertaining to showing an interest entitling one to redeem are incorporated in Section 703.760 (evidence of interest of successor in interest).

§ 706. Waste; restraint until expiration of redemption time; acts not considered waste

UNTIL THE EXPIRATION OF REDEMPTION TIME, COURT MAY RESTRAIN WASTE ON THE PROPERTY. WHAT CONSIDERED WASTE. Until the expiration of the time allowed for redemption, the Court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it is not waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel in his family, while he occupies the property. (Enacted 1872.)

Comment. The substance of the first sentence of former Section 706 is continued in Section 703.790(c). The second sentence is not continued. See the Comment to Section 703.790.

§ 707. Rents and profits; rights of purchaser and redemptioner; credit upon redemption money to be paid; accounting

RENTS AND PROFITS. The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, is entitled to receive, from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser, or his or their assigns, from the property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; and if the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor, or his assigns, a written and verified statement of the amounts of such rents and profits thus received, the period for redemption is extended five days after such sworn statement is given by such purchaser or his assigns, to such redemptioner or debtor. If such purchaser or his assigns shall, for a period of one month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may bring an action in any Court of competent jurisdiction, to compel an accounting and disclosure of such rents and profits, and until fifteen days

from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor. (Enacted 1872.)

Comment. The substance of the first sentence of former Section 707 is continued in Section 703.790(a) except that "redemptioners" are no longer entitled to redeem. See Section 703.730 (persons entitled to redeem). The first clause of the second sentence is superseded by Section 703.750(b) which provides for the amount of rents and profits received by the purchaser to be set off against the redemption price. The last clause of the second sentence is superseded by a portion of Section 703.790(b) which does not limit the right to a statement to the time before the expiration of the redemption period and does not extend the redemption period until five days after the statement is given. The last sentence is superseded by the first sentence of Section 703.790(b) which makes the purchaser liable to the person who redeems for the amount of rents and profits.

§ 708. Eviction of purchaser for irregularities or reversal or discharge of judgment, recovery of price and interest; failure to obtain possession; revival of judgment

IF PURCHASER OF REAL PROPERTY BE EVICTED FOR IRREGULARITIES IN SALE, WHAT HE MAY RECOVER, AND FROM WHOM. WHEN JUDGMENT TO BE REVIVED. PETITION FOR THIS PURPOSE, HOW AND BY WHOM MADE. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at Sheriff's sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the Court having jurisdiction thereof must, after notice and on motion of such party in interest, or his attorney, revive the original judgment in the name of the petitioner, for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and the judgment so revived has the same force and effect as would an original judgment of the date of the revival, and no more. (Enacted 1872.)

Comment. The substance of former Section 708 is continued in Section 703.650.

§ 709. Contribution among judgment debtors; repayment of surety by principal; enforcement; notice, filing and entry

PARTY WHO PAYS MORE THAN HIS SHARE MAY COMPEL CONTRIBUTION. When property, liable to an execution against several persons, is sold thereon, and more than a due proportion of the judgment is satisfied out of the proceeds of the sale of the property of one of them, or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several, and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such case, the person so paying or contributing is entitled to the benefit of the judgment, to enforce contribution or repayment, if, within ten days after his payment, he file with the Clerk of the Court where the judgment was rendered, notice of his payment and claim to contribution or repayment. Upon a filing of such notice, the Clerk must make an entry thereof in the margin of the docket. (Enacted 1872.)

Comment. The substance of Section 709 is continued in subdivisions (a), (b), and (c) of Section 702.230.

[Section 710, as proposed to be amended in "Recommendation Relating to Wage Garnishment"]

§ 710 (technical amendment)

710. (a) Whenever a judgment for the payment of money is rendered by any court of this state against a defendant to whom money is owing and unpaid by this state or by any county, city and county, city or municipality, quasi-municipality, district or public corporation, the judgment creditor may file a duly authenticated abstract or transcript of such judgment together with an affidavit stating the exact amount then due, owing and unpaid thereon and that he desires to avail himself of the provisions of this section in the manner as follows:

1. If such money is owing and unpaid by this state to such judgment debtor, said judgment creditor shall file said abstract or transcript and affidavit with the state department, board, office or commission owing such money to said judgment debtor prior to the time such state department, board, office or commission presents the claim of such judgment debtor therefor to the State Controller. Said state department, board, office or commission in presenting such claim of such judgment debtor to said State Controller shall note thereunder the

fact of the filing of such abstract or transcript and affidavit and state the amount unpaid on said judgment as shown by said affidavit and shall also note any amounts advanced to the judgment debtor by, or which the judgment debtor owes to, the State of California by reason of advances for expenses or for any other purpose. Thereupon the State Controller, to discharge such claim of such judgment debtor, shall pay into the court which issued such abstract or transcript by his warrant or check payable to said court the whole or such portion of the amount due such judgment debtor on such claim, after deducting from such claim an amount sufficient to reimburse the state department, board, office or commission for any amounts advanced to said judgment debtor or by him owed to the State of California, as will satisfy in full or to the greatest extent the amount unpaid on said judgment and the balance thereof, if any, to the judgment debtor.

2. If such money is owing and unpaid to such judgment debtor by any county, city and county, city or municipality, quasi-municipality, district or public corporation, said judgment creditor shall file said abstract or transcript and affidavit with the auditor of such county, city and county, city or municipality, quasi-municipality, district or public corporation (and in case there be no auditor then with the official whose duty corresponds to that of auditor). Thereupon said auditor (or other official) to discharge such claim of such judgment debtor shall pay into the court which issued such abstract or transcript by his warrant or check payable to said court the whole or such portion of the amount due on such claim of such judgment debtor as will satisfy in full or to the greatest extent the amount unpaid on said judgment and the balance thereof, if any, to the judgment debtor.

(b) The judgment creditor upon filing such abstract or transcript and affidavit shall pay a fee of six dollars (\$6) to the person or agency with whom the same is filed.

(c) Whenever a court receives any money hereunder, it shall pay as much thereof as is not exempt from execution under this code to the judgment creditor and the balance thereof, if any, to the judgment debtor. The procedure for determining the claim of exemption shall be governed by the procedure set forth in Section 690.50 of this code, and the court rendering the judgment shall be considered the levying officer for the purpose of that section.

(d) In the event the moneys owing to a judgment debtor by any governmental agency mentioned in this section are owing by reason of an award made in a condemnation proceeding brought by the governmental agency, such governmental agency may pay the amount of the award to the clerk of the court in which such condemnation proceeding was tried, and shall file therewith the abstract or transcript of judgment and the affidavit filed with it by the judgment creditor. Such payment into court shall constitute payment of the condemnation award within the meaning of Section 1268.010. Upon such payment into court and the filing with the county clerk of such abstract or transcript of judgment and affidavit, the county clerk shall notify by mail, through their attorneys, if any, all parties interested in said award of the time and place at which the court which tried the condemnation proceeding will determine the conflicting claims to said award. At said time and place the court shall make such determination and order the distribution of the money held by the county clerk in accordance therewith.

(e) The judgment creditor may state in the affidavit any fact or facts tending to establish the identity of the judgment debtor. No public officer or employee shall be liable for failure to perform any duty imposed by this section unless sufficient information is furnished by the abstract or transcript together with the affidavit to enable him in the exercise of reasonable diligence to ascertain such identity therefrom and from the papers and records on file in the office in which he works. The word "office" as used herein does not include any branch or subordinate office located in a different city.

(f) Nothing in this section shall authorize the filing of any abstract or transcript and affidavit against any overpayment of tax, penalty or interest, or interest allowable with respect to such overpayment, under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

(g) Any fees received by a state agency under this section shall be deposited to the credit of the fund from which payments were, or would be, made on account of a garnishment under this section.

(h) This section shall not be construed to authorize the withholding of earnings of a public officer or employee. Except as otherwise expressly provided by law, the earnings of a public officer or employee may be withheld for payment of a judgment only pursuant to Section 682-3 Chapter 2.5 (commencing with Section 723.010).

Comment. The provisions of former Section 710 are continued without substantive change in Sections 705.410-705.450 and 705.470-705.495.

§ 710a. Collection of judgment where judgment debtor is contractor on public work; subordination to claims of laborers and materialmen, etc.

In the event the judgment debtor named in any transcript of judgment filed under the provisions of Section 710 of this code, approved March 21, 1908, be a contractor upon any public work, the cost of which is to be paid out of any public moneys voted, appropriated or otherwise set apart for the purpose of paying therefor, only so much of the contract price shall be deemed owing to the contractor, within the meaning of said section, as may remain payable to him under the terms of his contract, upon the completion thereof, after the sums severally due and to become due to all persons who perform labor upon such work or who bestow skill or other necessary services, or furnish materials, appliances, teams or power used or consumed in the performance of such work, have been ascertained and paid. In ascertaining the sums severally due or to become due the persons who perform labor upon public works or other necessary services, or furnish materials, appliances, teams or power used or consumed in the performance of such work, only such claims shall be considered as are filed against the moneys due or to become due the judgment debtor in accordance with the provisions of Chapter 4 (commencing with Section 3179) of Title 18 of Part 4 of Division 3 of the Civil Code. The controller, auditor, or other public disbursing officer whose duty it is to make payments under the provisions of such contract shall not draw his warrant in favor of the court from the docket of which the transcript was taken until said contract is completed and the payments above specified are made, and then only for the excess, if any, of the contract price over the aggregate of the sums so paid.

(Amended by Stats.1968, c. 1862, p. 2781, § 2.5, operative Jan. 1, 1971.)

Comment. Former Section 710a is continued in Section 705.460.

§ 710b. Third party claimants; undertaking; release of property

Where personal property levied upon under execution to satisfy a judgment for the payment of money is claimed, in whole or in part, by a person, corporation, partnership or association, other than the judgment debtor, such claimant may give an undertaking as herein provided, which undertaking shall release the personal property in the undertaking described from the lien and levy of such execution. (Formerly § 710, added Stats.1903, c. 92, p. 101, § 1. Renumbered § 710b, and amended Stats.1933, c. 744, p. 1889, § 437; Stats.1965, c. 1974, p. 4501, § 1.)

Comment. The substance of former Section 710b is continued in Section 706.510 except that the third person is not specifically required to be a claimant. See the Comment to Section 706.510.

§ 710c. Third party claimants; undertakings form; contents; amount

Such undertaking, with two sureties, shall be executed by the person, corporation, partnership or association, claiming in whole or in part, the property upon which execution is levied in double the estimated value of the property claimed by the person, corporation, partnership or association; provided, in no case need such undertaking be for a greater sum than double the amount for which the execution is levied; and where the estimated value of the property so claimed by the person, corporation, partnership or association is less than the sum for which such execution is levied, such estimated value shall be stated in the undertaking. Said undertaking shall be conditioned that if the property claimed by the person, corporation, partnership or association is finally adjudged to be the property of the judgment debtor, said person, corporation, partnership or association will pay of said judgment upon which execution has issued a sum equal to the value, as estimated in said undertaking, of said property claimed by said person, corporation, partnership or association, and said property claimed shall be described in said undertaking. (Formerly § 710½, added Stats.1903, c. 92, p. 101, § 2. Renumbered § 710c, and amended Stats.1933, c. 744, p. 1889, § 138.)

Comment. Former Section 710c is superseded by Sections 706.510 (third-party undertaking to obtain release of property), 706.520 (contents of undertaking). See Section 706.120 (general provisions relating to undertakings in attachment applicable to undertakings under Chapter 6).

§ 711. Third party claimants; undertaking; filing and service

Said undertaking shall be filed in the action in the court in which said execution issued, and a copy thereof served upon the judgment creditor or his attorney in said action. (Added Stats.1903, c. 92, p. 102, § 3. As amended Stats.1905, c. 1923, p. 444, § 1.)

Comment. The substance of former Section 711 is continued in Section 706.530.

§ 711½. Third party claimants; undertaking; objections to sureties

Within ten days after the service of the copy of undertaking, the judgment creditor may object to such undertaking on the ground of inability of the sureties, or either of them, to pay the sum for which they become bound in said undertaking, and upon the ground that the estimated value of property therein is less than the market value of the property claimed. Such objection to the undertaking shall be made in writing, specifying the ground or grounds of objection, and if the objection is made to the undertaking that the estimated value therein is less than the market value of the property claimed. Such objection shall specify the judgment creditor's estimate of the market

value of the property claimed. Such written objection shall be served upon the person, partnership, corporation or association giving such undertaking and claiming the property therein described. (Added Stats.1903, c. 92, p. 102, § 4.)

Comment. Former Section 711-1/2 and also Sections 712-713-1/2 are superseded by Section 706.120 which makes the provisions pertaining to objections to undertakings under attachment applicable to undertakings given pursuant to Chapter 6 (commencing with Section 706.110) of Title 9. See Article 1 (commencing with Section 469.010) of Chapter 9 of Title 6.5.

§ 712. Third party claimants; undertaking; justification of sureties

When the sureties, or either of them, are objected to, the surety or sureties so objected to shall justify before the court out of which such execution issued, upon ten days' notice of the time when they will so justify being given to the judgment creditor or his attorney. Upon the hearing and examination into the sufficiency of a surety, witnesses may be required to attend and evidence may be procured and introduced in the same manner as in trial of civil cases. Upon such hearing and examination, the court shall make its order, in writing, approving or disapproving the sufficiency of the surety or sureties on such undertaking. In case the court disapproves of the surety or sureties on any undertaking, a new undertaking may be filed and served, and to any undertaking given under the provisions of this section the same objection to the sureties may be made, and the same proceedings had as in case of the first undertaking filed and served. (Added Stats.1903, c. 92, p. 102, § 5. As amended Stats.1933, c. 744, p. 1889, § 138a.)

Comment. See the Comment to former Section 711-1/2.

§ 712¹/₂. Third party claimants; dispute as to estimated value of property claimed; estimation of value by court; new undertaking

When objection is made to the undertaking upon the ground that the estimated value of the property claimed, as stated in the undertaking, is less than the market value of the property claimed, the person, corporation, partnership or association may accept the estimated value stated by the judgment creditor in said objection, and a new undertaking may be at once filed with the judgment creditor's estimate stated therein as the estimated value, and no objection shall thereafter be made upon that ground; If the judgment creditor's estimate of the market value is not accepted, the person, corporation, partnership or association giving the undertaking shall move the court in which the execution issued, upon ten days' notice to the

judgment creditor, to estimate the market value of the property claimed and described in the undertaking, and upon the hearing of such motion witnesses may be required to attend and testify, and evidence be produced in the same manner as in the trial of civil actions. Upon the hearing of such motion, the court shall estimate the market value of the property described in the undertaking, and if the estimated value made by the court exceeds the estimated value as stated in the undertaking, a new undertaking shall be filed and served, with the market value determined by the court stated therein as the estimated value. (Added Stats.1903, c. 92, p. 103, § 6.)

Comment. See the Comment to former Section 711-1/2.

§ 713. Third party claimants; new undertaking; justification of sureties

The sureties shall justify on the undertaking as required by section one thousand and fifty-seven of the Code of Civil Procedure. (Added Stats.1903, c. 92, p. 103, § 7.)

Comment. See the Comment to former Section 711-1/2.

§ 713 $\frac{1}{2}$. Third party claimants; undertaking; time effective

The undertaking shall become effective for the purpose herein specified ten days after service of copy thereof on the judgment creditor, unless objection to such undertaking is made as herein provided, and in case objection is made to the undertaking filed and served, then the undertaking shall become effective for such purposes when an undertaking is given as herein provided. (Added Stats.1903, c. 92, p. 103, § 8. As amended Stats.1933, c. 744, p. 1890, § 139.)

Comment. See the Comment to former Section 711-1/2.

CHAPTER 2. PROCEEDINGS SUPPLEMENTAL TO EXECUTION

§ 714. Examination of judgment debtor; order; frequency; arrest; contempt

When an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, may properly be issued, whether or not such execution has been issued or returned, the judgment creditor is entitled to an order from a judge of the court, requiring such judgment debtor to appear and answer concerning his property before such judge, or a referee appointed by him, at a time and place specified in the order. However, a judgment debtor may not, pursuant to this section, be required to appear and answer more frequently than every four months. This section shall not be construed to restrict the rights granted by Section 715.

If the judgment debtor ordered to appear pursuant to this section fails to do so, and if such order has been served by a sheriff, constable, mar-

shal, some person specially appointed by the court in the order, or a registered process server, the judge may, pursuant to a warrant, have such debtor brought before the court to answer for such failure to appear.

An order made pursuant to this section shall contain the following language in boldface type: "Failure to appear may subject the party served to arrest and punishment for contempt of court."

Any person who willfully makes an improper service of an order directed to a judgment debtor to appear and answer concerning his property which subsequently results in his arrest is guilty of a misdemeanor. (Amended by Stats.1969, c. 184, p. 286, § 2; Stats.1974, c. 218, p. 410, § 1.)

Comment. The substance of the first paragraph of former Section 714 is continued in subdivisions (a) and (b)(1) of Section 705.120 (examination of judgment debtor not more than once every 120 days) and in subdivision (a) of Section 705.190 (appointment of referee). The introductory clause of the first paragraph is superseded by the provisions of Sections 702.170, 702.180, and 702.190 (time for enforcement of judgment). The second paragraph is continued in subdivision (a) of Section 705.170. The third paragraph is continued in subdivision (c) of Section 705.120. The fourth paragraph is continued in subdivision (c) of Section 705.170.

§ 714.5 Written interrogatories; service; enforcement; time

In addition to the procedure set forth in Section 714, the judgment creditor may propound written interrogatories to a judgment debtor represented by counsel in the manner set forth in Section 2030, and the judgment debtor shall be required to answer the interrogatories in the same manner and within the same time as required by Section 2030. Interrogatories may be served pursuant to this section any time after execution against property of the judgment debtor may properly be issued. The provisions of this section may be enforced, to the extent practicable, in the same manner as interrogatories in a civil action. The procedure authorized by this section is cumulative to, and may be used in conjunction with, the procedures set forth in Section 714. A judgment debtor may not be required to respond to interrogatories pursuant to this section more frequently than once in any four-month period or within any four-month period during which he has been subject to an examination pursuant to Section 714.

(Added by Stats.1976, c. 808, p. —, § 1.)

Comment. Former Section 714.5 is superseded by Section 705.110. The second sentence has not been continued because it is unnecessary in view of the general application of Sections 702.170-702.190. The four-month period has been changed to a 120-day period in Section 705.110.

§ 715. Proceedings in aid of execution; examination; application of property to satisfaction of judgment; arrest of debtor; undertaking or imprisonment

After the issuing of an execution against property, and upon proof, by affidavit of a party or otherwise, to the satisfaction of a judge of the court, that any judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, such judge may, by an order, require the judgment debtor to appear, at a specified time and place, before such judge or a referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the sheriff, or a constable, or marshal to arrest the debtor and bring him before such judge. Upon being brought before the judge, he may be ordered to enter into an undertaking, with sufficient sureties, that he will attend from time to time before the judge, or referee, as may be directed during the pendency of proceedings and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to prison. (Enacted 1872. As amended Code Am.1880, c. 17, p. 5, § 2; Stats.1933, c. 744, p. 1890, § 141; Stats. 1951, c. 1737, p. 4126, § 110, operative Jan. 1, 1952.)

Comment. The first sentence of former Section 715 is superseded by subdivisions (a) and (b) of Section 705.120 (examination of judgment debtor where there is unjust refusal to apply property to judgment) and Section 705.160(a) (application of property to judgment). The introductory clause requiring issuance of a writ of execution has not been continued because it was an unnecessary formality. The second, third, and fourth sentences of Section 705 which provide for the arrest of the judgment debtor on the ex parte application of the judgment creditor and the alternative of giving of an undertaking or imprisonment are not continued. These provisions conflicted with the policies supporting the repeal of the civil arrest provisions. See Recommendation and Study Relating to Civil Arrest, 11 Cal. L. Revision Comm'n Reports 1 (1973).

§ 716. Payment by debtor of judgment debtor

After the issuing of an execution against property, and before its return, any person indebted to the judgment debtor may pay to the sheriff, constable, or marshal having such execution the amount of

his debt, or so much thereof as may be necessary to satisfy the execution; and such officer's receipt is a sufficient discharge for the amount so paid. (Enacted 1872. As amended Stats.1933, c. 744, p. 1891, § 142.)

Comment. Former Section 716 is superseded by subdivision (b) of Section 703.250.

§ 717. Examination of debtor of judgment debtor; exception for spouse of debtor; failure to appear

After the issuing or return of an execution against property of the judgment debtor, or of any one of the several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars (\$50), the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same. The spouse of a judgment debtor to the extent provided by Sections 970 and 971 of the Evidence Code may not be required to so testify, if there has not been a waiver of such provisions in the action giving rise to the judgment.

If the person ordered to appear pursuant to this section fails to do so, and if the order requiring his appearance has been served by a sheriff, constable, marshal, some person specially appointed by the court in the order, or a registered process server, the judge may, pursuant to a warrant, have such person brought before the court to answer for such failure to appear.

An order made pursuant to this section shall contain the following language in boldface type: "Failure to appear may subject the party served to arrest and punishment for contempt of court."

Any person who willfully makes an improper service of an order made pursuant to this section which results in the arrest of the person ordered to appear is guilty of a misdemeanor.

(Amended by Stats.1969, c. 184, p. 286, § 8; Stats.1972, c. 619, p. 1154, § 1; Stats.1974, c. 214, p. 411, § 1.)

Comment. The first sentence of former Section 717 is superseded by Sections 705.130(a), 705.180, and 705.190. The requirement that a writ of execution be issued or returned is not continued. See Comment to Section 705.130. The amount in which the person to be examined must be indebted to the judgment debtor has been raised from 50 to 250 dollars. Section 705.130(a). The manner of appearance by a corporation is specified in Section 705.180 and the authority of referees is continued in Section 705.190. The second sentence of former Section 717 is continued in Section 705.130(a). The substance of the second paragraph of former Section 717 is continued in Section 705.170(a). The third paragraph is continued in Section 705.130(c). The last paragraph is continued in Section 705.170(c).

§ 717.1 Examination; attendance outside county of residence or place of business; tender of mileage fees; costs

Neither a judgment debtor nor a debtor of a judgment debtor shall be required to attend before a judge or referee outside of the county in which he resides or in which he has a place of business unless the distance is less than 150 miles from his place of residence or his place of business to the place of trial.

No process to require the attendance, pursuant to this chapter, of a debtor of a judgment debtor, shall be effective unless, at the time of service of process, the person serving same tenders to such person mileage fees in the amount of fifteen cents (\$0.15) per mile necessary to be traveled, one way, from such person's residence to the court or other place where attendance is sought. Such mileage fees shall be an item of costs chargeable to the judgment debtor, and the court may, pursuant to Section 719, order the application of any property of the judgment debtor to the satisfaction of such costs. (Added Stats.1945, c. 1139, p. 2179, § 2. As amended Stats.1951, c. 1737, p. 4126, § 112, operative Jan. 1, 1952; Stats.1957, c. 1596, p. 2948, § 4; Stats.1959, c. 196, p. 2088, § 1; Stats.1963, c. 691, p. 1699, § 1.)

Comment. The first paragraph of former Section 717.1 is continued in Section 705.150(a). The substance of the second paragraph is continued in Section 705.130(d). The 15 cents per mile rate has been raised to 20 cents per mile. In addition, Section 705.130(d) provides that only nonexempt property of the judgment debtor may be used to satisfy mileage costs.

§ 718. Witnesses

Witnesses may be required to appear and testify before the judge or referee, upon any proceeding under this chapter, in the same manner as upon the trial of an issue. (Enacted 1872. As amended Stats. 1933, c. 744, p. 1891, § 144; Stats.1951, c. 1737, p. 4126, § 113, operative Jan. 1, 1952.)

Comment. Former Section 718 is continued in Section 705.140. The authority of the referee is continued in Section 705.190(a).

§ 719. Order applying property toward satisfaction of judgment

The judge or referee may order any property of the judgment debtor, not exempt from execution, in the hands of such debtor, or any other person, or due to the judgment debtor, to be applied toward the satisfaction of the judgment; but no such order can be made as to money or property in the hands of any other person or claimed to be due from him to the judgment debtor, if such person claims an

Interest in the property adverse to the judgment debtor or denies the debt. (Enacted 1872. As amended Stats.1907, c. 362, p. 685, § 3; Stats.1933, c. 744, p. 1891, § 145; Stats.1951, c. 1737, p. 4127, § 114, operative Jan. 1, 1952.)

Comment. Former Section 719 is continued in Section 705.160. The authority of the referee is continued in Section 705.190(a).

§ 720. Third party denying debt or claiming interest adverse to judgment debtor; action by judgment creditor; protective orders

If it appears that a person or corporation, alleged to have property of the judgment debtor, or to be indebted to him, claims an interest in the property adverse to him, or denies the debt, the judgment creditor may maintain an action against such person or corporation for the recovery of such interest or debt; and the judge or referee may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge or referee granting the same, or the court in which the action is brought, at any time, upon such terms as may be just. (Enacted 1872. As amended Stats.1907, c. 362, p. 686, § 4; Stats.1931, c. 607, p. 1309, § 1; Stats. 1933, c. 744, p. 1891, § 146; Stats.1951, c. 1737, p. 4127, § 115, operative Jan. 1, 1952.)

Comment. The first portion of the first sentence of former Section 720 is superseded by Section 705.220(a) which does not require as a prerequisite to bringing a creditor's suit thereunder that the person alleged to be indebted to the judgment debtor have denied the debt or claimed an adverse interest. The last portion of the first sentence is superseded by Section 705.240(a) which requires that the action be commenced within 60 days for the restraining order to be extended. The substance of the last sentence of former Section 720 is continued in Section 705.240(b) and also in Section 705.190(a) which provides for the authority of referees.

§ 721. Contempt

If any person, party, or witness disobey an order of the referee, properly made, in the proceedings before him under this chapter, he may be punished by the court or judge ordering the reference, for a contempt. (Enacted 1872. As amended Stats.1933, c. 744, p. 1892, § 147; Stats.1951, c. 1737, p. 4127, § 116, operative Jan. 1, 1952.)

Comment. Former Section 721 is continued in Section 705.190(a).

§ 722. Supplemental proceedings in other counties

When any judgment debtor, or any person or corporation or officer or member of such corporation, does not reside or have a place of business in the county where the judgment roll is filed, or where the judgment is entered in the docket in the justice court, an order authorized to be made under any of the provisions of this chapter may be made by any judge of a court of similar jurisdiction of the county where such judgment debtor or other person resides or has a place of business, or if there be no court of similar jurisdiction in such county, by a court of higher jurisdiction therein, upon filing with the clerk or judge of said court an abstract of the judgment, in the form prescribed by Section 674 of this code and upon presenting to the judge of such court an affidavit showing the existence of the facts required to be shown herein. At the time of filing such abstract, there shall be paid to such clerk or judge, as and for a filing fee, the sum of four dollars (\$4) when filed in a justice court; the sum of six dollars (\$6) when filed in a superior or municipal court.

(As amended Stats.1967, c. 64, p. 986, § 1.)

Comment. The substance of the first sentence of former Section 722 is continued in Section 705.150(b). The second sentence has been relocated as Section ___ of the Government Code.

§ 722.5 Remedies of agency issuing warrant; jurisdiction

Whenever a warrant may properly be issued pursuant to Section 1785 of the Unemployment Insurance Code or Sections 6776, 7881, 9001, 10111, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code to enforce any lien arising under the provisions of the Unemployment Insurance Code or the Revenue and Taxation Code, the state agency authorized to issue the warrant shall be entitled to all of the remedies available to judgment creditors. Where jurisdiction of any court is required for enforcement of such remedies, jurisdiction is conferred upon the superior court of the State of California in and for the county where the person against whom enforcement is sought resides or the property against which enforcement is sought is situated, or if the person does not reside in this State, in any county of this State. (Added Stats.1963, c. 1664, p. 3255, § 1.)

Comment. Former Section 722.5 is continued in Section 702.240.

§ 723. Referee; qualifications; powers

A referee appointed by a judge of the superior court of a county or city and county having a population of one million inhabitants or more, pursuant to the provisions of this chapter, must be an attorney duly licensed to practice law in all the courts of this State at least five years prior to the date of such appointment, and said referee of the superior court of such county or city and county of the State shall have the same powers as the court to grant adjournments, to preserve order, to subpoena witnesses to attend before him and to compel the

attendance of witnesses by attachment. (Added Stats.1931, c. 607, p. 1310, § 2. As amended Stats.1963, c. 1629, p. 3219, § 1.)

Comment. The substance of former Section 723 is continued in Section 705.190 which applies to all referees in examination proceedings.

Chapter 3

SALE OF FRANCHISES

Comment. Former Chapter 3 (commencing with former Section 724a) is not continued. These provisions have been repealed as obsolete. The predecessor sections of this chapter were enacted in 1850 and the last reported case applying these provisions was decided over 50 years ago. See People ex rel. Spiers v. Lawley, 17 Cal. App. 331, 119 P. 1089 (1911). See also Section [707.120(b)] (licenses issued by the state are not subject to execution).

§ 724a. Franchise subject to levy and sale

For the satisfaction of any judgment against any person, company, or corporation having any franchise other than the franchise of being a corporation, such franchise, and all the rights and privileges thereof, may be levied upon and sold under execution, in the same manner, and with the same effect, as any other property. (Added Stats.1931, c. 865, p. 1837, § 1.)

§ 724b. Purchaser's rights and duties; conducting business; redemption

The purchaser at the sale must receive a certificate of purchase of the franchise, and be immediately let into the possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof, and must thereafter conduct the business of such corporation, with all its powers and privileges, and subject to all its liabilities, until the redemption of the same, which redemption may be had as provided in this code in the case of redemption from sales of real estate on execution. (Added Stats.1931, c. 865, p. 1837, § 1.)

§ 724c. Purchaser; recovery of penalties and damages for injury to franchise or property

The purchaser or his assignee is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages or other causes, occurring during the time he holds the same, and may use

the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had is a bar to any subsequent action by or on behalf of the corporation for the same. (Added Stats.1931, c. 865, p. 1838, § 1.)

§ 724d. Judgment debtor; powers, duties and liabilities after sale

The person, company, or corporation whose franchise is sold, as in this chapter provided, in all other respects retains the same powers, is bound to the discharge of the same duties, and is liable to the same penalties and forfeitures, as before such sale. (Added Stats. 1931, c. 865, p. 1838, § 1.)

§ 724e. Place of sale

The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business, or in which the property, or some portion thereof is situated. (Added Stats.1931, c. 865, p. 1838, § 1.)