

1982 CREDITORS' REMEDIES LEGISLATION

(Operative July 1, 1983)

with
Official Comments

The Enforcement of Judgments Law
The Attachment Law

September 1982

California Law Revision Commission
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STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

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PREFACE

The 1982 session of the California Legislature enacted a new Enforcement of Judgments Law. The new law—enacted by Chapter 1364 of the Statutes of 1982—becomes operative on July 1, 1983. This book contains the full text of the new law. The official Comment to each section is set out following the text of the section.

The Attachment Law was substantially revised in 1982. See 1982 Cal. Stats. ch. 1198, operative July 1, 1983. This book contains the full text of The Attachment Law as it will be in effect on July 1, 1983. The official Comment to each section is set out following the text of the section.

Legislation also was enacted in 1982 to make revisions (additions, amendments, and repeals) in other code sections to conform to the new Enforcement of Judgments Law. See 1982 Cal. Stats. ch. 497. This book includes a list of the sections affected by the conforming legislation and sets out the official Comment to each section. The text of the sections is omitted, except for sections which made significant changes in prior law or added new provisions to prior law.

The disposition of each section of the repealed Code of Civil Procedure title governing enforcement of judgments is noted in the Comment to the section set out in the back portion of this book.

The new Enforcement of Judgments Law is the result of a recommendation of the California Law Revision Commission. See *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980). The portion of the Commission's recommendation explaining its proposed new Enforcement of Judgments Law is set out in the first part of this book. The text of the recommendation has been revised to reflect changes made in the Commission's proposed legislation before it was enacted. Although these revisions were made by the Commission's legal staff, the revised material does not necessarily represent the views of the Commission.

The 1982 revision of The Attachment Law also is the result of a Commission recommendation. See *Recommendation Relating to Attachment*, 16 Cal. L. Revision Comm'n Reports 701 (1982). The portion of the Commission's recommendation explaining the proposed revisions—revised to reflect changes made in the Commission's proposed legislation before it was enacted—is set out as the last part of the Commission's explanation of the proposed Enforcement of Judgments Law.

The official Comments for the 1982 legislation are taken from the pertinent Law Revision Commission recommendation or from the special report adopted by the Assembly Committee on Judiciary or the Senate Committee on Judiciary providing new or revised Comments for particular sections. See *Report of Assembly Committee on Judiciary on Assembly Bills 707 and 798*, Assembly J. January 18, 1982, and the report referred to therein which is on file with the Assembly Committee on Judiciary; *Report of Senate Committee on Judiciary on Assembly Bills 707, 798, and 2332*, Senate J. June 24, 1982. These reports will be republished in the 1982 Annual Report of the California Law Revision Commission.

In addition to the official Comments to the 1982 legislation, there are earlier official Comments for some of the sections of the Attachment Law as enacted in 1974 and for almost all of the sections as amended or added since 1974. Later revisions of the Attachment Law have made some of these earlier Comments obsolete and have made portions of others inaccurate. Some of the earlier Comments are included in this book, but those Comments considered obsolete are omitted and editorial revisions are made in other Comments to correct the most obvious inaccuracies.

The California Continuing Education of the Bar (CEB) paid the cost of printing this book. The Commission is pleased to assist CEB in its effort to inform lawyers, judges, and others concerning the new Enforcement of Judgments Law.

Any defect believed to exist in the 1982 legislation should be brought to the attention of the Law Revision Commission so that the Commission can study the matter and present any necessary corrections for legislative consideration.

John H. DeMouly
Executive Secretary

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CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

ENFORCEMENT OF JUDGMENTS LAW

(Revised to Reflect Changes Made by Legislature)

Editorial note. The material that follows is taken from the Law Revision Commission's *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980). The material has been revised to reflect the changes made by the Legislature after the Commission recommended legislation was introduced. Although these revisions were made by the Commission's legal staff, the revised material does not necessarily represent the views of the Commission.

Material added to the text of the Commission's original printed recommendation is shown in italics or otherwise indicated. The omission of material that was contained in the text of the original recommendation also is indicated. The omitted material related to the legislation as proposed by the Commission; the omitted material is no longer relevant in view of the changes made in the proposed legislation before it was enacted. Some footnotes have been omitted; others have been added. Some editorial revisions have been made in footnotes. The addition of footnotes and editorial revisions in footnotes are not indicated.

SUMMARY OF REPORT

The proposed comprehensive statute governs the enforcement of judgments (money judgments, judgments for the possession or sale of real or personal property, and judgments enforceable only by contempt). It replaces the existing title of the Code of Civil Procedure relating to enforcement of judgments. The recommended legislation also makes conforming revisions in other code provisions.

The proposed law retains much of the substance of existing law but makes important substantive changes and many minor and technical revisions. The operative date of the proposed law is deferred until... *July* 1, 1983. Provisions governing the transition to the new law are included.

The more important changes that would be made by the proposed law are indicated below.

Time for Enforcement of Judgments

The proposed law provides a 10-year period of enforceability running from the date of entry of the judgment. The 10-year period is not tolled for any reason, but the proposed law provides a simple procedure for extending the period of enforceability. The judgment may be renewed by filing an application with the court clerk during the period of enforceability. The debtor is given 30 days after service of a . . . *notice of renewal of the judgment* within which to object to the renewal. A renewal permits enforcement of the judgment for another 10 years running from the date the application for renewal is filed. A renewed judgment may be renewed for additional 10-year periods using the same procedure. This new procedure is drawn from the existing procedure for entry of a California judgment based on a sister state judgment.

The statutory scheme described above does not apply to judgments, orders, or decrees under the Family Law Act. The proposed law permits enforcement of court-ordered child or spousal support payments without prior court approval for amounts that are not more than 10 years

overdue and permits the court to make an order permitting enforcement of amounts more than 10 years overdue.

Interest on Judgments

[Material omitted.]

The new law continues the existing 10 percent rate of interest on judgments.

The proposed law permits the creditor to collect interest on costs that have been allowed by memorandum or motion. Whether interest is allowed on costs is unclear under existing law.

Judgment Lien on Real Property

The proposed law continues the existing rule that a judgment lien on real property (obtained by recording an abstract or certified copy of a money judgment) is good for 10 years from the entry of the judgment and adds a provision that permits the lien to be extended for additional 10-year periods by recording a notice of renewal of judgment.

Under existing law, a judgment lien on real property reaches only vested ownership interests in land. The proposed law expands the coverage of the lien to leasehold interests (with a term of at least two years remaining), equitable interests (other than the interest of a trust beneficiary), and contingent interests.

[Material omitted.]

The new law provides that, if a homestead declaration has been recorded, a judgment lien attaches to the surplus value of the homestead over the total of (1) all liens and encumbrances and (2) the amount of the homestead exemption.

Judgment Lien on Personal Property

The proposed law adds a new procedure for obtaining a judgment lien on certain types of business property. The lien is obtained by filing a notice of judgment lien with the Secretary of State in the same manner as a security interest is perfected under the Commercial Code by filing a

financing statement. The lien attaches to accounts receivable, chattel paper, equipment, farm products, inventory, and negotiable documents of title, but does not reach a vehicle or boat that is required to be registered. The lien extends to after-acquired property and identifiable cash proceeds of property subject to the lien.

Levy Under Writ of Execution

The proposed law includes specific provisions prescribing the manner of levy on particular types of property. The existing law incorporates by reference the manner of levy under writs of attachment.

The proposed law sets forth a procedure for obtaining a court order permitting levy on property in a private place.

The proposed law provides that the court may issue an order in appropriate cases requiring the debtor to transfer possession of property sought to be levied upon to the levying officer or to transfer to the levying officer evidence of title to property levied upon.

Levy on Property Subject to Security Interest

The proposed law includes provisions designed to minimize the disruption of commercial relationships that might be caused by an execution levy. If a garnishee is making payments to a person other than the judgment debtor, the notice of levy instructs that future payments continue to be made to that person. The issue of the right to such payments may then be settled between the judgment creditor and such payee, depending upon who has priority. If the garnishee is making payments to the judgment debtor, the notice of levy instructs that the future payments be made to the levying officer.

Duties of Garnishee

The proposed law requires the garnishee to furnish a memorandum describing the property of the judgment debtor in the garnishee's possession and the debts owed to the judgment debtor. A garnishee who fails to comply may be liable for the cost of obtaining the required information.

The proposed law requires that the garnishee make prompt payment to the levying officer of debts that are due, and any payments falling due *on the obligation levied on* during the . . . *two-year* lien of execution must be similarly paid. Existing law does not provide for a continuing levy on payments as they fall due.

Property Exempt From Enforcement of Money Judgments

The proposed law makes a number of significant changes in the exemptions allowed under existing law. Other changes of a minor or technical nature also are made. The most significant changes are indicated below.

Dwelling exemptions. The coverage of the dwelling exemption has been extended to cover any type of property constituting a dwelling, and any type of interest in the property, thus eliminating the provision of existing law that precludes an exemption claim in a leasehold of less than 30 years.

[Material omitted.]

In the case of a real property dwelling, the creditor is required to apply for an order permitting sale of the dwelling and the court then determines whether the property is exempt and the amount of the exemption. In the case of a personal property dwelling, the debtor must apply for an exemption within 10 days after notice of levy. Under this procedure, the exemption may be claimed even if a judgment lien has been recorded on the property if the dwelling qualified for the exemption at the time of recording.

If the property is offered for sale on execution, the minimum bid must exceed the exempt amount *and all liens and encumbrances on the dwelling*. *In addition, the new law prohibits the sale of the dwelling for less than 90 percent of its fair market value, as determined by the court, unless the court otherwise orders.* [Material omitted.] If the minimum bid is not received at the sale, the proposed law makes the creditor liable for costs . . . and bars levy on the homestead by that creditor for one year.

A limited declared homestead procedure is provided in the new law. If a homestead declaration is recorded before a judgment lien attaches to the dwelling, the proceeds . . . from a voluntary . . . sale are exempt in the amount of the homestead exemption for a period of . . . six months. . . . A homestead declaration does not have any effect on the power to convey or encumber the property.

Household and personal effects. Instead of listing specific household items that are exempt from execution, the proposed law exempts furnishings, appliances, wearing apparel, provisions, and other personal effects “ordinarily and reasonably necessary . . .” and personally used by the debtor and the debtor’s family at their principal residence, *so long as an item does not have extraordinary value. If the court determines that an item is not exempt because it has extraordinary value, the proceeds of the sale of the item are exempt to the extent reasonably necessary to replace the item with one of ordinary value.* [Material omitted.]

A separate exemption is provided for *the debtor’s aggregate equity in jewelry, heirlooms, and works of art . . . in the amount of \$2,500.* [Material omitted.]

Motor vehicles. The motor vehicle exemption is raised from \$500 to . . . *\$1,200* equity to take account of increases in motor vehicle prices. [Material omitted.] *The debtor may apply exempt amount to one or to more than one motor vehicle.* The 90-day proceeds exemption is extended to proceeds . . . from insurance.

Tools of a trade. The proposed law continues the existing \$2,500 exemption for the debtor’s equity in tools of a trade and permits the debtor’s spouse to claim a second \$2,500 exemption if the spouse qualifies. The proposed law also exempts proceeds from *an execution* sale or insurance for 90 days.

[Material omitted.]

Paid earnings. *The new law provides an exemption for earnings paid within the 30 days prior to levy. If the paid earnings have already been garnished, they are completely exempt. If the earnings were not subject to garnishment before payment, 75 percent of the earnings are exempt. This exemption supersedes the \$1,000 exemption for*

savings and loan association accounts and the \$1,500 exemption for credit union accounts.

Life insurance. The proposed law protects the cash surrender value of a life insurance policy but permits the creditor to reach the loan value in excess of \$4,000. Each spouse may claim this exemption. The existing provision exempting life insurance proceeds to the extent they derive from a \$500 annual premium is replaced with a provision exempting the amount reasonably necessary for the support of the insured and the spouse and dependents of the insured or decedent.

Private retirement plans. *The exemption for IRA and Keogh accounts is revised to pick up the recent changes in federal tax law and the exemption is limited to the amount necessary for the support of the debtor or the debtor's family or, if paid in installments, the amount that would be exempt on a like amount of earnings of an employee.*

Disability and health benefits. The existing exemption for disability and health benefits to the extent they derive from a \$500 annual premium is replaced by a total exemption, except as against a provider of health care whose claim is the basis on which the benefits are paid.

Damages for personal injury or wrongful death. A new exemption is provided for damages for personal injury or wrongful death to the extent necessary for the support of the debtor or the debtor's family *or, if paid in installments, to the same extent as the earnings of an employee.*

Strike benefits. A new exemption is provided for strike benefits paid by a union.

Charitable aid. The exemption for welfare benefits and similar governmental aid is extended to aid provided by a charitable organization.

Prisoner's trust funds. The proposed law raises the prisoner's trust fund exemption from \$40 to \$1,000 and also permits the debtor's spouse to claim the exemption.

Student financial aid. *A new exemption is provided for financial aid provided to a student by an institution of higher education.*

Cemetery plots. The one-quarter acre cemetery plot exemption is replaced by an exemption of a plot for the debtor and the debtor's spouse. The proposed law also recognizes the exemption of family plots from enforcement of money judgments.

[Material omitted.]

Exemptions Determined Under Law in Effect When Lien Created

The proposed law provides for the determination of exemptions under the law in effect at the time the creditor's lien attached to the property. Decisions under existing law hold that the exemptions in effect at the time an obligation is incurred apply when a judgment on that obligation is enforced.

Tracing Exempt Amounts

Decisions under existing law permit the continuation of an exemption to the extent that exempt proceeds can be traced into bank accounts and as cash or checks. The proposed law codifies these decisions and includes a general provision that provides for tracing by means of the lowest intermediate balance principle unless the exemption claimant or the creditor shows that some other method would be more appropriate under the circumstances of the case.

Exception to Exemptions in Support Cases

The proposed law contains a general provision permitting the court to apply property to a judgment for child or spousal support, notwithstanding that an exemption is claimed and otherwise would be allowed. This general provision is derived from the exception applicable to the retirement benefits exemption under existing law.

Information to Debtor on Exemptions

The new law requires that the debtor be provided with a list of the state and federal exemptions from enforcement of a money judgment. This list is served on the judgment debtor along with the notice of levy.

General Exemption Procedures

The proposed law adds a general requirement that a person claiming an exemption based on need provide a detailed financial statement to the court and the creditor. If the debtor claims an exemption for certain types of property, such as a motor vehicle, tools of a trade, . . . or life insurance, the proposed law requires that the debtor list all other such property so that the court can determine the property to which the exemption is to be applied.

Execution Sale Procedure

Certain types of property are particularly susceptible to sacrifice sales, such as accounts receivable, chattel paper, general intangibles, money judgments, and instruments. The proposed law encourages collection rather than sale in these cases by precluding sale unless the creditor first serves the debtor with a notice of intended sale. The debtor may apply to the court within 10 days after service for an order to prevent sale of the property. Upon such application, the court may make an order appropriate under the circumstances of the case, such as an order permitting an execution sale or a sale under specified conditions or an order requiring the debtor to assign the debt to the creditor for collection. If the debtor fails to make the application within the 10 days allowed, the property may be sold.

In order to encourage outside bidding at an execution sale, the proposed law permits the highest bidder at the sale to treat a bid of over \$5,000 *for real property or over \$2,500 for personal property* as a credit transaction. At the time of sale, the bidder must pay . . . *the base amount* or 10 percent of the amount bid, whichever is greater. The balance of the amount bid (with additional costs and interest on the balance) must be paid within . . . *10 days*.

A general provision . . . *of the new law* precludes the sale of any property at an execution sale if the amount bid does not exceed the total of . . . preferred labor claims, *superior state tax liens*, third-party claims that have been satisfied by the judgment creditor, and any applicable proceeds

exemption. *Special provisions (discussed above under "Dwelling exemptions") apply to the sale of a real property dwelling at an execution sale.* [Material omitted.]

Distribution of Proceeds of Execution Sale

The proposed law includes a new procedure . . . *for the orderly distribution of the proceeds of sale or collection and to handle* disputes concerning the proper distribution of proceeds of sale or collection. . . .

Statutory Redemption

The right of statutory redemption is the right of the judgment debtor and junior lienholders to redeem real property within one year after it is sold at an execution or foreclosure sale. One effect of the redemption right is that the purchaser of real property is forced to take a title which is defeasible for a year. The proposed law repeals the redemption right *as it applied to execution sales* and makes the sale absolute. However, in order to give the debtor an opportunity to save the property or obtain a higher price for it at the sale, a grace period of 120 days is provided between serving notice of levy on the debtor and giving notice of sale of the real property. *The right of redemption is continued in a simplified form where a creditor foreclosing a mortgage or deed of trust seeks a deficiency judgment.*

Miscellaneous Procedures for Enforcement of Money Judgments

The proposed law continues the existing special procedures for enforcement of money judgments—examinations, creditors' suits, interrogatories, charging orders, receivers, liens in pending actions, and procedures for collecting from a public entity that owes money to the debtor—and makes several of these special procedures more readily available by eliminating the traditional prerequisite of resort to execution.

Examinations. Under the proposed law, a third person owing money to the debtor may not be examined unless the debt is \$250 or more. Existing law sets this amount at \$50.

The proposed law allows the creditor to recover attorney's fees if the person served with an order to appear fails without good cause to appear. The debtor is also to be given notice of an examination of a third person.

The proposed law makes clear that the debtor may obtain a determination of exemption claims in the proceedings before the court. The proposed law gives the court discretion to determine an adverse claim of a third person made in examination proceedings; the court does not have this authority under existing law.

Creditors' suits. The proposed law makes clear the statute of limitations applicable to creditors' suits. The debtor is required to be joined in a creditor's suit under the proposed law but is not an indispensable party.

Receivers. The proposed law makes clear that a receiver may be appointed on direct application to the court where appropriate under the circumstances of the particular case. The proposed law also provides for the appointment of receivers to sell alcoholic beverage licenses, which are unreachable under existing law.

Lien in pending action. Existing law permits the judgment creditor to obtain a lien in a pending action by application to the court where the action is pending. The proposed law permits the lien to be obtained merely by filing a notice of lien in the action.

The proposed law makes clear that the lien extends to the right of the debtor to recover property under the judgment in the pending action. Existing law covers money and it is unclear whether property is covered.

The proposed law permits the court to approve a settlement without the consent of the creditor.

Under existing law, the method of enforcing the lien is not clear. The proposed law permits the court, on application of the creditor or a party to the action, to order the money or property applied to the satisfaction of the lien. The proposed law also adds a procedure for determining any exemption claim.

Assignment order. The proposed law adds a new procedure that permits the creditor to apply to the court for

an order requiring the debtor to assign rights to future payments, such as future rents, commissions, and federal wages.

Interest of trust beneficiary. The proposed law includes a procedure that permits the creditor to reach the debtor's interest in a trust that is subject to the enforcement of the judgment.

Contingent future interests. Under existing law, a future interest that is contingent is not subject to enforcement of a money judgment. The proposed law permits the court, on application of the creditor, to apply a contingent interest to the satisfaction of a judgment by such means as are appropriate under the circumstances of the case.

Third-Party Claims

The proposed law makes significant revisions in the law governing the third-party claims procedure.

The proposed law makes the third-party claims procedure applicable to claims to real property. Existing law limits the third-party claims procedure to claims to personal property, and a claimant to real property must usually resort to an action to quiet title.

Under existing law, the creditor may file an undertaking in response to the third-party claim to prevent the release of the property. The undertaking is required to be twice the amount of the property or, as an alternative in the case of a security interest, twice the amount of the claim. The proposed law eliminates the need to value the property or the claim and the attendant disputes by providing that the creditor's undertaking is to be not less than a flat amount—\$7,500 in superior court and \$2,500 in municipal and justice courts—*or twice the amount of the creditor's lien, whichever is the lesser*. The third person may obtain the release of the property by filing an undertaking in favor of the creditor in the same amount as the undertaking filed by the creditor. As an alternative, the third person may apply to the court for an order increasing the amount of the undertaking to an amount sufficient to compensate the

third person for any damages that are likely to result from the levy should the third person prevail.

The proposed law requires that the debtor be given notice of the third-party claim in order to guard against an incorrect determination of the respective interests of the parties.

[Material omitted.]

The proposed law eliminates the provisions of the existing Attachment Law which create liability for wrongful attachment of property of third persons. Under the proposed law, a third person whose property is levied upon under a writ of attachment may make a third-party claim or may resort to common law remedies.

Service of Writs, Notices, and Other Papers

The proposed law makes clear when service on the creditor's attorney or the debtor's attorney is permitted or required.

The proposed law permits the debtor or creditor to serve a paper (other than a writ or notice of levy) that otherwise would be served by the levying officer if the levying officer gives permission.

The proposed law expands the existing authority of a registered process server. A registered process server is given new authority to make a levy upon (1) real property, (2) growing crops, (3) timber to be cut, (4) minerals and the like to be extracted, and (5) personal property used as a dwelling where levy is accomplished by service or posting rather than by taking possession of the property. The duties to be performed by the registered process server and by the levying officer when a levy is made by a registered process server are clarified.

The new law also permits a registered process server to serve a writ of possession of real property (as in an unlawful detainer case), provided that the levying officer is first afforded three business days within which to serve the writ. The eviction of occupants who do not comply with the notice to vacate remains a duty of the levying officer, and this duty may not be performed by a registered process server.

Costs of service by a registered process server are recoverable in the court's discretion.

[Material omitted]

Enforcement by Assignee of Judgment

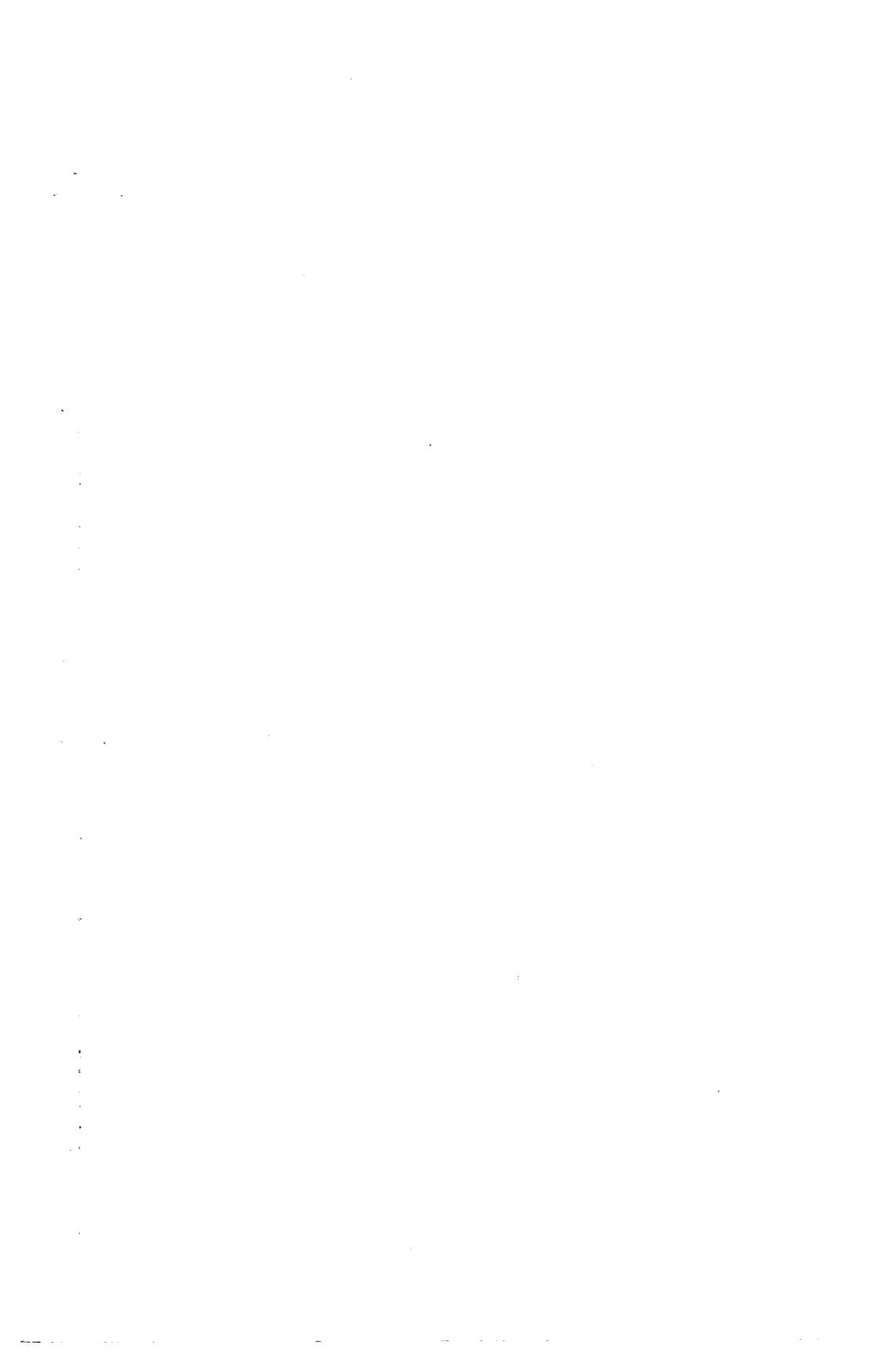
The proposed law codifies the requirement of existing practice that an assignee of a judgment may enforce the judgment only if the assignee has become an assignee of record. A new provision permits an assignee to become an assignee of record by filing with the court clerk an acknowledgment of assignment, but this does not limit any other method by which the assignee may become an assignee of record. New rules are included to determine priorities among two or more assignees of the same judgment.

Satisfaction of Judgment

The proposed law clarifies the provisions governing acknowledgment of full satisfaction of a judgment. New procedures are added (1) for acknowledgment of partial satisfaction and (2) for acknowledgment of satisfaction of matured installments under an installment judgment.

Forms and Judicial Council Rules

Statutory forms are included in the proposed law but may be superseded by Judicial Council forms. The Judicial Council is given authority to make rules governing practice and procedure under the proposed law.



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INTRODUCTION

The law relating to enforcement of judgments has long been in need of a thorough study and revision. Many provisions in existing law date from the 1872 enactment of the Code of Civil Procedure¹ and some have remained largely unchanged since 1851, and piecemeal amendments have accumulated over the last century. As a result, the statutory law falls far below the standards of the modern California codes. There are long and complex sections that are difficult to read and more difficult to understand. There are duplicating and inconsistent provisions. There are provisions that are obsolete and inoperative. Judicial decisions interpreting the statutory language are conflicting and obscure. Important matters are not covered at all in the existing statute or are covered inadequately. The principles and terminology of the Commercial Code are not recognized in the statutes governing enforcement of judgments, even though portions of the Commercial Code deal with the same or related subject matter.

The proposed law is a new comprehensive statute that will provide a full and clear statutory treatment of the law governing enforcement of judgments.² It will streamline procedures to the extent practicable in an effort to reduce the procedural costs to the judicial system and the parties and will provide better remedies for creditors and protections for debtors where needed. The more important changes in existing law are discussed below. Other changes

¹ Unless otherwise indicated, all statutory citations in this recommendation are to the Code of Civil Procedure.

² The proposed law will replace existing Title 9 of Part 2 of the Code of Civil Procedure (Sections 681-724e). Existing Title 9 deals with the enforcement of money judgments, judgments for the possession or sale of real or personal property, and judgments enforceable by contempt. Its provisions are also available for the enforcement of a tax liability in a situation where the state is authorized to issue a prejudgment collection warrant. For the most part, however, Title 9 is concerned with enforcement of money judgments. The scope of the new comprehensive statute is essentially the same as that of existing law. The proposed law separates the provisions pertaining to the enforcement of various types of judgments and clarifies the extent to which general provisions apply to nonmoney judgments. Under existing law, it is not always clear which provisions apply to which types of judgments.

are noted in the Comments following the sections of the proposed legislation.

The operative date of the proposed law is deferred until . . . *July 1, 1983*. This will allow a sufficient time for interested persons to familiarize themselves with the new law and for the Judicial Council to prepare any necessary forms.

PERIOD FOR ENFORCEMENT OF JUDGMENTS AND RENEWAL OF JUDGMENTS

Existing Law

Under existing law, a writ or order for the enforcement of a judgment may be obtained as a matter of right within 10 years after the entry of the judgment.³ The time during which the enforcement of the judgment is stayed or enjoined is excluded from the computation of the 10 years within which the writ or order may issue.⁴ The judgment may be enforced after 10 years in the discretion of the court upon motion by the judgment creditor with notice to the judgment debtor.⁵ The judgment may also be renewed by bringing an action on the judgment if the 10-year statute of limitations has not run.⁶ This scheme is a direct descendant

³ Section 681. Section 681 and its companion provision, Section 685 pertaining to issuance after 10 years, govern issuance of writs or orders for the enforcement of money judgments and judgments for the possession or sale of property. See, e.g., *Butcher v. Brouwer*, 21 Cal.2d 354, 132 P.2d 205 (1942) (money judgment); *Laubisch v. Roberdo*, 43 Cal.2d 702, 706-09, 713-15, 277 P.2d 9, 13, 16-17 (1954) (judgment for sale of real property); *City of Los Angeles v. Forrester*, 12 Cal. App.2d 146, 148-49, 55 P.2d 277, 278 (1936) (judgment for possession of real property). See also 5 B. Witkin, *California Procedure Enforcement of Judgment* § 68, at 3442, § 199, at 3553 (2d ed. 1971); *Review of 1955 Code Legislation* 101 (Cal. Cont. Ed. Bar 1955). But see Civil Code § 4380 (court has discretion as to manner of enforcement of judgment, order, or decree under Family Law Act).

⁴ Section 681.

⁵ Section 685. This provision requires the judgment creditor to file an affidavit stating the reasons for failure to enforce the judgment within the 10 years allowed by Section 681. See the cases cited in 5 B. Witkin, *California Procedure Enforcement of Judgment* § 202, at 3555 (2d ed. 1971). There is no fixed time limit for a motion under Section 685. Cases cited in *Long v. Long*, 76 Cal. App.2d 716, 722, 173 P.2d 840, 843 (1946), reveal that execution has been permitted under Section 685 for as much as 20 years after judgment. In *Hatch v. Calkins*, 21 Cal.2d 364, 371, 132 P.2d 210, 214 (1942), the court denied issuance of a writ of execution 29 years after entry of judgment for lack of diligence.

⁶ Section 337.5. See *Atkinson v. Adkins*, 92 Cal. App. 424, 426, 268 P. 461, 462 (1928). The statute of limitations does not begin to run until the judgment is final. See *Turner v. Donovan*, 52 Cal. App.2d 236, 126 P.2d 187 (1942). The statute of limitations may be tolled for reasons such as the debtor's absence from the state. See Section 351.

of the common law rules concerning actionability and executability of a money judgment.⁷

Proposed Law

Period of Enforcement

The proposed law establishes a 10-year period of enforcement for money judgments and judgments for possession or sale of property, but permits the 10-year period to be extended by renewal of the judgment.⁸ A stay of enforcement does not extend the 10-year period. If the judgment is not renewed, it becomes unenforceable at the conclusion of 10 years from its entry and all enforcement proceedings against the judgment debtor must cease.⁹ The proposed law does not, however, limit the existing right to renew the judgment by an action on the judgment.¹⁰

In the case of a money judgment payable in installments,¹¹ the proposed law codifies case law holding

⁷ At common law, a writ of the appropriate type—*leviari facias*, *fieri facias*, or *elegit*—could be issued to enforce a money judgment only for a year and a day after the signing of the judgment. If a writ was not issued within this time, the judgment became dormant and the judgment creditor was required to initiate proceedings to revive the judgment by means of a writ of *scire facias* or to bring an action of debt to renew the judgment. *Scire facias* could be obtained without application to the court for a period of 10 years after judgment. At a later time, the common law developed a rebuttable presumption of payment after 20 years. See Riesenfeld, *Collection of Money Judgments in American Law—A Historical Inventory and a Prospectus*, 42 Iowa L. Rev. 155, 156-59, 172-73 (1957).

⁸ See discussion under "Streamlined Renewal Procedure" *infra*.

⁹ The rule announced in *Alonso Inv. Corp. v. Doff*, 17 Cal.3d 539, 551 P.2d 1243, 131 Cal. Rptr. 411 (1976), permitting the enforcement of a writ of execution after the expiration of the 10-year period provided by Section 681 if the writ had been timely issued, is not continued in the proposed law. If an enforcement proceeding is in progress when the 10-year period expires, the proposed law permits the enforcement proceeding to continue if the judgment is renewed before the expiration of the 10-year period. In addition, the proposed law makes clear that an otherwise unenforceable judgment may be used as an offset if the judgment was enforceable at the same time that the judgment debtor had a claim against the judgment creditor.

¹⁰ A judgment that has become unenforceable under the proposed law may still be renewed by an action if the 10-year statute of limitations provided by Section 337.5 has not run. This may occur because the statute of limitations does not begin to run until the judgment is final and may be tolled for reasons such as the debtor's absence from the state. See note 6 *supra*. In addition, the proposed law permits the judgment creditor to continue a creditor's suit against a third person holding property of or owing debts to the judgment debtor (and to enforce any judgment obtained in that suit) after the time for enforcement of the original judgment against the judgment debtor has expired. See the discussion in the text at notes 460-463 *infra*.

¹¹ See, e.g., Code Civ. Proc. §§ 85 (installment payment of money judgments of municipal or justice court), 117 (small claims court judgment), 667.7 (periodic payment of future damages under judgment against provider of health care

that the time for enforcement of each installment begins to run from the time the installment falls due.¹² If an installment judgment is not renewed, the proposed law makes payments due more than 10 years unenforceable, but payments not more than 10 years overdue and future installments are enforceable even though the judgment was entered more than 10 years previously.

The provisions outlined above would not apply to the enforcement of a judgment, order, or decree *enforceable* under the Family Law Act. The proposed law would not affect the existing general rule that the court has discretion as to the manner of enforcement of judgments, orders, and decrees under the Family Law Act.¹³ However, the proposed law adds provisions to the Family Law Act to make a judgment, order, or decree for the payment of child or spousal support enforceable by writ of execution without the need for a court order if the payments are not more than 10 years overdue. . . . After the expiration of the 10-year period, the overdue support payments are enforceable only in the discretion of the court, and the lack of diligence in seeking enforcement is required to be considered by the court in determining whether to permit enforcement.

Streamlined Renewal Procedure

The proposed law provides a simple renewal procedure for extending the period of enforceability of a money judgment or judgment for the possession or sale of property. The new procedure is drawn from the existing statutory provisions that permit entry of a California judgment based on a sister state judgment upon application of the judgment creditor.

Under the proposed law, the judgment creditor may file an application for renewal with the court where the judgment was entered. Thereupon, the clerk enters the

services); Labor Code §§ 5801, 5806 (judgment for installment payment of workers' compensation award); Veh. Code § 16380 (installment payment of vehicle accident damage judgment).

¹² Cf. *Wolfe v. Wolfe*, 30 Cal.2d 1, 4, 180 P.2d 345 (1947) (installment judgment for support).

¹³ Civil Code § 4380.

renewal in the amount required to satisfy the judgment on the date the application is filed. This amount is determined on the basis of the judgment creditor's application for renewal.¹⁴ The renewal extends the enforceability of the judgment for 10 years from the date of filing the application for renewal. The judgment creditor is required to serve notice . . . *of the renewal of the judgment* on the judgment debtor who then has 30 days after service within which to make a motion to vacate the renewal. A writ to enforce the judgment may not be issued nor may enforcement proceedings be commenced until after the judgment creditor files proof of service on the judgment debtor with the court clerk. The judgment can be vacated on any grounds that would be a defense to an action on the judgment.¹⁵ In addition, the court has authority to modify the amount of the renewal if it is shown at the hearing on the motion to vacate the renewed judgment that the amount due has been incorrectly stated in the judgment creditor's application. An application for renewal must be filed before the expiration of the 10-year period of enforceability.¹⁶ In the case of an installment judgment (other than an installment judgment for child or spousal support which is governed by the Family Law Act), only installments due not more than 10 years will be renewed by the application.¹⁷ There is no limit placed on the number of times the judgment creditor may renew the judgment by means of this procedure, except that a judgment may not be renewed more often than once every five years.¹⁸ There

¹⁴ The amount due on the judgment includes the amount of unsatisfied principal, allowed costs, accrued interest, and the fee for renewal. This provision is analogous to the provision governing an entry of a California judgment based on a sister state judgment upon the filing of an application with the clerk. See Section 1710.25.

¹⁵ This procedure is analogous to Sections 1710.30 and 1710.40 (sister state judgments).

¹⁶ An application for renewal may be filed under the proposed law even if enforcement of the judgment is stayed since renewal has no effect on the stay but the renewal will prevent the expiration of the 10-year period of enforceability.

¹⁷ In the case of an installment judgment, the past due installments are aggregated into a lump sum with a period of enforceability running 10 years from the filing of the application for renewal. Future installments may continue to fall due under the terms of the judgment and are not affected by the renewal.

¹⁸ By preventing the renewal of a judgment more often than once every five years, the proposed law prevents the judgment creditor from renewing a judgment more frequently merely to compound the interest on the judgment. Renewal has the effect of compounding the interest on the judgment, since interest accrues on the total amount of the judgment as renewed and the judgment as renewed includes the accrued interest on the date of filing the application for renewal.

is no requirement that the judgment creditor demonstrate diligence in enforcing the judgment during the previous 10 years.¹⁹

A certified copy of the judgment creditor's application for renewal may be recorded with the county recorder in order to continue a judgment lien on an interest in real property for 10 years running from the date the application for renewal was filed with the court clerk.²⁰ Other liens and enforcement proceedings may also be continued after the expiration of a prior 10-year enforcement period if a certified copy of the application for renewal has been served on or filed with the proper person.

INTEREST AND COSTS

Rate of Interest

[Material omitted.]

Legislation enacted in 1982 sets the rate of interest on judgments at 10 percent.²¹ The 10 percent rate, which

¹⁹ The necessity of satisfying the reasonable diligence requirement of existing law is a waste of judicial resources for no significant benefit. Prior to the amendment of Section 685 in 1933, the creditor could obtain issuance of a writ of execution "almost as a matter of right" after the expiration of the period prescribed by Section 681 (five years at that time). *Butcher v. Brouwer*, 21 Cal.2d 354, 357, 132 P.2d 205 (1942). However, in *Butcher* the court held that execution could issue only if the judgment creditor has "exercised due diligence in locating and levying upon property owned by the debtor, or in following available information to the point where a reasonable person would conclude that there was no property subject to levy within that time. And even though the creditor may have satisfied the court that he has proceeded with due diligence . . . , the court may still deny him its process if the debtor shows circumstances occurring subsequent to the five-year period upon which, in the exercise of a sound discretion, it should conclude that he is not now entitled to collect his judgment." *Id.* at 358, 132 P.2d at 207. For the application of this standard in a variety of factual settings, see the cases cited in 5 B. Witkin, *California Procedure Enforcement of Judgment* § 202, at 3555 (2d ed. 1971).

²⁰ This provision achieves the same result as under existing law in a case where a judgment in an action on a money judgment is recorded to create a judgment lien on the judgment debtor's property that is still subject to the judgment lien of the original judgment. See *Provisor v. Nelson*, 234 Cal. App.2d Supp. 876, 44 Cal. Rptr. 894 (1965). The proposed law also permits the renewal of a judgment lien on an interest in real property that has been transferred subject to the lien if a copy of the application for renewal is personally served on the transferee and proof of service is filed within 30 days after the application is filed.

²¹ 1982 Cal. Stats. ch. 150.

effectuates a separate Commission recommendation,²² is continued in the new law.²³

Accrual of Interest

[Material omitted.]

In the case of a money judgment payable in installments, the proposed law makes clear that interest accrues on each installment from the date it becomes due unless the judgment otherwise provides.²⁴

As a general rule, the judgment creditor is entitled to receive interest on the unpaid principal amount of the judgment until the judgment is satisfied.²⁵ However, full satisfaction of a judgment through the levy process would not be possible if minimal amounts of interest were to continue to accrue until the judgment creditor is actually paid the proceeds of collection or sale by the levying officer.²⁶ For this reason, existing law grants interest only to the date of levy if the judgment is satisfied in full pursuant to a levy under writ of execution.²⁷ *The new law continues this rule in cases where a garnishee pays the full amount due in a lump sum. In other cases of full satisfaction, such as where property is sold at an execution sale or where a garnishee does not pay the full amount in a lump sum, the new law provides that . . . interest ceases to accrue when the proceeds are actually received by the levying officer. This change will reduce the lost interest to a practical*

²² *Recommendation Relating to Interest Rate on Judgments*, 15 Cal. L. Revision Comm'n Reports 7 (1980). See also Cal. Const. art. 15, § 1 (fixing the rate of interest on judgments at seven percent but giving the Legislature authority to set the rate at not more than 10 percent and to provide a variable rate).

²³ The proposed law also includes the conforming changes proposed in the earlier recommendation with respect to the amount of accrued interest allowed under a sister state judgment when a California judgment is entered based on the sister state judgment.

²⁴ See, e.g., *Huellmantel v. Huellmantel*, 124 Cal. 583, 589-90, 57 P. 582 (1899); *In re Marriage of Hoffee*, 60 Cal. App.3d 337, 131 Cal. Rptr. 637 (1976).

²⁵ See, e.g., *State v. Day*, 76 Cal. App.2d 536, 556, 173 P.2d 399 (1946); *City of Los Angeles v. Aitken*, 32 Cal. App.2d 524, 531-32, 90 P.2d 377 (1939).

²⁶ Many collections are in the form of personal checks which must clear before the levying officer may safely pay the amount collected to the judgment creditor. There is also an inevitable delay in processing the proceeds through the sheriff's or marshal's office and in the issuance of warrants by the appropriate auditing agency. Judgment creditors are probably content with receiving a substantially full satisfaction by this process and are not unduly troubled by the loss of several weeks' worth of interest.

²⁷ See Section 682.2.

minimum.²⁸ In all other cases of full or partial satisfaction, the proposed law makes clear that interest runs until the judgment is satisfied, whether by actual receipt of payment by the judgment creditor, tender, deposit in court, or otherwise.²⁹

Costs of Enforcement

Scattered provisions of existing law govern the award of costs incurred in enforcing a judgment and the collection of those costs.³⁰ The proposed law reorganizes these provisions and makes clarifying changes.

[Material omitted.]

Existing law permits the filing of a memorandum of costs or a motion for costs within six months after the costs are incurred.³¹ The new law increases this period to two years. The new law also provides a new procedure for adding costs to the amount to be collected pursuant to a writ that has already been issued.

Interest on Costs

The existing statutes are silent on the question whether interest accrues on costs that have been incurred during the enforcement process. Generally, interest accrues on “judgments.”³² Allowed costs (pursuant to a memorandum of costs or a motion for costs) are entered “on the margin of the judgment” and are included in writs subsequently issued to enforce the judgment.³³ Whether this makes costs part of the judgment for purposes of interest is not clear.

²⁸ Except in cases where the full amount is collected without an execution sale, the judgment creditor will be entitled to interest accruing from the date of levy until the date of sale or collection, but will still not receive any interest for the time it takes to pay out the funds received by the levying officer.

²⁹ For example, if a partial satisfaction is received as the result of a levy, the judgment creditor will be entitled to apply the partial satisfaction to the total amount due, including interest and allowed costs, on the date the partial satisfaction is received by the judgment creditor from the levying officer. In the case of a partial satisfaction, the expense of the law’s delay is borne by the judgment debtor who had the ability to pay part of the judgment voluntarily and so could have avoided the extra amount of interest as well as collection costs.

³⁰ See Sections 682.2, 691, 1032.6, 1033.7. Provisions relating to advance deposit of costs of the levying officer are found in Section 488.050 (incorporated by Section 688(b)) and Government Code Sections 6103.2 and 24350.5.

³¹ Section 1033.7.

³² See Sections 682.1, 682.2.

³³ Section 1033.7; see also Sections 682.1, 682.2, 691.

The Judicial Council form of the writ of execution, through a quirk of drafting, provides for interest on costs if there has been a partial satisfaction of the judgment but not otherwise.³⁴

The proposed law provides that costs advanced by the judgment creditor draw interest from the date costs are added to the judgment. This occurs when a court order allowing the costs is filed or when the time expires for making a motion to tax costs after a memorandum of costs is filed. Interest is intended to compensate the judgment creditor for the loss of use of money advanced by the judgment creditor to cover collection costs.

PROPERTY SUBJECT TO ENFORCEMENT

As a general rule, all property of the judgment debtor is subject to enforcement procedures to satisfy a money judgment.³⁵ This rule is subject to a number of significant qualifications:

(1) As a general rule, property that is not transferable is not subject to enforcement.³⁶

(2) Property of a public entity is not subject to enforcement.³⁷

(3) Property that would otherwise be subject to enforcement may be exempt.³⁸

³⁴ See Writ of Execution (Form Approved by the Judicial Council of California, effective January 1, 1979).

³⁵ In general, nonexempt property interests that are assignable may, by some procedure, be reached to satisfy a money judgment. See *Murphy v. Allstate Ins. Co.*, 17 Cal.3d 937, 945-46, 553 P.2d 584, 589-90, 132 Cal. Rptr. 424, 429-30 (1976). For a discussion of procedures to reach property not subject to levy of execution, see the discussion in the text under "Miscellaneous Creditors' Remedies" beginning at note 425 *infra*.

³⁶ See, e.g., 1 A. Freeman, *Law of Executions* § 119 (3d ed. 1900); *Murphy v. Allstate Ins. Co.*, 17 Cal.3d 937, 553 P.2d 584, 132 Cal. Rptr. 424 (1976) (choses in action founded upon torts subject to creditors' suits only if assignable by the law of the state). Although not subject to execution, a nonassignable cause of action is subject to the procedure for creation of a lien if the cause of action is the subject of a pending action or special proceeding. See the discussion in the text under "Lien in Pending Action or Proceeding" beginning at note 473 *infra*.

³⁷ See Gov't Code §§ 965.5(b), 970.1(b). See also *Recommendation Relating to Enforcement of Claims and Judgments Against Public Entities*, 15 Cal. L. Revision Comm'n Reports 1257 (1980).

³⁸ See the discussion in the text under "Exemptions From Enforcement of Money Judgments" beginning at note 217 *infra*.

These rules, and other technical limitations on property subject to enforcement,³⁹ are continued in the proposed law.

In three situations, property that is not owned by the judgment debtor is also subject to execution or some other enforcement procedure:

(1) Community property is liable for the satisfaction of the debts of either spouse; and, if the debt was incurred for necessities of life after marriage, the separate property of the nondebtor spouse may also be applied to the judgment against the other spouse.⁴⁰ Case law provides that the separate property of the nondebtor spouse may not be applied to the satisfaction of a money judgment unless the nondebtor spouse is made a party to the action.⁴¹ This rule is codified in the proposed law. The nondebtor spouse, for due process reasons, should have the opportunity to contest the validity of the debt before his or her separate property is applied to the satisfaction of the judgment.

(2) Property that was subject to an enforcement lien when owned by the debtor and later transferred may be reached.⁴²

(3) Where the debtor makes a fraudulent conveyance, the creditor may "disregard the conveyance and . . . levy execution upon the property conveyed."⁴³

The new law makes clear that a lessee's interest in real property may be applied to the satisfaction of a money judgment in certain specified circumstances.

³⁹ See, e.g., Civil Code § 765 (estate at will); Educ. Code § 21116 (educational endowment funds). See the discussion in the text under "Miscellaneous Creditors' Remedies" beginning at note 425 *infra*.

⁴⁰ See Civil Code §§ 5116, 5120, 5121, 5122, 5132. The Commission is now engaged in a study of the liability of marital property for obligations of either or both of the spouses. The Commission plans to submit a separate recommendation on this subject to a future session of the Legislature.

⁴¹ See, e.g., *Evans v. Noonan*, 20 Cal. App. 288, 128 P. 794 (1912); *Credit Bureau of Santa Monica Bay Dist., Inc. v. Terranova*, 15 Cal. App.3d 854, 93 Cal. Rptr. 538 (1971).

⁴² See Section 682 (real property subjected to judgment lien); *Riley v. Nance*, 97 Cal. 203, 31 P. 1126 (1893) (property subjected to attachment lien when owned by debtor); *Puissegur v. Yarbrough*, 29 Cal.2d 409, 412-13, 175 P.2d 830, 832 (1946) (property subjected to execution lien when owned by judgment debtor).

⁴³ Civil Code § 3439.09. The proposed law does not affect the provisions relating to fraudulent conveyances.

ENFORCEMENT LIENS

Liens Generally

Introduction

Under existing law, the important matters of the creation and effect of liens that arise in the course of enforcing a money judgment are left largely to case law. Existing statutes provide for the creation of a judgment lien on real property,⁴⁴ an execution lien,⁴⁵ and a lien in a pending action or proceeding.⁴⁶ The proposed law continues these liens with some revisions and with more detail and provides also for a judgment lien on certain types of business personal property and for liens arising pursuant to examination proceedings, creditors' suits, and charging orders. The proposed law also specifies the time when the lien arises, which is the primary factor in determining the rights of a creditor against transferees and encumbrancers of the debtor's property and against other creditors.⁴⁷

Codification of Doctrine of Relation Back

The proposed law codifies the case law rule that a creditor's priority relates back to the time as of which the first of a series of overlapping liens is created on a particular item of tangible property or a debt.⁴⁸ For example, the relation back doctrine may provide the judgment creditor with a priority predating the date of entry of the judgment

⁴⁴ Sections 674, 674.5, 674.7. See the discussion in the text under "Judgment Lien on Real Property" beginning at note 54 *infra*.

⁴⁵ Section 688(d), (e). See the discussion in the text under "Execution Lien" beginning at note 103 *infra*.

⁴⁶ Section 688.1. See the discussion in the text under "Lien in Pending Action or Proceeding" beginning at note 473 *infra*.

⁴⁷ A lien signifies the right of the judgment creditor to resort to the property subject to the lien for the satisfaction of the money judgment. In a sense, acquisition of a lien elevates a general judgment creditor to the status of a secured creditor. See S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 54 (2d ed. 1975). Determination of the time as of which a lien is created is essential because as a general rule the creditor having the earliest valid lien in time will prevail over other creditors. See Civil Code §§ 2897-2899 (general provisions concerning the priority of liens). In general, a judgment creditor holding a valid lien will also prevail over a secured party whose security interest is not perfected before the creation of the lien. See Com. Code § 9301.

⁴⁸ See, e.g., *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242 (1909); *Riley v. Nance*, 97 Cal. 203, 205, 31 P. 1126 (1893); *Bagley v. Ward*, 37 Cal. 121, 131 (1869) (dictum); *Durkin v. Durkin*, 133 Cal. App.2d 283, 294, 284 P.2d 185 (1955); *Balzano v. Traeger*, 93 Cal. App. 640, 643-44, 270 P. 249 (1928).

if property of the debtor has been attached in the action.⁴⁹ However, the relation back doctrine does not affect the priorities or rights of third persons established while the earlier lien was in effect under the law governing the earlier lien. Thus, for example, if a good faith encumbrancer obtains priority over the rights of the judgment creditor while the first lien is in effect under the law applicable to the first lien, the good faith encumbrancer retains this priority even though a lien that would give the judgment creditor a priority over a good faith encumbrancer is obtained later.

Duration of Liens Generally

The proposed law makes clear that, unless a lien is specifically limited to a shorter duration,⁵⁰ a lien expires when the period of enforcement of the judgment under which it was created ends.⁵¹ The proposed law also requires the release of property subject to the lien when the lien terminates.

Stay of Enforcement of Judgment

Under existing law, unless enforcement of the judgment is stayed on appeal, an order staying the enforcement of a money judgment does not preclude the judgment creditor from recording an abstract of the judgment to create a judgment lien on real property.⁵² The effect of a stay of enforcement on execution liens and liens arising out of enforcement proceedings is unclear. The proposed law includes a detailed provision governing the effect of a stay of enforcement on the creation and maintenance of enforcement liens.⁵³

⁴⁹ An attachment lien may run for as long as eight years. See Sections 488.500, 488.510. See also Section 488.500(i) (lien of attachment effective as of date of service of temporary protective order pursuant to Section 486.080).

⁵⁰ Section 688(e) provides that a writ of execution does not bind property for more than a year from the date of issuance of the writ. Under the new law, the lien of execution continues until two years after the issuance of the writ, and a judgment lien on personal property continues for five years.

⁵¹ See the discussion in the text under "Period For Enforcement of Judgments and Renewal of Judgments" beginning at note 3 *supra*.

⁵² Section 674(a); *Industrial Indem. Co. v. Levine*, 49 Cal. App.3d 698, 699, 122 Cal. Rptr. 712 (1975). See also Section 1710.50 (effect of stay on enforcement of California judgment entered on judgment creditor's application upon basis of sister state judgment).

⁵³ See the discussion in the text under "Effect on Enforcement Liens of Stay of Enforcement of Money Judgment" beginning at note 609 *infra*.

Judgment Lien on Real Property

Under existing law, the abstract of a money judgment, or a certified copy of certain installment money judgments, may be recorded with the county recorder to create a judgment lien on the real property owned by the judgment debtor in the county or thereafter acquired.⁵⁴ The judgment lien is one of the simplest and most effective means by which a judgment creditor may seek to secure payment of the judgment and establish a priority over other judgment creditors. It is among the least disruptive of creditors' remedies because it results in a lien that does not usually interfere with the use of the property. If the judgment is not voluntarily satisfied, the judgment lien is generally enforced by levy on and sale of the real property under a writ of execution.⁵⁵

Courts Which May Issue Judgments as Basis for Lien

A judgment, order, or decree for the payment of money that is enforceable in California may provide the basis for a judgment lien.⁵⁶ Existing law specifically refers to judgments and decrees of courts of this state, judgments entered in this state on the basis of sister state judgments, judgments of small claims courts, judgments of "any court of record of the United States," and orders for the reimbursement to a county for legal services, probation supervision, or support in a county institution, provided to wards and dependent children.⁵⁷ The proposed law continues the substance of existing law except that the

⁵⁴ See Sections 674 (money judgments in general), 674.5 (child and spousal support judgments), 674.7 (installment judgments against health care provider). Section 674 refers to judgments, but only *money* judgments may create judgment liens. See *Laubisch v. Roberdo*, 43 Cal.2d 702, 707-08, 277 P.2d 9 (1954); 4 B. Witkin, *California Procedure Judgment* § 139, at 3286 (2d ed. 1971).

⁵⁵ If execution is unavailable, the judgment lien may be foreclosed by an action in equity. For example, after the death of the judgment debtor, a claim may be made against the estate or the judgment lien may be foreclosed. See Prob. Code §§ 716, 732; *Corporation of America v. Marks*, 10 Cal.2d 218, 220-22, 73 P.2d 1215 (1937). The judgment creditor may also foreclose a judgment lien by a cross-complaint in an action to foreclose by a mortgagee. See *Hibernia Sav. & Loan Soc'y v. London & Lancashire Fire Ins. Co.*, 138 Cal. 257, 71 P. 334 (1903).

⁵⁶ The law relating to whether some types of installment judgments may be the basis for a judgment lien is unclear. See the discussion in the text under "Judgment Lien Under Installment Judgment" beginning at note 71 *infra*.

⁵⁷ See Section 674(a). Orders for reimbursement to a county issuable under Welfare and Institutions Code Section 908 are referred to in Section 674(b). A judgment may be entered in California on the basis of a sister state money judgment pursuant to

misleading language pertaining to judgments of federal courts is eliminated.⁵⁸

Property Subject to Judgment Lien

Under existing law, a judgment lien reaches all the nonexempt real property owned by the judgment debtor in the county where the lien is created.⁵⁹ This provision has been strictly construed with the effect that the lien does not reach estates for years,⁶⁰ equitable interests,⁶¹ contingent interests,⁶² or naked title.⁶³

The proposed law expands the coverage of judgment liens to leasehold interests with an unexpired term of two or more years at the time of creation of the lien,⁶⁴ equitable interests,⁶⁵ and contingent interests. The equitable interest

Sections 1710.10-1710.65 and is enforceable as if originally entered in California. Section 1710.35. A sister state support order may be registered in California and enforced as a support order issued in California. Section 1699. A foreign nation money judgment may be recognized and enforced as provided in Sections 1713-1713.8.

⁵⁸ A federal money judgment may be recorded to create a judgment lien pursuant to federal law if it is rendered in California or is registered in a federal court sitting in California. 28 U.S.C. §§ 1962 (judgment lien of federal judgment), 1963 (registration of judgment of one federal district court in another district). The new law makes clear that an abstract or certified copy of a federal judgment enforceable in this state may be recorded to create a judgment lien on real property.

⁵⁹ Section 674(a).

⁶⁰ See *Summerville v. Stockton Milling Co.*, 142 Cal. 529, 537-40, 76 P. 243 (1904); *Arnett v. Peterson*, 15 Cal. App.3d 170, 173, 92 Cal. Rptr. 913 (1971) (90 years remaining of a 99-year lease). It has been asserted, however, that a lease for an indefinite term would be real property subject to a judgment lien. See 2 A. Bowman, *Ogden's Revised California Real Property Law* § 19.19 (1975).

⁶¹ See *Helvey v. Bank of America*, 43 Cal. App.2d 532, 535, 111 P.2d 390 (1941) (right of redemption of tax deeded property). *Poindexter v. Los Angeles Stone Co.*, 60 Cal. App. 686, 214 P. 241 (1923) (interest of beneficiary of trust in land); *Belieu v. Power*, 54 Cal. App. 244, 246, 201 P. 620 (1921) (interest of purchaser in possession under executory contract for sale of land).

⁶² *Cf. Anglo California Nat'l Bank v. Kidd*, 58 Cal. App.2d 651, 655, 137 P.2d 460 (1943) (contingent remainder under trust not subject to execution).

⁶³ See *Iknoian v. Winter*, 94 Cal. App. 223, 225, 270 P. 999 (1928) (lien did not apply against fully paid vendor under installment land contract who neglected to give deed). See also *Majewsky v. Empire Constr. Co.*, 2 Cal.3d 478, 483-84, 467 P.2d 547, 85 Cal. Rptr. 819 (1970); *Parsons v. Robinson*, 206 Cal. 378, 379, 274 P. 528 (1929). The proposed law makes no change in the rule that the lien does not reach naked title.

⁶⁴ The treatment of leases with an unexpired term of two years or more is consistent with the extent of the right of redemption under existing law (see Section 700a(a)) and the proposed provisions for delay of sale of real property. See the discussion in the text under "Statutory Redemption From Judicial Sales" beginning at note 380 *infra*.

⁶⁵ The lien would not reach the interest of a beneficiary in real property held in trust. The proposed law provides a separate procedure for reaching the judgment debtor's interest as beneficiary of a trust. See the discussion in the text under "Trusts" beginning at note 510 *infra*.

of a buyer of real property is subject to execution⁶⁶ and should be subject to a judgment lien. Leasehold interests should be subject to the judgment lien for the same reason. Contingent interests are made subject to the judgment lien to help ensure eventual collection of the judgment, but the proposed law requires court approval before a contingent interest may be applied to the satisfaction of a money judgment since such an interest often can be sold only at a great sacrifice.⁶⁷

Duration of Judgment Lien Under Lump-Sum Judgments

Under existing law, a judgment lien on real property may continue for as long as 10 years from the date of entry of judgment.⁶⁸ The lien may be extended in effect by bringing an action on the judgment and obtaining a judgment lien under the second judgment before the judgment lien under the first judgment expires.⁶⁹

The term of the judgment lien under the proposed law is 10 years, but the lien may be renewed with the same priority if a certified copy of an application for renewal of the judgment is recorded before the lien expires.⁷⁰ The renewed judgment lien runs for 10 years from the date the application for renewal was filed with the court clerk to renew the judgment. By using this renewal procedure, the judgment lien may be continued for as long as the judgment is enforceable.

⁶⁶ See *Hansen v. d'Artenay*, 13 Cal. App.2d 293, 297, 57 P.2d 202 (1936).

⁶⁷ See generally Halbach, *Creditors' Rights in Future Interests*, 43 Minn. L. Rev. 217 (1958). The proposed law gives the court discretion to determine the appropriate method of enforcing a judgment against a contingent interest. Sale of the interest is only one of the several choices available to the court. See the discussion in the text under "Contingent Interests" beginning at note 515 *infra*.

⁶⁸ Section 674 (a). For a discussion of special rules applicable to installment judgments, see "Judgment Lien Under Installment Judgment" *infra*. From 1851 until 1923, the judgment lien lasted two years although a writ of execution could be issued without prior court approval for five years after entry of judgment. See 1851 Cal. Stats. ch. 5, § 204. In 1923 the duration of the judgment lien was increased to five years, consistent with the period for automatic issuance of a writ of execution. See 1923 Cal. Stats. ch. 368, § 3. In 1955, the duration of the judgment lien and the period for automatic issuance of a writ of execution were raised to 10 years. See 1955 Cal. Stats. ch. 781, § 1; ch. 754, § 1. The 10-year periods do not necessarily run concurrently under existing law because the time during which enforcement is stayed other than on appeal is excluded from the time during which execution may automatically issue but not from the running of the judgment lien. Compare Section 674 with Section 681. The proposed law eliminates this purposeless inconsistency.

⁶⁹ See *Provisor v. Nelson*, 234 Cal. App.2d Supp. 876, 879-80, 44 Cal. Rptr. 894 (1965).

⁷⁰ See the discussion at note 20 *supra*.

Judgment Lien Under Installment Judgment

Until the rule was changed by statute, a money judgment payable in installments for an indefinite period could not create a judgment lien because the total amount was uncertain.⁷¹ In the case of child or spousal support judgments⁷² and certain medical malpractice judgments,⁷³ this rule was changed to permit recordation of a certified copy of the judgment to create a judgment lien in the amount of installments as they become due. Whether a judgment for a lump-sum amount payable in installments may create a judgment lien under existing law is unclear.⁷⁴

Under the proposed law, judgment liens created under lump-sum judgments that are payable in installments pursuant to Code of Civil Procedure Section 85 (municipal court judgments) or 117 (small claims court judgments) or Vehicle Code Section 16380 (vehicle accident damage awards) are treated basically the same as other lump-sum money judgments.⁷⁵ The whole amount of the judgment is a lien on the real property when an abstract of judgment is recorded with the county recorder, but the lien may not be enforced for installments that have not matured unless the court so orders. This scheme recognizes that the installment payment feature of such judgments is for the benefit of the judgment debtor and is not an inherent part of the judgment as is the case with installment judgments for support. The judgment creditor is given a lien for the full amount to prevent a transfer of property free of the lien and to establish a priority for the full amount over other creditors.

Under the proposed law, a different rule applies to judgment liens created under installment judgments for child or spousal support, installment judgments against

⁷¹ See *Moniz v. Moniz*, 142 Cal. App.2d 641, 646, 299 P.2d 329 (1956); *Bird v. Murphy*, 82 Cal. App. 691, 694-95, 256 P. 258 (1927); 2 A. Freeman, *Law of Judgments* § 932, at 1965 (5th ed. 1925). Under this rule, the judgment creditor could obtain a judgment lien only for installments that had fallen due and remained unpaid, thus requiring repeated filings over a period of time.

⁷² See Section 674.5 (enacted in 1959).

⁷³ See Section 674.7 (enacted in 1975).

⁷⁴ Such judgments may be issued pursuant to Code Civ. Proc. § 85 (installment payment of judgment of municipal or justice courts), 117 (small claims court judgment), Labor Code § 5801 (installment payment of workers' compensation award), and Veh. Code § 16380 (installment payment of vehicle accident damage award).

⁷⁵ The treatment of lump-sum judgments payable in installments is not specified under existing law.

health care providers for future damages, and installment judgments based on workers' compensation awards.⁷⁶ Judgment liens under these types of judgments are created by recording a certified copy of the judgment with the county recorder. The lien continues for 10 years from the date of recording and may be renewed by rerecording within that time. The amount of the lien is discussed below.

Amount of Judgment Lien

Existing law does not clearly prescribe the amount of the judgment lien.⁷⁷ The proposed law provides a general rule that the lien is for the amount required to satisfy the judgment (the principal amount of the judgment and costs that are added to the judgment pursuant to an appropriate procedure, plus interest as it accrues,⁷⁸ and less the amount of any partial satisfactions). Interest and costs are added to the judgment lien without the need of any additional recording and have the same priority as the remainder of the lien. Hence, the amount of the judgment enforceable by execution is the same as the amount of the judgment lien, except for certain lump-sum judgments payable in installments⁷⁹ in which case the judgment lien is for the full principal amount of the judgment plus interest and costs even though installments not yet due may not be enforced by execution.

The proposed law continues the existing rule that a judgment lien created under an installment judgment for child or spousal support or under an installment judgment against a health care provider is for the amount of the

⁷⁶ See Sections 674.5 (judgment lien for installment judgments for child or spousal support), 674.7 (judgment lien for installment judgment against health care provider); Labor Code §§ 5801 (installment workers' compensation awards), 5806 (entry of judgment based on award). Existing law does not provide specifically for judgment liens based on workers' compensation awards, but since a judgment may be entered on the basis of the award and there is no exception prescribed by statute, a judgment lien should be available. *Cf. Myers v. Workmen's Compensation Appeals Bd.*, 2 Cal. App.3d 621, 626, 83 Cal. Rptr. 427 (1969) (dictum). Lump-sum workers' compensation awards are treated like other lump-sum judgments under the proposed law.

⁷⁷ Section 674 states that "from such recording the judgment or decree becomes a lien." Sections 674.5 and 674.7 provide that certain installment judgments become a lien "for the respective amounts and installments as they mature (but shall not become a lien for any sum or sums prior to the date they severally become due and payable)."

⁷⁸ See the discussions in the text beginning at note 24 and note 32 *supra*.

⁷⁹ See the text at notes 80 and 81 *infra*.

installments as they mature⁸⁰ and makes clear that the lien also includes interest as it accrues and costs as they are added to the judgment. The same rule is made applicable to an installment judgment based on a workers' compensation award.

The proposed law prescribes special rules governing the amount of a judgment lien on property that is transferred or encumbered without satisfying the lien. In the case of a lump-sum judgment, interest and costs after transfer or encumbrance are included under the lien since they are likely to be a limited amount and may be reasonably anticipated by the purchaser at the time the sale price is negotiated or the encumbrance made. However, in the case of an installment judgment for child or spousal support, against a health care provider for future damages, or based on a workers' compensation award, the amount of the lien is determined by the amount due at the time of transfer or encumbrance since the liability for future amounts is usually incalculable,⁸¹ but the interest thereafter accruing on such amount is covered by the lien since this interest is computed on an amount known at the time of the transfer or encumbrance.

The proposed law also contains a new provision governing the amount of a judgment lien in a case where the amount of the judgment is modified. This provision is designed to protect persons who rely on the papers recorded to create the lien. Hence, if the amount of the judgment is increased, the lien continues under its original terms until the modification is recorded. If the amount of the judgment is reduced, the judgment lien is considered modified, whether or not the modification is recorded.

Priorities of Judgment Liens

The proposed law continues the existing rule that a lump-sum judgment lien has priority over a lump-sum

⁸⁰ See Sections 674.5, 674.7.

⁸¹ Installment judgments for child or spousal support may be modified in amount, and are subject to other contingencies such as death, remarriage, or continuation in school. See Civil Code §§ 4700, 4801, 4801.5. Installment judgments for future damages against a health care provider are subject to modification upon the death of the judgment creditor. See Section 667.7. Workers' compensation awards may be rescinded or modified by the appeals board. Labor Code § 5803.

judgment lien thereafter created.⁸² The rules under existing law are not clear concerning the priorities where there is a conflict between a lump-sum judgment lien and an installment judgment lien or between two installment judgment liens. Since the installment judgment lien is only a lien for installments as they mature on the judgment, the proposed law gives a lump-sum judgment lien later recorded priority over the lien under the installment judgment as to unmatured installments but not as to matured installments. Where there are competing installment judgment liens, each lien is given priority as to installments as they mature over the unmatured installments on the other judgment.

Judgment Lien on After-Acquired Property

A judgment lien on real property acquired by the judgment debtor in the county after the creation of the lien attaches at the time the property is acquired.⁸³ Under existing law, if there are two or more judgment liens in effect in that county against property of the judgment debtor, they attach with equal status to the newly-acquired property, regardless of the order in which the liens were created. However, the judgment creditor who first levies upon and sells the after-acquired property is permitted to do so free of the other equal liens.⁸⁴ The nonexecuting equal lienholders in effect become subordinate lienholders and have the right to redeem the real property from the execution sale under the lien of the executing judgment creditor in order to protect their security.⁸⁵ The proposed law repeals this right of redemption,⁸⁶ and the priority in after-acquired property is determined on the basis of the priority established at the time of the creation of the judgment liens. There is no compelling reason for

⁸² However, a judgment lien later recorded may prevail over an earlier recorded judgment lien, for example, where the later recorded lien dates back to the effective date of an attachment lien. See the discussion in the text under "Codification of Doctrine of Relation Back" beginning at note 48 *supra*.

⁸³ See Section 674(a); *Hertweck v. Fearon*, 180 Cal. 71, 73, 179 P. 190 (1919).

⁸⁴ *Hertweck v. Fearon*, 180 Cal. 71, 75, 179 P. 190 (1919).

⁸⁵ See Section 701; 4 B. Witkin, *California Procedure Judgment* § 146, at 3292 (2d ed 1971).

⁸⁶ See the discussion in the text under "Statutory Redemption From Judicial Sales" beginning at note 380 *infra*.

determining lien priorities differently depending on the time of acquisition of the property. This change preserves the benign aspect of the judgment lien by avoiding a race to levy on after-acquired property.

Judgment Lien on Personal Property

Although existing law permits the judgment creditor to obtain a judgment lien on real property,⁸⁷ there is no comparable procedure for obtaining a judgment lien on personal property. The proposed law includes a new procedure for obtaining a judgment lien⁸⁸ on certain types of personal property of a business that is analogous to the procedure provided in the Commercial Code for perfecting a security interest by filing a financing statement in the office of the Secretary of State.⁸⁹ *This remedy is available to enforce only money judgments first entered in California after June 30, 1983.*

Under the proposed law, the judgment creditor may obtain a judgment lien on the following kinds of personal property:

- Accounts receivable
- Chattel paper
- Equipment
- Farm products
- Inventory
- Negotiable documents of title

The judgment lien on personal property does not attach to a vehicle or boat required to be registered with the Department of Motor Vehicles or a mobilehome or commercial coach required to be registered pursuant to the

⁸⁷ See the discussion in the text under "Judgment Lien on Real Property" beginning at note 54 *supra*.

⁸⁸ The judgment lien may be obtained only on a lump-sum judgment (including a lump-sum judgment payable in installments) or on an installment judgment on which all installments have become due and payable at the time the lien is created. The new law also makes clear that a federal money judgment enforceable in California may be used to create a judgment lien on personal property.

⁸⁹ See Com. Code §§ 9302, 9304, 9305. This judgment lien procedure is an expanded version of the provisions in the Attachment Law for obtaining an attachment lien on equipment of a going business (Section 488.340) and inventory, growing crops, and timber to be cut (Section 488.360). Unlike an attachment lien, the judgment lien will not reach growing crops or timber to be cut. The new procedure is also similar to but more limited than the provisions for the filing of notice of a state tax lien. See Gov't Code § 7171. See also Section 2101 (filing of notice of federal tax lien). Iowa has recently adopted a procedure for filing a sheriff's inventory of property with the Secretary of State or county recorder with the effect of a financing statement. Iowa R. Civ. Proc. 260.

Health and Safety Code.⁹⁰ *The judgment lien on personal property also does not attach to inventory of a retail merchant that does not have a unit value of at least \$500, consistent with Commercial Code Section 9102(4). If personal property subject to judgment lien becomes a fixture (as defined in Commercial Code Section 9313), the judgment lien is extinguished.*

The judgment lien on personal property is obtained by filing a notice of judgment lien in the office of the Secretary of State.⁹¹ *The judgment creditor is required to serve a copy of the notice of judgment lien on the judgment debtor, either personally or by mail.* The judgment lien is good for not more than five years, the same duration as a security interest.⁹² The filed notice of judgment lien is to be reported (along with security interests, state and federal tax liens, and attachment liens) in a certificate issued by the Secretary of State pursuant to a request.⁹³ [Material omitted.] The judgment creditor may also release the lien as to all or part of the property or may subordinate the lien.⁹⁵

⁹⁰ "Equipment" may include vehicles and boats required to be registered with the Department of Motor Vehicles, but such vehicles and boats are not subject to the judgment lien on personal property as "equipment" because a security interest in such property is generally perfected by deposit of a properly endorsed certificate of ownership to the vehicle or boat with the Department of Motor Vehicles. See Veh. Code §§ 6300-6303 (vehicle), 9919-9924 (boat).

"Inventory" may include vehicles and boats required to be registered with the Department of Motor Vehicles, but such vehicles and boats are not subject to the judgment lien on personal property as "inventory" because generally a security interest may be obtained only if the secured party has possession of the certificate of ownership. See Veh. Code § 5907. See also Veh. Code §§ 6300-6303, 9919-9924.

For provisions governing the perfection of security interests in mobilehomes and commercial coaches, see Health & Saf. Code §§ 18077.1-18077.4.

Although a judgment lien is not allowed, the judgment creditor may, of course, obtain an execution lien on the vehicle, boat, mobilehome, or commercial coach by levy of execution.

⁹¹ Because the notice of judgment lien is filed in the office of the Secretary of State, a judgment lien can be obtained only on property in which a security interest could be perfected by filing a financing statement in that office. As to the place of filing to perfect a security interest, see Com. Code § 9401.

⁹² See Com. Code § 9403(2). Unlike a security interest, the judgment lien on personal property under the proposed law may not be extended. The judgment creditor can reasonably be expected to apply the property subject to the lien to the satisfaction of the judgment within the five-year period.

⁹³ See Com. Code § 9409, as proposed to be amended.

⁹⁴ [Omitted.]

⁹⁵ This provision is comparable to Commercial Code Section 9405.

The judgment lien extends to after-acquired property of the type to which a judgment lien initially attaches,⁹⁶ but a secured party having a purchase money security interest in the after-acquired property may obtain priority by the timely filing of a financing statement.⁹⁷ The judgment lien also extends to identifiable cash proceeds of the transfer of the property subject to the lien. This provision is similar to but narrower than the Commercial Code provision relating to proceeds where a financing statement has been filed to perfect a security interest.⁹⁸

The new law gives the creditor who has filed a notice of judgment lien on personal property the status of . . . a lien creditor under Section 9301 of the Commercial Code. Accordingly, the judgment lien has priority if the notice of judgment lien is filed before the security interest is perfected,⁹⁹ but a purchase money security interest may have priority over an earlier filed notice of judgment lien.¹⁰⁰ [Material omitted.] If the notice of judgment lien is filed when the property is already subject to a perfected security interest, the secured party has priority to the extent the security interest secures advances already made, or made or committed within 45 days after the judgment creditor serves a copy of the notice of judgment lien on the secured party.¹⁰¹

The judgment lien on personal property does not follow the property when it is transferred to any of the following:

—A buyer in the ordinary course of business who, under the Commercial Code, would take free of a security interest created by the seller.

—A holder to whom a negotiable document of title has been duly negotiated.

⁹⁶ This provision is consistent with Commercial Code Section 9204, but the judgment lien automatically extends to such after-acquired property.

⁹⁷ This provision is consistent with the Commercial Code rule as to the rights of a lien creditor. See Com. Code § 9301(2).

⁹⁸ See Com. Code § 9306. Money, checks, deposit accounts, and the like are “cash proceeds.”

⁹⁹ This provision gives the judgment lien on personal property the same effect against unperfected security interests as an execution lien under Commercial Code Section 9301.

¹⁰⁰ See Com. Code § 9301(2).

¹⁰¹ See Com. Code § 9301(4) and new § 9301(5).

—A purchaser of chattel paper who gives new value and takes possession of the chattel paper in the ordinary course of business.

The proposed judgment lien on personal property offers a speedy and inexpensive means whereby a judgment creditor may obtain priority over other creditors with a less drastic disruption of the judgment debtor's business affairs than a levy of execution.¹⁰² Moreover, the judgment creditor does not risk incurring considerable expenses with no return, such as might happen if a person with a perfected security interest in inventory levied upon makes a successful third-party claim. The judgment lien on personal property pressures the judgment debtor to settle with the judgment creditor since the property subject to the lien cannot be pledged to finance continuation of the business unless the judgment is satisfied or the lien is released or subordinated. The interests of the judgment creditor are also protected to some extent because the judgment lien on personal property covers after-acquired property and identifiable cash proceeds from the sale of the inventory or other property subject to the lien. Ultimately, if the judgment lien does not result in voluntary compliance or a settlement, the judgment creditor may find it necessary to resort to an execution levy to enforce the lien.

Execution Lien

The proposed law continues the rule of existing law that an execution lien is created when property is levied on pursuant to a writ of execution. . . . *The one-year execution lien of existing law (running from the date of issuance of the writ)*¹⁰³ *is superseded by a provision in the new law for an execution lien that terminates two years after the issuance of the writ.*

The proposed law adds new provisions to specify the effect of an execution lien where the property levied upon is transferred or encumbered after the creation of the lien. Under the proposed law, the following rules govern the effect of an execution lien after transfer or encumbrance:

(1) A transferee or encumbrancer of a judgment debtor's interest in real property that is subject to an

¹⁰² The judgment lien on personal property is available as an addition to other enforcement procedures and its creation does not preclude the judgment creditor from using other procedures.

¹⁰³ See Section 688(d), (e).

execution lien takes the property subject to the lien. The recording of a copy of the writ of execution and a notice of levy to create an execution lien provides constructive notice to any potential transferee or encumbrancer.

(2) A transferee or encumbrancer of a judgment debtor's interest in growing crops, timber to be cut, or minerals to be extracted takes the interest subject to any prior execution lien. The form of levy on this type of property—by recording a writ of execution and a notice of levy with the county recorder—provides constructive notice to all potential transferees or encumbrancers, just as does a levy upon real property.

(3) If a levying officer has levied upon tangible personal property by taking possession, the execution lien created by the levy remains on the property despite any later purported encumbrance or transfer to a third person. This rule is based on the principle that the potential transferee or encumbrancer has a duty of inquiry where it appears that the judgment debtor does not have possession of the property or is unable to deliver it. The inability to deliver the property is constructive notice of the execution lien in such cases.¹⁰⁴

(4) If a lien is created on personal property pursuant to a levy of execution, but the property subject to the lien is not in the possession of a levying officer, the interests of bona fide purchasers or encumbrancers are not affected by the lien because the process that creates the lien is not sufficient to provide constructive notice. Accordingly, the lien does not follow the property when it is transferred to a transferee or encumbrancer who gives fair consideration without knowledge of the lien, including a purchaser of chattel paper or an instrument.¹⁰⁵ Certain types of property

¹⁰⁴ *Cf.* Civil Code § 3440 (transfer without delivery under Uniform Fraudulent Conveyance Act).

¹⁰⁵ This is consistent with the treatment of a perfected security interest in chattel paper or instruments pursuant to Commercial Code Section 9308.

subject to a lien of this type may be transferred free of the lien even where the transferee knows of the lien. This principle applies to:

- A buyer in ordinary course of business.¹⁰⁶
- A holder in due course of a negotiable instrument.¹⁰⁷
- A holder to whom a negotiable document *of title* has been duly negotiated.¹⁰⁸
- A bona fide purchaser of a security.¹⁰⁹
- A purchaser of chattel paper or an instrument who gives new value and takes possession of the chattel paper or instrument in the ordinary course of business.¹¹⁰
- A holder of a purchase money security interest.¹¹¹
- A collecting bank holding a security interest in items being collected and accompanying documents and proceeds pursuant to the Commercial Code.¹¹²
- A person acquiring any right or interest in letters of credit, advices of credit, or money.¹¹³
- A person acquiring any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of the perfection of the security interest.¹¹⁴

This recognition of the rights of purchasers and transferees is consistent with case law relating to the effect of equitable liens and recent legislation governing the effect of state tax liens.¹¹⁵

¹⁰⁶ “Buyer in ordinary course of business” is defined in Commercial Code Section 1201(9). This principle is consistent with the treatment of a perfected security interest pursuant to Commercial Code Section 9307.

¹⁰⁷ See Com. Code § 3302.

¹⁰⁸ See Com. Code § 7501.

¹⁰⁹ See Com. Code § 8302.

¹¹⁰ See Com. Code § 9308.

¹¹¹ See Com. Code § 9312.

¹¹² See Com. Code § 4208.

¹¹³ See Com. Code § 5116.

¹¹⁴ See Com. Code § 9103(2).

¹¹⁵ See Gov’t Code § 7170.

Other Enforcement Liens

The existing statutes do not specify the effect of equitable liens that are created in the enforcement process. However, the courts have held that liens created by service of an order in supplementary proceedings or by the commencement of a creditor's suit¹¹⁶ are not effective against a subsequent transferee of the property subject to the lien who gives fair consideration for the property without knowledge of the lien.¹¹⁷

The proposed law includes provisions specifying the effect of the lien created in examination proceedings, a creditor's suit, or charging order proceedings. The lien is given the same effect as the execution lien is given where the property levied upon is not in the custody of the levying officer.¹¹⁸

EXECUTION

Introduction

A number of enforcement procedures are available for collection of a money judgment, the simplest and most common being execution.¹¹⁹ With certain exceptions,¹²⁰ all of the judgment debtor's nonexempt property, tangible and intangible, may be levied upon under a writ of execution. In general, the property levied upon is sold in the case of

¹¹⁶ See *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 28-30, 87 P.2d 830, 844 (1939).

¹¹⁷ See *Jud Whitehead Heater Co. v. Obler*, 111 Cal. App.2d 861, 872-74, 245 P.2d 608, 616 (1952); *Wagner v. Sariotti*, 56 Cal. App.2d 693, 698, 133 P.2d 430, 433 (1943); cf. *Taylor v. S & M Lamp Co.*, 190 Cal. App.2d 700, 711-13, 12 Cal. Rptr. 323 (1961) (transferee of partnership property with knowledge of charging order which created lien is liable in tort to judgment creditor); see generally 1 J. Pomeroy, *Equity Jurisprudence* §§ 165, 171(4) (5th ed. 1941); 4 *id.*, §§ 1233-1234. The effect of an execution lien against a bona fide purchaser under existing law is not clear. In one early decision, it was indicated that a levy of attachment would not be effective as against a good faith purchaser from the defendant. See *Rogers v. Gilmore*, 51 Cal. 309, 312 (1876). In the case of real property, it is clear that a transferee takes the property subject to a judgment lien that attached when it was owned by the judgment debtor. See Section 682, subd. 1; *Kinney v. Vallentyne*, 15 Cal.3d 475, 479, 541 P.2d 537, 124 Cal. Rptr. 897 (1975).

¹¹⁸ See the discussion in the text under "Execution Lien" beginning at note 103 *supra*.

¹¹⁹ For a discussion of other remedies, see the text under "Miscellaneous Creditors' Remedies" beginning at note 425 *infra*.

¹²⁰ Property that is not subject to execution but is subject to enforcement of a money judgment is reached using one of the miscellaneous creditors' remedies. See the discussion in the text under "Miscellaneous Creditors' Remedies" beginning at note 425 *infra* for the manner of subjecting property not subject to execution to enforcement of a money judgment.

tangible property or either collected or sold in the case of a debt.

Issuance and Return of Writ of Execution

Existing Law

Under existing law, a writ of execution for enforcement of a money judgment is issued by the clerk of the court where the judgment is entered upon application of the judgment creditor.¹²¹ A writ may be issued to the levying officer in each county in which the judgment debtor has property that the judgment creditor desires to reach.¹²² Only one writ to enforce the judgment may be outstanding in a county at a time.¹²³

The writ of execution may be in force for one year from its date of issuance, but it must be returned to the court clerk between 10 and 60 days after its delivery to the levying officer.¹²⁴ The return provides an account of the levying officer's activities in executing the writ and the amounts collected in satisfaction of the judgment.¹²⁵ If proceeds are received after the writ has been returned or if a sale has not been completed before the return date, the

¹²¹ See Section 682. Under existing law, a court hearing is required before a writ of execution may be issued to enforce a judgment for support of a child or spouse. See Civil Code § 4380; *Messenger v. Messenger*, 46 Cal.2d 619, 630, 297 P.2d 988 (1956); *Jackson v. Jackson*, 51 Cal. App.3d 363, 366-68, 124 Cal. Rptr. 101 (1975). In the interest of efficiency and economy, the proposed law permits resort to execution in such cases without prior court approval so long as amounts sought to be collected are not more than 10 years overdue. See the text at note 13 *supra*. Existing law also requires a judgment creditor who seeks to execute upon a dwelling house (for which a homestead declaration has not been recorded) to apply to the court in the county where the house is located. See Section 690.31; *Krause v. Superior Court*, 78 Cal. App.3d 499, 505, 144 Cal. Rptr. 194, 197 (1978). For the proposed modification of this feature of existing law, see the discussion in the text at note 294 and under "Exemption procedure under proposed law" beginning at note 298 *infra*.

¹²² See Sections 682, 687. The writ may also be issued to a registered process server where the judgment creditor seeks to levy upon a debt owed the judgment debtor by a third person. See the discussion in the text under "Registered Process Server" beginning at note 141 *infra*.

¹²³ See Section 683; 32 Ops. Cal. Att'y Gen. 22 (1958). Section 690.31 may create an implied exception to this general rule because the special writ issued pursuant to court order under that section for the purpose of levying upon a dwelling presumably may not be used for a levy on other property and, correspondingly, a general writ of execution issued by the clerk to the same county may not be used against a dwelling.

¹²⁴ See Sections 683, 688(e). The writ may, however, be retained to complete a sale after its return date. See Section 683(c).

¹²⁵ See Section 682.1; *Marshal's Manual of Procedure* § 404 (rev. 1980).

writ may be redelivered to the levying officer who then makes an alias return.¹²⁶

The writ of execution states the amount due on the judgment at the time of its issuance.¹²⁷ The clerk also enters the amount of interest accruing daily and the fee for issuance of the writ, and the levying officer adds the costs of levy and sale to the amount to be collected under the writ.¹²⁸

Proposed Law

The proposed law modifies these procedures in several important respects in order to provide more time for locating and levying on property and to avoid levy under a writ that no longer accurately reflects the amount due on the judgment. The writ of execution is leviable at any time during the first . . . *180* days after its issuance, rather than 60 days after its delivery to the levying officer. If property is levied upon during the . . . *180-day* period, the writ is retained by the levying officer for the purpose of selling or collecting thereafter during the life of the writ, thus avoiding the need for redelivery of the writ and an alias return. The creditor may obtain another writ of execution for the same county after the first writ is at least . . . *180* days old so that additional property may be levied upon while the sale or collection process continues under the first writ.

If no property is levied upon during the first . . . *180* days after the writ is issued, the writ is returnable promptly after the expiration of the . . . *180-day* period. The writ also is returnable at the written request of the judgment creditor; this permits issuance of a new writ when the time for levy under the prior writ has almost expired without any property having been levied upon.

Writs are returnable after the duties thereunder have been performed, but not later than . . . *two years* after issuance.¹²⁹ The writ is returnable earlier if the time for enforcement of the judgment has expired.

¹²⁶ See Section 683.

¹²⁷ See Sections 682, 682.2.

¹²⁸ See Section 682.2.

¹²⁹ In the case of a levy upon an interest of an heir, devisee, or legatee in personal property in the estate of a decedent, the writ is returnable as late as one year after the date the decree distributing the interest is final.

Levy Under Writ of Execution

The writ of execution is executed by the levying officer¹³⁰ pursuant to instructions from the judgment creditor describing the nature and location of the property to be levied upon.¹³¹

Under existing law, the levying officer is required first to apply property previously attached in the action to the satisfaction of the judgment and then to levy upon personal property and finally upon real property.¹³² This rule is ineffective, however, because the levying officer follows the instructions of the judgment creditor as to the property to be levied upon. The order of levy rule is not continued in the proposed law because it is not efficient and is not necessarily beneficial to either the debtor or the creditor.

[Material omitted.]

The 1982 revision of the Attachment Law contains a provision to protect the defendant against excessive levies. After entry of judgment in the action in which property was attached, the court is required to take into consideration in determining whether the attachment is clearly excessive the value of any property not attached in the action that has been levied upon pursuant to a writ of execution or otherwise sought to be applied to satisfy the judgment in the action.

The proposed law does not continue the requirement that the creditor levy on personal property before real property. The creditor should not be prevented from

¹³⁰ Service of the writ on a third person may also be accomplished by a registered process server if the levy does not require the sale, delivery, or custody of the property levied upon. Sections 682, 687. See also the discussion in the text under "Registered Process Server" beginning at note 141 *infra*.

¹³¹ See Section 262 (levying officer not liable for carrying out signed instructions); *cf.* Section 692 (instructions for sale of property); see generally Marshal's Manual of Procedure §§ 301, 341 (rev. 1979); California State Sheriffs' Ass'n, Civil Procedural Manual 4.05 (rev. 1980).

¹³² Sections 682, 684.2. The preferential protection of real property from the claims of creditors dates from feudal times and was recognized in clause 9 of the Magna Carta.

¹³³ [Omitted.]

reaching real property simply because there may be some personal property which might be applied to the satisfaction of the judgment. In some cases, the creditor may wish to levy on the real property because a levy on personal property would be likely to give rise to an exemption claim or a third-party claim. In other cases, real property rather than personal property might be levied upon because the levy on and sale of the personal property could be made only at a great sacrifice to the debtor, as in the case of used furniture or intangibles.

General Rules Governing Levy

Under the proposed law, property is levied upon—seized in the eyes of the law—in four ways:

(1) By taking custody and serving a writ and notice of levy. Custody and service are used where tangible personal property to be levied upon is in the judgment debtor's possession.

(2) By serving a writ and notice of levy without taking custody (garnishment). Service alone is used for a levy upon intangible personal property or tangible personal property under the control of a third person *or property under estate administration*.

(3) By filing or recording of a writ and a notice of levy. Filing or recording is used to levy upon real property, growing crops, standing timber, and minerals to be extracted, . . . or a final money judgment.

(4) By delivering a writ and instructions to levy to the levying officer. Delivery of a writ and instructions to the levying officer constitutes a "paper levy" upon property already levied upon by the levying officer.¹³⁴

The levy procedures under the proposed law are largely the same as existing procedures. However, existing law generally adopts by reference the rules governing levy under a writ of attachment,¹³⁵ whereas the proposed law includes specific provisions that prescribe the manner of levy upon the various types of property. This avoids conflicts in terminology that would otherwise arise when attachment provisions are applied in the execution context.

¹³⁴ See *O'Connor v. Blake*, 29 Cal. 312, 315 (1865); *Colver v. W.B. Scarborough Co.*, 73 Cal. App. 441, 443, 238 P. 1104 (1925).

¹³⁵ See Section 688(b).

Since the vast majority of levies take place after judgment, specific execution levy procedures are more convenient for practitioners and levying officers.

The proposed law also employs the terminology of the Commercial Code to the extent practicable. For example, references to “things in action” and “debts” in existing law¹³⁶ are replaced by references to “accounts receivable” and “general intangibles” in the proposed law.¹³⁷

Under the proposed law, both a copy of the writ of execution and a notice of levy are to be served on the judgment debtor and on other persons affected by the levy. The notice of levy informs the person served of the capacity in which the person is served (such as judgment debtor, garnishee, or interest holder of record), the property that is levied upon, the person’s rights under the levy (including the right to make a third-party claim or to claim an exemption), and the person’s duties under the levy (such as the requirement that a garnishee file a memorandum with the levying officer). Notice of levy is required to be given promptly to the judgment debtor in every case. A levy is valid, however, even if no notice is given to the judgment debtor or a third person, provided that the essential levy requirements are satisfied.¹³⁸

Creation of Execution Lien

A levy creates a lien upon the property levied upon which runs for one year from the date of the issuance of the writ.¹³⁹ [Material omitted.] *The new law increases the maximum duration of an execution lien to two years from the date the writ was issued.* By clarifying the method of levy applicable to a particular type of property, the proposed law facilitates the determination of the exact time

¹³⁶ See Sections 688(b), 691.

¹³⁷ Under the proposed law, “account receivable” means “account” as defined by Commercial Code Section 9106 and “general intangibles” means “general intangibles” as defined in Commercial Code Section 9106.

¹³⁸ This continues a feature of attachment levies that, under the incorporation provision of Section 688(a), applies to execution. See, e.g., Sections 488.310(e), 488.320(b), 488.330(c).

¹³⁹ See Section 688(e). The lien of execution has a longer duration in the case of a levy on interests or claims of heirs, devisees, or legatees in assets of decedents remaining in the hands of executors or administrators. See note 129 *supra*.

a lien is created. This is a necessary step in determining the priorities among various creditors.¹⁴⁰

Registered Process Server

The proposed law expands the role of registered process servers in levying of property pursuant to writs of execution. Under existing law, a registered process server may levy where the property levied upon is not in the possession of the judgment debtor and “the levy of execution does not require the person serving the writ to sell, deliver, or take custody of such property.”¹⁴¹ This appears to mean that a registered process server may levy on intangible property where the method of levy is by service on a third person and the property may be applied to the satisfaction of the judgment by collection rather than sale (as in the case of accounts receivable, deposit accounts, and general intangibles). The proposed law continues this aspect of existing law and also permits a registered process server to levy on real property, growing crops, timber to be cut, and minerals to be extracted, where the method of levy is by recording a copy of the writ and a notice of levy with the county recorder. The proposed law also permits a registered process server to levy on personal property used as a dwelling, such as a mobilehome or boat, where the method of levy is by posting or serving an occupant.¹⁴² *The new law permits the registered process server to levy on property in the custody of a levying officer, property in a safe deposit box, and personal property in the estate of a decedent.* The proposed law also makes clear that the registered process server is to serve persons required to be served as an adjunct of the levy, such as the judgment debtor, an occupant of real property, or a co-obligee of an account receivable or general intangible.¹⁴³

¹⁴⁰ See note 47 *supra*. See generally the discussions in the text under “Execution Lien” beginning at note 103 *supra* and under “Distribution of Proceeds of Sale and Collection” beginning at note 378 *infra*.

¹⁴¹ Section 687.

¹⁴² See the discussion in the text under “Methods of Levy on Particular Types of Property” beginning at note 159 *infra*. The proposed law provides an alternative method of levy on personal property used as a dwelling that involves a keeper taking possession and eventual removal of the occupants. The registered process server would not be involved in this type of levy.

¹⁴³ See the discussion in the text under “Methods of Levy on Particular Types of Property” beginning at note 159 *infra*.

After levy and any other service or posting is accomplished, the registered process server is required by the proposed law to file the writ with the levying officer along with an affidavit stating the activities of the registered process server. *Upon payment of the usual fee, the . . . levying officer then performs the remaining duties under the writ, such as receiving garnished amounts, selling real property, crops, timber, or minerals, processing any third-party claims or exemption claims, and returning the writ to the court clerk.*

Existing law does not make clear whether the fee of the registered process server is a recoverable cost of collection. *The new law makes the fee of the registered process server recoverable in the court's discretion. If a fee is allowed, the new law . . . incorporates the general standard¹⁴⁴ for recovery of the costs of employing a registered process server. . . . The levying officer's fee for completing the processing of the writ and returning it to the court is also recoverable under the general rules.¹⁴⁵*

Levy on Personal Property in a Private Place

The right of the judgment creditor to cause a levying officer to seize personal property from the possession of the judgment debtor is limited by the debtor's right to privacy.¹⁴⁶ Consistent with constitutional protections, the proposed law permits the judgment creditor to apply to the court *ex parte*, or on noticed motion if the court so directs or court rule so requires, for an order directing the levying officer to seize personal property in a private place. As a prerequisite to issuance of such an order, the judgment creditor must describe with particularity both the property sought to be levied upon and the place where it is to be found. The court must be satisfied that there is probable cause to believe that the property is located in the place described.

¹⁴⁴ See Section 1032.8.

¹⁴⁵ See the discussion in the text under "Costs of Enforcement" beginning at note 30 *supra*.

¹⁴⁶ The right to privacy and the protection of the security of the home was recognized in early common law. See 2 A. Freeman, *Law of Executions* § 256 (3d ed. 1900). In *Blair v. Pitchess*, 5 Cal.3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971), the prejudgment claim and delivery procedure was held unconstitutional partly because the seizure of the property in a private place constituted an unreasonable intrusion on the debtor's privacy in the absence of probable cause. *Cf.* *Camara v. Municipal Court*,

Turnover Orders

The proposed law makes available the remedy of a turnover order derived from the laws pertaining to claim and delivery and attachment.¹⁴⁷ The judgment creditor may obtain an order on ex parte application, or on noticed motion if the court so directs or court rule so requires, requiring the judgment debtor to transfer possession of property sought to be levied upon or documentary evidence of title to property or a debt sought to be levied upon. The order is enforceable by the power of the court to punish for contempt. Use of a turnover order in appropriate cases may avoid the need to obtain an order for a levy on property in a private place, may facilitate reaching intangible assets with a situs outside California, and by permitting a turnover of evidence of title may facilitate eventual collection of a debt or sale of property such as a motor vehicle.

Disposition of Perishable Property

The proposed law makes specific provision for the prompt sale by the levying officer or a receiver of perishable property that has been levied upon.¹⁴⁸ Such property may be sold pursuant to court order obtained ex parte or on noticed motion if the court or a court rule so requires. However, if the levying officer determines that the property is so perishable or so subject to deterioration or depreciation that there is not time to obtain a court order, the levying officer may take any action necessary to preserve its value. The levying officer is protected from liability if the determination is made in good faith.

Release of Property

The proposed law contains provisions governing the release of property. Existing law incorporates by reference the provisions of the Attachment Law pertaining to the release of property that has been levied upon.¹⁴⁹

387 U.S. 523, 528-29 (1967) (attempted warrantless search by municipal health inspector).

¹⁴⁷ See Sections 482.080 (attachment), 512.070 (claim and delivery).

¹⁴⁸ This provision is derived from Section 488.530 (attachment), and portions of Sections 689 (third-party claims proceedings) and 690.50(g) (exemption proceedings).

¹⁴⁹ See Section 488.560.

The proposed law continues the substance of existing law but permits property to be sold rather than released if the person from whom it was taken cannot be found. In such a case, the proceeds are deposited in the county treasury payable to the order of the person from whom the property was taken.

Levy on Property Subject to Security Interest

Existing Law

Levy procedures under existing statutory law take no account of the possibility of a security interest having priority in the personal property levied upon.¹⁵⁰ However, if a secured party has collateral that a judgment creditor seeks to levy upon, the secured party may protect his or her rights by refusing to turn the property over to the levying officer. A priority determination may then be made in a creditor's suit brought by the judgment creditor against the secured party.¹⁵¹ If the collateral is in the possession of the judgment debtor or some person other than the secured party (such as a bank or bailee) or if the collateral is intangible property (such as an account receivable), the secured party may make a third-party claim¹⁵² or seek to enforce the security interest after the property levied upon is sold.¹⁵³ Judgment creditors are permitted to levy on property in disregard of the perfected interests of secured

¹⁵⁰ Under Commercial Code Section 9301(1), (2), a lien creditor has priority over an unperfected security interest, except where a secured party with a purchase money security interest files no later than 10 days after the debtor receives possession of the collateral, in which case the secured party has priority. A perfected security interest has priority over an execution lien with respect to advances made before the execution levy and with respect to advances made within 45 days after levy or advances or commitments made thereafter without knowledge of the lien. Com. Code § 9301(4). *Cf.* Civil Code § 2897 (lien priority according to time of creation). It should be noted that a lien creditor with knowledge of the contents of an improperly filed financing statement may lose priority over an unperfected security interest if the filing was made in good faith. See Com. Code § 9401(2). This would be an unlikely occurrence, however, under the single filing alternative of the Uniform Commercial Code adopted in California.

¹⁵¹ See Section 720. See also the discussion in the text under "Creditor's Suit" beginning at note 453 *infra*. This course subjects the secured party to liability for costs.

¹⁵² See Section 689b. See also the discussion in the text under "Third-Party Claims and Related Procedures" beginning at note 519 *infra*. The judgment creditor may also force the secured party to make a third-party claim within 30 days after a demand therefor or forfeit the security interest in the property levied upon. Section 689b(8). See also discussion in the text at notes 543-544 *infra*.

¹⁵³ See Sections 689, 699 (purchaser at execution sale takes judgment debtor's interest in the property); 5 B. Witkin, *California Procedure Enforcement of Judgment* §§ 116-117, at 3482-83 (2d ed. 1971).

parties, but this aspect of existing law is needlessly burdensome to secured parties and results in excessive disruptions of ongoing business relations.

Proposed Law

The proposed law attempts to alleviate the conflict between levying creditors and secured parties through two procedures:

(1) Permitting a judgment creditor to obtain a judgment lien on personal property by filing with the Secretary of State in the manner provided for perfecting a security interest.¹⁵⁴

(2) Revising the execution levy procedures to take account of paramount interests of secured parties.

The proposed law codifies the substance of decisional law regarding the rights of secured parties with perfected security interests as against levying creditors¹⁵⁵ and adopts the terminology of the Commercial Code as far as practicable to accomplish this goal. In summary, a levy under the proposed law reaches the judgment debtor's rights in the collateral¹⁵⁶ while minimizing the disruption of the secured party's rights to satisfaction of the security interest from collateral consisting of goods in the possession of the secured party, bailee, lessee, or conditional buyer, or from an account debtor or obligor obligated on collateral such as accounts receivable, chattel paper, instruments, or general intangibles.¹⁵⁷ The priority of the judgment creditor is established at the time of levy, although it is not then known whether the secured party has the priority of a perfected security interest or is subordinate to the

¹⁵⁴ See the discussion in the text under "Judgment Lien on Personal Property" beginning at note 87 *supra*.

¹⁵⁵ The cases hold in general that a secured party with a perfected security interest in collateral involving a bailment or the indebtedness of an account debtor is entitled to the disposition of the collateral, including the collection of payments due thereon, without interference deriving from a subsequent levy by the creditor on the debtor's interest in the pledged property. See, *e.g.*, *Puissegur v. Yarbrough*, 29 Cal.2d 409, 412-14, 175 P.2d 830, 831-32 (1946); *Dubois v. Spinks*, 114 Cal. 289, 294-95, 46 P. 95, 96 (1896); *William Deering & Co. v. Richardson-Kimball Co.*, 109 Cal. 73, 84, 41 P. 801, 803-04 (1895); *Robinson v. Tevis*, 38 Cal. 611, 614-15 (1869); *Axe v. Commercial Credit Corp.*, 227 Cal. App.2d 216, 220-23, 38 Cal. Rptr. 558, 563 (1964); *Crow v. Yosemite Creek Co.*, 149 Cal. App.2d 188, 308 P.2d 421 (1957).

¹⁵⁶ See Code Civ. Proc. § 689a; Com. Code § 9311.

¹⁵⁷ The levy procedures are considered in more detail under "Methods of Levy on Particular Types of Property" *infra*.

judgment creditor's lien. This is accomplished by means of the notice served on account debtors, bailees, and obligors, which is designed to preserve the status quo pending a determination of the priorities between the judgment creditor and the secured party.¹⁵⁸ If it is determined that the judgment creditor's lien has priority over the security interest, the secured party is then liable to the judgment creditor for any payments received after the levy or the value of any property subject to the execution lien.

Methods of Levy on Particular Types of Property

The proposed law contains specific provisions for levy upon various categories of property. Many of these provisions are the same in substance as existing law which in general incorporates the methods of levy under attachment.¹⁵⁹ Significant revisions are discussed below.

Real Property

The proposed law requires the recording of a copy of the writ of execution and a notice of levy with the county recorder in all cases of a levy on an interest in real property. Under existing law, no recordation is required if the judgment is already a lien on the property.¹⁶⁰ The proposed law also makes clear that a leasehold interest in real property is to be levied upon in the same manner as a freehold interest. It is the practice under existing law to treat some leases as personal property and some as real property for the purpose of determining the correct manner of levy.¹⁶¹

Growing Crops and Timber to be Cut

Under existing law, the manner of levy on growing crops or timber to be cut is the same as a levy on the underlying

¹⁵⁸ See the discussion in the text under "Methods of Levy on Particular Types of Property" *infra* and under "Duties and Liabilities of Third Persons After Levy" beginning at note 209 *infra*.

¹⁵⁹ Section 688(b). See the discussion in the text beginning at note 135 *supra*.

¹⁶⁰ See *Lehnhardt v. Jennings*, 119 Cal. 192, 195-97, 48 P. 56, 51 P. 195 (1897). The practice has been to make a complete levy in every case. See *Marshal's Manual of Procedure* § 303.2 (rev. 1980).

¹⁶¹ See *Marshal's Manual of Procedure* § 300.3 (rev. 1977) (leases for definite term of years treated as personal property, leases for indefinite term treated as real property). The Attachment Law, however, does not make this distinction. See Section 488.310.

land.¹⁶² The proposed law continues existing law and also requires that notice of the levy be given to any secured party who has filed a financing statement with respect to the crops or timber before the date of levy.¹⁶³ This notice is needed so that the secured party can obtain protection in the event the crops or timber are to be sold at an execution sale or the levying officer or a receiver is ordered by the court to cultivate, harvest, pack, or sell the property because of its perishable nature.

Minerals to be Extracted

The proposed law makes clear that minerals and the like (including oil and gas) to be extracted and accounts receivable resulting from the sale thereof at the wellhead or minehead are levied upon in the same manner as real property. This provision is consistent with the manner of perfection of a security interest in such property.¹⁶⁴

Tangible Personal Property Already in Custody of Levying Officer

The proposed law contains a new provision governing levy on tangible personal property that is already in a levying officer's custody.¹⁶⁵ There is no need to seize the property again in such a case, so the levy is accomplished and a lien arises when the creditor delivers the writ of execution to the levying officer with instructions to levy upon the property already in the officer's custody. If the writ is to be executed by a levying officer other than the one having custody of the property, the executing officer will levy upon the property by serving a copy of the writ and a notice of levy on the levying officer having custody. This procedure enables a second judgment creditor to establish a lien on the surplus proceeds that might remain after a sale of the property¹⁶⁶ and to prevent the release of the property

¹⁶² See Section 488.360(c) (incorporated by Section 688(b)).

¹⁶³ A security interest in growing crops or timber to be cut may be perfected by filing in the office where a mortgage on real estate would be recorded. Com. Code §§ 9302, 9401(1)(b), 9402(1), (5).

¹⁶⁴ See Com. Code §§ 9103(5), 9401(1)(b).

¹⁶⁵ See *O'Connor v. Blake*, 29 Cal. 312, 315 (1865) (valid paper levy effected by levying officer's return on back of attachment); *Colver v. W.B. Scarborough Co.*, 73 Cal. App. 441, 443, 238 P. 1104 (1925).

¹⁶⁶ See the discussion in the text at note 379 *infra*.

should the lien of the first judgment creditor cease, such as pursuant to satisfaction of the first judgment or otherwise at the direction of the first judgment creditor.

Goods in Possession of Bailee

If the judgment debtor's property is in the possession of a bailee, levy is made by personal service of a copy of the writ of execution and a notice of levy on the bailee, just as on any other third person. If a negotiable document has been issued, it must be levied upon to reach the goods.¹⁶⁷ If the goods are subject to a security interest, the proposed law permits service on the secured party, but does not make such service a prerequisite of a valid levy.¹⁶⁸ The security interest in the bailed goods may be enforced notwithstanding the levy, but if the security interest was unperfected at the time of levy, the secured party will be liable to the judgment creditor to the extent of the creditor's lien on the property. If the security interest was perfected, the levy reaches the judgment debtor's interest in the goods that remains after the security interest is satisfied.¹⁶⁹ Thus, if any proceeds remain after the secured party has sold the goods to satisfy the security interest, the secured party . . . *may be* required to pay the surplus over to the levying officer *as provided in Commercial Code Section 9504 as amended*.¹⁷⁰

Property of a Going Business

Existing law requires that tangible personal property of a going business be levied upon by placing a keeper in charge of the property; the business is permitted to operate for at least two days under the keeper unless the judgment debtor objects to the keeper.¹⁷¹ Under the proposed law, the judgment creditor is not required to use a keeper but may have the property seized immediately. The two-day keeper requirement has been defended as a grace period during

¹⁶⁷ See the discussion in the text under "Negotiable Documents of Title" beginning at note 187 *infra*.

¹⁶⁸ This changes the rule in *Crow v. Yosemite Creek Co.*, 149 Cal. App.2d 188, 308 P.2d 421 (1957).

¹⁶⁹ See Com. Code §§ 9311, 9504, 9506.

¹⁷⁰ See also the discussion in the text under "Duties and Liabilities of Third Persons After Levy" beginning at note 209 *infra*.

¹⁷¹ Section 688(c).

which the debtor may work out a settlement with the creditor. While a grace period is useful in prejudgment attachment, a grace period is unnecessary once a judgment has been entered and becomes enforceable. The proposed law does, however, permit the judgment creditor to choose to levy by means of a keeper for a period specified by the creditor *not exceeding 10 days*, so long as the judgment debtor does not object. At the end of the keeper period specified by the creditor *or 10 days, whichever is shorter*, or if the debtor objects to the keeper, the levying officer takes exclusive custody of the property to the extent necessary to satisfy the judgment. *The new law also provides the levying officer a fee of \$14 for each day the keeper is in place to cover administrative costs.*

Personal Property Used as a Dwelling

Existing law also provides for a two-day keeper levy on personal property used as a dwelling, such as a house trailer, mobilehome, or vessel. At the end of the two-day period, the levying officer is required to remove the occupants and take exclusive custody of the dwelling unless some other disposition is agreed on by the parties or ordered by the court.¹⁷² This procedure is defective because no adequate opportunity is afforded to claim a dwelling exemption¹⁷³ or assert a right to possession such as under a lease. This procedure is also needlessly expensive because of the keeper fees and any moving and storage charges that would be incurred if the occupant is able to stay proceedings pending a determination of an exemption claim or for some other reason.¹⁷⁴

The proposed law permits levy to be made by service on the occupant and posting the property. While this method of levy does not offer the same security as a keeper levy, it should suffice in most cases since it is unlikely that the judgment debtor could transfer the dwelling to a bona fide

¹⁷² Section 688(c). This procedure would apparently not apply if the dwelling is of a type that could be selected as a homestead or is a mobilehome as defined in Health and Safety Code Section 18008. See Section 690.31(a)(2).

¹⁷³ Existing law affords the judgment debtor 10 days after levy within which to make an exemption claim for such property not governed by Section 690.31. See Section 690.50(a).

¹⁷⁴ A two-day keeper levy on an occupied mobilehome requires a deposit of \$200 plus the cost of moving the mobilehome and storing its contents. See *Marshal's Manual of Procedure* §§ 11 (rev. 1980), 369 (rev. 1977); see also California State Sheriffs' Ass'n, *Civil Procedural Manual* 1.22-1.23, 4.09 (rev. 1980).

purchaser free of the lien on such short notice.¹⁷⁵ If the judgment creditor is unwilling to take this risk, however, a keeper levy remains available under the proposed law. The proposed law requires the judgment creditor to apply on noticed motion for an order directing the removal of the occupants if they do not voluntarily vacate the dwelling. This would eliminate the harsh aspect of existing law that purports to permit the levying officer to remove any occupant of the dwelling after two days without any determination of the right to possession.

Vehicles and Boats Required to be Registered

Existing law requires the levying officer to give notice of levy on a vehicle or boat required to be registered to the legal owner if different from the registered owner.¹⁷⁶ The proposed law is worded so as to avoid giving duplicate notice to legal owners; if the legal owner is in possession, notice generally will be given at the time the property is levied upon.

Chattel Paper

Under existing law, chattel paper is levied upon by serving a third person in possession of the chattel paper or, if it is in the possession of the judgment debtor, by taking custody of it.¹⁷⁷ After levy the account debtor obligated on the chattel paper is served with notice of the levy, but the rights of the account debtor are not affected before notice is given.

This method of levy works perfectly well if no competing rights of secured parties are involved. However, if the chattel paper is subject to a prior security interest, the account debtor may cease making payments in response to the levy, to the detriment of the secured party. The proposed law revises this levy procedure by making clear that the account debtor may be given notice of levy only if (1) the levying officer obtains custody of the chattel paper or (2) a secured party has left with the judgment debtor the liberty to collect payments due on the chattel paper or to

¹⁷⁵ See the discussion in the text under "Execution Lien" beginning at note 103 *supra*.

¹⁷⁶ See Section 689b(1).

¹⁷⁷ See Section 488.380 (incorporated by Section 688(b)). This method of levy is the same as that provided for levy on any tangible personal property.

enforce or accept the return of goods leased or sold to create the chattel paper.¹⁷⁸ The notice given the account debtor under the proposed law states that the account debtor is to continue making payments to a secured party, but if any payments are being made or are required to be made to the judgment debtor, such payments must be made to the levying officer. In a case where payments are being made to the judgment debtor on chattel paper that is subject to a security interest having priority over the judgment creditor's lien, the secured party will find it necessary to take some action to assert the priority of the security interest.¹⁷⁹ After satisfaction of the security interest, any excess payments or excess proceeds from the sale of the collateral in the hands of the secured party are subject to the judgment creditor's lien and are to be paid over to the levying officer *as provided in Commercial Code Section 9504, as amended*. The proposed law also makes clear that a levy on chattel paper creates a lien on the judgment debtor's interest in the collateral as well.¹⁸⁰

¹⁷⁸ Commercial Code Section 9205 recognizes the validity of a security interest where the debtor has "liberty . . . to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions . . ." In such a case, a notice of levy instructing the account debtor to cease making payments to the judgment debtor and to make payments or return property to the levying officer is served whether or not the levying officer has obtained custody of the chattel paper. This protects the interests of the judgment creditor by depriving the judgment debtor of the power to dispose of the collateral levied upon. Such notice to the account debtor is not needed if the secured party has retained power over the disposition of the collateral because the secured party in possession of the chattel paper is liable for compliance with the levy after satisfaction of the security interest.

¹⁷⁹ A security interest in chattel paper is perfected either by filing (Com. Code § 9304(1)) or by possession of the chattel paper (Com. Code § 9305). If the secured party has perfected by filing, the proposed law gives the secured party no additional protection in a case where the levying officer obtains custody of the chattel paper and where the account debtor is making payments to the judgment debtor. However, if the payments are being made to the secured party, the account debtor will be instructed by the notice of levy to continue making payments even if the levying officer has obtained custody of the chattel paper.

¹⁸⁰ This proposal is derived from the rule that a perfected security interest in chattel paper gives the secured party a perfected security interest in the rights to payment evidenced thereby and in the debtor's security interest in the goods sold if that security interest is perfected by filing. See *Bolduan v. Normandin (In re Western Leasing, Inc.)*, 17 U.C.C. Rep. 1369 (D. Ore. 1975). The proposed provision resolves for the purposes of execution levy the conflict in decisions under the Uniform Commercial Code concerning whether a security interest in chattel paper that is perfected by possession results in a perfected security interest in the lessor's property interest in the leased goods since the lessor's interest is not a security interest in need of perfection. See Comment, *In Re Leasing Consultants, Inc.: The Double Perfection Rule for Security Assignments of True Leases*, 84 Yale L.J. 1722 (1975).

Instruments

Under existing law, a negotiable instrument is levied upon by serving a third person in possession or, if the negotiable instrument is in the possession of the judgment debtor, by taking custody of it.¹⁸¹ A nonnegotiable instrument¹⁸² is treated as a chose in action which is levied upon by service on the obligor.¹⁸³

The proposed law revises these procedures to conform more closely to the Commercial Code provisions governing security interests in instruments.¹⁸⁴ Hence, all instruments, negotiable as well as nonnegotiable, are levied upon by taking custody (if the instrument is in the judgment debtor's possession) or by service on a third person in possession.¹⁸⁵ Notice is not given to the person obligated on the instrument unless the levying officer obtains custody of the instrument. This limitation is intended to prevent interference with the rights of secured parties¹⁸⁶ and holders in due course. As in the case of chattel paper subject to a security interest, the secured party is liable for any excess payments made after satisfaction of the security interest. The rights of the obligor are not affected until notice of levy is received, but payments made to a person other than the levying officer after notice of levy is received do not discharge the obligation on the instrument.

Negotiable Documents of Title

A negotiable document is levied upon under existing law by serving a third person in possession of the document or, if it is in the possession of the judgment debtor, by taking

¹⁸¹ See Section 488.400(a) (incorporated by Section 688(b)).

¹⁸² A nonnegotiable instrument is an instrument which is otherwise negotiable within Division 3 (commencing with Section 3101) of the Commercial Code but which is not payable to order or to bearer.

¹⁸³ Section 481.050 classes nonnegotiable instruments as choses in action which are levied upon pursuant to Section 488.370 (incorporated by Section 688(b)).

¹⁸⁴ Under Commercial Code Section 9105(1) (i) an instrument includes a negotiable instrument, a security, or "any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment." The proposed law treats levy on securities separately.

¹⁸⁵ The provision governing levy on instruments does not apply to levy on an instrument that constitutes a part of chattel paper, which would be levied upon in the manner provided for chattel paper. See Com. Code § 9105(1) (b).

¹⁸⁶ A security interest in an instrument is perfected by possession. Com. Code §§ 9304, 9305.

custody of it.¹⁸⁷ In addition, notice of levy must be given the obligor on the document (*i.e.*, the bailee who has issued it).¹⁸⁸ The proposed law deletes this additional requirement since the bailee cannot deliver the goods covered by the negotiable document to anyone not in possession of it.¹⁸⁹ There is no need to further alter these rules to take account of conflicting interests of secured parties.¹⁹⁰

Securities

Existing law governing levy on securities is consistent with the rule stated in Section 8317 of the Commercial Code.¹⁹¹ The proposed law continues the substance of existing law by incorporating Commercial Code Section 8317.

Deposit Accounts

A deposit account is levied upon by service on the financial institution holding the account.¹⁹² If the deposit account is held in the name of a person other than the judgment debtor or in the names of both the judgment debtor and another person, the levy is not effective unless the judgment creditor delivers a bond that indemnifies the nondebtor account holder in twice the amount of the judgment or twice the amount sought to be reached by levy, whichever is less.¹⁹³ A levy freezes the deposit account.¹⁹⁴ Under the proposed law, the financial institution

¹⁸⁷ See Section 488.400(a) (incorporated by Section 688(b)).

¹⁸⁸ See Section 488.400(c).

¹⁸⁹ See Com. Code §§ 7403, 7602.

¹⁹⁰ A security interest in a negotiable document is perfected by possession (Com. Code § 9305) or by filing (Com. Code § 9304(1)). If the security interest is perfected by possession, the existing rules governing levy require service on the secured party. Thus the secured party will be liable to the judgment creditor for any excess proceeds after satisfaction of the security interest. If the security interest in the negotiable document is perfected by filing and the negotiable document is in the hands of the judgment debtor, the levy is by seizure in order to prevent negotiation to a holder free of the lien pursuant to Commercial Code Section 7501. See also Com. Code § 9309. If the levying officer obtains possession of the negotiable document, the interest of the secured party may be asserted through the third-party claims procedure.

¹⁹¹ See Section 488.410 (incorporated by Section 688(b)).

¹⁹² See Sections 488.390 (incorporated by Section 688(b)), 682a.

¹⁹³ Section 682a. Under the proposed law, a corporate surety bond is required whereas under existing law personal sureties are permitted. This will minimize the need for proceedings to justify sureties.

¹⁹⁴ See Sections 488.390, 682a. The Commission is informed, however, that in practice at least some banks withhold in a suspense account only the amount needed to satisfy the levy.

is required to hold in the account the amount levied upon. The proposed law balances the interests of the judgment creditor and the judgment debtor where accounts are sufficiently large by permitting the debtor to use excess amounts while making the levy effective.¹⁹⁵

Safe Deposit Boxes

The procedures for levy on property in a safe deposit box are analogous to procedures for levy on deposit accounts.¹⁹⁶ A bond is required if the box is in the name of a person other than the judgment debtor. No access is permitted to the box after levy. In order to reduce costs, the proposed law specifically provides that the box holder be given an opportunity to open the box to permit the removal of its contents pursuant to the levy.

Accounts Receivable and General Intangibles

Under existing law, accounts receivable, choses in action, and other debts owed the judgment debtor are levied upon by service on the person obligated.¹⁹⁷ After levy the account debtor is relieved of the duty to pay the judgment debtor and must pay the levying officer.¹⁹⁸

The proposed law continues the substance of these provisions but uses the term "general intangibles" in place of "choses in action" and "debts."¹⁹⁹ After levy, the account debtor must continue making payments as before, but if payments are being made or are required to be made to the judgment debtor,²⁰⁰ such payments must be made thereafter to the levying officer. In such a situation, a secured party having priority over the judgment creditor's

¹⁹⁵ In the case of a levy on a joint deposit account, withdrawals of the excess amount may be made by either the judgment debtor or the nondebtor account holder and the interest of the nondebtor account holder to the amount held under the levy may be asserted by way of a third-party claim.

¹⁹⁶ See Sections 488.390 (incorporated by Section 688(b)), 682a.

¹⁹⁷ See Sections 488.370 (incorporated by Section 688(b)), 688(b) (manner of levy on debts for which a method of attachment is not provided).

¹⁹⁸ See Sections 488.370, 488.540, 488.550.

¹⁹⁹ Compare Section 481.050 ("choses in action" defined) with Com. Code § 9106 ("general intangibles" defined).

²⁰⁰ See Com. Code § 9205 ("liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions").

lien will find it necessary to take action to assert the priority of the security interest. If an account receivable or general intangible is being collected by a third person, such as a secured party or assignee for collection, the judgment creditor may establish a lien on any amounts owed the judgment debtor by serving the third person. If the third person has a perfected security interest,²⁰¹ the third person has the right to receive payments due from the account debtor without interference from the levy.²⁰² After satisfaction of the security interest, any excess payments or excess proceeds from the sale of the collateral in the hands of the secured party are subject to the judgment creditor's lien and are to be paid over to the levying officer. If the security interest is unperfected, the secured party is liable under the proposed law for all amounts received after the levy.

Property That is Subject of Pending Action or Proceeding

The effect of an execution levy on property that is the subject of a pending action or special proceeding is unclear under existing law.²⁰³ The proposed law clarifies the extent to which such property is subject to levy and also allows the judgment creditor to obtain a lien in the pending action or proceeding.²⁰⁴ Real property that is the subject of a pending action or proceeding is levied upon by recording in the same manner as if the action or proceeding were not pending. This recording provides constructive notice of the execution lien to subsequent purchasers or encumbrancers and establishes the judgment creditor's priority with

²⁰¹ A security interest in an account receivable or general intangible is perfected by filing. Com. Code § 9302(1).

²⁰² See Com. Code § 9301.

²⁰³ Existing law precludes levy upon or sale of a cause of action or judgment "as such." See Section 688(f). There is no provision dealing with levy on tangible property that is the subject of a pending action or proceeding. See also the discussion in the text under "Final Money Judgment" beginning at note 206 *infra*.

²⁰⁴ See the discussion in the text under "Lien in Pending Action or Proceeding" beginning at note 473 *infra*. Levy of execution may not be a sufficient remedy where the property levied upon is the subject of a pending action or proceeding. The judgment creditor may need to restrict the ability of the judgment debtor to settle the pending action or proceeding and to collect on the judgment procured therein. The judgment creditor may wish to intervene in the pending action or proceeding to protect the rights obtained by the levy of execution. For this reason, the judgment creditor may choose, as permitted by the proposed law, both to levy on the property and to obtain a lien in the pending action or proceeding. Such a lien will provide the further protections mentioned above to the judgment creditor.

respect to other creditors. *The new law permits levy under the same circumstances on growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead.* The proposed law permits a levy on tangible personal property in possession of the judgment debtor that is the subject of a pending action or proceeding in the usual manner. By taking custody of the property, the levying officer deprives the judgment debtor of the ability to dispose of it. *The new law also permits levy on the interest of a judgment debtor in personal property in the estate of a decedent even though the interest may be the subject of a pending action. With these exceptions, the . . .* proposed law does not permit a levy of execution on tangible personal property not in the possession of the judgment debtor or on intangible personal property where the property is the subject of a pending action or proceeding. This prohibition protects the party involved in litigation with the judgment debtor and permits the party to await the outcome of the litigation before being required to deliver the property or pay the debt or other obligation. Although execution is not permitted, the judgment creditor may obtain a lien in the pending action or proceeding and thus establish a priority and protect his or her interests in the property.²⁰⁵

Final Money Judgment

It is unclear under existing law whether levy of execution can be made on a final money judgment obtained by the judgment debtor.²⁰⁶ The proposed law permits a levy of execution on a final money judgment and prescribes the manner and effect of the levy. The levy is made by filing a copy of the writ of execution and a notice of levy with the clerk of the court that entered the judgment.²⁰⁷ Notice of

²⁰⁵ See the discussion in the text under "Lien in Pending Action or Proceeding" beginning at note 473 *infra*.

²⁰⁶ Existing law precludes levy upon or sale of a judgment "as such." See Section 688(f). However, Section 688(b) provides that the manner of levy of execution is the same as in attachment, and the Attachment Law (Section 488.420) provides for the attachment of a final judgment.

²⁰⁷ In order to attach a judgment, Section 488.420 requires the filing of a copy of the writ and notice of levy in the court that rendered the judgment and also requires service of a copy of the writ and a notice of levy on the judgment debtor obligated to pay the judgment attached. The proposed law does not require such service as an essential element of a levy of execution, but does require the levying officer to make service promptly after levy.

levy must also be served on the judgment debtor and the judgment debtor's judgment debtor under the judgment levied upon. This service is not an essential element of the levy, but a judgment debtor who makes a payment on the judgment levied upon without notice of the levy is protected against having to pay twice.

Interest in Personal Property of Estate of Decedent

[Material omitted.]

Under existing law,²⁰⁸ the interest of a judgment debtor in personal property in the estate of a decedent is levied upon by (1) filing a copy of the writ and notice of levy in the office of the clerk of the court in which the estate is being administered and (2) serving the personal representative of the decedent with a copy of the writ and notice. Promptly after levy and in no event more than 45 days after levy, the levying officer serves the judgment debtor with a copy of the writ and notice of levy. Failure to serve the judgment debtor does not affect the execution lien.

The new law makes two changes in existing law:

(1) The requirement of filing with the court clerk is not continued; the levy is made by serving the personal representative only.

(2) Service on the judgment debtor is not made at the time of levy. Instead, promptly after property levied upon is delivered to the levying officer, the levying officer serves a notice describing the property on the judgment debtor. The judgment debtor may claim an exemption for the property described in the notice within 10 days after service of the notice.

Duties and Liabilities of Third Persons After Levy

The proposed law contains detailed provisions governing the duties and liabilities of third persons who are served with a copy of a writ of execution and a notice of levy in the course of enforcement of a money judgment. These provisions expand and clarify the existing law pertaining to

²⁰⁸ See Section 488.430 (incorporated by Section 688(b)).

the liability of garnishees²⁰⁹ and prescribe the duties of secured parties, obligors, account debtors, and other third persons in situations where the property levied upon is subject to a security interest or the rights of an assignee.

If tangible personal property in the possession of a third person is levied upon, the proposed law makes clear that the third person is liable to the extent of the value of the judgment debtor's interest in the property for failing without good cause to comply with the levy by delivering the property to the levying officer.²¹⁰ If an account receivable . . . or general intangible is levied upon, the third person is required to pay over the amount due at the time of levy and any amounts falling due during the period of the execution lien. *The new law makes clear that the execution lien on a deposit account terminates when the amount levied upon is paid to the levying officer.* Unless there is good cause for failure to pay over these amounts, the third person is liable in proceedings taken for the enforcement of the lien.²¹¹

A third person who is served with a copy of the writ of execution and a notice of levy is also required to prepare a memorandum to be mailed or delivered to the levying officer within 10 days after service.²¹² A memorandum is not required, however, if the third person has delivered to the levying officer all of the property sought to be levied upon and has paid to the levying officer the amount due at the time of levy on any obligation to the judgment debtor that was levied upon and there is no additional amount that

²⁰⁹ See Section 488.550; *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212, 100 P. 242 (1909). This law is presumably incorporated by the general language of Section 688(b).

²¹⁰ This requirement is subject to the qualification that the garnishee may assert an adverse claim. In such situations, the judgment creditor may contest the adverse claim by means of an examination proceeding or a creditor's suit.

²¹¹ See Section 488.550.

²¹² This requirement is consistent with the procedure upon attachment under Section 488.080 (incorporated by Section 688(b)). See California State Sheriffs' Ass'n, *Civil Procedural Manual* 4.24-4.25 (rev. 1980); *Marshal's Manual of Procedure* § 404 (rev. 1980).

thereafter will become payable on the obligation levied upon. A financial institution need not deliver a memorandum to the levying officer when a levy is made upon a deposit account or safe deposit box if the financial institution fully complies with the levy.

If a memorandum is required, it must describe tangible personal property sought to be levied upon that is not delivered to the levying officer and the reasons for not delivering it, state the terms of any debt sought to be levied upon that is not paid or will not be paid to the levying officer and the reasons for nonpayment, describe any other tangible personal property of the judgment debtor in the possession or control of the third person or any debt owed the judgment debtor, and describe any claims or rights of other persons in the property levied upon that are known to the third person. This expanded memorandum is intended to provide the judgment creditor with needed information and inhibit evasive answers by third persons. If the levy is not complied with, the third person must give a complete memorandum and may, in the court's discretion, be held liable for the costs and reasonable attorney's fees in any proceedings necessary to obtain the withheld information.²¹³ *In the case of a financial institution, information need be supplied only with respect to property carried on the records available at the office or branch where the levy is made.*

Additional rules are provided in the proposed law governing the duties of secured parties, account debtors obligated on collateral, and obligors under instruments. A secured party may continue to enforce a security interest without regard to priority but is liable for any excess property or payments received by the secured party after satisfaction of the security agreement,²¹⁴ *as provided in Commercial Code Section 9504, as amended.* If it is determined that the levying judgment creditor has priority over the security interest,²¹⁵ the secured party is liable for any payments received after levy.

²¹³ Such proceedings include examination proceedings and creditors' suits. The liability for noncompliance is not new, but the existing law has no exception to liability where good cause is shown for the failure to comply with the levy. See Section 488.550.

²¹⁴ See Com. Code § 9311 (transferability of debtor's rights in collateral).

²¹⁵ See Com. Code § 9301.

The proposed law provides a statutory presumption in favor of security interests even in the absence of a determination of priority. Consequently, an account debtor on collateral levied upon is instructed to continue payments to the secured party pending a contrary direction by a court. If the account debtor is making payments to a secured party, such payments are to continue. If the account debtor is paying the judgment debtor,²¹⁶ the account debtor is to pay the levying officer.

An obligor on an instrument is instructed to make payments to the levying officer if the levying officer has obtained possession of the instrument. If the obligor pays the prior holder of the instrument after receiving notice of levy, such payments will not satisfy the obligation of the obligor.

EXEMPTIONS FROM ENFORCEMENT OF MONEY JUDGMENTS

Introduction

In general, laws exempting property from the enforcement of a money judgment are intended to protect an amount of property sufficient to support the judgment debtor and the judgment debtor's family and to facilitate the financial rehabilitation of the judgment debtor.²¹⁷ Exemption laws also serve to shift the cost of social welfare for debtors from the community to judgment creditors.²¹⁸

Since 1851 California law has provided that certain property of judgment debtors is exempt.²¹⁹ The California exemptions are among the most generous in the United

²¹⁶ See Com. Code § 9205.

²¹⁷ *Bailey v. Superior Court*, 215 Cal. 548, 554, 11 P.2d 865, 867 (1932); see generally Vukowich, *Debtors' Exemption Rights*, 62 Geo. L.J. 779, 782-88 (1974). It has also been suggested that early exemptions were enacted to attract settlers in newly admitted states. See Haskins, *Homestead Exemptions*, 63 Harv. L. Rev. 1289, 1290 (1950).

²¹⁸ See Comment, *Bankruptcy Exemptions: Critique and Suggestions*, 68 Yale L.J. 1459, 1497-1502 (1959). Although it has been suggested that no property should be exempt and that insolvent debtors should rely on social welfare legislation, this alternative is undesirable because of the cost to the community of providing welfare and the low level of available benefits, because most creditors are in a position to control their extension of credit, and because the lack of exemptions would drive greater numbers of debtors into bankruptcy. See *id.*

²¹⁹ 1851 Cal. Stats. ch. 5, § 219.

States.²²⁰ They were extensively revised in 1970 in response to a 1967 report by the State Bar Committee on Debtor and Creditor.²²¹ Both the exemptions and the procedural provisions applicable to exemptions are in need of further revision. Important factors prompting the proposals in this recommendation include the occurrence during recent years of dramatic inflation, the enactment in 1978 of the new Bankruptcy Code containing new exemption provisions,²²² and the approval in 1976 of the Uniform Exemptions Act by the National Conference of Commissioners on Uniform State Laws.

Exempt Property

The substantive exemption provisions should accommodate both the interest of the judgment debtor in maintaining a basic standard of living and the interest of the judgment creditor in satisfying the money judgment. Accordingly, the general approach of the proposed law is to protect income and property needed for the subsistence of the judgment debtor and his or her family. The Commission's recommendations are tempered with the knowledge that exemption laws are controversial.²²³

A matter of particular concern in the formulation of exemptions is the treatment of property of a married judgment debtor and spouse. As a general rule, all the community property as well as the separate property of a married judgment debtor is available to satisfy the judgment.²²⁴ Because the interest in community property of the judgment debtor's spouse is vulnerable to the judgment creditor, the exemption rights of the spouse must be recognized as well as the exemption rights of the judgment

²²⁰ D. Cowans, *Bankruptcy Law and Practice* § 589, at 326 (1963); Committee on Debtor and Creditor of State Bar of California, *Modernization of Statutory Exemptions*, 42 Cal. St. B.J. 869, 873 (1967).

²²¹ See Committee on Debtor and Creditor of State Bar of California, *Modernization of Statutory Exemptions*, 42 Cal. St. B.J. 869 (1967).

²²² See 11 U.S.C. § 522. See also Report of the Commission on the Bankruptcy Laws of the United States, House Doc. No. 93-137, Part I, 93d Cong., 1st Sess. (1973).

²²³ The Advisory Committee in charge of the revision of New York laws on enforcement of money judgments gave as a reason for declining to recommend changes in exemption provisions "that they are the result of legislative compromise; that they reflect the diverse pulls of various groups within the state." 6 J. Weinstein, H. Korp, & A. Miller, *New York Civil Practice* ¶ 5205.01 (1980).

²²⁴ See the discussion in the text at note 40 *supra*.

debtor.²²⁵ The proposed law treats a married judgment debtor and spouse as a marital unit for purposes of exemptions. Some of the exemptions are increased to accommodate the needs of the marital unit and others are shared between the spouses, depending on the nature of the particular exemption. Exemptions based on need or based on the availability of other property of the same character are determined by taking into account all the marital property, whether or not all the property would be liable to satisfy the judgment. The fact that one or both spouses are debtors under the judgment does not affect the availability or the amount of their exemptions.

In drafting the proposed exemptions, the Commission has sought to strike a balance between designating specific items as exempt (such as a table, refrigerator, or stove) and creating general categories of exempt property (such as household furnishings).²²⁶ Specific exemptions result in more certainty but can be overly restrictive and are more likely to be rendered obsolete over time. General exemptions provide greater flexibility and equality of treatment but are more difficult to administer.

The major statutory exemptions of existing law and the more important revisions proposed by the Commission are indicated in the following discussion.²²⁷ The extent to which these exemptions are available where the judgment is for child or spousal support is limited under the proposed law.²²⁸

Earnings

The proposed law continues the existing exemptions for earnings²²⁹ *The new law also provides for protection of*

²²⁵ Cf. *White v. Gobey*, 130 Cal. App. Supp. 789, 791, 19 P.2d 876, 877 (1933).

²²⁶ See generally Joslin, *Debtors' Exemption Laws: Time for Modernization*, 34 Ind. L.J. 355, 356-57 (1959); Note, *Debtor Exemptions in Personal Property—Proposals for Modernization*, 52 Kent. L.J. 456, 457-58, 465 (1964); Rombauer, *Debtors' Exemption Statutes—Revision Ideas*, 36 Wash. L. Rev. 484, 490-95 (1961).

²²⁷ Property that is not subject to the enforcement of a money judgment is exempt without making a claim. As to property not subject to enforcement of a money judgment, see the discussion in the text under "Property Subject to Enforcement" beginning at note 35 *supra*. The more technical revisions in the exemptions are discussed in the Comments to sections in the statute set out *infra* and in the Comments to the repealed sections in the last part of this publication.

²²⁸ See the discussion in the text under "Judgments for Spousal or Child Support" beginning at note 334 *infra*.

²²⁹ See the discussion in the text under "Wage Garnishment" beginning at note 418 *infra*.

“paid earnings”—earnings that can be traced into a deposit account or in the form of cash or its equivalent and that were paid within 30 days prior to levy. If the paid earnings were subject to wage garnishment or a wage assignment for support before payment to the debtor, they are completely exempt. Otherwise, 75 percent of the paid earnings are exempt and the creditor can resort to the remaining 25 percent.

Household Furnishings and Personal Effects

Existing law provides a general exemption for necessary household furnishings, appliances, and wearing apparel, *“ordinarily and reasonably necessary to, and personally used by, the debtor and his resident family,” including, but not limited to, the following listed property: . . . a piano, radio, television receiver, shotgun, rifle, provisions and fuel for three months, and works of art by the debtor or the judgment debtor’s resident family.*²³⁰ Under this provision, the courts have applied a “station-in-life” test resulting in the exemption of substantial amounts of personal property.²³¹

[Material omitted.]

The new law retains the substance of this exemption but omits the list of specific types of property. The new law also makes clear that, if the debtor and the debtor’s spouse live separate and apart, each household is entitled to an exemption. The new law significantly restricts the application of the “station-in-life” test. In determining whether an item of property is “ordinarily and reasonably necessary,” the court is required to take into account both (1) the extent to which the particular type of item is ordinarily found in a household and (2) whether the particular item has extraordinary value as compared to the value of items of the same type found in other households. If an item is found to be nonexempt because of its extraordinary value, the new law permits the exemption of the proceeds obtained from sale of the item in an amount

²³⁰ Section 690.1.

²³¹ See *Independence Bank v. Heller*, 275 Cal. App.2d 84, 79 Cal. Rptr. 868 (1969) (furniture worth over \$22,000 held exempt); *Newport Nat’l Bank v. Adair*, 2 Cal. App.3d 1043, 83 Cal. Rptr. 1 (1969) (furniture for 14-room apartment held exempt); Comment, *California’s New Household Goods Exemption and the Problem of Personal Accountability*, 12 Santa Clara Law. 155 (1972).

determined by the court to be sufficient to purchase a replacement of ordinary value if the court determines that a replacement is reasonably necessary. The exempt proceeds are exempt for a period of 90 days after they are actually received by the debtor.

The new law provides a new exemption for jewelry, heirlooms, and works of art to the extent that the aggregate equity therein does not exceed \$2,500.

Motor Vehicle

Existing law provides an exemption for one motor vehicle with a value not exceeding \$500 over all liens and encumbrances on the vehicle.²³² The value of the vehicle is required to be determined from used car price guides customarily used by California automobile dealers or, if not listed, by fair market value. If the judgment debtor's equity in the motor vehicle exceeds \$500, it may be sold at an execution sale, but the proceeds remaining after satisfaction of liens and encumbrances are exempt in the amount of \$500 for a period of 90 days.

[Material omitted.]

The new law increases the exemption to \$1,200, and the exemption is not limited to one vehicle; the \$1,200 exemption may be applied to the aggregate equity in two or more vehicles. The exemption for proceeds is extended to proceeds from . . . insurance or other indemnification received for the damage or destruction of the vehicle.²³³

Tools of a Trade

Existing law provides an exemption for tools and other items, including one commercial fishing boat and one commercial motor vehicle, reasonably necessary to and actually used in the exercise of the trade, calling, or profession by which the judgment debtor earns a livelihood, to the maximum aggregate actual cash value of \$2,500 in excess of liens and encumbrances on such items.²³⁴

²³² Section 690.2. Section 690.4 also provides an exemption for a commercial motor vehicle used in the judgment debtor's trade, calling, or profession.

²³³ Section 9(a) of the Uniform Exemptions Act (1976) provides a similar exemption traceable for 18 months. *Cf. Houghton v. Lee*, 50 Cal. 101, 103 (1875) (exemption of proceeds from insurance of homestead).

²³⁴ Section 690.4.

The proposed law continues the substance of this exemption, but makes clear that the exemption covers “materials” used in the trade, business, or profession and eliminates the existing separate \$1,000 exemption that covers only building materials.²³⁵ If the judgment debtor is married, the tools of a trade exemption is available to each spouse, and the spouses may aggregate their exemptions if they work together. The proposed law also includes within the exemption proceeds from the *execution* sale or indemnification for the loss, damage, or destruction of such items for a period of 90 days . . . after receipt of the proceeds or indemnification.²³⁶ *The new law provides that a motor vehicle may not be exempted under the tool of the trade exemption if a motor vehicle adequate for use in the judgment debtor’s trade, business, or profession has been exempted under the motor vehicle exemption.*

Health Aids

Existing law provides an exemption for prosthetic and orthopedic appliances personally used by the debtor.²³⁷ This exemption is too narrow²³⁸ and is expanded in the proposed law to include health aids reasonably necessary to enable the judgment debtor or the spouse or dependents of the judgment debtor to work or sustain health. This provision—derived from the Uniform Exemption Act—permits the exemption of items such as a wheel chair for a person unable to walk to work or an air conditioner for a person afflicted with asthma, but does not exempt a swimming pool, sauna, bicycle, or golf clubs merely because its use is conducive to good health.²³⁹

²³⁵ Section 690.17. The proposed law provides a separate \$1,000 exemption for building materials that have been purchased in good faith by a homeowner for the repair or improvement of a home. In the case of a married judgment debtor living separate and apart from a spouse, each spouse is entitled to this exemption.

²³⁶ Section 9(a) of the Uniform Exemptions Act (1976) provides a similar exemption traceable for 18 months. The 90-day limitation on the protection of proceeds is the same as that provided by Section 690.2(e) in the case of a motor vehicle. The proceeds exemption does not increase the amount of the exemption. The amount of \$2,500 covers both the tools of a trade and the proceeds; there is not a separate \$2,500 exemption for proceeds.

²³⁷ Section 690.5.

²³⁸ “Prosthesis” is defined as the “addition to the human body of some artificial part, as a leg, eye, or tooth.” Webster’s New Collegiate Dictionary 678 (1956). “Orthopedics” is defined as the “correction or prevention of deformities, esp. in children.” *Id.* at 593.

²³⁹ This provision is derived from Section 5(2) of the Uniform Exemptions Act (1976). See the Comment to that section of the Uniform Act.

Deposit Accounts

Existing law provides exemptions for \$1,000 in a savings and loan association account²⁴⁰ and \$1,500 in a credit union account.²⁴¹ An account into which social security benefits are directly deposited is protected from levy to the extent of \$500 if there is one recipient and \$750 if there are two or more recipients, and is exempt to the extent that additional amounts consist of social security payments.²⁴² There is no specific exemption for savings or checking accounts in banks.²⁴³

[Material omitted.]

The new law continues the protection for deposit accounts into which social security benefits are directly deposited, but the other deposit account exemptions are superseded by the exemption for earnings paid within the 30-day period before the execution levy^{243.5} and by the provision permitting tracing of exempt amounts.^{243.7}

Life Insurance

Existing law exempts “all moneys, benefits, privileges, or immunities, accruing or in any manner growing out of any life insurance” in an amount resulting from payment of a \$500 annual premium and provides an additional exemption in the same amount in favor of the insured’s spouse or minor children.²⁴⁴ Certain types of group life

²⁴⁰ Section 690.7.

²⁴¹ Fin. Code § 14864.

²⁴² Section 690.30. Section 690.30 requires the judgment creditor to initiate the exemption proceedings to determine whether nonexempt amounts are in the account. At the hearing, however, the judgment debtor has the burden of proof. This provision (enacted by 1976 Cal. Stats. ch. 810, § 1) limits the application of the rule in *Phillips v. Bartolomie*, 46 Cal. App.3d 346, 121 Cal. Rptr. 56 (1975), which held that a judgment debtor is not entitled to a hearing before social security, AFDC, county welfare, and veterans’ benefits in a bank account could be levied upon. Of course, such benefits are exempt when a claim is made under general principles regarding tracing of exempt benefits. See note 341 *infra*. Section 690.30 provides an additional protection since it shields a certain portion of the account from the reach of creditors without the necessity of making a claim of exemption. This exemption is continued in the proposed law with some procedural changes.

²⁴³ Exempt amounts may be traced into bank accounts under existing law. See the discussion in the text under “Tracing Exempt Amounts” beginning at note 341 *infra*.

^{243.5} See the discussion in the text under “Earnings” beginning at note 229 *supra*.

^{243.7} See the discussion in the text under “Tracing Exempt Amounts” beginning at note 341 *infra*.

²⁴⁴ Section 690.9. The exemption also applies to endowment and annuity policies. See *Hing v. Lee*, 37 Cal. App. 313, 318, 174 P. 356, 357 (1918). Where there are multiple beneficiaries entitled to claim the exemption, each beneficiary is entitled to assert

insurance are completely exempt.²⁴⁵ The life insurance exemption shields benefits from the reach of judgment creditors of the insured and of the beneficiary.²⁴⁶ The exemption also protects a beneficiary under a credit insurance policy.²⁴⁷

Consistent with the policy of protecting a minimal amount of property necessary to support the judgment debtor and the judgment debtor's family, the proposed law consolidates and substantially revises these exemptions:

(1) A judgment creditor may not reach the cash surrender value of a policy. The judgment debtor and spouse should not be forced to surrender their policies since they may be uninsurable or insurable only at a prohibitive premium.

(2) A judgment creditor may reach the loan value of the policy to the extent it exceeds \$4,000.²⁴⁸ In the case of a married judgment debtor, each spouse is entitled to this exemption and they may combine their exemptions to protect \$8,000 in one policy.

(3) Benefits from a matured life insurance policy (including endowment and annuity policies) . . . are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

The proposed law eliminates the arbitrary feature of existing law which exempts benefits to the extent represented by a \$500 annual premium.²⁴⁹ The existing

an exemption in proportion to the total proceeds of the policy. *Jackson v. Fisher*, 56 Cal.2d 196, 201, 363 P.2d 479, 481-82, 14 Cal. Rptr. 439, 441-42 (1961).

²⁴⁵ Code Civ. Proc. § 690.10; Ins. Code § 10213. This exemption does not apply in certain cases. See Ins. Code §§ 10203.5 (borrower and installment purchaser groups), 10203.6 (credit union groups), 10203.8 (savings account depositors).

²⁴⁶ *Holmes v. Marshall*, 145 Cal. 777, 779-82, 79 P. 534, 535-36 (1905).

²⁴⁷ *Jackson v. Fisher*, 56 Cal.2d 196, 199-200, 363 P.2d 479, 481, 14 Cal. Rptr. 439, 441 (1961).

²⁴⁸ The amount of this exemption is the same as that provided in bankruptcy. See 11 U.S.C. § 522(d) (8).

²⁴⁹ This standard dates from 1868 when the life insurance exemption was enacted. 1868 Cal. Stats. ch. 406, § 1. The first life insurance exemption provision, the Verplanck Act enacted in New York in 1840, also based the exemption upon the amount of the annual premium. See Riesenfeld, *Life Insurance and Creditors' Remedies in the United States*, 4 U.C.L.A. L. Rev. 583, 589 (1957). At the time such exemptions were first enacted, life insurance was used to provide support for the family of the deceased. Today, a majority of payments under life insurance policies are made to policyholders. See American Council of Life Insurance, 1980 Life Insurance Fact Book 45-46 (1980); Vukowich, *Debtors' Exemption Rights*, 62 Geo. L.J. 779, 810 & n.183 (1974).

standard can result in widely varying exempt amounts depending upon the type of policy (*e.g.*, straight life, endowment, or annuity), the type of insurer (*e.g.*, private, group, industrial, government), the age of the insured when the policy was taken out, and the length of coverage,²⁵⁰ but having no relation to the needs of the judgment debtor or the judgment debtor's family.

Public or Private Retirement Plan Benefits

Existing law exempts public retirement plan benefits both before payment (when no claim is required to be made) and after payment (when the exemption must be claimed).²⁵¹ The law governing private retirement plans is not clear but appears to be that funds held by the retirement plan are exempt before payment to the judgment debtor,²⁵² that contributions and interest returned to the judgment debtor are exempt if the exemption is claimed,²⁵³ and that periodic payments to the judgment debtor from the plan are exempt to the same extent as wages.²⁵⁴ The exemptions for public and private retirement plans do not apply against a judgment for child or spousal support.²⁵⁵

²⁵⁰ For example, the exempt benefits deriving from a \$500 annual premium amounted to \$113,200 in *Jackson v. Fisher*, 56 Cal.2d 196, 363 P.2d 479, 14 Cal. Rptr. 439 (1961) (\$883 annual premium on \$100,000 policy with double indemnity clause), and \$8,900 in *California United States Bond & Mortgage Corp. v. Grodzins*, 139 Cal. App. 240, 34 P.2d 192 (1934) (\$558 annual premium on \$10,000 policy).

²⁵¹ Section 690.18(a), (b). This exemption covers pensions, annuities, and retirement, disability, death, or other benefits, and return of contributions and interest, from a public entity, and public employee vacation credits. The exemption for vacation credits is continued in the proposed law as a separate exemption. See also note 255 *infra* for special exemption provisions applicable to particular public retirement plans.

²⁵² Section 690.18(d). The existing exemption applies only to retirement plans that meet the requirements specified in the exemption provision, but the new law updates the reference to federal law.

²⁵³ Section 690.18(d).

²⁵⁴ 15 U.S.C. §§ 1672-1673.

²⁵⁵ Section 690.18(a), (b), (d). Other code sections were amended to delete specific exemptions for public retirement plans in the case of court-ordered child or spousal support payments and to instead to incorporate by reference the general exemption provided by Section 690.18. See Educ. Code § 22005; Gov't Code § 21201; Pub. Util. Code §§ 12337, 25337. But all public retirement fund sections were conformed to the general exemption provision. See Gov't Code §§ 9359.3, 31913, 32210; Pub. Util. Code §§ 28896, 50146, 95836, 98196; Water Code § 22142. The proposed law makes the necessary conforming amendments to provide a uniform and consistent treatment of this aspect of the exemption. See also Civil Code §§ 4701, 4801.6 (wage assignment for support directed to public retirement fund authorized).

The new law expands the exemption for self-employed retirement plans and individual retirement annuities and accounts provided for in the Internal Revenue Code. The exemption under the new law applies to all plans, annuities, and accounts that are provided for in the Internal Revenue Code, including all amendments made in the future to that code. The existing exemption picks up 1976 amendments to the Internal Revenue Code but not later amendments. The general limitation of the exemption to the maximum amounts exempt from federal income taxation is retained, but the new law establishes a new limitation: The exemption is limited to the amount necessary to provide for the support of the judgment debtor upon retirement and for the support of the spouse and dependents of the judgment debtor, taking into account all resources that are likely to be available for the support of the judgment debtor when the judgment debtor retires.

The new law provides that when exempt amounts held in a self-employed retirement plan or individual retirement annuity or account are payable periodically, the payments are exempt on the same basis as earnings.

In other respects the new law continues the substance of the existing retirement exemptions, . . . but clarifies the extent to which funds are available to satisfy judgments for child and spousal support.²⁵⁶

Disability and Health Benefits

Existing law provides several exemptions for benefits from a disability or health insurance policy or program. Disability or health insurance benefits are exempt to the extent represented by a \$500 annual premium.²⁵⁷ Money of a fraternal organization used to pay sick benefits to members of the organization is exempt in the amount of \$500.²⁵⁸ Money paid by a fraternal benefit society is exempt before and after payment.²⁵⁹ Disability benefits under a retirement plan are exempt to the same extent as other retirement benefits.²⁶⁰

²⁵⁶ See the discussion in the text at notes 339-340, *infra*.

²⁵⁷ Section 690.11. For a discussion of tying the exemption of insurance benefits to the amount of the premium, see the text under "Life Insurance" beginning at note 244 *supra*.

²⁵⁸ Section 690.13.

²⁵⁹ Section 690.14.

²⁶⁰ Section 690.18. See the discussion in the text under "Public or Private Retirement Plan Benefits" *supra*.

The proposed law consolidates these provisions. Under the proposed law, disability and health benefits are exempt before payment without the requirement of making a claim and are exempt after payment upon a claim of exemption. This exemption does not apply where the judgment creditor provided health care concerning the condition for which the benefits are collected.

Damages for Personal Injury

Existing law provides an exemption for insurance benefits for injury²⁶¹ or death²⁶² but does not exempt settlements or awards for the personal injury of the judgment debtor. The proposed law provides an exemption for a settlement or award arising out of the personal injury of the judgment debtor to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.²⁶³ This exemption would not apply when the judgment creditor provided health care for the personal injury for which the settlement or award was made. *The new law also exempts damages or a settlement for personal injury in the same amount as earnings if the payments are made periodically.*

Wrongful Death Awards

Existing law does not exempt wrongful death settlements or awards. The proposed law exempts settlements and awards arising out of the wrongful death of a person of whom the judgment debtor was a spouse or a dependent to the extent reasonably necessary for support.²⁶⁴ *The new law also exempts damages or a settlement for wrongful death in the same amount as earnings if the payments are made periodically.*

Unemployment Benefits and Contributions and Strike Benefits

Under existing law, contributions of employees and employers to unemployment programs, and benefits from such programs, prior to payment, are exempt without

²⁶¹ Section 690.11 (disability and health insurance).

²⁶² Sections 690.9 (life insurance), 690.10 (group life insurance).

²⁶³ Section 6(a) (3) of the Uniform Exemptions Act (1976) provides a similar exemption.

²⁶⁴ Section 6(a) (3) of the Uniform Exemptions Act (1976) provides a similar exemption.

making a claim.²⁶⁵ After payment, these benefits are exempt if a claim is made.²⁶⁶ The proposed law continues the substance of this exemption and also provides a similar exemption for strike benefits paid to a union member. *The new law also provides special rules for the application of such benefits to satisfy a judgment for child support consistent with recent federal legislation.*

Public Assistance and Similar Assistance From Charitable Organization

Existing law provides a complete exemption for aid given under a public assistance program²⁶⁷ and for aid from a fraternal benefit society.²⁶⁸ Under the proposed law, these exemptions are combined and the protection is extended to aid of the same nature given by a charitable organization.

Relocation Benefits

Under existing law, relocation benefits paid or payable by a public entity for displacement from a dwelling owned or rented by the judgment debtor are exempt without making a claim.²⁶⁹ The proposed law extends this exemption to include relocation benefits from a public utility or quasi-public entity.²⁷⁰ Under the proposed law, once the benefits have been paid, an exemption claim must be made since it is necessary for the judgment debtor to trace the funds to their source in order to qualify for the exemption.

Workers' Compensation

The existing exemption for workers' compensation²⁷¹ is continued in the proposed law.

²⁶⁵ Code Civ. Proc. §§ 690.13 (\$500 used by fraternal organization as unemployment benefits for members), 690.16 (contributions to the Unemployment Compensation Disability Fund and the Unemployment Fund), 690.175 (state and federal-state benefits and payments under a plan or system established by an employer for employees generally or for a class or group of employees for the purpose of supplementing unemployment compensation benefits), 690.18(c) (contributions and reimbursement for benefits received under Unemployment Insurance Code by government employees); Unemp. Ins. Code §§ 988 (incorporating Section 690.16), 1342 (incorporating Sections 690.175, 690.18).

²⁶⁶ See Sections 690.13, 690.175.

²⁶⁷ Section 690.19. Before payment, the aid is exempt without making a claim; after payment, a claim of exemption must be made.

²⁶⁸ Section 690.14. This exemption must be claimed.

²⁶⁹ Section 690.8a.

²⁷⁰ See Gov't Code § 7276 (quasi-public entity); Pub. Util. Code § 600 (public utility).

²⁷¹ Section 690.15.

Student Financial Aid

The new law provides a new exemption for financial aid provided to a student by an “institution of higher education” as defined in Section 1141(a) of Title 20 of the United States Code. Before payment, the aid is exempt without making a claim; after payment, the exemption must be claimed.

Cemetery Plot

Existing law exempts a judgment debtor’s cemetery lot, not exceeding one-quarter of an acre and, in the case of a religious or benevolent association or corporation, not exceeding five acres.²⁷² The exemption under the proposed law includes graves, crypts, vaults, and niches,²⁷³ whereas existing law specifically applies only to land to be used for burial purposes and fixtures. The proposed law exempts a cemetery plot for the judgment debtor and spouse. The proposed law also protects a family plot²⁷⁴ from enforcement of a money judgment. Land held for the purpose of sale as cemetery plots is nonexempt as under existing law.²⁷⁵ The restrictions included in the proposed law make it unnecessary to retain the existing limitations on the size of the cemetery plot.

Prisoners’ Trust Fund

Under existing law, a prison inmate’s trust fund is exempt in the amount of \$40.²⁷⁶ The proposed law raises this exemption to \$1,000 so that a prisoner who is released will have some funds on which to live. If the judgment debtor is married, each spouse is entitled to a separate \$1,000 exemption or the spouses may combine their exemptions.

Church Pews

Existing law exempts pews in churches and meetinghouses used for religious purposes and owned by the debtor.²⁷⁷ The proposed law does not continue this

²⁷² Section 690.24.

²⁷³ See Health & Saf. Code § 7022.

²⁷⁴ For provisions concerning family plots, see Health & Saf. Code §§ 8650-8653.

²⁷⁵ Section 690.24.

²⁷⁶ Section 690.21.

²⁷⁷ Section 690.25.

exemption because it is obsolete, the practice of member ownership of pews having generally ceased.²⁷⁸

Homestead Exemption

Introduction

California law provides a substantial homestead exemption for the purpose of promoting the security of the home and protecting it from the consequences of the owner's economic misfortune.²⁷⁹ Under existing law there are three separate homestead exemption statutes: the declared homestead,²⁸⁰ the dwelling house exemption for persons who have failed to declare a homestead,²⁸¹ and the claimed exemption for a mobilehome or vessel.²⁸² The amount of the exemption provided by each statute is the same—\$45,000 if the judgment debtor is married, the head of a family, or over 65 years old, and \$30,000 in other cases.²⁸³ Each statute protects the dwelling from sale to satisfy a money judgment if the judgment debtor's equity is less than the exempt amount; if the judgment debtor's equity exceeds the exempt amount, the dwelling may be sold to satisfy the judgment and the statute preserves the sale proceeds for the judgment debtor in the amount of the exemption.²⁸⁴

Amount of Exemption

[Material omitted.]

The new law continues the amount of the homestead exemption set by existing law, but makes clear that the combined exemption of two spouses may not exceed

²⁷⁸ See 6 J. Weinstein, H. Korn, & A. Miller, *New York Civil Practice* ¶ 5205.15 (rev. 1980).

²⁷⁹ The California Constitution requires the Legislature to provide for the protection of a portion of the homesteads of heads of families. Cal. Const. art. 20, § 1.5. For a discussion of the development of the homestead provisions, see *Taylor v. Madigan*, 53 Cal. App.3d 943, 955-61, 126 Cal. Rptr. 376, 384-88 (1975).

²⁸⁰ See Civil Code §§ 1237-1304.

²⁸¹ See Section 690.31.

²⁸² See Sections 690.3, 690.50. See also Sections 690.31(a)(2).

²⁸³ Civil Code § 1260; Code Civ. Proc. §§ 690.3(a), 690.31(a). See 1980 Cal. Stats. ch. 15.

²⁸⁴ Civil Code §§ 1245-1256; Code Civ. Proc. §§ 690.31(c)-(k), 690.3, 690.50(i).

*\$45,000, regardless of whether the spouses are both obligated on the judgment or whether the homestead is community or separate property.*²⁸⁵

Exemption Procedure

The three dwelling exemption procedures provided by existing law display unnecessary differences and complexities. They should be simplified and unified.

Declared homestead. The judgment debtor may exempt a real property dwelling by filing a homestead declaration with the county recorder²⁸⁸ if the judgment creditor has not earlier obtained a judgment lien.²⁸⁹ After an effective declaration is recorded, the judgment creditor cannot obtain a judgment lien on the property described in the declaration, even if the judgment debtor's equity in the property exceeds the amount of the exemption.²⁹⁰ The result of this scheme is a race to the recorder's office. If the judgment creditor wins the race, the judgment debtor may still assert a dwelling house exemption in a court hearing on the judgment creditor's application for a writ of execution.²⁹¹ If the judgment debtor wins the race, the exemption is not secure since a hearing on entitlement to the exemption is still necessary should the judgment creditor levy execution on the dwelling.²⁹² The practical effect of a declared homestead is that judgment creditors may be precluded from securing payment of the judgment by means of the relatively benign judgment lien. Judgment creditors must thus seek immediate execution in order to reach any equity the judgment debtor may have in excess

²⁸⁵ If the spouses have a legal separation or an interlocutory dissolution decree, each spouse is entitled to a separate homestead. This continues the effect of existing law. See Civil Code §§ 1300-1304 (married person's separate homestead).

²⁸⁶ [Omitted.]

²⁸⁷ [Omitted.]

²⁸⁸ See Civil Code §§ 1262-1265, 1266-1269, 1300-1303.

²⁸⁹ See Civil Code § 1241.

²⁹⁰ See *Boggs v. Dunn*, 160 Cal. 283, 285-87, 116 P. 743, 744-75 (1911); *Swearingen v. Byrne*, 67 Cal. App.3d 580, 585, 136 Cal. Rptr. 736, 739 (1977).

²⁹¹ Section 690.31.

²⁹² Civil Code §§ 1245-1247.

of the dwelling exemption, since the creditor who first levies has priority.²⁹³

Dwelling house exemption. Before a judgment creditor may obtain a writ of execution against a dwelling, the judgment creditor must apply to a court in the county where the dwelling is located.²⁹⁴ This requirement applies whether or not the judgment debtor has recorded a homestead declaration on the dwelling. A judgment debtor who has not recorded a prior homestead declaration may nonetheless assert the dwelling house exemption at the hearing on the issuance of the writ.²⁹⁵ This manner of asserting the exemption is preferable to the declared homestead because it comes into play only when the exemption is needed—when the judgment creditor seeks to apply the property to the satisfaction of the judgment.

Mobilehome and vessel exemption. Under existing law, the judgment debtor may, within 10 days after the property is levied upon, claim a dwelling exemption for a housetrailer, mobilehome, houseboat, boat, or other waterborne vessel pursuant to the general procedure for claiming exemptions for personal property levied upon under execution.²⁹⁷

Exemption procedure under proposed law. [Material omitted.] Under the proposed law, if the dwelling is personal property (a mobilehome not affixed to land or a boat) or a leasehold estate with an unexpired term of less than two years at the time of levy, the general procedure for claiming exemptions for personal property applies.²⁹⁸

[Material omitted.]

If the dwelling is real property other than a leasehold estate with an unexpired term of less than two years at the time of levy, a procedure patterned after the existing

²⁹³ See Adams, *Homestead Legislation in California*, 9 Pac. L.J. 723, 728 (1978).

²⁹⁴ Civil Code § 1245; Code Civ. Proc. § 690.31(c).

²⁹⁵ Section 690.31(a), (b).

²⁹⁷ Sections 690.3, 690.50(a). See the discussion in the text under "Procedure for Claiming Exemptions After Levy" beginning at note 357 *infra*.

²⁹⁸ This continues the aspect of existing law that requires the debtor to initiate exemption proceedings as to personal property. It eliminates the overlap between Sections 690.3 and 690.31 insofar as certain mobilehomes are concerned.

declared homestead and dwelling house exemptions would apply, subject to the . . . important differences *noted below*:

(1) As under existing law, the proposed law would require the judgment creditor to initiate court proceedings to determine whether the property is exempt and the amount of the exemption. However, instead of requiring the judgment creditor to apply for a writ of execution, the proposed law permits the judgment creditor to have the property levied upon first and then apply for an order permitting sale of the property. The writ is issued by the court clerk where the judgment is entered; the order for sale is made by the court where the dwelling is located. This will eliminate the confusion caused by issuance of writs of execution for different purposes and out of different courts for the enforcement of the same judgment.

(2) Under the proposed law, the judgment creditor must apply to the court for an order permitting sale of the dwelling within 20 days after the levying officer has served on the judgment creditor a notice that the levy has been made. If the application is not made within the 20-day period, the property must be released. The hearing is to be held within 45 days after the application is filed and the judgment debtor must be given 30 days' notice of the hearing. This provision is intended to provide a resolution of the exemption question early in the period during which the sale of real property is delayed under the proposed law,²⁹⁹ while permitting adequate time for the judgment debtor to prepare. It also enables prompt clearing of title where property is levied upon but an order for sale is not diligently pursued.

(3) Under existing law, if the judgment creditor alleges the dwelling is not exempt, the judgment debtor has the burden of proof on the exempt status of the dwelling.³⁰⁰ The proposed law creates a presumption in favor of exempt status if the judgment debtor has claimed a homeowner's or veteran's property tax exemption for the dwelling. Such property tax exemptions are available only for a person's principal place of residence.³⁰¹ If the judgment debtor is not

²⁹⁹ See the discussion in the text beginning at note 405 *infra*.

³⁰⁰ Civil Code § 1247; Code Civ. Proc. § 690.31(e).

³⁰¹ Rev. & Tax. Code §§ 205.5, 218, 252.1, 253.5.

present or represented at the hearing where the order for sale is obtained, the proposed law includes a provision drawn from existing law³⁰² requiring notice to the judgment debtor that an order of sale has been made and notifying the judgment debtor of the procedure for asserting the exemption if the judgment debtor failed to do so because of mistake, inadvertence, surprise, or excusable neglect. The form of the notice in layman's language is included in the proposed law in English and Spanish.

(4) Before a dwelling that is entitled to homestead protection under existing law may be sold on execution, it must be determined whether a portion of the land on which it is located can be divided without material injury to the dwelling and sold to satisfy the judgment.³⁰³ This requirement is time-consuming, costly, and burdensome, and results in few partitions in kind. It dates from an era when dwellings were commonly located on larger tracts. Today most dwellings are located on standard lots that cannot be divided. The proposed law does not require a determination whether the property can be divided without material injury to the dwelling. A judgment debtor living on a larger tract who desires to save the dwelling from forced sale may voluntarily divide the property and sell the remainder to satisfy the judgment.

(5) Under existing law, before a dwelling subject to the homestead exemption may be sold on execution, it must be determined that the judgment debtor's equity exceeds the amount of the exemption.³⁰⁴ This determination is unnecessary, since the market place is a better determinant of value and the property should not be sold unless the minimum bid . . . exceeds the amount of the homestead exemption *plus any amount necessary to satisfy all liens and encumbrances on the property*. The proposed law eliminates the determination of the judgment debtor's equity. To help ensure that the judgment creditor does not attempt to force sale of property in which the equity is less than the exempt amount, the proposed law provides that if the minimum bid at sale is not received, the judgment

³⁰² Civil Code §§ 1251, 1252; Code Civ. Proc. § 690.31(g).

³⁰³ Civil Code § 1248; *cf.* Code Civ. Proc. § 690.31(c) (determination of exemption in manner provided in Civil Code).

³⁰⁴ Civil Code § 1249; Code Civ. Proc. § 690.31(f).

creditor is not entitled to recover the costs of the sale procedure . . . ~~required to award to the judgment debtor reasonable attorney's fees.~~ In addition, the judgment creditor is precluded from again levying on the homestead for a period of one year.

(6) Existing law requires that a dwelling be sold at a price not less than 90 percent of its fair market value; but, if no such bid is received, the court, upon motion, may accept the highest bid exceeding encumbrances and the amount of the homestead exemption or may order a new sale.³⁰⁵ *The new law continues this aspect of existing law.*

(7) *The new law defers the execution sale for a period of 120 days. This is a new requirement.*³⁰⁶

(8) *Existing law requires the "discharge of all liens and encumbrances" on the homestead if it is sold on execution.*³⁰⁷ *The new law retains this requirement.*

[Material omitted.]

Declared Homesteads

The new law includes provisions for a declared homestead. One effect of the new declared homestead is to permit a judgment debtor to exempt the proceeds of a voluntary sale of the homestead for a six-month period if the homestead declaration was recorded before a judgment lien is created. This continues a feature of existing law.

Where a homestead declaration is recorded before a judgment lien is created, the new law changes existing law³⁰⁸ to permit a later recorded judgment lien to attach to the surplus value of the homestead over the total of (1) all liens and encumbrances on the declared homestead at the time the judgment lien is created and (2) the applicable amount of the homestead exemption.

³⁰⁵ Civil Code § 1254.

³⁰⁶ The proposed law precludes the giving of notice of sale of real property (whether or not a dwelling) for 120 days from the date notice of levy is served on the judgment debtor. See the discussion of this provision in the text beginning at note 405 *infra*.

³⁰⁷ Civil Code §§ 1255, 1260; Code Civ. Proc. § 690.31 (j).

³⁰⁸ See the discussion in the text at note 290 *supra*.

³⁰⁹ [Omitted.]

³¹⁰ [Omitted.]

³¹¹ [Omitted.]

³¹² [Omitted.]

In addition to shielding the home from general creditors, the declaration of a homestead under existing law prevents the conveyance or encumbrance of the homestead property without the acknowledged written consent of both spouses.³¹³ The . . . *new law eliminates this aspect of the declared homestead system but includes new provisions that protect against conveyance or encumbrance of the dwelling without the consent of both spouses. Under the proposed law, a community personal property dwelling may not be conveyed or encumbered without the consent of both spouses. In addition, a spouse may record a lis pendens in a dissolution proceeding and thereby prevent the transfer or encumbrance of a separate property dwelling for three months, unless the court otherwise orders. These new provisions supplement the existing general rules limiting the ability of spouses to convey or encumber community property and requiring the spouses to support each other out of separate property.*³¹⁴

Exemptions in Bankruptcy

A debtor in bankruptcy is entitled to select either the applicable state exemptions or the federal exemptions provided in the Bankruptcy Code.³¹⁵ The California exemptions are more favorable to a debtor who is a homeowner since California law provides a liberal dwelling exemption,³¹⁶ while the federal exemptions are more favorable to a debtor who is a renter since the bankruptcy law provides a liberal "blanket" exemption to the extent the \$7,500 bankruptcy dwelling exemption is not used.³¹⁷

³¹³ See Civil Code § 1242.

³¹⁴ See, e.g., Civil Code §§ 5100, 5102, 5125, 5127 (Family Law Act).

³¹⁵ 11 U.S.C. § 522(b).

³¹⁶ See the discussion in the text under "Homestead Exemption" beginning at note 279 *supra*.

³¹⁷ 11 U.S.C. § 522(d)(5).

Each state is permitted to preclude use of the federal exemptions in bankruptcy and to require that a debtor in bankruptcy be subject to the state exemptions. *The new law continues the substance of a 1981 California statute^{317.5} precluding spouses from claiming both state and federal exemptions in a bankruptcy.*

[Material omitted.]

Applicability of Exemptions

It is implicit under existing law that property which is exempt from execution is also exempt from other procedures for the enforcement of a money judgment.³¹⁸ This principle is made explicit in the proposed law, and provisions for the determination of exemption claims are included in the special procedures for enforcement of money judgments where appropriate.³¹⁹

^{317.5} 1981 Cal. Stats. ch. 455.

³¹⁸ Section 690(a) provides that the property mentioned in Sections 690.1-690.29 is "exempt from execution." Section 690.31 exempts a dwelling house from "execution" and Civil Code Section 1240 provides that a homestead is "exempt from execution or forced sale." Section 690.50 (i) provides that the judgment rendered in exemption proceedings thereunder is "determinative as to the right of the creditor . . . to subject the property to payment or other satisfaction of his judgment." Section 710(c) incorporates Section 690.50 for the determination of exemption claims concerning money owed to the debtor by a public entity. Section 719 provides that the court in supplementary proceedings may order the application of property "not exempt from execution" toward the satisfaction of the judgment. Section 690.51 incorporates Section 690.50 for the determination of exemption claims when property is levied upon pursuant to certain warrants or notices of levy for the collection of tax liability. Section 302(c) of the Consumer Credit Protection Act, 15 U.S.C. § 1672(c) (1976), defines garnishment to mean "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt."

³¹⁹ See the discussion in the text under "Miscellaneous Creditors' Remedies" beginning at note 425 *infra*.

The principle that exemptions do not apply where the judgment is for the foreclosure of a lien on the property³²⁰ (other than a lien created in the course of enforcing a general money judgment) is continued in the proposed law. However, the existing provision that exemptions do not apply where the judgment is for the purchase price of the property³²¹ is not continued. This rule is not enforceable in practice since a levying officer will resist levying on property that appears to be exempt. Moreover, the purchase money creditor can obtain more direct protection by taking a security interest in the property.

The proposed law also makes clear that exemptions are to be determined and applied under the circumstances existing at the time an enforcement lien—such as an attachment lien, judgment lien, or execution lien—is created upon the property for which the exemption claim is made.³²² This provision is intended to reject the holding in *California United States Bond & Mortgage Corp. v. Grodzins*³²³ which held that the portion of life insurance benefits which exceeded the exempt amount at the time they were received was “earmarked” for creditors even though the amount of benefits remaining at the time they were levied upon was less than the amount protected by statute.³²⁴ Exemption laws are intended to protect an amount of property sufficient for the support of the debtor and the debtor’s family at the time it is needed, *i.e.*, when

³²⁰ See Civil Code § 1241; Code Civ. Proc. §§ 690.28, 690.31, 690.52; *Willen v. Willen*, 121 Cal. App. 351, 353, 8 P.2d 942, 943 (1932) (lien on insurance policies created by court order in proceedings to enforce alimony award foreclosed by execution).

³²¹ Section 690.52.

³²² The court may however disallow an exemption if property was used for the exempt purpose when the enforcement lien was created but is not used for the exempt purpose at the time of the hearing on the exemption. The court may consider (1) a change in the value of the property occurring after the time an enforcement lien is created if the exemption is based on value and (2) a change in the financial circumstances of the judgment debtor and the judgment debtor’s family if the exemption is based on their needs.

³²³ 139 Cal. App. 240, 34 P.2d 192 (1934).

³²⁴ In *Grodzins* the surviving wife received \$10,000 in life insurance benefits, deposited \$5,000 in a savings and loan account, and spent the remainder for the support of herself and her minor children. Under the exemption in effect at the time, approximately \$8,900 of the \$10,000 would have been exempt if the creditor had levied upon the funds immediately. The creditor was permitted to reach \$1,100 of the remaining \$5,000. The result can be more detrimental. For example, if the lump-sum originally received at some remote time before levy had been \$18,000 and the wife had spent the amount exempt (approximately \$8,900) before levy, the creditor would have been able to apply all of the remaining amount to the judgment.

the creditor attempts to enforce the judgment. The question of whether property is exempt does not arise until the creditor seeks to reach the property and apply it toward the satisfaction of a judgment.³²⁵

Determination of Exemptions Under Law in Effect When Lien Created

Decisions of state and federal courts in California have held that the grant of a new or increased exemption for property sought to be applied to the satisfaction of a contractual obligation incurred before the change in the exemption would violate the Contract Clause of Article 1, Section 10, of the United States Constitution and of Article 1, Section 9, of the California Constitution.³²⁶ This rule has also been applied in bankruptcy cases with the result that the debtor is restricted to the exemptions in effect at the time of the earliest of the scheduled debts.³²⁷

Decisions in this area during the last forty years have almost completely ignored the gradual erosion of the rigid application of the Contract Clause by the United States Supreme Court.³²⁸ California decisions concerning the retroactive application of statutory provisions in other areas of the law, such as community property and sovereign immunity, have engaged in a modern and more sophisticated analysis of the constitutional issues and found

³²⁵ *Medical Fin. Ass'n v. Rambo*, 33 Cal. App.2d Supp. 756, 758-60, 86 P.2d 159, 160-61 (1938). This case involved the garnishment of wages at a time when one-half of the earnings received during a 30-day period were exempt. The debtor had already received some earnings and the creditor argued that those earnings should be counted toward the exemption, leaving the remainder earned during the 30-day period subject to levy in the amount of one-half of the total. The court held that only one-half of the particular paycheck could be garnished.

³²⁶ See *In re Rauer's Collection Co.*, 87 Cal. App.2d 248, 253-54, 196 P.2d 803, 807 (1948) (increase in homestead exemption); *Daylin Medical & Surgical Supply, Inc. v. Thomas*, 69 Cal. App.3d Supp. 37, 41-42, 138 Cal. Rptr. 878, 880-81 (1977) (extension of time for claiming homestead exemption); *Smith v. Hume*, 29 Cal. App.2d Supp. 747, 749-50, 74 P.2d 566, 567-68 (1937) (new motor vehicle exemption); *Medical Fin. Ass'n v. Wood*, 20 Cal. App.2d Supp. 749, 751-53, 63 P.2d 1219, 1220 (1936) (new motor vehicle exemption); *In re Fox*, 16 F. Supp. 320, 324 (S.D. Cal. 1936) (motor vehicle exemption); *The Queen*, 93 F. 834, 835 (N.D. Cal. 1899) (seamen's earnings exemption).

³²⁷ See *England v. Sanderson*, 236 F.2d 641, 643 (9th Cir. 1956), *rev'g In re Sanderson*, 134 F. Supp. 484, 485 (N.D. Cal. 1955); *In re Towers*, 146 F. Supp. 882, 885-86, *aff'd sub nom. Towers v. Curry*, 247 F.2d 738, 739 (9th Cir. 1957).

³²⁸ See *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 447-48 (1934) (upholding the Minnesota Mortgage Moratorium Law); *City of El Paso v. Simmons*, 379 U.S. 497 (1965).

no constitutional impediment to retroactive application.³²⁹ Recent decisions in at least two other states have recognized the erosion of the Contract Clause and upheld application of an increased exemption to preexisting debts.³³⁰ Most commentators also urge the views set forth in these recent decisions.³³¹

The proposed law determines an exemption under the law in effect at the time an attachment, judgment, or execution lien is created on the property claimed to be exempt or the time the property otherwise subjected to a lien by the creditor.³³² This principle furthers the policy of the exemption laws—to provide the debtor with sufficient assets to remain self-supporting and to avoid making the debtor a charge upon the state. At the same time the judgment creditor can protect against any new or increased exemption by obtaining a judgment lien on the property or, if that is not possible, by levying on the property.

Increased or new exemptions are generally enacted to take account of inflation or to recognize the importance of new forms of assets. This intention is defeated if the fortuity of the time of contract or tort liability determines the applicable exemption. Tort creditors clearly do not have any reliance interest in exemptions in effect at the time

³²⁹ See, e.g., *Robertson v. Willis*, 77 Cal. App.3d 358, 366-68, 143 Cal. Rptr. 523, 527-28 (1978) (community property); *In re Marriage of Bouquet*, 16 Cal.3d 583, 592-94, 546 P.2d 1371, 1376-77, 128 Cal. Rptr. 427, 432-33 (1976) (community property); *Flournoy v. State*, 230 Cal. App.2d 520, 530-37, 41 Cal. Rptr. 190, 195-201 (1964) (sovereign immunity). These cases have applied a balancing approach, relying heavily on the analysis developed in Hochman, *The Supreme Court and the Constitutionality of Retroactive Legislation*, 73 Harv. L. Rev. 692 (1960). See also Reppy, *Retroactivity of the 1975 California Community Property Reforms*, 48 So. Cal. L. Rev. 977 (1975).

³³⁰ See *Wilkinson v. Carpenter*, 277 Or. 557, 561 P.2d 607, 609-12 (1977) (application of homestead exemption in effect at time of sale); *Hooter v. Wilson*, 273 So.2d 516, 521-22 (La. 1973) (wage garnishment exemption); *Ouachita Nat'l Bank v. Rowan*, 345 So.2d 1014, 1016-17 (La. Ct. App. 1977) (homestead exemption); see also *Natchitoches Collections, Inc. v. Gorum*, 274 So.2d 449, 450 (La. Ct. App. 1973) (homestead exemption).

³³¹ See, e.g., Countryman, *For a New Exemption Policy in Bankruptcy*, 14 Rutgers L. Rev. 678, 726-32 (1960); Reppy, *Retroactivity of the 1975 California Community Property Reforms*, 48 So. Cal. L. Rev. 977, 1120 n.470 (1975); Comment, *The Contract Clause and the Constitutionality of Retroactive Application of Exemption Statutes: A Reconsideration*, 9 Pac. L.J. 889 (1978); Note, *Bankruptcy Exemptions: Critique and Suggestions*, 68 Yale L.J. 1459, 1471-72 (1959); Comment, *Contract Clause Prevents Exemption Change*, 1 Stan. L. Rev. 350 (1949). Similarly, Section 23(b) of the Uniform Exemptions Act (1976) would apply exemptions retroactively. See also *In re Towers*, 146 F. Supp. 882, 885 n.2 (N.D. Cal. 1956).

³³² The proposed law also provides that contracts are made in recognition of the power of the state to alter or make additions to exemptions. See *Wilkinson v. Carpenter*, 277 Or. 557, 561 P.2d 607, 610-11 (1977); *Hooter v. Wilson*, 273 So.2d 516, 521-22 (La. 1973).

liability arises. It is highly doubtful that general contract creditors have a significant vested interest in exemptions in effect when the contract is executed. The debtor's financial status at the time a contract is executed is certainly an important consideration to the creditor, but there is no guarantee that the assets listed in a financial statement will not be transferred or exhausted before a default occurs. The creditor may also be protected by insisting on security for the obligation. The incremental increase of the amount of exemptions is necessary to take account of inflation.³³³ Under current economic conditions, inflation is much more a certainty than the expectation that the debtor will have nonexempt assets that were listed in a financial statement. To the extent that exemptions are increased to take account of inflation, creditors should not be heard to complain that vested rights are being abrogated by the proposed law which determines the exemption under the law in effect when the enforcement lien attached. This rule protects the creditor, for example, from an increase in the amount of an exemption after the attachment, judgment, or execution lien has attached to the property.

Judgments for Spousal or Child Support

Existing Law

Under existing law, the standard exemptions from enforcement of money judgments apply where the judgment is for child or spousal support unless there is a specific statutory exception.³³⁴ Several exceptions are now provided by statute. A support creditor can reach one-half of a debtor's earnings (instead of the usual one-fourth), subject to the power of the court to increase or decrease the exemption in the interest of equity.³³⁵ Public retirement, disability, and death benefits after payment are not exempt

³³³ See the discussion in the text under "Continuing Review of Exemptions" beginning at note 345 *infra*.

³³⁴ See *Miller v. Superior Court*, 69 Cal.2d 14, 442 P.2d 663, 69 Cal. Rptr. 583 (1968) (retirement funds); *Yager v. Yager*, 7 Cal.2d 213, 218, 60 P.2d 422 (1936) (homestead).

³³⁵ Section 723.052. Federal law limits the extent of the court's authority to increase the amount that may be withheld. See 15 U.S.C. § 1673 (Supp. III 1979). The proposed law makes clear that federal law limits the court's authority.

in support cases;³³⁶ before payment, such benefits and vacation credits, if payable, are subject to enforcement in the same amount as wages. Private retirement, disability, and death benefits are not exempt from enforcement of support either before or after payment.³³⁷ It also appears that a court may avoid the potential application of an exemption by imposing a lien on specific property to secure the payment of a support obligation by exercise of its powers under Civil Code Section 4380.³³⁸

Proposed Law

The proposed law contains detailed provisions that make clear the extent to which otherwise exempt property may be applied to the satisfaction of a judgment for child or spousal support.

No substantive change is made in the provisions that now govern withholding for support judgments from earnings.

Where property is levied upon to obtain satisfaction of court-ordered child or spousal support and the property is exempt if a claim is made, the court may order that some or all of the property be applied to the satisfaction of the support judgment notwithstanding that the property is otherwise exempt. In determining the extent to which the otherwise exempt property is to be applied to the satisfaction of the judgment, the court is required to weigh the needs of the judgment creditor, the needs of the judgment debtor and persons dependent on the judgment debtor, and any other relevant circumstances. This general exception to the application of exemption statutes in support cases recognizes that the exemptions should not be used to defeat the claims of persons dependent on the judgment debtor for support, since these are the very persons the exemption laws are designed to protect.

The proposed law continues the general rule that property which is exempt without making a claim may not be applied to the satisfaction of a judgment for child or

³³⁶ Code Civ. Proc. § 690.18(a), (b); Gov't Code § 21201. An exception is also provided for benefits in the State Teachers' Retirement System, but without the limitation to amounts that could be garnished as wages. Educ. Code § 22005.

³³⁷ Section 690.18(d).

³³⁸ See *Willen v. Willen*, 121 Cal. App. 351, 6 P.2d 554 (1932) (no exemption where lien created on money payable under husband's insurance policies and enforced by execution).

spousal support. However, the proposed law continues and clarifies the exception to this general rule which makes certain retirement plan benefits subject to payment of court-ordered support.³³⁹ Where an amount under a retirement plan becomes payable to a person and is sought to be applied to the satisfaction of a support judgment, the amount is exempt only to the extent that the court determines under the general standard discussed above. However, if the amount is payable periodically, the amount withheld for support may not exceed the amount permitted to be withheld on a wage garnishment. This amount is 50 percent of the amount that otherwise would be received by the support obligor unless the court orders a greater or lesser amount. The maximum amount that may be withheld for support from a periodic payment is subject to the restriction imposed by federal law.³⁴⁰

Tracing Exempt Amounts

An exemption for money derived from a particular source, such as retirement or life insurance benefits, is illusory if the exemption is lost when the benefits are deposited in a bank or held in the form of a check or cash. Present case law and, to a limited extent, statutory law recognize the right of a debtor to trace exempt amounts through a change in form.³⁴¹ The proposed law contains a general provision that permits the judgment debtor to trace exempt amounts through deposit accounts and in the form of cash and the equivalent of cash, including cashier's checks, certified checks, and money orders. This tracing provision applies to relocation, life insurance, retirement, unemployment, disability, health, social security, and

³³⁹ The proposed law also provides a uniform \$2 maximum fee for each payment made by a public retirement system. This amount is the same as that provided in Government Code Section 21201. Section 690.18(b) provides a \$1 fee.

³⁴⁰ See 15 U.S.C. § 1673 (Supp. III 1979).

³⁴¹ See, e.g., Sections 690.18(a) (pension benefits exempt in debtor's possession and when deposited), 690.30 (direct deposit of social security payments); *Kruger v. Wells Fargo Bank*, 11 Cal.3d 352, 368, 521 P.2d 441, 450, 113 Cal. Rptr. 449, 458 (1974) (unemployment benefits in checking account); *Holmes v. Marshall*, 145 Cal. 777, 782-83, 79 P. 534, 536-37 (1905) (life insurance benefits deposited in bank account); *Bowman v. Wilkinson*, 153 Cal App 2d 391, 395-96, 314 P.2d 574, 577 (1957) (life insurance check converted to cashier's check and deposited in attorney's trust account); *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 416-17 (1973) (disability benefits in bank account); *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 162 (1962) (veterans' benefits in savings and loan account).

veteran's benefits, worker's compensation, aid, exempt earnings, and proceeds from the sale of or indemnification for a homestead, a motor vehicle, and tools of a trade.³⁴² Consistent with the general burden on the judgment debtor to claim exemptions,³⁴³ the judgment debtor has the burden of tracing the exempt amount under the proposed law. Tracing is accomplished by the lowest intermediate balance principle³⁴⁴ unless the judgment debtor or the judgment creditor shows that some other method is more appropriate under the circumstances of the case.

Continuing Review of Exemptions

Exemptions subject to dollar amount limitations have the virtue of certainty and prevent the abuse that arises where specific items are exempt without value limits. Legislatures have typically been slow to adjust exemptions in response to changes in the value of the dollar.³⁴⁵ For example, the exemption for an account in a savings and loan association³⁴⁶ was set at \$1,000 in 1901.³⁴⁷ The dollar was worth over seven times as much in 1901 as it is now,³⁴⁸ yet the amount of the exemption remains unchanged. The credit union account exemption³⁴⁹ was raised to \$1,500 in 1939³⁵⁰ when the dollar was worth over four times as much as it now is.³⁵¹ The life insurance exemption³⁵² was set at the amount of benefits represented by a \$500 annual premium in 1868³⁵³ when the

³⁴² The new law limits the opportunity to trace exempt proceeds to 90 days in the case of the sale of a motor vehicle or tools and to six months in the case of homestead proceeds.

³⁴³ See Section 690.50(i).

³⁴⁴ See *Republic Supply Co. v. Richfield Oil Co.*, 79 F.2d 375, 379 (9th Cir. 1935) (determination of lowest intermediate balance).

³⁴⁵ See Countryman, *For a New Exemption Policy in Bankruptcy*, 14 Rutgers L. Rev. 678, 683 (1960); Joslin, *Debtors' Exemption Laws: Time for Modernization*, 34 Ind. L.J. 355, 356 (1959).

³⁴⁶ Section 690.7.

³⁴⁷ 1901 Cal. Stats. ch. 28, § 1 (then building and loan associations).

³⁴⁸ See Bureau of Census, *Historical Statistics of the United States*, Table E-183, at 212, (1975) [hereinafter cited as *Historical Statistics*]. Bureau of Census, *Statistical Abstract of the United States*: 1976, Table No. 708, at 439 [hereinafter cited as *Statistical Abstract*].

³⁴⁹ Fin. Code § 14864.

³⁵⁰ 1939 Cal. Stats. ch. 965, § 2.

³⁵¹ See *Historical Statistics*, *supra* note 348, Table E-135, at 210; *Statistical Abstract*, *supra* note 348, Table No. 708, at 439.

³⁵² Section 690.9.

³⁵³ 1868 Cal. Stats. ch. 406, § 1.

dollar was worth over six times what it is today.³⁵⁴ Less dramatic but still significant disparities have occurred in exemptions such as the motor vehicle exemption which has been frequently amended since its original enactment in 1935.³⁵⁵ The protection of a motor vehicle in which the debtor has no more than \$500 equity, established in 1972, has been significantly eroded because by 1976 the average price of new cars had risen over 20 percent and the average price of used cars had risen over 40 percent.³⁵⁶

The proposed law provides a means for periodic and continuing review of the exemptions and exempt amounts. The California Law Revision Commission is charged with the responsibility to review the exemptions every . . . 10 years, and more frequently if desirable, and make any necessary recommendations to the Legislature. This will assist the Legislature periodically to consider adjustment of the exemptions without mandating automatic increases tied to inflation.

Procedure for Claiming Exemptions After Levy

Existing law provides a detailed procedure through which exemptions may be claimed and determined.³⁵⁷ The judgment debtor may, within 10 days after property has been levied upon, claim an exemption by filing an affidavit with the levying officer; otherwise the exemption is waived and the property may be applied toward the satisfaction of the judgment.³⁵⁸ If the judgment debtor files an affidavit,

³⁵⁴ Historical Statistics, *supra* note 348, Table E-183, at 212; Statistical Abstract, *supra* note 348, Table No. 708, at 439.

³⁵⁵ 1935 Cal. Stats. ch. 723, § 24. The motor vehicle exemption at first protected a vehicle valued at \$100, regardless of the amount of the debtor's equity. This limit was raised to \$250 in 1949 and to \$350 in 1959. In 1967 the debtor's equity was protected in the amount of \$350 so long as the vehicle was not worth more than \$1,000. The equity exemption was raised to \$500 in 1972 and in 1976 the value limitation was repealed. See 1949 Cal. Stats. ch. 628, § 1; 1959 Cal. Stats. ch. 1474, § 1; 1967 Cal. Stats. ch. 1241, § 1; 1972 Cal. Stats. ch. 744, § 1; 1976 Cal. Stats. ch. 1210.

³⁵⁶ Statistical Abstract, *supra* note 348, Table No. 709, at 440.

³⁵⁷ Section 690.50; see generally 5 B. Witkin, California Procedure *Enforcement of Judgment* §§ 88-92 (2d ed. 1971 & Supp. 1979). Special procedures are provided for determining certain exemptions. See Sections 690.30 (deposit account into which social security benefits directly deposited), 690.31 (dwelling exemption).

³⁵⁸ Section 690(a). Some exemptions are not subject to waiver. See, e.g., Sections 690.15 (worker's compensation benefits prior to payment), 690.19 (aid under public assistance program prior to payment), 723.050 (portion of earnings not subject to garnishment); *Smith v. Rhea*, 72 Cal. App.3d 361, 370-72, 140 Cal. Rptr. 116, 120-22 (1977) (exempt portion of proceeds from execution sale of motor vehicle).

the levying officer immediately serves it on the judgment creditor along with a notice that the property will be released unless the judgment creditor files a counteraffidavit with the levying officer within five days after the judgment debtor's affidavit is served. The judgment creditor is also required to serve a copy of this counteraffidavit on the judgment debtor and file proof of service with the levying officer. Once the counteraffidavit is filed, either party is permitted to make a motion for an order determining the exemption claim within five days after the filing of the counteraffidavit. The hearing is required to be held within 15 days after the motion is made unless a continuance is granted. The moving party must give at least five days' notice of the hearing to the other party and to the levying officer. If no motion is made within five days after the counteraffidavit is filed or, if the levying officer is not served with notice of the hearing within 10 days after such filing, the property is required to be released to the debtor. At the hearing the judgment debtor has the burden of proof. The affidavit and counteraffidavit are filed with the court by the levying officer and constitute the pleadings of the parties, subject to the power of the court to permit amendments. The court may also permit the production of other evidence. At the conclusion of the hearing, the court determines the exemption and makes any necessary orders for the disposition of the property.

The proposed law makes several changes in this procedure.³⁵⁹ Since the judgment debtor may not receive notice of levy for some time after levy has occurred,³⁶⁰ the 10-day period within which the claim of exemption must be filed with the levying officer runs from the date notice of levy is served on the judgment debtor. As a condition of claiming an exemption for a motor vehicle or tools of a trade, the judgment debtor is required to describe other property of the same type in the claim of exemption. Similarly, where the judgment debtor claims an exemption . . . for the loan value of an insurance policy, the judgment debtor must describe all other such funds. Where

³⁵⁹ For minor and technical revisions, see the Comments to the sections in the proposed legislation *infra*.

³⁶⁰ Notice of levy is required to be given the judgment debtor promptly after levy. See Section 688(b) (incorporating the levy provisions in the Attachment Law, Sections 488.310-488.430).

property is claimed as exempt pursuant to a provision exempting property to the extent necessary for the support of the judgment debtor and the judgment debtor's family, the judgment debtor must provide a detailed financial statement of assets and obligations. Exemptions based on need or based on the availability of other property of the same character are determined by taking into account all the marital property, whether or not all the property would be liable to satisfy the judgment. These provisions will enable the judgment creditor to obtain information regarding other property of the judgment debtor and will help achieve the policy of the exemptions laws to protect only a limited amount of the judgment debtor's property.

The right of the judgment debtor to move for a hearing on the exemption claim is eliminated as unnecessary. Under the proposed law, if the judgment creditor does not file the notice of opposition with the levying officer and file notice of motion within . . . a 10-day period after service of the claim of exemption, the property will be released and the judgment creditor will be precluded from levying on it again absent a showing of changed circumstances. Accordingly, the judgment debtor has nothing to gain by moving for a hearing on the exemption claim. The 15-day period after the motion is filed during which the hearing is required to be commenced is increased to 20 days to ensure that the judgment debtor may be given 10 days' notice of the hearing.³⁶¹

Service of List of Exemptions

The new law requires that at the time of levy a form listing state and federal exemptions (prepared by the Judicial Council) be served on judgment debtors who are natural persons.

SALE AND COLLECTION

Sale in General

The general assumption of existing law is that property levied upon will be sold to satisfy the money judgment.³⁶²

³⁶¹ The proposed law requires that the judgment debtor be given 10 days notice of the hearing. If the notice of hearing is served by mail, the notice must be mailed 15 days prior to the hearing.

³⁶² See Section 691.

This principle is continued in the proposed law with one important modification.³⁶³ The proposed law encourages collection rather than sale of certain types of property that are especially susceptible to sacrifice sales—accounts receivable, chattel paper, general intangibles, final money judgments, and instruments that are not of a type customarily transferred in established markets or that arise out of consumer transactions. These types of property are to be collected rather than sold unless the judgment creditor first serves a notice of intended sale on the judgment debtor. If the judgment debtor applies to the court within 10 days after service for an order to prevent the sale, the court may make an order appropriate under the circumstances of the case. The order may permit the execution sale, may order sale only on specified conditions, or may order that the property continue to be collected. The court may condition an order restraining sale on an assignment of the property by the judgment debtor to the judgment creditor to the extent necessary to satisfy the judgment.³⁶⁴ If the judgment debtor does not apply within the 10-day period for an order to prevent the sale, the property may be sold.

Collection

If the judgment creditor does not seek to have collectible property sold or if the court denies the sale upon the judgment debtor's application, amounts due on a right to payment are to be collected under the proposed law during the period of the lien of execution which lasts until . . . *two years* from the date of issuance of the writ of execution unless the execution lien is renewed by another levy.³⁶⁵ This represents a significant change from existing law under which the writ of execution has active force only for a maximum 60-day period after delivery to the levying officer after which time it must be returned.³⁶⁶ By permitting

³⁶³ The new law also makes clear that cash is not to be sold unless it has a value exceeding its face value.

³⁶⁴ See the discussion in the text under "Order to Assign Right to Payment" beginning at note 483 *infra*.

³⁶⁵ The execution lien on another levy on the same property may relate back to the date of the earlier execution lien. See discussion in text beginning at note 48 *supra*. The proposed law also provides other remedies for collecting debts. See the discussion in the text under "Miscellaneous Creditors' Remedies" beginning at note 425 *infra*.

³⁶⁶ See Section 683.

collection over . . . *two* year's time or longer if the execution lien is renewed, the proposed law should save enforcement costs and result in much less disruption of the relation between the judgment debtor and the judgment debtor's debtors.

Sale Procedure

Notice of Sale

The proposed law continues the substance of existing law governing the notice of sale with the following changes:

(1) In order to reach potentially interested bidders at an execution sale more effectively, the proposed law permits the judgment creditor to advertise the sale in an advertising section of a newspaper or other periodical and recover the reasonable costs of such advertising. *The judgment debtor may also advertise the sale at the judgment debtor's own expense.*

(2) The proposed law gives the judgment debtor an opportunity to claim any available exemption for personal property by precluding its sale until 10 days after the notice of levy is given to the debtor. Under existing law the 10-day period runs from the date of levy;³⁶⁷ but, since the debtor may not be aware of the levy, the existing provision provides little protection.

(3) If real property is to be sold, the proposed law requires both a legal description and a street address, other common designation, or directions to the location of the property. Existing law permits the omission of the street address and apparently provides for a designation of the location of property only in the case of a foreclosure sale.³⁶⁸

(4) The proposed law requires that notice of sale of real property be . . . *mailed to all* lienholders of record, be . . . served on the judgment debtor *personally or by mail, be posted in one public place and in a conspicuous place on the property*, and be personally served on an occupant of the property . . . *if an occupant can be served when service is attempted.*

(5) The notice of sale of real property is delayed under the proposed law until 120 days after the notice of levy is

³⁶⁷ See Section 690.50(a).

³⁶⁸ See Section 692.

served on the judgment debtor. This important provision gives the judgment debtor time to redeem the property from the judgment creditor's lien before the sale, to sell the property, or to seek the attendance of other potential purchasers at the judicial sale. This delay provision compensates for the . . . elimination of the statutory right to redeem real property for one year after . . . *an execution sale*.³⁶⁹

Manner of Sale

The existing law pertaining to the time, place, and manner of sale is largely continued in the proposed law.³⁷⁰ However, the requirement that personal property be in view of those attending the sale is subject to an exception where the court orders otherwise. This option avoids the expense of moving bulky objects or large lots of items to the place where the sale is to be held.

Under the proposed law, the judgment debtor may request that property be sold in certain lots or in a particular order, but the levying officer is not bound to follow the request unless it is likely that the requested manner of sale will yield an amount equal to any other manner of sale *or the amount required to satisfy the money judgment*. Under existing law, it appears that the judgment debtor has absolute control over this aspect of sale.³⁷¹

Manner of Payment

The practice under existing law requires bidders at an execution sale other than the judgment creditor to pay in cash or by certified check or cashier's check.³⁷² The judgment creditor may credit the judgment on any bids but must pay cash to cover the expenses of the levying officer, preferred labor claims, exempt proceeds, and other superior claims that are required to be satisfied.³⁷³ The proposed law continues this general requirement, but also

³⁶⁹ See the discussion in the text under "Statutory Redemption From Judicial Sales" beginning at note 380 *infra*.

³⁷⁰ See Section 694.

³⁷¹ See Section 694.

³⁷² Marshal's Manual of Procedure § 423.4 (rev. 1980); California State Sheriffs' Ass'n, Civil Procedural Manual 6.10-6.11, 6.20 (rev. 1980).

³⁷³ See *Turner v. Donovan*, 64 Cal. App.2d 375, 377, 148 P.2d 912 (1944); *cf. Kelly v. Barnet*, 24 Cal. App. 119, 121-22, 140 P. 605 (1914) (levying officer has discretion to require judgment creditor to pay cash).

would permit a high bidder *at a sale of real property* to elect to treat a bid over \$5,000 as a credit transaction by paying \$5,000 or 10 percent of the amount bid, whichever is greater, in cash, and paying the balance with interest on the balance and additional accruing costs within . . . 10 days after the date of the sale.³⁷⁴ *In the case of personal property, the new law permits a credit bid of \$2,500 or 10 percent of the amount bid, whichever is greater, in cash, with the balance (including interest and any additional costs) due in 10 days. These provisions . . .* should encourage outside bidding at execution sales of valuable property, particularly real property, whereas under existing law it is difficult for interested bidders to have the necessary cash at a sale. If the credit bidder does not complete payment of the amount bid within the . . . 10-day period allowed, the amount paid will be applied to the satisfaction of the judgment and any excess will be returned to the bidder.

Minimum Bid

The proposed law specifically precludes the sale of property at an execution sale if the amount bid does not exceed the total of . . . *preferred labor claims,*^{374.1} *state tax liens superior to the judgment creditor's lien,* third-party claims that have been paid off by the judgment creditor,³⁷⁵ and any proceeds exemption.³⁷⁶ This provision is intended to enforce the principle that the debtor's property should not be sold, particularly at a sacrifice, if none of the proceeds would be applied to the satisfaction of the judgment. *A special minimum bid provision applies when a dwelling subject to a homestead exemption is sold on execution.*³⁷⁷

³⁷⁴ This proposal is patterned after Revenue and Taxation Code Section 3693.1 pertaining to sales of tax deeded property to private persons.

^{374.1} See Section 1206.

³⁷⁵ Cf. Section 689c (proceeds of sale paid first to repayment of sum paid by creditor to satisfy interest of third-party claimant). See the discussion in the text under "Distribution of Proceeds of Sale and Collection" beginning at note 378 *infra*.

³⁷⁶ Proceeds of sale may be exempt where a motor vehicle, household furnishings and other personal effects, or tools of trade are sold. See the discussion in the text under "Exemptions From Enforcement of Money Judgments" beginning at note 217 *supra*.

³⁷⁷ See the discussion in the text beginning at note 304 *supra*.

Distribution of Proceeds of Sale and Collection

Existing law contains several incomplete and somewhat contradictory provisions relating to the distribution of the proceeds of sale and collection.³⁷⁸ The proposed law contains a general section governing the distribution of proceeds resulting from sale or collection under a writ of execution. Proceeds are applied in the following order:

(1) To the satisfaction of . . . *preferred labor claims, state tax liens superior to the judgment creditor's lien, and third-party claims that have been satisfied by the judgment creditor.*

(2) To the judgment debtor in the amount of any applicable exemption of proceeds except to the extent such proceeds are required to satisfy voluntary encumbrances subordinate to the judgment creditor's lien *and recorded or filed state tax liens subordinate to the judgment creditor's lien.*

(3) To the levying officer for the reimbursement of costs which have not been advanced.

(4) To the judgment creditor to satisfy . . . costs and interest accruing after . . . *the issuance of the writ, . . . and the amount due on the judgment with costs and interest as entered on the writ.*

(5) To any other judgment creditor who has delivered a writ of execution to the levying officer with instructions to levy on the same property and to other persons entitled to a share of the proceeds of sale³⁷⁹ *who are known to levying officer.*

(6) To the judgment debtor.

[Material omitted.]

The new law provides for the prompt and orderly distribution of proceeds of sale or collection. As a general rule, proceeds are to be paid out within 30 days after the levying officer receives them. If there are conflicting claims to proceeds known to the levying officer, the proceeds may be deposited in court and the rights thereto determined by motion of interested persons.

³⁷⁸ See Civil Code § 1255; Code Civ. Proc. §§ 689c, 690.2(c), (d), 690.31(j), 691.

³⁷⁹ See *Mitchell v. Alpha Hardware & Supply Co.*, 7 Cal. App.2d 52, 57, 45 P.2d 442 (1935).

STATUTORY REDEMPTION FROM JUDICIAL SALES

Existing Law

Statutes providing a right of redemption from execution sales were first enacted in California in 1851.³⁸⁰ This system, patterned after the Field Code proposed for New York,³⁸¹ has been described as the "scramble" type of redemption.³⁸² Under this system, the right to redeem is afforded the judgment debtor who owns the land, the successors in interest of the judgment debtor, and persons holding liens on the land that are subordinate to the lien under which the sale takes place.³⁸³ Redemption may take place at any time within twelve months after the sale of the property.³⁸⁴ Redemption is accomplished by paying the execution sale purchaser or prior redemptioner the amount paid to purchase or redeem the property plus the amount of a prior redemptioner's lien and specified amounts of interest and other expenses.³⁸⁵ Redemption by the judgment debtor or

³⁸⁰ 1851 Cal. Stats. ch. 5, §§ 229-236. Statutory redemption from execution and foreclosure sales is currently governed by Sections 700a-707.

³⁸¹ See New York Commissioners on Practice and Pleading, *The Code of Civil Procedure of the State of New-York* §§ 844-850 (1850). Although the redemption system proposed in the Field Code was not enacted in New York, it became the prevailing type of redemption in the United States. S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 150-51 (2d ed. 1975). The California statute in turn became the model for redemption laws in the western states. See Durfee & Doddridge, *Redemption From Foreclosure Sale—The Uniform Mortgage Act*, 23 Mich. L. Rev. 825, 866 n.93 (1925).

³⁸² See generally J. Hetland, *Secured Real Estate Transactions* §§ 7.7-7.19 (Cal. Cont. Ed. Bar 1974); S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 149-54 (2d ed. 1975); 5 B. Witkin, *California Procedure Enforcement of Judgment* §§ 98-102, at 3464-68 (2d ed. 1971); Comment, *The Statutory Right of Redemption in California*, 52 Calif. L. Rev. 846 (1964).

³⁸³ Section 701. Creditors entitled to redeem are termed "redemptioners" by this section.

³⁸⁴ Section 702. A redemption by a redemptioner must occur within 60 days after a redemption by a prior redemptioner. Section 703. It has been suggested that these 60-day redemption periods conceivably may continue to run after the 12-month period as long as there are qualified redemptioners prepared to redeem within 60 days after a prior redemption. See Comment, *The Statutory Right of Redemption in California*, 52 Calif. L. Rev. 846, 852-53 (1964).

³⁸⁵ See Sections 702-703. A person redeeming from the purchaser must pay two-thirds of one percent per month interest. Section 702. A person redeeming from a redemptioner must pay, in addition, two percent of the amount paid by the prior redemptioner. Section 703. The other items making up the redemption price specified in the statute are assessments, taxes, reasonable sums for fire insurance, maintenance, upkeep, or repair of improvements on the property, and sums necessarily paid on a prior obligation secured by the property. Sections 702-703. Rents and profits or the value of the use and occupation of the property may be set off

a successor in interest terminates the effect of the sale so that the judgment debtor or successor in interest is restored to his or her estate.³⁸⁶ However, liens that have not been paid off in the process of redemption reattach,³⁸⁷ and a judgment lien under which the property is sold reattaches to the extent it has not been satisfied when the debtor redeems.³⁸⁸ Redemption by a junior lienholder has the effect of satisfying a prior lien that is a part of the redemption price and preserving the junior lienholder's security in the property that would otherwise be lost at the conclusion of the redemption period as a result of the sale under a superior lien.³⁸⁹

These provisions apply as well to foreclosure sales under a mortgage or deed of trust.³⁹⁰ If the property is sold for less than the amount of the judgment, the redemption period is 12 months, as in the case of redemption from an execution sale.³⁹¹ If the property is sold at a foreclosure sale under a deed of trust or a mortgage with the power of sale at a price sufficient to satisfy the judgment, including interest, costs, and expenses of sale, the redemption period is three months.³⁹² There is, however, no statutory right of

against the redemption price. Section 707; *House v. Lala*, 214 Cal. App.2d 238, 245-46, 29 Cal. Rptr. 450, 454 (1963). Section 702 provides a summary hearing procedure in the event of a disagreement over the redemption price. As the discussion in Comment, *The Statutory Right of Redemption in California*, 52 Calif. L. Rev. 846, 863-69 (1964), fully demonstrates, the determination of the redemption price frequently is not an easy matter.

³⁸⁶ Section 703; *Bateman v. Kellogg*, 59 Cal. App. 464, 474-78, 211 P. 46, 51-52 (1922).

³⁸⁷ Section 703; *Kaiser v. Mansfield*, 160 Cal. App.2d 620, 628-29, 325 P.2d 865, 870-71 (1958).

³⁸⁸ See *Fry v. Bihr*, 6 Cal. App.3d 248, 251-52, 85 Cal. Rptr. 742, 743 (1970); *Moore v. Hall*, 250 Cal. App.2d 25, 29, 58 Cal. Rptr. 70, 72 (1967).

³⁸⁹ *Bank of America v. Hill*, 9 Cal.2d 495, 502, 71 P.2d 258, 261 (1937).

³⁹⁰ Subdivision (a) of Section 700a provides in relevant part: "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." Similar language in the law in effect in 1852 was termed "inapt" but found to be sufficiently comprehensive to apply to foreclosure sales. *Kent & Cahoon v. Laffan*, 2 Cal. 595 (1852).

³⁹¹ Section 725a. Even if there is a power of sale in the mortgage or deed of trust, a mortgagee or trustee must follow the judicial foreclosure procedures in order to be able to obtain a deficiency judgment for the difference between the fair market value of the property and the total debt. See Sections 580b, 580d, 726; *Roseleaf Corp. v. Chierighino*, 59 Cal.2d 35, 40-44, 378 P.2d 97, 99-101, 27 Cal. Rptr. 873, 875-77 (1963).

³⁹² Section 725a.

redemption after a private sale under a power of sale in a mortgage or deed of trust.³⁹³

Where a right of redemption exists, the judgment debtor or a tenant of the debtor is entitled to remain in possession of the real property during the redemption period.³⁹⁴ The purchaser is entitled to receive rent or the value of the use and occupancy of the property from the tenant in possession until a redemption takes place.³⁹⁵ If the debtor redeems, rents and profits paid to the purchaser are a credit on the redemption price.³⁹⁶ If the purchaser or redemptioner has occupied the property, the debtor who redeems is entitled to the value of the use and occupancy of the property.³⁹⁷

Purpose of Statutory Redemption

The primary purpose of statutes permitting redemption from judicial sales of real property is to force the purchaser at the execution or foreclosure sale (almost always the judgment creditor or mortgagee)³⁹⁸ to bid an amount near the property's fair value.³⁹⁹ The theory behind permitting

³⁹³ *Penryn Fruit Co. v. Sherman-Worrell Fruit Co.*, 142 Cal. 643, 645, 76 P. 484, 485 (1904); *Py v. Pleitner*, 70 Cal. App.2d 576, 579, 161 P.2d 393, 395 (1945); Hetland, *Land Contracts*, in *California Real Estate Secured Transactions* § 3.78, at 130 (Cal. Cont. Ed. Bar 1970).

³⁹⁴ Section 706; *First Nat'l Trust & Sav. Bank v. Staley*, 219 Cal. 225, 227, 25 P.2d 982, 983 (1933).

³⁹⁵ Section 707; see *Carpenter v. Hamilton*, 24 Cal.2d 95, 101-03, 147 P.2d 563, 566-67 (1944) ("tenant in possession" includes judgment debtor occupying property during redemption period); Comment, *The Statutory Right of Redemption in California*, 52 Calif. L. Rev. 846, 865-69 (1964). A redemptioner has the same rights to rents and profits from the time such person redeems until a later redemption.

³⁹⁶ Section 707.

³⁹⁷ *House v. Lala*, 214 Cal. App.2d 238, 245-46, 29 Cal. Rptr. 450, 454 (1963) (free use of property by judgment creditor is a profit within meaning of Section 707).

³⁹⁸ The defeasible title obtained at a sale subject to redemption, the lack of notice, and the requirement of cash payment by outside bidders, while the judgment creditor or mortgagee can bid the amount of the judgment, are the major factors discouraging bidding. See National Conference of Commissioners on Uniform State Laws, Handbook 258-59 (1922); G. Osborne, Handbook on the Law of Mortgages § 8, at 18 (2d ed. 1970); Durfee & Doddridge, *Redemption From Foreclosure Sale—The Uniform Mortgage Act*, 23 Mich. L. Rev. 825, 832-33 (1925); Madsen, *Equitable Considerations of Mortgage Foreclosure and Redemption in Utah: A Need for Remedial Legislation*, 1976 Utah L. Rev. 327, 335. In a study in New York in 1938, it was reported that, out of 40,853 foreclosures, the mortgagee bid in the amount of the obligation in 40,570 cases. Murray, *Statutory Redemption: The Enemy of Home Financing*, 28 Wash. L. Rev. 39, 40 n.13 (1953).

³⁹⁹ See *Moore v. Hall*, 250 Cal. App.2d 25, 29, 58 Cal. Rptr. 70, 73 (1967); G. Osborne, Handbook on the Law of Mortgages § 8, at 17-18 (2d ed. 1970), Durfee & Doddridge, *Redemption From Foreclosure Sale—The Uniform Mortgage Act*, 23 Mich. L. Rev.

other lien creditors to redeem is that the property should be used to satisfy as many creditors as possible.⁴⁰⁰ If the property is valuable enough, subordinate lienholders may thus protect security they would otherwise lose.⁴⁰¹ Statutory redemption also has the purpose of giving the debtor another chance to save the property by refinancing or otherwise finding assets sufficient to pay off the debt.⁴⁰²

It is difficult to assess the actual effect of statutory redemption. The states are almost evenly divided between those that permit redemption from execution or foreclosure sales and those that do not;⁴⁰³ however, there do not appear to be any studies comparing the results in redemption states as opposed to nonredemption states. It is certain that very few redemptions take place.⁴⁰⁴

Proposed Law

Elimination of Redemption from Execution Sales

The Commission has concluded that statutory redemption from execution and foreclosure sales has failed to achieve its purposes. The very existence of the right of

825, 839-41, 851 (1925); Comment, *The Statutory Right of Redemption in California*, 52 Calif. L. Rev. 846, 848 (1964).

⁴⁰⁰ S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 149 (2d ed. 1975).

⁴⁰¹ See Comment, *The Statutory Right of Redemption in California*, 52 Calif. L. Rev. 846, 848 (1964).

⁴⁰² See G. Osborne, *Handbook on the Law of Mortgages* § 8, at 17-18 (2d ed. 1970); Durfee & Doddridge, *Redemption From Foreclosure Sale—The Uniform Mortgage Act*, 23 Mich. L. Rev. 825, 839 (1925). The one-year redemption period has been termed a "farm mortgage proposition . . . based on the allowance to the mortgagor of possession of his farm for another crop year after default, to see if conditions will not better and he be able to save the farm." National Conference of Commissioners on Uniform State Laws, *Handbook* 270 (1922). A commentary on the law of New York, where statutory redemption was eliminated in 1962, terms the "desire to give judgment debtors every opportunity to recover their real property—a form of paternalism predicated in part on the special status accorded ownership of real property." 6 J. Weinstein, H. Korn, & A. Miller, *New York Civil Practice* ¶ 5236.02, at 52-720 (1980).

⁴⁰³ See G. Osborne, *Handbook on the Law of Mortgages* § 307 (2d ed. 1970); S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 150-51 (2d ed. 1975). Although there are some exceptions, redemption states usually permit redemption from both execution and foreclosure sales. Of the 27 states permitting redemption from execution sales, five permit only the judgment debtor to redeem, three permit redemption by the debtor and by creditors in order of priority, 13 provide "scramble" redemption, and six have some other variation. Among the states without redemption are Florida, Georgia, Missouri, New Jersey, New York, Ohio, Pennsylvania, Texas, and Virginia. Approximately 17 states have neither redemption nor any other special provisions designed to prevent sacrifice sales of real property.

⁴⁰⁴ G. Osborne, *Handbook on the Law of Mortgages* § 8, at 18 (2d ed. 1970); Brodkey, *Current Changes in Illinois Real Property Law*, 10 DePaul L. Rev. 567, 578 (1961)

redemption operates as the greatest impediment to the achievement of the primary purpose of obtaining a fair bid at a sale of real property because the purchaser can only obtain title that is defeasible for another year or, in certain cases, three months.⁴⁰⁵ The right of redemption thus makes "sacrifice" sales even more sacrificial. There are, no doubt, exceptional cases in which the purchase price is unreasonably low and in which the debtor manages to obtain the money necessary to save the property. The Commission has concluded, however, that whatever protection is afforded debtors by the right to redeem in these exceptional cases does not justify the detrimental effect in the vast majority of cases of the right to redeem. Accordingly, the proposed law eliminates the statutory right of redemption from judicial sales, *with the exception of cases where a deficiency judgment is sought upon foreclosure of a mortgage or deed of trust (discussed infra)*. This change would not affect the equitable right of a judgment debtor to redeem from a sale at a grossly

(fewer than one percent of foreclosed properties are redeemed); Murray, *Statutory Redemption: The Enemy of Home Financing*, 28 Wash. L. Rev. 39, 42 n.25 (1953) (reporting a 1938 study showing that, out of 22,000 properties foreclosed, only 204 were redeemed); Stattuck, *Washington Legislation 1961—Real Property Mortgage Foreclosure—Redemption*, 36 Wash. L. Rev. 239, 309, 311 n.3 (1961) (reporting a four-year study showing that, out of 276 foreclosures, one redemption was made by a mortgagor and two by other persons). The records of the San Francisco Sheriff's Department from mid-1970 through mid-1975 show that there were three redemptions out of 86 sales of real property. Letter from Carl M. Olsen, County Clerk, City and County of San Francisco (October 20, 1975) (on file at office of California Law Revision Commission).

⁴⁰⁵ The commentators are nearly unanimous in recognizing the drastic effect that the nature of the title obtained at a sale subject to redemption has on bidding. See, e.g., G. Osborne, *Handbook on the Law of Mortgages* § 8, at 19 (2d ed. 1970); Carey, Brabner-Smith, & Sullivan, *Studies in Foreclosures in Cook County: II. Foreclosure Methods and Redemption*, 27 Ill. L. Rev. 595, 615 (1933); Durfee & Doddridge, *Redemption From Foreclosure Sale—The Uniform Mortgage Act*, 23 Mich. L. Rev. 825, 841 n.51 (1925) (Redemption "certainly caps the wall we have built to keep the public away from the public sale. The best market for land is found among those who desire it for immediate use, and to them, obviously, the redemption feature is prohibitive."); Madway & Pearlman, *A Mortgage Foreclosure Primer: Part III Proposals for Change*, 8 Clearinghouse Rev. 473, 478-79 (1974) ("Protecting the title of the bid purchaser and eliminating post-sale redemption rights . . . would meet one of the major objections of mortgagees because these practices tend to depress foreclosure sale prices significantly."); Murray, *Statutory Redemption: The Enemy of Home Financing*, 28 Wash. L. Rev. 39, 40 (1953) ("A person's desire for a particular piece of property would have to be very strong to cause him to bid for it, as he knows he is buying a mere expectation."); Comment, *The Statutory Right of Redemption in California*, 52 Calif. L. Rev. 846, 848 (1964) (The "conditional title is not attractive to investors."). It is interesting to note that the commentary following the redemption provisions in the Field Code, which served as the model for the California statute, questions whether redemption affords any benefit to the debtor. New York Commissioners on Practice and Pleading, *The Code of Civil Procedure of the State of New-York* 359 (1850).

inadequate price where the purchaser is guilty of unfairness or has taken undue advantage.⁴⁰⁶

The Commission recognizes that a hurried, forced sale of real property may result in a depressed price even where the sale is absolute. Consequently, the proposed law provides a 120-day grace period between the time when notice of a levy on the property is given⁴⁰⁷ and the time when notice of sale is first given.⁴⁰⁸ This 120-day period is analogous to the three-month period before notice of sale which is allowed to a mortgagor or trustor for the purpose of curing the default under a mortgage or deed of trust containing a power of sale.⁴⁰⁹ During this time, the judgment debtor may refinance the property in order to pay off the lien under which it would otherwise be sold, sell the property privately subject to valid liens in order to realize a higher price than would be obtained at a forced sale, or acquiesce in the judicial sale but seek potential buyers by advertising and personal contact.

The provision for delay of sale would not apply to leasehold estates with less than two years' unexpired term at the time of levy. This exception is consistent with existing law which provides that sales of such interests are absolute, that is, not subject to redemption.⁴¹⁰

The proposed scheme should accomplish more effectively the main purposes of the redemption statute—to obtain a higher price at execution and foreclosure sales and to provide the debtor with an opportunity to retain the property.⁴¹¹ Junior lienholders

⁴⁰⁶ See *e.g.*, *Odell v. Cox*, 151 Cal. 70, 90 P. 194 (1907); *Smith v. Kessler*, 43 Cal. App.3d 26, 31-33, 117 Cal. Rptr. 470, 473-74 (1974).

⁴⁰⁷ Under the proposed law, notice of levy is required in every case. Under existing law, no levy is required where a foreclosure judgment is being enforced. See Section 684; *Southern Cal. Lumber Co. v. Ocean Beach Hotel Co.*, 94 Cal. 217, 222-24, 29 P. 627, 629 (1892). See the discussions in the text under "General Rules Governing Levy" beginning at note 134 *supra* and "Judgments for Sale of Real or Personal Property" beginning at note 582 *infra*.

⁴⁰⁸ At least 20 days' notice of sales of real property is required by subdivision 3 of Section 692. Hence, under this proposal, the property could not be sold sooner than 140 days after notice of levy is given to the judgment debtor.

⁴⁰⁹ Civil Code §§ 2924, 2924f.

⁴¹⁰ See Section 700a.

⁴¹¹ The proposed law would also improve the chances of obtaining a fair price by permitting credit bids (see the discussion in the text under "Manner of Payment" beginning at note 372 *supra*) and providing more extensive notice of levy and notice of sale (see the discussions in the text under "General Rules Governing Levy" beginning at note 134 *supra* and "Notice of Sale" beginning at note 367 *supra*).

may protect their interests by redeeming from the superior lien before the property is sold and thus being subrogated to the benefits of the superior lien.⁴¹² The proposed law eliminates the speculative aspect of existing law which results from the fluctuation in land values during a year's time. It should achieve a more equitable balance between the interests of the judgment debtor and the judgment creditor and has the added virtues of simplicity and ease of administration.⁴¹³

The Commission has considered several other alternatives to statutory redemption—the most important being: requiring court confirmation of sale,⁴¹⁴ fixing an upset price,⁴¹⁵ allowing advance bidding,⁴¹⁶ and extending antideficiency legislation to cover execution sales.⁴¹⁷

⁴¹² The pre-sale right of subrogation upon redemption from a superior lien is provided by Civil Code Section 2904:

2904. One who has a lien inferior to another, upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and,
2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

The Commission does not propose to alter this right.

⁴¹³ Indiana recently enacted a statute providing a six-month delay of execution sales coupled with an upset price of two-thirds the appraised value of the property. Ind. Code Ann. § 34-1-37-1 (Burns 1973). One commentator suggested in 1938 that California substitute a grace period of a year for the one-year redemption period. King, *The Enforcement of Money Judgments in California*, 11 So. Cal. L. Rev. 224, 228-29 (1938). For reasons given in the text, the Commission believes that its proposal is preferable to these alternatives.

⁴¹⁴ Court confirmation, in the absence of an upset price feature, would be intended to protect against unreasonably low sale prices. It does not appear that any state provides for court confirmation of execution sales without combining it with an upset price or advance bid procedure. In California, Section 568.5 provides for court confirmation of sales by receivers and there is no right of redemption after a sale by a receiver.

⁴¹⁵ Five states have a procedure for appraising the property and setting an upset price, usually two-thirds of the appraised value. *E.g.*, Ohio Rev. Code Ann. §§ 2329.17, 2329.20 (Page 1954). California law provides an upset price of 90 percent of the appraised value in private probate sales by an executor or administrator. Prob. Code § 784. Appraisals are a matter of course in probate for tax purposes but would be an additional expense in execution and foreclosure sales. Civil Code Section 1254 also provides that a homestead is to be sold on execution at not less than 90 percent of appraised fair market value, if possible. See the discussion in the text at note 305 *supra*.

⁴¹⁶ Only North and South Carolina provide for continuing an execution sale so that the judgment debtor may find a buyer who will pay a specified amount over the last bid. N.C. Gen. Stat. §§ 1-339.64 to 1-339.68 (repl. vol. 1969); S.C. Code § 15-39-720 (1976). California law provides for advance bids at private partition and probate sales. Code Civ. Proc. §§ 873.730, 873.740; Prob. Code § 785.

⁴¹⁷ Pennsylvania requires the judgment creditor to petition the court within six months of an execution sale to fix the fair market value of the property if the price obtained at the sale is insufficient to satisfy the judgment. Satisfaction is granted to the extent

Although some of these options may be preferable to statutory redemption as it exists in California, they have their own drawbacks that are avoided in the proposed law. Generally speaking, these alternatives would require a court hearing in every case, thereby increasing the expenditure of time and resources by the parties and the judicial system. The Commission is mindful of the fact that the costs incurred in such additional proceedings would be borne by the judgment debtor, to the extent that the debtor is solvent, and ultimately by borrowers and consumers in general. The proposed law is most likely to forward the interests of both debtors and creditors in this area.

Redemption in Cases Where Deficiency Judgment Sought

The new law preserves statutory redemption in one area—where a decree of foreclosure of a mortgage or deed of trust on real property pursuant to Code of Civil Procedure Section 726 determines that a deficiency judgment may be ordered. In this situation, the property may be redeemed only by the judgment debtor or the debtor's successor in interest. As under prior law, redemption may take place within three months after sale, if the proceeds are sufficient to satisfy the debtor's obligation, or within one year, if they are not sufficient. The new law also simplifies the procedure for redeeming the property sold. If the property is redeemed from the foreclosure sale, the new law does not permit junior liens to reattach. This limited redemption procedure preserves the balance between debtors and creditors in the area where deficiency judgments are available.

of the fair market value of the property. If a petition is not timely filed, the debtor is released from liability. 42 Pa. Cons. Stat. §§ 5522, 8103 (Purdon 1980). Kansas also permits the court to credit the fair market value of property on the judgment. Kan. Stat. § 60-2415(b) (1976). California's antideficiency legislation applies only to foreclosures under mortgages and deeds of trust. Sections 580b, 580d, 726.

WAGE GARNISHMENT

The proposed law continues the wage garnishment provisions of existing law⁴¹⁸ with several technical changes.⁴¹⁹ . . .

[Material omitted.]

MISCELLANEOUS CREDITORS' REMEDIES

Introduction

Levy under a writ of execution is not a complete remedy for enforcement of a money judgment. It may be ineffective where the judgment debtor conceals or disposes of assets that are subject to execution or where a third person refuses to cooperate with the levy. In addition, there are types of property that for historical or practical reasons cannot be reached by execution. Other procedures have been developed to deal with these special situations, first by the courts of equity, and later by statute.

⁴¹⁸ See Sections 723.010-723.154. These provisions were enacted upon the recommendation of the Law Revision Commission. Recommendations relating to wage garnishment are found in 10 Cal. L. Revision Comm'n Reports 701 (1971); 11 Cal. L. Revision Comm'n Reports 101 (1973); 12 Cal. L. Revision Comm'n Reports 901 (1974); 13 Cal. L. Revision Comm'n Reports 601, 1703 (1976). See also 14 Cal. L. Revision Comm'n Reports 261 (1978).

⁴¹⁹ The technical changes made by the proposed law include (1) the name "Employees' Earnings Protection Law" is changed to the more descriptive name "Wage Garnishment Law" and (2) the types of state taxes that are subject to the wage garnishment law are somewhat expanded.

⁴²⁰ [Omitted.]

⁴²¹ [Omitted.]

⁴²² [Omitted.]

⁴²³ [Omitted.]

⁴²⁴ [Omitted.]

The proposed law revises and expands the various special procedures to provide to the judgment creditor a greater variety of effective remedies consistent with fair treatment of the interests of the judgment debtor.

Examination Proceedings

Examination proceedings⁴²⁵—frequently called proceedings in aid of execution or supplementary proceedings—permit the judgment creditor to examine the judgment debtor, or a third person who has property of or is indebted to the judgment debtor, in order to discover property and apply it toward the satisfaction of the money judgment. Examination proceedings are initiated by application for an order that the judgment debtor or third person appear and answer concerning the judgment debtor's property.

A judgment debtor may be examined once every four months⁴²⁶ or more frequently where a writ of execution has been issued and the judgment creditor shows that there is property that the judgment debtor "unjustly refuses" to apply toward the satisfaction of the judgment.⁴²⁷ The four-month limitation is retained in the proposed law since it is designed to prevent harassment of the judgment debtor.⁴²⁸ However, the requirement that in order to obtain a more frequent examination the judgment creditor must obtain issuance of a writ of execution is eliminated.⁴²⁹ The

⁴²⁵ See Sections 714-723.

⁴²⁶ Section 714.

⁴²⁷ Section 715.

⁴²⁸ For the sake of precision, it is recommended that the four-month period be changed to 120 days.

⁴²⁹ Originally, California adopted the system provided in the Field draft of a Code of Civil Procedure for New York under which issuance of a writ and its return unsatisfied were required before the judgment debtor could be examined, but only issuance was required where the proceedings were aimed at the application of particular property that the judgment debtor unjustly refused to apply. See 1851 Cal. Stats. ch. 5, §§ 238, 239; S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 283-84 (2d ed. 1975). It was not until 1957 that the four-month limitation was added to the California provision for judgment debtor examinations where no special showing is made. See 1957 Cal. Stats. ch. 1194, § 1. An amendment of Section 714 in 1955 eliminated the requirement that a writ be issued and returned unsatisfied, and substituted therefor the requirement that a writ be "issuable"—in effect, a test of whether the judgment is currently enforceable. See 1955 Cal. Stats. ch. 1191, § 1. This amendment recognized that the former requirement was an outgrowth of the time when the

requirement that the judgment creditor show that the judgment debtor's refusal to apply property has been "unjust" is replaced in the proposed law with a requirement that the judgment creditor show good cause for a more frequent examination.⁴³⁰ The proposed law adds an express provision that the judgment debtor be personally served with the order of examination not less than 10 days prior to the date set for the examination.

Examinations of third persons are more circumscribed. Under existing law, the order to appear may be issued only if a writ of execution has been issued or returned and the judgment creditor must show that the third person has property of the judgment debtor or is indebted in an amount exceeding \$50.⁴³¹ The prerequisite of the issuance or return of a writ of execution should be eliminated as an outmoded historical relic. The judgment creditor should be free to select the most appropriate means of reaching the property held or controlled by the third person. The \$50 requirement, dating from 1851,⁴³² is increased to \$250 under the proposed law to compensate for the change in the value of the dollar. The proposed law requires that notice of the examination of the third person be given the judgment debtor since the judgment debtor is an interested party. If the judgment creditor describes in the application for the order the property of the judgment debtor in the hands of the third person or the debt owed to the judgment debtor by the third person and the judgment debtor receives at least 10 days' notice of the examination, the judgment

courts of equity and law were separate and when equity would not act unless the legal remedies had been exhausted, and that the return of a writ unsatisfied creates no presumption that the legal remedy is inadequate since the levying officer may not have been instructed to levy under the writ. See S. Riesenfeld, *supra* at 283.

⁴³⁰ The requirement that the judgment debtor's refusal to apply property under Section 715 be alleged to be unjust serves no apparent purpose. If it means that the judgment debtor has nonexempt property, as opposed to exempt property or property of third persons which may not properly be applied to the judgment, then the language is unneeded because the proposed law elsewhere makes clear which property may be applied toward the satisfaction of a judgment. If it is designed to make sure the judgment creditor first attempts to reach property by levy under a writ of execution, it should be eliminated, consistent with the 1955 amendment of Section 714 and the policy of the proposed law to expunge the exhaustion of legal remedies doctrine and permit the judgment creditor to pursue whichever remedy is thought to be most effective in given circumstances.

⁴³¹ Section 717.

⁴³² 1851 Cal. Stats. ch. 5, § 241.

debtor must make any applicable exemption claim at the hearing or the exemption will be deemed waived. Notice of this requirement is to be included in the order which is served on the judgment debtor.

As an added incentive to the judgment debtor or the third person served with an order of examination to appear as directed in the order, the proposed law provides for an award of reasonable attorneys' fees in favor of the judgment creditor if the person has been served by an authorized person⁴³³ but fails to appear for the examination without good cause. The order will contain a notice to the person served that, in addition to the contempt sanction for nonappearance, attorneys' fees may be awarded.

Under existing law, if the third person being examined claims an interest in the property or denies the debt, the court may not adjudicate the dispute and may not order the property to be applied toward the satisfaction of the judgment.⁴³⁴ The judgment creditor must resort instead to a creditor's suit in which the interest of the third person may be determined.⁴³⁵ The proposed law relaxes this restrictive rule so that the court in which the examination proceeding is pending may adjudicate a dispute between the judgment debtor and the third person concerning ownership of the property or the existence of the debt unless any one of the following conditions exist: (1) if the court in which the examination proceeding is pending would not be a proper court for the trial of an independent civil action to resolve the dispute and the third person objects to the dispute being resolved in the examination proceeding; (2) if there is a civil action pending concerning the dispute at the time the order of examination is served on the third person; or (3) if the court in its discretion

⁴³³ The proposed law continues existing provisions that require service of an order of examination to be made by a sheriff, constable, marshal, a person specially appointed by the court in the order, or a registered process server before the judgment debtor or a third person may be brought before the court pursuant to a warrant. See Sections 714, 717. Under the proposed law, service must be similarly made before the attorney's fee sanction may be invoked.

⁴³⁴ See Section 719. The third person is entitled to a determination of the respective interests in the property or debt in an independent action. *Takahashi v. Kunishima*, 34 Cal. App.2d 367, 373, 93 P.2d 645, 648 (1939).

⁴³⁵ See Section 720 and the discussion in the text under "Creditor's Suit" beginning at note 453 *infra*.

determines that the dispute should be determined in an independent civil action.⁴³⁶

The provision of existing law which authorizes the court to forbid the third person from transferring or otherwise disposing of the property pending resolution of the dispute⁴³⁷ is restricted by the proposed law. An order forbidding the third person to transfer property to the judgment debtor may be made *ex parte*, but an order forbidding transfer to another person may be made only on noticed motion, and after the court has determined that the judgment debtor probably owns an interest in the property, and an undertaking by the judgment creditor is required.

The proposed law codifies the case law concerning the lien created by service of an order of examination.⁴³⁸ Service on the judgment debtor creates a lien on the judgment debtor's personal property which is subject to the enforcement of a money judgment. Service on a third person creates a lien on the property in the third person's possession in which the judgment debtor has an interest and on any debt owing to the judgment debtor if the property or debt is described in the judgment creditor's affidavit or application for the order.⁴³⁹ The proposed law also makes clear that a lien is created by a court order that the third person apply such property or debt to the satisfaction of the judgment. This provision will be useful where the property or debt was not described in the judgment creditor's affidavit or application for the order.

The proposed law provides a procedure for claim of exemption by the judgment debtor and for the determination of the claim.

The proposed law makes several other changes in the existing examination procedure. The provision of existing law permitting the arrest of the judgment debtor on ex

⁴³⁶ The provision in the proposed law for summary adjudication in examination proceedings of disputed ownership of property or a disputed debt is comparable to provisions in the Probate Code for determination of some kinds of claims in the course of estate administration or in guardianship or conservatorship proceedings. See Prob. Code §§ 851.5-853, 2520-2828.

⁴³⁷ See Section 720. See also the discussion in the text at notes 466-468 *infra* (creditor's suit).

⁴³⁸ See *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 28-30, 87 P.2d 830, 844 (1939); *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242, 245 (1909).

⁴³⁹ See the discussion in the text under "Other Enforcement Liens" beginning at note 116 *supra*.

parte application of the judgment creditor where it appears that there is a danger that the judgment debtor will abscond and providing for the imprisonment of the judgment debtor unless an undertaking is given⁴⁴⁰ is repealed since it conflicts with the policies supporting the repeal of the civil arrest provisions.⁴⁴¹ The provision of existing law that grants a privilege to the spouse of the judgment debtor to refuse to be examined as a debtor of the judgment debtor⁴⁴² is not continued, and the proposed law expressly provides that the marital testimonial privilege⁴⁴³ is not applicable in examination proceedings. This is to prevent the privilege from being used as a collusive device for the spouse to conceal assets liable for the satisfaction of the judgment. Mileage fees for third persons attending examination proceedings are made the same as for witnesses generally.⁴⁴⁴ The proposed law authorizes the court to permit a nonparty who claims an interest in the property or debt sought by the judgment creditor to intervene in the proceeding and to determine the person's rights in the property or debt. The proposed law adds express authority for the court to make such protective order as justice may require, comparable to the court's authority in civil discovery proceedings.⁴⁴⁵ The proposed law includes a detailed provision, drawn from the civil discovery provisions,⁴⁴⁶ concerning examination of a corporation, partnership, or similar organization. Existing law provides that a referee appointed to conduct examinations in a county with a population of one million or more must have been licensed to practice law for five years.⁴⁴⁷ The proposed law requires only that a referee be a member of the State Bar of California. The proposed law

⁴⁴⁰ Section 715.

⁴⁴¹ See *Recommendation and Study Relating to Civil Arrest*, 11 Cal. L. Revision Comm'n Reports 1 (1973).

⁴⁴² Section 717.

⁴⁴³ Evid. Code §§ 970-971. The proposed law does not affect the privilege which protects confidential marital communications. See Evid. Code § 980.

⁴⁴⁴ Section 717.1 provides mileage fees for third persons to be examined in the amount of \$0.15 per mile one way. Government Code Section 68093 was amended in 1981 to raise the fee for witnesses to \$0.20 per mile both ways. 1981 Cal. Stats. ch. 184, § 4.

⁴⁴⁵ See Sections 2019(b)(1), 2030(c).

⁴⁴⁶ See Section 2019(a)(6).

⁴⁴⁷ Section 723.

specifies the powers that only the court (but not a referee) may exercise in examination proceedings.

Interrogatories to the Judgment Debtor

Existing law permits a judgment creditor to serve interrogatories upon the judgment debtor if the debtor is represented by counsel.⁴⁴⁸ The form of, answer to, and enforcement of the interrogatories is the same as that provided for interrogatories in a civil action.⁴⁴⁹ The proposed law continues this procedure but permits the use of interrogatories whether or not the debtor is represented by counsel. This will make the use of postjudgment interrogatories consistent with interrogatories used in civil discovery.⁴⁵⁰ In order to prevent harassment, the proposed law provides that interrogatories may not be served if within the preceding 120 days the judgment debtor has responded to postjudgment interrogatories or an examination has been conducted.⁴⁵¹ Under this provision, judgment creditors will be able to use the order obtainable in an examination proceeding to apply to the satisfaction of the judgment the property that is described in the answer to the interrogatories. Service of interrogatories will not have the effect of creating a lien on property of the judgment debtor, as does service of an order of examination.⁴⁵²

Creditor's Suit

Under existing law, the judgment creditor may bring an action against a third person who has property in which the judgment debtor has an interest, or who is indebted to the

⁴⁴⁸ Section 714.5.

⁴⁴⁹ See Sections 714.5, 2030.

⁴⁵⁰ See Section 2030.

⁴⁵¹ Section 714.5 provides that interrogatories may be used "cumulative to" and "in conjunction with" examination proceedings under Section 714 and also that the judgment debtor may not be required to respond to interrogatories more frequently than once in any four-month period or within any four-month period during which an examination has been conducted pursuant to Section 714. The effect on the right to examine the judgment debtor of using interrogatories is not specified in Section 714.5, nor is the relation between interrogatories and an examination under Section 715 indicated.

⁴⁵² See the discussion in the text under "Examination Proceedings" beginning at note 425 *supra*.

judgment debtor, for the application of the property or debt to the satisfaction of the money judgment.⁴⁵³ The remedy of the creditor's suit developed when the types of property reachable by the writs that were predecessors of the writ of execution were fairly limited.⁴⁵⁴ Although the reach of the writ of execution has been considerably expanded,⁴⁵⁵ the creditor's suit has persisted and is continued in the proposed law in order to reach certain types of property that still cannot be reached by execution, or only inefficiently so, and to enforce the liability of a recalcitrant third person holding property of, or owing debts to, the judgment debtor.⁴⁵⁶

Creditors' suits, as a creation of the courts of equity, are subject to the doctrine requiring exhaustion of legal remedies before the action can be commenced.⁴⁵⁷ Consistent with the policy of providing flexibility to the judgment creditor in the selection of the appropriate remedy, the proposed law does not require the exhaustion of any other remedies. [Material omitted.]

⁴⁵³ See Section 720; 5 B. Witkin, *California Procedure Enforcement of Judgment* § 143, at 3506-07 (2d ed. 1971).

⁴⁵⁴ See generally, G. Gilbert, *The Law of Executions* 1-58 (London 1763); R. Millar, *Civil Procedure of the Trial Court in Historical Perspective* 419-26, 437-42 (1952); Riesenfeld, *Collection of Money Judgments in American Law—A Historical Inventory and a Prospectus*, 42 *Iowa L. Rev.* 155, 160-63 (1957).

⁴⁵⁵ Section 688(a) provides (somewhat overinclusively): "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."

⁴⁵⁶ A creditor's suit and an examination proceeding against third persons may reach the same types of property (examination proceedings being an outgrowth of the creditor's suit), but under existing law a creditor's suit is necessary where the third person claims an adverse interest or denies the debt in an examination proceeding. See the discussion in the text under "Examination Proceedings" beginning at note 425 *supra*. This discussion is not concerned with another aspect of creditors' suits—the action to set aside a fraudulent conveyance—from which the action to set aside under the Uniform Fraudulent Conveyance Act was derived. See *Civil Code* § 3439.09; 5 B. Witkin, *California Procedure Enforcement of Judgment* §§ 152-153, at 3516-18 (2d ed. 1971).

⁴⁵⁷ See *Farmers' & Merchants' Bank v. Bank of Italy*, 216 Cal. 452, 455-58, 14 P.2d 527, 528-29 (1932) (resort to examination proceedings required); *Bond v. Bulgheroni*, 215 Cal. 7, 10-11, 8 P.2d 130, 132 (1932) (resort to examination proceedings not required where inadequate or futile).

Unlike existing law,⁴⁵⁹ the proposed law would require that the judgment debtor be joined in the creditor's suit in order to permit a full adjudication of the issues. However, the proposed law provides that the judgment debtor is not an indispensable party, and that the judgment debtor's residence may not be considered in the determination of proper venue unless otherwise provided by contract between the judgment debtor and the third person. The proposed law includes a procedure for a claim of exemption by the judgment debtor and for the determination of the claim by the court.

Under existing law, it appears that the creditor's suit is subject to the general four-year statute of limitations⁴⁶⁰ and, at least in certain circumstances, that the time begins to run from the return of the writ of execution unsatisfied.⁴⁶¹ Under the proposed law, the creditor's suit may be commenced at any time when the judgment debtor may bring an action against the third person concerning the property or debt or, if a lien is created on the property or debt within such time, at a later time extending for one year from the creation of the lien (subject to the time limit for enforcement of the judgment).⁴⁶² This provision would have the effect of extending the liability of the third person for up to an additional year after the judgment debtor may no longer sue, in order to prevent the third person from avoiding liability by delaying tactics. Once commenced, the creditor's suit may be pursued to judgment, even though the judgment creditor could no longer enforce the original judgment against the judgment debtor. The judgment in

⁴⁵⁸ [Omitted.]

⁴⁵⁹ *Cf. Coffee v. Haynes*, 124 Cal. 561, 564-565, 57 P. 482 (1899) (notice to judgment debtor not required in examination proceedings under Sections 717 and 719); *Blanc v. Paymaster Mining Co.*, 95 Cal. 524, 528-29, 30 P. 765 (1892) (fraudulent transferor a proper but not necessary party in action to set aside); *High v. Bank of Commerce*, 95 Cal. 386, 397-88, 30 P. 556 (1892) (notice to judgment debtor not required when court authorizes creditor's suit pursuant to Section 720).

⁴⁶⁰ See Section 343 (four-year statute of limitations where no specific provision); *Sherman v. S.K.D. Oil Co.*, 185 Cal. 534, 538, 545, 197 P. 799 (1921).

⁴⁶¹ See *Spencer v. Anderson*, 193 Cal. 1, 5, 222 P. 355 (1924); *Sherman v. S.K.D. Oil Co.*, 185 Cal. 534, 538, 197 P. 799, 801 (1921). There is, however, no requirement that a writ be returned unsatisfied as a precondition to bringing a creditor's suit. Even if exhaustion of the remedy of examination proceedings is required, only issuance of a writ is necessary pursuant to Section 717.

⁴⁶² See the discussion in the text under "Period For Enforcement of Judgments and Renewal of Judgments" beginning at note 3 *supra*.

the creditor's suit is independently enforceable against the third person.⁴⁶³ The existing case law to the effect that service of summons in a creditor's suit creates a lien on the property that is the subject of the action is codified in the proposed law.⁴⁶⁴

Under existing law, if a third person in an examination proceeding claims an interest in property adverse to the judgment debtor or denies the debt, the court may not order the property to be applied toward the satisfaction of the judgment, but may, with or without notice,⁴⁶⁵ forbid a transfer or other disposition of the property or debt until a creditor's suit can be commenced and prosecuted to judgment.⁴⁶⁶ Under the proposed law, the court in which the examination proceeding is pending has a more limited power to forbid transfer of the property.⁴⁶⁷ Once a creditor's suit is commenced, the judgment creditor may obtain an order, on notice if required by the court and with a bond if required by the court, forbidding such transfer or payment to the judgment debtor. The judgment creditor also may, after notice and hearing, obtain a temporary restraining order or a temporary injunction restraining the third person from transferring the property to any person.⁴⁶⁸ This is to prevent the third person from frustrating the purpose of the proceeding by collusive or evasive action.

⁴⁶³ Where it is determined that the third person owes a debt to the judgment debtor, the judgment in the creditor's suit will be, in effect, a money judgment against the third person. Where it is determined that the third person has property of the judgment debtor, the judgment creditor may apply only that property (or, if it cannot be found, its value) to the satisfaction of the judgment against the judgment debtor. Any money collected from the third person goes toward the satisfaction of both the judgment in the creditor's suit and the original money judgment.

⁴⁶⁴ See *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 28-30, 87 P.2d 830, 844 (1939); *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242, 245 (1909). See also the discussion in the text under "Other Enforcement Liens" beginning at note 116 *supra*.

⁴⁶⁵ See, e.g., *High v. Bank of Commerce*, 95 Cal. 386, 30 P. 556 (1892). Because notice to the third person is not required, this procedure is constitutionally suspect. Cf. *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 606-08 (1975); *Randone v. Appellate Dep't*, 5 Cal.3d 536, 547-52, 488 P.2d 13, 20-23, 96 Cal. Rptr. 709, 716-19 (1971).

⁴⁶⁶ Section 720.

⁴⁶⁷ See the discussion in the text under "Examination Proceedings" beginning at note 425 *supra*.

⁴⁶⁸ If a preliminary injunction is issued, the judgment creditor must furnish an undertaking. See 2 B. Witkin, *California Procedure Provisional Remedies* § 47, at 1496-97 (2d ed. 1970). Under the proposed law, the authority for the judgment

The proposed law makes clear that there is no right to trial by jury in a creditor's suit.⁴⁶⁹

The new law provides that the judgment creditor may not recover costs incurred in a creditor's suit from the judgment debtor as a cost of enforcing the judgment.

Charging Order

A charging order is the usual means to reach the judgment debtor's interest in a partnership and apply it to the satisfaction of a money judgment where the partner, but not the partnership, is liable under the judgment.⁴⁷⁰ This procedure is continued in the proposed law. Existing case law recognizes that a lien arises from a charging order but is unclear as to the time of its creation and its effect.⁴⁷¹ The proposed law provides for creation of the lien at the time the notice of motion for a charging order is served on the judgment debtor and on the other partners or the partnership and contains general provisions governing the effect of the lien.⁴⁷²

Lien in Pending Action or Proceeding

Existing law⁴⁷³ permits a judgment creditor to apply on noticed motion for an order granting a lien in a pending action or proceeding on a cause of action of the judgment debtor that is the subject of the action or proceeding and upon any moneys subsequently recovered by the judgment

creditor to commence a creditor's suit is not conditioned on the third person claiming an interest in the property or denying the debt.

⁴⁶⁹ Under existing law, a creditor's suit is an equitable proceeding. See, e.g., *Woodcock v. Petrol Corp.*, 48 Cal. App.2d 652, 120 P.2d 889 (1941). Thus there appears to be no right to jury trial in a creditor's suit under existing law. See *Misrach v. Liederman*, 14 Cal. App.2d Supp. 757, 762, 58 P.2d 746, 748 (1936). See generally 21 Am. Jur.2d *Creditors' Bills* § 9, at 10 (1965); 21 C.J.S. *Creditors' Suits* § 73, at 1125 (1940).

⁴⁷⁰ See Corp. Code §§ 15028 (charging order under Uniform Partnership Act), 15573 (charging order under Limited Partnership Act); 5 B. Witkin, *California Procedure Enforcement of Judgment* § 142, at 3504-06, Supp. at 57-58 (2d ed. 1971 & Supp. 1979); Gose, *The Charging Order Under the Uniform Partnership Act*, 28 Wash. L. Rev. 1 (1953).

⁴⁷¹ See *Taylor v. S & M Lamp Co.*, 190 Cal. App.2d 700, 707-12, 12 Cal. Rptr. 323, 329-31 (1961).

⁴⁷² The lien provision in the proposed law is analogous to that provided in examination proceedings. See the discussions in the text under "Examination Proceedings" beginning at note 425 *supra* and "Other Enforcement Liens" beginning at note 116 *supra*.

⁴⁷³ Section 688.1.

debtor in such action or proceeding. All parties to the action or proceeding must be given notice of the application for the lien. The court may also authorize the judgment creditor to intervene in the action or proceeding. The consent of the judgment creditor having the lien is required before a compromise, settlement, or satisfaction is entered into by or on behalf of the judgment debtor unless the lien is sooner satisfied or discharged.

The proposed law continues the existing procedure with some significant modifications:

(1) A lien is created when the judgment creditor files in the action or proceeding a notice of lien and an abstract or certified copy of the judgment creditor's money judgment.⁴⁷⁴ The requirement of a prior court hearing authorizing the creation of a lien is not continued. The court hearing serves no useful purpose since it has been held under existing law to be an abuse of discretion for the court to refuse to order the lien on the ground that it would impede settlement negotiations.⁴⁷⁵ Thus the proposed law leaves to the judgment creditor the choice of what assets to pursue in satisfaction of the judgment and is consistent with the freedom the judgment creditor has to select assets of the debtor when levy of execution is the method of collection used. If the judgment debtor wishes to avoid the lien, he or she may do so by voluntarily applying any other available assets to the satisfaction of the judgment.

(2) The requirement that notice be given to all parties to the action is continued, but failure to give notice to one or more of the parties does not affect the validity of the lien. However, the proposed law makes clear that the rights of a party who makes a settlement, dismissal, compromise, or

⁴⁷⁴ This provides a definite rule governing the time the lien is created and its priority. The general rule under existing law is that the priority of the lien is determined as of the time the lien is granted. See *Takehara v. H.C. Muddox Co.*, 8 Cal.3d 168, 170, 501 P.2d 913, 104 Cal. Rptr. 345 (1972); Civil Code § 2897 (priority based on time of creation of lien, other things being equal). But the equitable rule granting priority to the one who first applies for the lien has also been invoked. See *Del Conte Masonry Co. v. Lewis*, 16 Cal. App.3d 678, 681, 94 Cal. Rptr. 439 (1971).

⁴⁷⁵ Existing law provides no standard for denial of the application for a lien. In *Atiya v. DiBartolo*, 63 Cal. App.3d 121, 133 Cal. Rptr. 611 (1976), the court held that it was an abuse of discretion to deny the lien on the ground that the lien would impede settlement negotiations but in dictum stated that a substantial showing that other assets were available might justify denial of a lien.

satisfaction without notice of the existence of the lien are not affected.⁴⁷⁶

(3) The lien extends to all rights of the judgment debtor to recover money or property under the judgment in the pending action or proceeding. Existing law may limit the lien to the judgment debtor's right to money under the judgment.⁴⁷⁷ The expansion of the lien under the proposed law is consistent with the scope of a creditor's suit which may be brought against a person indebted to or holding property of the judgment debtor.⁴⁷⁸

(4) The proposed law specifies the contents of the notice of lien. This notice is filed in the pending action or proceeding and is served on the parties to the action or proceeding. The notice will inform the parties of the relevant facts and the consequences of the lien (such as the judgment debtor's right to claim an exemption and the prohibition against compromise, dismissal, settlement, or satisfaction without the judgment creditor's consent or prior court approval).

(5) The proposed law empowers the court to make an order permitting a compromise, dismissal, settlement, or satisfaction without the consent of the judgment creditor. This will prevent the judgment creditor from forcing the judgment debtor to proceed with the action or proceeding when the court concludes that it is in the best interests of the parties to settle.⁴⁷⁹

(6) Under existing law, it appears that an action to foreclose the lien is necessary in order to reach the amount represented by the judgment.⁴⁸⁰ The proposed law permits a party or the judgment creditor to obtain an order from the court applying the money or property to the satisfaction of the lien in the same manner as property may be applied in a creditor's suit. This enables the defendant in the action, for example, to obtain an early determination of whom to

⁴⁷⁶ This principle of protecting obligors without notice is consistent with comparable general provisions. See Civil Code § 955.1; Com. Code § 9318.

⁴⁷⁷ See *Abatti v. Eldridge*, 103 Cal. App.3d 484, 163 Cal. Rptr. 82 (1980).

⁴⁷⁸ See the discussion in the text under "Creditor's Suit" beginning at note 453 *supra*.

⁴⁷⁹ *Cf. Abatti v. Eldridge*, 112 Cal. App.3d 411, 169 Cal. Rptr. 330 (1980) (court has equitable power to approve settlement that does not fully satisfy judgment creditor's lien).

⁴⁸⁰ See *Roseburg Loggers, Inc. v. Plywood-Champion Papers, Inc.*, 14 Cal.3d 742, 748, 537 P.2d 399, 402-3, 122 Cal. Rptr. 567, 571 (1975) (dictum); *Work of the 1941 California Legislature*, 15 So. Cal. L. Rev. 1, 18 (1941).

pay upon the conclusion of the action. If no order to apply the property is sought, the judgment creditor may employ any appropriate remedy after final judgment, such as levy under a writ of execution on a final money judgment, appointment of a receiver, or assignment of the judgment. These remedies will be more effective and efficient than an equitable action to foreclose a lien.

(7) The proposed law provides for a determination of the judgment debtor's exemption claim before judgment in the main proceeding, analogous to determination of exemptions in a creditor's suit. Exemption claims not made within 30 days after the judgment debtor has notice of the lien are waived. Existing law makes no provision for claiming or determining exemptions.

Existing law provides that an assignee by operation of law of a party to a personal injury action may not acquire a lien on money recovered for general damages.⁴⁸¹ This provision is not continued because it has been held to be in conflict with bankruptcy law.⁴⁸²

Order to Assign Right to Payment

The proposed law permits the judgment creditor to apply to the court on noticed motion for an order requiring the judgment debtor to assign to the judgment creditor or a receiver all or part of a right to payment.⁴⁸³ Under this procedure, the terms of the assignment are subject to the court's discretion depending upon the circumstances, but the judgment creditor may not receive amounts in excess of that needed to satisfy the money judgment. The terms of the order are subject to later modification to take account of changed circumstances. The judgment creditor may obtain an order restraining assignment by the judgment debtor pending the hearing on the motion for an assignment order. The judgment debtor may make a claim

⁴⁸¹ Section 688.1(b).

⁴⁸² See *In re Kanter*, 505 F.2d 228 (9th Cir. 1974), *aff'g* 345 F. Supp. 1151 (C.D. Cal. 1972).

⁴⁸³ This procedure is derived from cases involving examination proceedings or creditors' suits where property was ordered to be assigned or delivered to a receiver. See *Habenicht v. Lissak*, 78 Cal. 351, 357, 20 P. 874, 877 (1889); *Pacific Bank v. Robinson*, 57 Cal. 520 (1881); *Hathaway v. Brady*, 26 Cal. 581 (1864); *Tucker v. Fontes*, 70 Cal. App.2d 768, 774-5, 161 P.2d 697, 701 (1945). See also N.Y. Civ. Prac. Law & R. § 5226 (McKinney 1978) (order requiring judgment debtor to make specified installment payments where shown that debtor will be receiving money).

of exemption which is determined at the hearing on the issuance of the assignment order. If an assignment is ordered, the effect and priority of the assignment are governed by the rules that apply to a voluntary assignment.⁴⁸⁴ The rights of the person obligated to make payments are not affected until notice of the order is received by the obligor.

The assignment order remedy is designed to be used to reach forms of property that cannot be reached by levy under a writ of execution,⁴⁸⁵ such as wages due from the federal government⁴⁸⁶ and the loan value of insurance policies. This remedy is also available to reach and apply rents, royalties, commissions, and payments falling due on accounts receivable, general intangibles, and judgments—forms of property that are subject to levy and either sale or collection.⁴⁸⁷ By restricting the assignment of payments to the amount necessary to satisfy the judgment, the assignment order procedure (in conjunction with the proposed restrictions on the sale of certain obligations) is designed to avoid cases where valuable or potentially valuable obligations are purchased by the judgment

⁴⁸⁴ See Civil Code § 955.1; see also Com. Code § 9318.

⁴⁸⁵ Existing law is not especially clear in delineating the conditions making a debt subject to garnishment. Compare *Philbrook v. Mercantile Trust Co.*, 84 Cal. App. 187, 195-96, 257 P. 882 (1927) (existing debt fixed in amount but payable in the future subject to garnishment), *Brainard v. Rogers*, 74 Cal. App. 247, 248-50, 239 P. 1095 (1925) (fire insurance policy after fire but before adjustment subject to garnishment), *Meacham v. Meacham*, 262 Cal. App.2d 248, 252, 68 Cal. Rptr. 746 (1968) (contract for royalties from marketing invention subject to garnishment), and Section 706.022(b) (continuing levy on future earnings) with *Early v. Redwood City*, 57 Cal. 193, 195 (1881) (garnishment did not reach money due only after completion of work under contract), *Hustead v. Superior Court*, 2 Cal. App.3d 780, 785-88, 83 Cal. Rptr. 26 (1969) (future rent not subject to garnishment), and *Dawson v. Bank of America*, 100 Cal. App.2d 305, 309-10, 223 P.2d 280 (1950) (escrow not subject to garnishment where amount not certain and conditions necessary to establish proper claimant not fulfilled).

⁴⁸⁶ As a function of the principle of sovereign immunity, wages in the hands of the federal government are not subject to garnishment without the consent of the government. However, wages may be reached by an order obtained in examination proceedings directed to the judgment debtor to endorse and deliver paychecks to a receiver. See *Sheridan v. Sheridan*, 33 Cal. App.3d 917, 920-22, 109 Cal. Rptr. 466 (1972). Pursuant to 42 U.S.C. § 659 (Supp. III 1979), the wages of federal employees may be garnished for the enforcement of child support and alimony payments as if the United States were a private person. See also *Standard Oil Div., American Oil Co. v. Starks*, 528 F.2d 201, 203-04 (7th Cir. 1975) (employees of U.S. Postal Service not immune from garnishment).

⁴⁸⁷ See the discussion in the text under "Sale and Collection" beginning at note 362 *supra*.

creditor or a third person on a speculative basis, perhaps resulting in a large windfall to the purchaser.⁴⁸⁸

Receivers

Existing Law

Existing law permits the appointment of a receiver in aid of execution where the writ of execution has been returned unsatisfied or where the judgment debtor refuses to apply property toward the satisfaction of the judgment.⁴⁸⁹ Appointment of a receiver may also enable the judgment creditor to reach and apply types of property that cannot be reached by levy under a writ of execution.⁴⁹⁰ Generally, receivers are appointed in examination proceedings where the requisite showing is made,⁴⁹¹ but a receiver may also be appointed in independent proceedings on noticed motion.⁴⁹² Receivership is considered a drastic remedy, and the courts are reluctant to appoint a receiver unless it is shown that other remedies are inadequate.⁴⁹³

Proposed Law

Under the proposed law, the appointment of a receiver to enforce a money judgment continues as a remedy requiring a special showing, but a new standard is provided. The judgment creditor may obtain the appointment of a receiver upon a showing that, considering the interests of both the judgment creditor and the judgment debtor, it is a reasonable method to achieve the fair and orderly satisfaction of the judgment. The proposed law eliminates the existing statutory requirement that the writ be returned unsatisfied. This requirement is an empty

⁴⁸⁸ See, e.g., *Meacham v. Meacham*, 262 Cal. App.2d 248, 253 n.2, 68 Cal. Rptr. 746, 749 n.2 (1968), where it was asserted that a \$13,000 windfall would result from the sale of a right to royalties from the marketing of an invention in satisfaction of judgment for plaintiff's attorney's fees.

⁴⁸⁹ Section 564, subd. 4.

⁴⁹⁰ See *Habenicht v. Lissak*, 78 Cal. 351, 357, 20 P. 874, 877 (1889) (seat on stock exchange); *Pacific Bank v. Robinson*, 57 Cal. 520, 524 (1881) (patent); *Medical Fin. Ass'n v. Short*, 36 Cal. App.2d Supp. 745, 747, 92 P.2d 961 (1939) (federal wages).

⁴⁹¹ See *Tucker v. Fontes*, 70 Cal. App.2d 768, 771, 161 P.2d 697 (1945); *Bruton v. Tearle*, 7 Cal.2d 48, 53, 59 P.2d 953 (1936).

⁴⁹² *Olsan v. Comora*, 73 Cal. App.3d 642, 647-49, 140 Cal. Rptr. 835 (1977).

⁴⁹³ *Jackson v. Jackson*, 253 Cal. App.2d 1026, 1040-41, 62 Cal. Rptr. 121 (1967); *Olsan v. Comora*, 73 Cal. App.3d 642, 646-47, 140 Cal. Rptr. 835 (1977).

formality which results in a delay of at least 10 days in the attempt to reach the judgment debtor's assets and merely increases the costs of collection.⁴⁹⁴ The law concerning the appointment, qualification, powers, and duties of a receiver is continued unchanged.⁴⁹⁵

The proposed law also specifically provides for the appointment of a receiver to transfer the judgment debtor's interest in a liquor license which, under existing law, may not be forceably applied to the satisfaction of a money judgment.⁴⁹⁶ The proposed law includes specific authority for the use of a receiver to dispose of perishable property⁴⁹⁷ and for the use of a receiver to enforce a nonmoney judgment in an appropriate case.⁴⁹⁸

Collection Where Judgment Debtor Is Creditor of Public Entity

Existing law provides an exclusive procedure for reaching money, other than wages, owed to the judgment debtor by a public entity.⁴⁹⁹ Under this procedure, the

⁴⁹⁴ The 10-day delay is the result of Section 683 which provides that the writ is returnable not less than 10 nor more than 60 days after its receipt by the levying officer. The cost of issuance of a writ is recoverable pursuant to Section 1033.7(c). It may be argued that the provision that the writ be returned *nulla bona* (no goods) before a receiver may be appointed is no longer the law since a receiver may be appointed in examination proceedings under Section 714 which, since 1955, has not required the return of the writ unsatisfied. See 1955 Cal. Stats. ch. 1191, § 1. Levying officers no longer make an independent search for property subject to execution, but instead act at the instructions of the judgment creditor. See 1 A. Freeman, *Law of Executions* § 107, at 395-98 (3d ed. 1900) (former practice); California State Sheriffs' Ass'n, *Civil Procedural Manual* 4.05 (rev. 1980) (modern practice). If so instructed, the levying officer will return the writ unsatisfied and will not attempt to levy under the writ. Obviously, this procedure should not result in a presumption that there is no property subject to levy and sale.

⁴⁹⁵ See Sections 564-571.

⁴⁹⁶ Since 1959, Section 688 has precluded the use of any enforcement process against licenses, including liquor licenses. See Section 688(f); 37 Ops. Cal. Att'y Gen. 4 (1961). The use of a receiver permits application of the proceeds according to the set of priorities spelled out in Business and Professions Code Section 24074. See *Grover Escrow Corp. v. Gole*, 71 Cal.2d 61, 65, 453 P.2d 461, 463, 77 Cal. Rptr. 21, 23 (1969) (statutory priorities are mandatory and exclusive). The proposed law will not permit appointment of a receiver to sell a liquor license if the probable sale price of the license does not exceed the amount necessary to satisfy any delinquent taxes described in Section 24049 of the Business and Professions Code and the claims of creditors with priority over the judgment creditor who is seeking the appointment of a receiver.

⁴⁹⁷ See the discussion in the text under "Disposition of Perishable Property" beginning at note 148 *supra*.

⁴⁹⁸ See the discussion in the text under "Enforcement of Nonmoney Judgments" beginning at note 557 *infra*.

⁴⁹⁹ See Sections 710, 710a. As provided in Section 710(h), earnings are withheld pursuant to Sections 723.010-723.154.

judgment creditor files with the state agency or local public entity an abstract or transcript of the judgment and an affidavit stating the amount owing on the judgment. Filing in this manner is the equivalent of levy under a writ of execution and the priorities among creditors are determined as of the time of filing with the public entity.⁵⁰⁰ The public entity is required to pay the money into court and the court then pays the nonexempt portion of the money to the judgment creditor.

This scheme is generally continued in the proposed law;⁵⁰¹ however, several revisions are made. Under existing law, the relation between the procedure for obtaining a lien in a pending action on any eventual judgment⁵⁰² and the procedure for reaching money owed the judgment debtor by a public entity is unclear. The proposed law provides that the special procedure for obtaining a lien in a pending action must be followed when the obligation is the subject of a pending action.

Under existing law, the general procedure for determining exemptions from execution by Section 690.50 is incorporated with the provision that the court is to be considered the levying officer.⁵⁰³ This exemption procedure is inadequate. The judgment debtor is not required to be given notice of the filing, the payment into court, or the payment to the judgment creditor, although the statute assumes that exemptions will be claimed and determined despite the judgment debtor's lack of notice.⁵⁰⁴ The judgment creditor should give notice of the filing to the judgment debtor, just as a judgment debtor is given notice of levy under a writ of execution. The proposed law

⁵⁰⁰ See *Department of Water & Power v. Inyo Chem. Co.*, 16 Cal.2d 744, 751-53, 108 P.2d 410 (1940); *Ott Hardware Co. v. Davis*, 165 Cal. 795, 800, 134 P. 973 (1913). This principle is codified in the proposed law.

⁵⁰¹ Several minor and technical changes are recommended. For example, the provision for setting off amounts owed by, or advanced to, the judgment debtor applies only to the state under Section 710(a); the proposed law makes this provision also applicable to local public entities.

⁵⁰² See the discussion in the text under "Lien in Pending Action or Proceeding" beginning at note 473 *supra*.

⁵⁰³ Section 710(c).

⁵⁰⁴ The purpose of this special procedure is "to shift to the court the burden of adjudicating any claims of exemption which may arise and to insulate the governmental units from liability for wrongful payments to garnishing creditors." *McDaniel v. City & County of San Francisco*, 259 Cal. App.2d 356, 363, 66 Cal. Rptr. 384 (1968).

requires the court clerk to give the judgment debtor notice when the court receives the payment from the public entity, and the judgment debtor is then given 10 days from service of the notice of payment within which to make a claim of exemption on noticed motion before the court pays over to the judgment creditor.

Existing law provides a special procedure that applies where the money owed to the judgment debtor by a public entity is an award in a condemnation proceeding brought by the public entity. It is provided that the money may be paid into the court in which the condemnation proceeding was tried and that the clerk then sends notice to “all parties interested in said award” of the hearing to determine conflicting claims to the award.⁵⁰⁵ The court is directed to determine the conflicting claims and order the distribution of the money accordingly. This special procedure is unnecessary;⁵⁰⁶ the general procedures under the proposed law for reaching money owed to the judgment debtor by a public entity afford adequate remedies. Before final judgment in the condemnation proceeding, the judgment creditor may obtain a lien in the pending eminent domain proceeding on any amounts eventually awarded.⁵⁰⁷ If the judgment is final and the public entity has not paid the award or deposited the award with the court,⁵⁰⁸ the judgment creditor may follow the general procedure for reaching money owed to the judgment debtor by a public entity. If the public entity has deposited the amount of the

⁵⁰⁵ Section 710(d). It is not clear under this provision whether the judgment creditor is to receive notice.

⁵⁰⁶ The existing procedure is also inadequate in several respects and is not consistent with the relevant provisions of the Eminent Domain Law. For example, the reference to the hearing where conflicting claims to the award are to be determined is ambiguous, and the provision that the court order the distribution of the money deposited conflicts with the Eminent Domain Law. The value of divided interests in property acquired by eminent domain are determined in the condemnation proceeding itself pursuant to Section 1260.220. If an amount of probable compensation is deposited, it may be withdrawn on application pursuant to Section 1255.210. If the amount of compensation has been determined, the defendant may apply for withdrawal of the deposit pursuant to Section 1268.140. There is no reason for the judgment creditor to be involved in the condemnation proceeding at the time the interests of the condemnation defendants are determined; the creditor should be involved only when payment is to be made to the judgment debtor, at which time the issue is whether the award is exempt, such as where it represents the homestead exemption.

⁵⁰⁷ See the discussion in the text under “Lien in Pending Action or Proceeding” beginning at note 473 *supra*.

⁵⁰⁸ See Sections 1255.010 (deposit of probable compensation), 1268.010 (payment directly to defendant), 1268.110 (deposit of full amount of award).

award with the court where the condemnation proceeding is held and the creditor has not obtained a lien before final judgment, the creditor may use some other appropriate procedure, such as garnishment or motion.⁵⁰⁹

Trusts

Existing California law permits execution against the judgment debtor's equitable interest in a trust.⁵¹⁰ However, it is not clear whether the purchaser at the execution sale acquires the right to receive the income or the principal of the trust and what the measure of the income or principal will be. Trust instruments vary so widely in their character that automatic execution and sale is inadvisable. The proposed law provides an exclusive remedy under which the judgment creditor may apply to the probate court to reach the judgment debtor's interest in the trust. The court may permit such enforcement means as are appropriate in the circumstances of the case, such as imposition of a lien, sale of the interest, collection of income, or liquidation and transfer of trust assets. The proposed law does not affect the validity of a spendthrift trust⁵¹¹ or Totten trust.⁵¹²

Property in Guardianship or Conservatorship Estate

If the judgment debtor is a ward or conservatee, the judgment debtor's property that is part of the guardianship or conservatorship estate is not subject to the normal enforcement remedies, whether or not it is held in the name of the guardian or conservator.⁵¹³ The property may be applied to the satisfaction of a judgment only by order

⁵⁰⁹ See, e.g., *Kimball v. Richardson-Kimball Co.*, 111 Cal. 386, 394, 43 P. 1111 (1896) (levy of attachment); *Phoenix v. Kovacevich*, 246 Cal. App.2d 774, 778-79, 55 Cal. Rptr. 135 (1966) (permission to levy by court order); *Credit Bureau of San Diego v. Getty*, 61 Cal. App.2d Supp. 823, 826-29, 142 P.2d 105 (1943) (affidavit procedure for former Section 710 not effective where court deposited money with county); *Colver v. W.B. Scarborough*, 73 Cal. App. 455, 457-59, 238 P. 1110 (1925) (levy of execution).

⁵¹⁰ See, e.g., *Houghton v. Pacific Southwest Trust & Sav. Bank*, 111 Cal. App. 509, 295 P. 1079 (1931).

⁵¹¹ Under the proposed law, the new procedure is available to reach surplus income from a spendthrift trust to the extent such income is liable. See Civil Code § 859. This alters existing law pursuant to which a creditor's suit is the appropriate remedy. See, e.g., *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 87 P.2d 830 (1939).

⁵¹² See *Recommendation Relating to Non-Probate Transfers*, 15 Cal. L. Revision Comm'n Reports 1605 (1980).

⁵¹³ *McCracken v. Lott*, 3 Cal.2d 164, 44 P.2d 355 (1935).

of the probate court having jurisdiction of the estate.⁵¹⁴ The proposed law codifies this rule.

Contingent Interests

A future interest that is contingent is not subject to enforcement of a money judgment.⁵¹⁵ The proposed law changes this rule since there are appropriate means of applying contingent interests to the satisfaction of a money judgment.⁵¹⁶ Under the proposed law, the court, upon application of the judgment creditor, may apply a contingent interest to the satisfaction of a judgment by such means as are appropriate under the circumstances of the case, such as imposition of a lien or sale of the interest.

Franchises

At common law, a governmental franchise⁵¹⁷ was not subject to enforcement of a money judgment. In California the common law rule is abrogated by a statute that permits levy of execution on and sale of a franchise.⁵¹⁸ The California rule creates a number of problems. Levy on the franchise may be impractical and sale may not be the most satisfactory means of reaching the value of the franchise. Moreover, the franchise may not be transferable or transfer may be subject to approval by a regulatory agency such as the Public Utilities Commission. For these reasons, the proposed law repeals the provisions for levy upon and sale of a franchise. Under the proposed law, a creditor may apply a franchise to satisfy a money judgment only upon court order, taking into consideration factors such as the nature of the franchise and its transferability. The court may prescribe the most appropriate means of applying the franchise to the satisfaction of the judgment such as sale, collection of proceeds, or appointment of a receiver, subject to all applicable statutory and administrative regulations.

⁵¹⁴ Prob. Code § 2404.

⁵¹⁵ See, e.g., *Anglo California Nat'l Bank v. Kidd*, 58 Cal. App.2d 651, 137 P.2d 460 (1943).

⁵¹⁶ See Halbach, *Creditors' Rights in Future Interests*, 43 Minn. L. Rev. 217 (1958).

⁵¹⁷ A franchise is a special privilege or right in the nature of a license granted by a governmental entity to a private person. Examples of franchises are the right granted to a public utility to place facilities in a public street, a right to operate a parking lot on publicly-owned property, and a right to provide cable television or community antenna service.

⁵¹⁸ Sections 724a-724e.

THIRD-PARTY CLAIMS AND RELATED PROCEDURES

Introduction

A levy on property to satisfy a judgment may infringe on the property rights of a third person (a person other than the creditor or the debtor). The third person may own the property or have the right to its possession or the third person may have a superior right under a lien or security interest to resort to the property for the satisfaction of an obligation. Although the superior rights of a third person are not lost if the property is applied to the satisfaction of the creditor's judgment, it may not be practical or economical for the third person to bring an appropriate action after the property has been sold on execution or otherwise applied to the satisfaction of a judgment.⁵¹⁹ In recognition of these difficulties, and also to protect the creditor and the levying officer from liability, existing law provides a summary special proceeding for the determination of certain third-party claims before the property is applied to the satisfaction of a judgment.⁵²⁰ The Commission recommends that the third-party claims procedure be made available in a broader variety of

⁵¹⁹ The interest of the third person in property levied upon is not affected by the third person's failure to make a third-party claim. An execution sale conveys the interest of the debtor in the property sold. See Sections 698, 699, 700. In appropriate circumstances, the third person may bring an action for specific recovery of personal property or for damages for conversion. See 5 B. Witkin, *California Procedure Enforcement of Judgment* § 115, at 3481 (2d ed. 1971). The third person may also seek declaratory relief. See *City of Torrance v. Castner*, 46 Cal. App.3d 76, 120 Cal. Rptr. 23 (1975).

⁵²⁰ See Sections 689, 689b. The existing third-party claims procedure derives from Section 218 of the Practice Act, enacted in 1851, under which the sheriff could summon a jury of six persons in the county to determine the validity of a third-party claim. The purpose of this procedure was to aid the sheriff, although he remained liable for a wrongful levy or for improperly releasing the property despite the determination of the jury which was held not to be conclusive against the parties. See *Perkins v. Thornburgh*, 10 Cal. 189 (1858). See generally 2 A. Freeman, *Law of Executions* § 276 (3d ed. 1900); G. Gilbert, *The Law of Executions* § 1 (London 1763); Curtis, *A Legal Headache*, 9 Cal. St. B.J. 167 (1934). In 1891, the statute was amended to substitute a provision for an undertaking in favor of the sheriff in place of the provision for a sheriff's jury. 1891 Cal. Stats. ch. 32, § 1. In light of this history, it has frequently been stated by the courts that a primary purpose of the procedure is to protect the levying officer from liability for taking, holding, and selling the property. See, e.g., *Sunset Realty Co. v. Dadmun*, 34 Cal. App.2d Supp. 733, 736, 88 P.2d 947, 949 (1939). Section 689 has provided since 1929 that the undertaking is in favor of the third person and, since 1933, that the levying officer is not liable if he complies therewith. 1929 Cal. Stats. ch. 341, § 1; 1933 Cal. Stats. ch. 744, § 135.

situations, as discussed below, and that several revisions be made to improve the operation of the procedure.

Proposed Revisions

Third-Party Claims to Personal Property

Existing law permits a person claiming title and the right to possession of personal property or the rights of a chattel mortgagee or conditional seller in personal property to make a third-party claim if the property was levied upon under a writ of attachment or a writ of execution to satisfy a money obligation,⁵²¹ or under a writ of possession in claim and delivery proceedings,⁵²² or where a lien on personal property has been foreclosed.⁵²³ The proposed law expands the class of permissible claimants to include persons claiming any security interest in the property or claiming a lien on the property.⁵²⁴ However, only a third person claiming an interest superior to the creditor's lien may make a claim.⁵²⁵ The proposed law also makes clear that a third-party claim may be made where personal property is levied upon under a postjudgment writ of possession.

The new law also permits a secured party claiming a security interest in fixtures to make a third-party claim under the statute governing third-party claims to personal property.

Third-Party Claims to Real Property

Existing law limits the third-party claims procedure to claims of interests in personal property.⁵²⁶ The proposed law

⁵²¹ See Sections 488.090 (attachment), 689 (title and right to possession in execution), 689b (chattel mortgage or conditional sale in execution).

⁵²² See Section 514.050.

⁵²³ See *Lawler v. Solus*, 101 Cal. App.2d 816, 226 P.2d 348 (1951) (judgment foreclosing chattel mortgage).

⁵²⁴ See Division 9 (commencing with Section 9101) of the Commercial Code (secured transactions). Under existing law, a lienholder other than a chattel mortgagee or conditional seller may not make a third-party claim. See *Palmquist v. Palmquist*, 228 Cal. App.2d 789, 791-93, 39 Cal. Rptr. 871 (1964).

⁵²⁵ Existing law is not specifically limited to determination of superior interests in property levied upon, but there would be no point in making a claim on the basis of an interest in the property that is inferior to that of the creditor since an inferior interest does not stand in the way of the levy. An inferior lien is lost when the property is sold on execution although the inferior lienholder may have the right to share in any excess proceeds at the sale. See *Mitchell v. Alpha Hardware & Supply Co.*, 7 Cal. App.2d 52, 57, 45 P.2d 442, 445 (1935).

⁵²⁶ See Sections 689, 689b. The usual remedy where real property is wrongfully sold on execution is an action to quiet title. See *First Nat'l Bank v. Kinslow*, 8 Cal.2d 339, 345,

permits a third-party claim of ownership or the right to possession of real property levied upon under a writ of attachment or writ of execution if the interest claimed in the real property is superior to the creditor's lien. Levy under a writ of attachment or a writ of execution can create a cloud on title preventing a third person who is the rightful owner from selling the property. Existing remedies do not provide adequate protection to the third person. In an action to enjoin the sale, the third person must provide an undertaking⁵²⁷ whereas a person who is permitted to file a third-party claim need not file an undertaking and is entitled to the benefit of the creditor's undertaking if the property is not released pursuant to the claim. If the third person relies on an action to quiet title⁵²⁸ after the property is sold on execution, considerable delay and expense will be involved.

Amount of Judgment Creditor's Undertaking

Under the proposed law, if a third-party claim is timely filed with the levying officer,⁵²⁹ the officer serves a copy of the claim on the creditor.⁵³⁰ If the third person is claiming ownership or the right to possession of the property, the judgment creditor must file an undertaking within 10 days after service of the claim to prevent the release of the property.⁵³¹ If the third person is claiming a security interest

65 P.2d 796, 799 (1937). If the third person acts quickly enough, an execution sale of property may be enjoined. See *Einstein v. Bank of California*, 137 Cal. 47, 69 P. 616 (1902).

⁵²⁷ See Section 529.

⁵²⁸ See *First Nat'l Bank v. Kinslow*, 8 Cal.2d 339, 65 P.2d 796 (1937).

⁵²⁹ The proposed law requires that the third-party claim be filed before the levying officer sells the property, pays the proceeds of collection to the creditor, or delivers possession of the property to the creditor. Sections 689 and 689b refer only to disposition by sale under the writ but, inasmuch as these provisions specifically apply to garnishment of intangibles and to claim and delivery proceedings (see Section 514.050), they must be read broadly to include collection and payment and to delivery of possession to the judgment creditor. *Cf. National Bank v. Finn*, 81 Cal. App. 317, 337, 253 P. 757, 766 (1927) (third-party claim must be made before it has become impossible for sheriff to deliver property to claimant or to obtain undertaking from creditor).

⁵³⁰ Under Sections 689 and 689b(3), the third-party claim is served on the creditor by registered or certified mail. Under the proposed law, the claim is served personally or by first-class mail.

⁵³¹ Under Section 689, the creditor is allowed five days after service (date of mailing) of the claim within which to file the undertaking. This time is extended pursuant to Section 1013 when the claim is served by mail. See *California State Sheriffs' Ass'n, Civil Procedural Manual 10.04-10.05* (rev. 1980). If the claim is served by mail under the proposed law, the time allowed for filing an undertaking is extended. See the discussion in the text under "Service of Writs, Notices, and Other Papers" beginning

or lien, the creditor must either file an undertaking or make a deposit of the amount claimed within 10 days after service of the claim to prevent the release of the property.⁵³²

Under existing law, the creditor's undertaking to prevent release of the property is required to be in an amount equal to twice the value of the property if the third person claims ownership.⁵³³ If the claim is made by a chattel mortgagee or conditional seller, the undertaking must be twice the amount due on the contract or twice the value of the property.⁵³⁴ The proposed law takes a different approach, permitting the creditor to give an undertaking in a flat amount in response to a third-party claim. If the action is pending or judgment was rendered in superior court, the amount of the undertaking is \$7,500; if the action is pending or judgment was rendered in municipal or justice court, the amount of the undertaking is \$2,500. This provision, derived from the Attachment Law, eliminates the need for the courts to consider objections to the amount of undertakings based on the value of the property claimed by the third person or the amount of the indebtedness secured by the property.⁵³⁵ *As an alternative to the flat amount, the new law permits the creditor to give an undertaking in an amount twice that of the execution or other enforcement lien on the property if this amount is less than the flat amount.*

at note 623 *infra*. If the creditor is a public entity, the creditor is exempt from filing the undertaking. Section 1058. The proposed law therefore provides for the public entity to file with the levying officer a notice of opposition to the third-party claim. This is drawn from the existing practice of giving the levying officer a letter stating that the public entity is exempt from giving an undertaking. See California State Sheriffs' Ass'n, Civil Procedural Manual 13.02 (rev. 1980).

⁵³² Under Section 689b(4), the creditor is allowed five days after receipt of the claim within which to file an undertaking or make a deposit. This time period is not subject to extension when the claim is mailed. See California State Sheriffs' Ass'n, Civil Procedural Manual 10.04-10.05 (rev. 1980). If the claim is served by mail under the proposed law, the time allowed for filing an undertaking is extended. See the discussion in the text under "Service of Writs, Notices, and Other Papers" beginning at note 623 *infra*. The proposed law also continues the substance of a portion of Section 689b(9) that requires the creditor to file a statement contesting the validity of a security interest as a condition of filing an undertaking.

⁵³³ Section 689, para. 1.

⁵³⁴ Section 689b(9).

⁵³⁵ See Section 489.220(a) (plaintiff's undertaking in attachment). The fourth and fifth paragraphs of Section 689 provide an appraisal procedure for determining an objection to the amount of an undertaking to indemnify an unsecured third-party claimant. Section 689b(9) gives the levying officer discretion to determine the value of the property for the purpose of setting the amount of the undertaking required to maintain the levy against a claim by a secured party.

The proposed law permits the third person to object to the undertaking and obtain a court order that the undertaking be increased to an amount sufficient to compensate the third person for any damages that probably may result from the levy should the third person ultimately prevail in the proceedings. If a motion to increase the undertaking is made, the court also has authority to decrease the amount of the undertaking where it is found to be more than sufficient.

As an alternative to objecting to the amount of the undertaking, the third person may obtain the release of the property by filing an undertaking in the same amount as the undertaking given by the creditor.⁵³⁶ The creditor may give an undertaking in a greater amount than that required by statute and thereby reduce the chance that the third person will object to its amount. Accordingly, if the creditor files a larger undertaking than one in the amount required by statute (\$7,500 for superior court or \$2,500 for municipal or justice court), the third person will also have to file a larger undertaking to obtain the release of the property.

These features of the proposed law give the parties greater flexibility than that provided by existing law, and enable the parties to fashion a course of action most appropriate in the circumstances of the case.

Hearing on Third-Party Claim

Under existing law, if the creditor gives an undertaking in response to a third-party claim, the third person may choose to rely on the undertaking and permit the property to be sold or otherwise applied toward the satisfaction of the judgment.⁵³⁷ However, if either the creditor or the third person petitions the court within 15 days after the third-party claim is filed with the levying officer, a hearing may be held on the third-party claim and the matter

⁵³⁶ See the discussion in the text under "Third Person's Undertaking to Release Property" beginning at note 545 *infra*.

⁵³⁷ See Sections 689, para. 7, 689b(9). If the creditor makes a deposit with the levying officer in the amount of the indebtedness claimed by a secured party (and also a lienholder under the proposed law), the interest of the secured party passes to the creditor and the property may be sold free of the security interest. See Section 689b(6). The creditor is then entitled to be reimbursed in the amount of the satisfied security interest from the proceeds obtained at the execution sale. See Section 689c. No hearing is held if a deposit has been made.

brought to a prompt resolution.⁵³⁸ Even in a case where the property has been released because the creditor refuses or fails to file an undertaking within the time allowed, either the creditor or the third person may petition for a hearing within 15 days after the claim is filed with the levying officer.⁵³⁹ At a hearing on the claim, the third person has the burden of proof.⁵⁴⁰ The proposed law continues this procedure

Notice to Debtor

Existing law ignores the interests of the debtor in third-party claim proceedings, even though it is readily apparent that the debtor is vitally interested in the disposition of the property. The proposed law requires that a copy of any third-party claim be served on the debtor when it is served on the creditor. Furthermore, if a hearing is held on the third-party claim, the petitioning party must give notice of the hearing to the debtor. Participation of the debtor should guard against an incorrect determination of the respective interests of the parties and a misallocation of the property.⁵⁴²

Creditor's Demand for Claim by Secured Party or Lienholder

Existing law permits the judgment creditor to serve a secured party with a demand that the secured party either file a third-party claim or forfeit the security interest in personal property levied upon under a writ of attachment or execution.⁵⁴³ The proposed law modifies this procedure to provide that if a demand is made and the secured party (or other lienholder) does not file a third-party claim within the time allowed, any superiority the security interest or lien may have had over the creditor's lien is lost,

⁵³⁸ Unless continued by the court, a hearing must be held within 20 days from the filing of the petition. See Sections 689, para. 8, 689b(10). There is no right to a jury trial in a hearing on a third-party claim. *Mazuran v. Finn*, 53 Cal. App. 656, 200 P. 769 (1921). This holding is codified in the proposed law.

⁵³⁹ See Sections 689, para. 8, 689b(10). If the creditor prevails at the hearing on the third-party claim, the property may again be levied upon or otherwise sought to be applied to the satisfaction of the judgment. *Id.*

⁵⁴⁰ See Sections 689, para. 8, 689(10).

⁵⁴¹ [Omitted.]

⁵⁴² See *Rubin v. Barasch*, 275 Cal. App.2d 835, 80 Cal. Rptr. 337 (1969).

⁵⁴³ See Section 689b(8).

but the security interest or lien itself remains. This provision preserves the rights of secured parties and lienholders in situations where the property is later released rather than sold on execution. In a situation where there are excess proceeds at the execution sale, this provision entitles a demoted secured party or lienholder to a share along with any other junior lienholders.⁵⁴⁴

Third Person's Undertaking to Release Property

Under existing law, a third person may give an undertaking to release personal property levied upon to satisfy a money judgment if the third person claims ownership and the right to possession of the property.⁵⁴⁵ The proposed law extends this useful remedy to cover the following cases:

(1) Where the third person claims ownership or the right to possession of real property levied upon under a writ of attachment or a writ of execution.

(2) Where the third person claims ownership or the right to possession of personal property levied upon under a writ of attachment, a writ of execution, or a writ of sale.

(3) Where the third person claims a security interest in or a lien on personal property levied upon under a writ of attachment, a writ of execution, or a writ of sale.

As noted earlier, the proposed law also permits the third person to obtain the release of property where the creditor has given an undertaking to preserve the lien in response to the third party's claim by giving a counter-undertaking in the same amount. If the third person has not previously filed a third-party claim to the property, the proposed law requires a third-party claim to be filed with the levying officer when the release undertaking is filed. If the creditor has not given an undertaking to preserve the lien, the amount of the release undertaking under the proposed law is twice the market value of the property or twice the amount of the creditor's lien on the property sought to be released, whichever is the lesser.⁵⁴⁶ The proposed law requires the release undertaking to be filed with the

⁵⁴⁴ See the discussion in the text under "Distribution of Proceeds of Sale and Collection" beginning at note 378 *supra*.

⁵⁴⁵ Section 710b.

⁵⁴⁶ This provision continues existing law. See Section 710c.

levying officer rather than with the court as under existing law,⁵⁴⁷ since the levying officer must be informed of matters affecting the disposition of the property. If a hearing is held on the third party's claim, the levying officer will file the undertaking with the court along with the claim. If a hearing is not held, the levying officer will file the undertaking with the court when the writ is returned.

General Provisions Relating to Undertakings

The proposed law sets forth general provisions governing undertakings in third-party claims proceedings, whereas existing law contains some provisions and otherwise incorporates provisions governing undertakings in attachment.⁵⁴⁸ In addition, the proposed law makes clear that the beneficiary of an undertaking may enforce the liability of sureties by a motion in the action without the necessity of bringing an independent action.⁵⁴⁹

Liability for Wrongful Attachment of Property of Third Person

Under existing law, it is a wrongful attachment to attach property of a person other than the defendant.^{549.1} The existing law provides one narrow exception for a levy in good faith and in reliance on registered or recorded ownership.^{549.2} The plaintiff is liable for all damages proximately caused to the third person by the wrongful attachment and all costs and expenses, including attorney's fees, reasonably expended in defeating the attachment, but liability is limited by the amount of the plaintiff's undertaking filed to obtain issuance of the writ of attachment.^{549.3}

⁵⁴⁷ Section 711.

⁵⁴⁸ See Sections 689, 689b, 710c to 713½.

⁵⁴⁹ See Section 1058a (enforcement of liability of sureties).

^{549.1} Section 490.010(d).

^{549.2} Section 490.010(d) provides that "it is not a wrongful attachment if all of the following exist:

- (1) The property levied on is required by law to be registered or recorded in the name of the owner.
- (2) It appeared that, at the time of the levy, the person against whom the writ was issued was such registered or record owner.
- (3) The plaintiff made the levy in good faith and in reliance on the registered or recorded ownership."

^{549.3} Section 490.020. As to the right of the third person to intervene in the action in which the attachment was obtained and to recover for wrongful attachment in that action, see Section 490.050.

The proposed law eliminates the statutory liability for wrongful attachment of property of a third person but does not limit the right of the third person to make a third-party claim or to resort to common law remedies. This change recognizes that the plaintiff often is not aware of the interests of third persons in property when the plaintiff attaches property which in good faith appears to be owned by the defendant. The plaintiff is in the same situation as a judgment creditor who causes a levy of execution to be made upon property in which a third person has an interest but which appears to be owned by the judgment debtor. The proposed law would treat both situations the same since, from the standpoint of the third person, it is irrelevant whether the interfering levy takes place under a writ of attachment or a writ of execution.

ENFORCEMENT OF STATE TAX LIABILITY

Under existing law, whenever a state agency may properly issue a warrant for the collection of taxes pursuant to eight enumerated Sections of the Revenue and Taxation Code and the Unemployment Insurance Code, the agency is entitled to all of the remedies available to judgment creditors.⁵⁵⁰ Whenever pursuant to these sections the agency actually issues the warrant, or pursuant to Section 1755 of the Unemployment Insurance Code issues a notice of levy, the tax debtor is entitled to the exemptions available to a judgment debtor⁵⁵¹ and a third party may claim ownership or the right to possession of the property levied upon by the state.⁵⁵² The proposed law continues these provisions and extends them to apply to . . . other comparable warrant provisions.⁵⁵³ *The new law also*

⁵⁵⁰ Section 722.5. Section 10111 of the Revenue and Taxation Code, which is referred to in Section 722.5 of the Code of Civil Procedure, was repealed in 1972. See 1972 Cal. Stats. ch. 563.

⁵⁵¹ See Section 690.51.

⁵⁵² See Section 689d.

⁵⁵³ Pub. Res. Code §§ 3423.2 (oil and gas conservation charges), 3772.2 (geothermal resources charges); Rev. & Tax. Code §§ 16071 (gift tax), 38541 (timber yield tax), 40161 (energy resources surcharge), 41125 (emergency telephone surcharge). The proposed law also adds language requiring that, before the state may use the remedies available to a judgment creditor, the provision authorizing the warrant must also provide that the warrant may be levied with the same effect as a levy pursuant to a writ of execution. Such a provision is contained in the various warrant sections. See Pub. Res. Code §§ 3423.2, 3772.2; Rev. & Tax. Code §§ 6776, 7882, 9001, 16071, 18907, 26191, 30341, 32365, 38541, 40161, 41125; Unemp. Ins. Code § 1785. The

provides that security interests and other liens can be claimed by the same procedures as apply to claims of ownership or right to possession.

Unlike a warrant which is given to a levying officer for levy,⁵⁵⁴ a notice of levy pursuant to Section 1755 of the Unemployment Insurance Code does not involve a levying officer. Hence, the proposed law provides that, when a notice of levy is used, the claim of exemption or the third-party claim shall be filed with the state agency that issued the notice of levy. Determination of the claim is made in judicial proceedings in the same manner as if the property were levied upon pursuant to a writ of execution.

Under existing law, the superior court has jurisdiction when judicial proceedings are required for the enforcement of a tax liability.⁵⁵⁵ The proposed law continues the provision for superior court jurisdiction and adds concurrent jurisdiction in the municipal or justice court when the amount of the tax claim being enforced is within the jurisdictional limits of the municipal or justice court and the legality of the tax liability is not contested.

The proposed law also adds a provision making clear that when a tax claim is reduced to judgment, the judgment is enforceable in the same manner as judgments generally.

In addition to tax enforcement by warrant or notice of levy, existing law permits enforcement in a number of situations by giving a notice to withhold or notice of delinquency to any person who has personal property of or owes a debt to the tax debtor.⁵⁵⁶ There are no provisions permitting the tax debtor to claim exemptions when enforcement is by a notice to withhold or notice of delinquency. The Commission does not recommend that

proposed law omits the references to specific sections providing authority for issuing warrants to collect a tax so that further amendment will not be required when tax laws in the Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code are revised. The new law excludes warrants to enforce liens for postponed real property taxes under Rev. & Tax. Code §§ 3201-3204 from the operation of this scheme.

⁵⁵⁴ See Pub. Res. Code §§ 3423.2, 3772.2; Rev. & Tax. Code §§ 6776, 7882, 9001, 16071, 18907, 26191, 30341, 32365, 38541, 40161, 41125; Unemp. Ins. Code § 1785.

⁵⁵⁵ See Sections 689d, 690.51, 722.5.

⁵⁵⁶ See, e.g., Rev. & Tax. Code §§ 6702 (sales and use taxes), 7851 (vehicle fuel license tax), 8952 (use fuel tax), 11451 (private car tax), 16101 (gift tax), 18817 (personal income tax), 26132 (bank and corporation taxes), 30311 (cigarette tax), 32381 (alcoholic beverage tax).

exemptions be extended to apply to a notice to withhold or notice of delinquency at the present time. The Commission may study this question and make a recommendation in the future.

ENFORCEMENT OF NONMONEY JUDGMENTS

Introduction

Existing law contains a few scattered references to enforcement of judgments other than money judgments—*i.e.*, judgments for the sale or possession of property or requiring the performance of some other act. The extent to which the provisions concerning enforcement of money judgments govern the enforcement of these other types of judgments is not clear.⁵⁵⁷ The proposed law is designed to make clear which aspects of the law relating to the enforcement of money judgments apply to other judgments and to make enforcement procedures uniform to the extent practicable.

Another source of confusion under existing statutory and case law derives from the variety of names given the writs or other process used in the course of enforcing nonmoney judgments. The writ used to enforce a judgment for possession of personal property has been termed a writ of possession⁵⁵⁸ or a writ of execution.⁵⁵⁹ The writ used to enforce a judgment for possession of real property has been

⁵⁵⁷ The word "execution" leads a chameleon-like existence in existing law; in many instances it is unclear whether "execution" or "writ of execution" refers to process to enforce money judgments and judgments for the possession or sale of property, process to enforce money judgments and judgments for the possession but not the sale of property, or only process to enforce money judgments. For example, Section 684 provides that a writ of execution may be used to enforce a money judgment or a judgment for the possession of real or personal property; a judgment for the sale of property may be enforced by a "writ reciting such judgment." Section 683 provides for the return of the "execution" not less than 10 nor more than 60 days after its receipt by the levying officer, but it was held in *Magnauid v. Traeger*, 66 Cal. App. 526, 530-31, 226 P. 990 (1924), that a writ of execution for the possession of real property remained in force insofar as it directed the levying officer to levy on property to satisfy the part of the judgment awarding damages. Section 681 was amended in 1955 to add a reference to "enforcement" of the judgment since it was felt that the word "execution" was arguably not broad enough to cover enforcement of a mortgage foreclosure decree, *i.e.*, a judgment for the sale of real property. See Review of 1955 Code Legislation 101 (Cal. Cont. Ed. Bar 1955). Section 692 (sale on execution) seems on its face to apply only to the enforcement of money judgments, although it has been held that foreclosure sales of real and personal property should be made in the same manner as in a sale under a money judgment. See *Podrat v. Oberndorff*, 207 Cal. 457, 459-60, 278 P. 1035 (1929) (personal property); *Johnson v. Tyrrell*, 77 Cal. App. 179, 182, 246 P. 140 (1926).

⁵⁵⁸ See E. Jackson, California Debt Collection Practice § 17.39 (Cal. Cont. Ed. Bar 1968). It may also be called a writ for delivery of the possession of property. *Id.*, at 391.

⁵⁵⁹ See Sections 682, subd. 4, 684. The form approved by the Judicial Council is entitled "writ of execution" and boxes are to be checked to indicate that it applies to possession of personal property.

termed a writ of possession,⁵⁶⁰ a writ of restitution,⁵⁶¹ a writ of execution,⁵⁶² a writ of assistance,⁵⁶³ or a writ of enforcement.⁵⁶⁴ The process used to enforce a judgment for the sale of property has been termed a writ of enforcement⁵⁶⁵ or an order of sale.⁵⁶⁶ Under the proposed law, a money judgment is enforceable by a writ of execution, a judgment for the possession of property is enforceable by a writ of possession, and a judgment for the sale of property is enforceable by a writ of sale.

Uniform Procedures

Under the proposed law, provisions concerning the time within which judgments may be enforced and other procedural provisions apply to enforcement of judgments for possession and judgments for sale, as well as to money judgments. Technical requirements concerning issuance and return of writs of execution, possession, and sale are largely the same.⁵⁶⁷ The proposed law continues the substance of existing law except as noted below.

Judgments for Possession of Personal Property

Upon entry of a judgment for possession of personal property, such as in an action for specific recovery of

⁵⁶⁰ See Section 1166a.

⁵⁶¹ See Section 1174(d).

⁵⁶² See Sections 682, subd. 4, 684. The form approved by the Judicial Council is entitled "writ of execution" and boxes are to be checked to indicate that it authorizes taking possession of real property.

⁵⁶³ See *Rafferty v. Kirkpatrick*, 29 Cal. App.2d 503, 505, 85 P.2d 147 (1938). The writ of assistance has been used to put the purchaser at a foreclosure sale of real property into possession where the defendant refuses to surrender possession. The writ of assistance derives from equity practice. See 1 A. Freeman, *Law of Executions* § 37d, at 155 (3d ed. 1900); Dinkelspiel, *Enforcement of Judgments*, in *California Remedies for Unsecured Creditors* § 16, at 140 (Cal. Cont. Ed. Bar 1957).

⁵⁶⁴ See *Hamilton v. Waters*, 93 Cal. App.2d 866, 868, 210 P.2d 67 (1949).

⁵⁶⁵ See *Laubisch v. Roberdo*, 43 Cal.2d 702, 712, 277 P.2d 9 (1954). Section 684 refers to a writ used to enforce a judgment for sale as a "writ reciting such judgment."

⁵⁶⁶ *Id.* In *Knapp v. Rose*, 32 Cal.2d 530, 534, 197 P.2d 7 (1948), the court said that it was immaterial whether the writ used to sell real property on foreclosure was entitled a writ of enforcement, writ of execution, or order of sale, if it was sufficient in substance. See also Gov't Code § 26829 (fee for issuing order of sale).

⁵⁶⁷ See the discussion in the text under "Issuance and Return of Writ of Execution" beginning at note 121 *supra*. Under existing law, it has been held that a writ of restitution remains in force beyond the 60-day period provided by Section 683 insofar as the writ directs the restitution of the premises although it had expired insofar as it directed the levying officer to levy on property to satisfy damages awarded in the judgment. See *Magnaud v. Traeger*, 66 Cal. App. 526, 530-31, 226 P. 990 (1924).

personal property,⁵⁶⁸ the judgment creditor may obtain a writ of possession of personal property if the property has not already been delivered to the judgment creditor under a prejudgment writ of possession.⁵⁶⁹ The levying officer, pursuant to the judgment creditor's instructions, attempts to take possession of the property in the manner provided for levy of execution where the property is in the judgment debtor's possession.⁵⁷⁰ Property may be seized only if it is in the possession of the judgment debtor or an agent of the judgment debtor.⁵⁷¹

If property cannot be taken into custody, whether it is lost, destroyed, hidden, or in the hands of a third person, the judgment creditor is entitled to satisfy the judgment out of the property of the judgment debtor that is not exempt from execution for the value of the property as determined in the judgment for possession.⁵⁷² For this purpose, the writ of possession is treated as a writ of execution. Whether or not the property awarded the judgment creditor can be found, the writ of possession is treated as a writ of execution for the purpose of satisfying costs and damages awarded in the judgment and costs and interest accruing thereafter.⁵⁷³ The proposed law also makes clear that the judgment creditor is entitled to resort to all of the remedies available for the enforcement of a money judgment, such as an examination proceeding, a creditor's suit, or an assignment order,⁵⁷⁴ for the purpose of collecting costs, interest, damages, and the value of the property if possession cannot be obtained.

⁵⁶⁸ See generally 3 B. Witkin, *California Procedure Pleading* §§ 554-63, at 2194-203 (2d ed. 1971). The action for specific recovery is frequently referred to as a claim and delivery action, and a distinction is sometimes made between replevin (where the original taking was wrongful) and detinue (where the original taking was lawful). *Id.* § 554, at 2195-96.

⁵⁶⁹ Possession may be obtained prior to judgment by way of the provisional remedy of claim and delivery. See Sections 511.010-516.050.

⁵⁷⁰ See the discussion in the text under "Methods of Levy on Particular Types of Property" beginning at note 159 *supra*.

⁵⁷¹ See Section 514.010.

⁵⁷² See Sections 627, 667, 682, subd. 4, 682.2. It is not necessary to determine the value of the property if it has already been taken into the custody of the levying officer pursuant to claim and delivery proceedings. See Section 627; *Webster v. Mountain Monarch Gold Mining Co.*, 6 Cal. App.2d 450, 454-55, 44 P.2d 646 (1935).

⁵⁷³ See Section 682, subd. 4.

⁵⁷⁴ See the discussion in the text under "Miscellaneous Creditors' Remedies" beginning at note 425 *supra*.

The proposed law permits the judgment creditor to seek an order, enforceable by the power to punish for contempt, requiring the judgment debtor to turn the property over to the judgment creditor directly. This order is the same as that available in claim and delivery proceedings prior to judgment.⁵⁷⁵

The proposed law also permits the appointment of a receiver to enforce the judgment in an appropriate case.⁵⁷⁶

Judgments for Possession of Real Property

Upon entry of a judgment for possession of real property, such as in an action for unlawful detainer, forceable entry, ejectment, or quiet title,⁵⁷⁷ the judgment creditor is entitled to a writ of possession of real property. Under the proposed law, the levying officer executes the writ of possession of real property in the manner provided by existing law for enforcement in unlawful detainer cases.⁵⁷⁸

The new law codifies the rule in Arrieta v. Mahon, 31 Cal.3d 381 (1982), to the effect that a person who is not named in the writ may not be removed from the premises if the person claims a right to possession accruing prior to the commencement of the unlawful detainer action or if the person claims to have been in possession when the action was filed. The new law also permits a registered process server to serve or post the writ of possession if the levying officer has not done so within three business days after the writ is delivered to the levying officer.

Like the writ of possession of personal property, the writ of possession of real property may be treated as a writ of execution for the purpose of levying on other property of the judgment debtor in order to satisfy costs, interest, and damages awarded in the judgment and costs and interest accruing thereafter.⁵⁷⁹ The proposed law makes clear that

⁵⁷⁵ See Section 512.070.

⁵⁷⁶ Existing law does not specifically authorize appointment of a receiver to enforce a judgment for possession of personal property although Section 564, para. 3, authorizes appointment of a receiver "[a]fter judgment, to carry the judgment into effect." See the discussion in the text under "Receivers" beginning at note 489 *supra*.

⁵⁷⁷ See generally 3 B. Witkin, California Procedure *Pleading* §§ 506-16, at 2164-70 (unlawful detainer), §§ 517-21, at 2170-72 (forcible entry), §§ 522-34, at 2173-83 (ejectment and quiet title) (2d ed. 1971).

⁵⁷⁸ See Section 1174(c)-(d). The proposed law also incorporates the procedure for disposition of personal property remaining on the premises provided by Section 1174(e)-(m).

⁵⁷⁹ See Section 682, subd. 4, 682.2.

the judgment creditor is entitled to resort to other remedies for collection of a money judgment in order to satisfy any monetary liability.⁵⁸⁰

The proposed law would also permit the appointment of a receiver to enforce a judgment for possession of real property in an appropriate case.⁵⁸¹

Judgments for Sale of Real or Personal Property

Upon entry of a judgment for the sale of real or personal property, such as in an action to foreclose a mortgage or other lien or to enforce a security interest,⁵⁸² the judgment creditor is entitled to issuance of a writ of sale. The proposed law requires that a levy be made in the same manner as under execution, whereas existing law permits sale under an order of sale issued by the court and does not require an actual levy.⁵⁸³ The proposed law provides that the property is to be sold in the same manner as under execution,⁵⁸⁴ but the proceeds would be distributed in the manner provided in the judgment.⁵⁸⁵

The writ of sale may be treated under the proposed law as a writ of execution for the purpose of collecting costs, interest, and damages, but the judgment creditor may be limited by the judgment to resort to proceeds of the property if it is designated as security for such amounts.⁵⁸⁶

The proposed law permits the judgment creditor to obtain an order, enforceable by the power to punish for contempt, requiring the judgment debtor to transfer to the levying officer property to be sold and documentary

⁵⁸⁰ See text at note 574 *supra*.

⁵⁸¹ Existing law does not specifically authorize appointment of a receiver to enforce a judgment for possession of real property, although Section 564, subd. 3, authorizes appointment of a receiver "[a]fter judgment, to carry the judgment into effect." See the discussion in the text under "Receivers" beginning at note 489 *supra*.

⁵⁸² See generally 3 B. Witkin, California Procedure *Pleading* §§ 539-42, at 2185-88 (2d ed. 1971); Code Civ. Proc. § 726 (mortgage foreclosure); Com. Code § 9501(1) (foreclosure of security interest).

⁵⁸³ See, e.g., *Knapp v. Rose*, 32 Cal.2d 530, 534, 197 P.2d 7 (1948); *Southern Cal. Lumber Co. v. Ocean Beach Hotel Co.*, 94 Cal. 217, 222-24, 26 P. 627 (1892).

⁵⁸⁴ This continues a principle of existing law. See *Johnson v. Tyrrell*, 77 Cal. App. 179, 182, 246 P. 140 (1926) (foreclosure sale of real property); *Podrat v. Oberndorff*, 207 Cal. 457, 459-60, 278 P. 1035 (1929) (foreclosure sale of personal property). It should be noted that the proposed law revises the sale provisions, as discussed in the text under "Sale Procedure" beginning at note 367 *supra*.

⁵⁸⁵ This continues existing law. See Sections 684, 726, 727.

⁵⁸⁶ This continues existing law. See Section 726.

evidence of title to the property. This order is similar to the turnover order which would be available under the proposed law for the enforcement of a money judgment.

The proposed law also permits the appointment of a receiver to enforce a judgment for sale of real or personal property.⁵⁸⁷

Other Types of Judgments

Under the proposed law, as under existing law, judgments requiring a person to perform some other act or to refrain from performing an act,⁵⁸⁸ are enforceable by the power to punish for contempt.⁵⁸⁹ A court may exercise its contempt power when the person against whom the judgment was rendered has notice or knowledge of the judgment and has the ability to comply but wilfully refuses to do so.⁵⁹⁰ The proposed law, like existing law, provides for personal service of a certified copy of the judgment on the person required to obey as a basis for invoking the contempt power.

SATISFACTION OF JUDGMENT

When a judgment is satisfied, the satisfaction needs to be brought to the attention of the court so that it can be noted in the court records. If the satisfaction is pursuant to a writ, the levying officer reports the satisfaction to the court when the writ is returned.⁵⁹¹ If the satisfaction is obtained other

⁵⁸⁷ Existing law does not specifically authorize appointment of a receiver to enforce a judgment for sale of property, although Section 564, para. 3, authorizes appointment of a receiver "[a]fter judgment, to carry the judgment into effect." See the discussion in the text under "Receivers" beginning at note 489 *supra*. A receiver may be appointed at the commencement of a foreclosure action and continued in possession until sale of the property. See *Boyd v. Benneyan*, 204 Cal. 23, 25, 266 P. 278 (1928).

⁵⁸⁸ Many types of judgments are self-executing and do not require enforcement, such as, for example, declaratory judgments, marital dissolutions, and corporate dissolutions.

⁵⁸⁹ See Sections 684, 1209-1222.

⁵⁹⁰ See *Phillips v. Superior Court*, 22 Cal.2d 256, 257-58, 137 P.2d 838 (1943) (person must have notice, actual knowledge, or have been present in court); *Mossman v. Superior Court*, 22 Cal. App.3d 706, 711-12, 99 Cal. Rptr. 638 (1972) (knowledge of attorney imputable to contemner); *In re Moulton*, 100 Cal. App.2d 559, 563, 224 P.2d 76 (1950) (inability to comply).

⁵⁹¹ See Sections 675 (a), 683. The proposed law adds a provision for the issuance by the court clerk of a certificate of satisfaction of judgment when the satisfaction has been entered in the court records. This certificate may be recorded where a judgment lien exists on the satisfied judgment with the same effect as an acknowledgment of satisfaction of judgment.

than pursuant to a writ,⁵⁹² the judgment creditor must file an acknowledgment of satisfaction with the court.⁵⁹³ The proposed law continues this scheme, *but makes clear that the judgment creditor is not required to give or file an acknowledgment of satisfaction until payment is actually received and any check has been honored.*

In some cases an abstract of a money judgment will have been recorded with the county recorder to create a judgment lien on the judgment debtor's real property.⁵⁹⁴ When the judgment is satisfied, the satisfaction needs to be made a matter of record with the county recorder in order to eliminate the cloud on title created by the judgment lien. For this reason, if an abstract of judgment has been recorded, existing law requires the judgment creditor to file with the court and deliver to the judgment debtor an acknowledgment of satisfaction within 30 days after satisfaction.⁵⁹⁵ The acknowledgment lists the counties where an abstract has been recorded and advises the judgment debtor that the acknowledgment must be recorded in these counties in order to release the judgment lien.⁵⁹⁶ The proposed law continues these provisions but requires the judgment creditor to file and deliver the acknowledgment immediately upon satisfaction rather than within 30 days.⁵⁹⁷

The existing law also includes a procedure that may be used where the judgment creditor fails or refuses to file or deliver an acknowledgment of satisfaction as required under the provisions outlined above.⁵⁹⁸ Within 15 days after

⁵⁹² The judgment may be satisfied, for example, through some other enforcement procedure, by full payment, or by acceptance of partial payment in full satisfaction.

⁵⁹³ Section 675 (a).

⁵⁹⁴ Section 674. A certified copy of certain types of money judgments payable in installments may be recorded with the county recorder to create a judgment lien on real property. See Sections 674.5, 674.7. See the discussion in the text beginning at note 71 *supra*.

⁵⁹⁵ Section 675 (b).

⁵⁹⁶ Section 675 (b).

⁵⁹⁷ This change is consistent with the comparable provision of the small claims court law. Section 117.9 ("Immediately upon receipt of payment of the judgment, the judgment creditor or his assignee shall file with the court an acknowledgment of satisfaction of judgment.").

⁵⁹⁸ The procedure may also be used where the judgment is satisfied pursuant to a writ. Existing law also permits the judgment debtor to apply to the court on noticed motion for an order requiring the judgment creditor to give an acknowledgment of satisfaction or requiring the court clerk to enter satisfaction without an

actual receipt of a demand from the judgment debtor or the owner of property upon which the judgment has become a lien, the judgment creditor must deliver an acknowledgment of satisfaction to the person making the demand.⁵⁹⁹ The proposed law continues this provision and expands it to permit a demand that the judgment creditor file an acknowledgment of satisfaction with the court.

Existing law imposes a statutory sanction if the judgment creditor fails to comply with the demand within the 15 days allowed. The judgment creditor is liable to the person making the demand for all damages sustained by reason of the failure and also forfeits one hundred dollars to such person.⁶⁰⁰ The same sanction also applies if the judgment creditor fails to file and deliver an acknowledgment of satisfaction as required in cases where an abstract of judgment has been recorded.⁶⁰¹ The proposed law limits the statutory sanction to the case where the judgment creditor fails to file or deliver the acknowledgment within 15 days after actual receipt of a demand in writing. The requirement that the judgment creditor must have failed to comply with a demand before the sanction is imposed is consistent with the comparable provision of the small claims court law⁶⁰² and will protect against imposition of the sanction where the judgment creditor inadvertently fails to file or deliver the acknowledgment. The proposed law contains a provision to make clear that the elimination of the statutory sanction where no demand has been made does not affect the right to recover any damages or penalty the injured person is entitled to recover under other provisions of law.⁶⁰³ The proposed law also adds a new requirement that the demand for an acknowledgment of

acknowledgment. See Section 675(a). The proposed law permits such a motion only after failure of the judgment creditor to comply with a demand for the delivering or filing of an acknowledgment.

⁵⁹⁹ Section 675(c).

⁶⁰⁰ Section 675(c).

⁶⁰¹ Section 675(b). No statutory sanction is imposed under existing law for failure to file an acknowledgment of satisfaction with the court clerk as required by Section 675(a) in a case where no abstract of judgment has been recorded.

⁶⁰² Section 117.9.

⁶⁰³ This provision is drawn from Section 675(g). The proposed law also continues the provision of Section 675(f) that the prevailing party is entitled to recover reasonable attorney's fees in a court proceeding brought to enforce the statutory requirements.

satisfaction contain a warning of the consequences of failure to comply with the demand.⁶⁰⁴

The proposed law adds a new provision permitting service of a demand for delivery of an acknowledgment of partial satisfaction of judgment and includes a procedure for obtaining a court determination of the issue if necessary. The new provisions will be useful where there is uncertainty or a dispute as to the amount remaining unpaid on the judgment. The proposed law also includes similar provisions that make clear that the judgment debtor may obtain an acknowledgment that all payments that have become payable on an installment judgment have been paid.⁶⁰⁵ Existing statutory law contains no provision for an acknowledgment of partial satisfaction, but there is some recognition in case law of the right of the judgment debtor to obtain an acknowledgment of partial satisfaction.⁶⁰⁶

The provisions of the proposed law relating to satisfaction of judgment have been drafted to reflect the introduction in the proposed law of the new judgment lien on personal property. For example, the proposed law requires that an acknowledgment of satisfaction of judgment indicate whether a notice of judgment lien was filed in the office of the Secretary of State to create a judgment lien on personal property. This information will permit the judgment debtor to terminate the lien on personal property if it has not already been terminated.

The proposed law does not continue the provisions of the existing statute dealing with judgments discharged in bankruptcy.⁶⁰⁷ These provisions are unnecessary in view of the provisions of the federal Bankruptcy Code.⁶⁰⁸

⁶⁰⁴ This warning will advise the judgment creditor that the law requires compliance with the demand within 15 days of receipt, that the judgment creditor will be required to pay the reasonable attorney's fees of the person making the demand if a court proceeding is necessary to compel compliance with the demand, and that the judgment creditor will be liable for all damages sustained by reason of the failure to comply and will also forfeit one hundred dollars if the judgment creditor fails without just cause to comply with the demand within the 15 days allowed.

⁶⁰⁵ Acknowledgment of satisfaction of matured installments will permit the judgment debtor to transfer real property free of the judgment lien created by the recording of a certified copy of certain types of installment judgments, such as a support judgment payable in installments, where the lien extends to matured installments but not to unmatured installments. See the discussion in the text at note 81 *supra*

⁶⁰⁶ See *Campbell v. Southern Pacific Co.*, 22 Cal.3d 51, 583 P.2d 121, 148 Cal. Rptr. 596 (1978); *Kaplan v. Hacker*, 113 Cal. App.2d 571, 248 P.2d 464 (1952). See also Partial Satisfaction form for Municipal Court, Los Angeles County.

⁶⁰⁷ See Sections 675b, 675c.

⁶⁰⁸ See 11 U.S.C. § 514.

EFFECT ON ENFORCEMENT LIENS OF STAY OF ENFORCEMENT OF MONEY JUDGMENT

The proposed law includes provisions concerning the effect of a stay of enforcement of a money judgment on the creation and continuance of enforcement liens. If an appeal is taken from the trial court judgment and a sufficient undertaking is provided, any property levied upon must be released since the execution lien terminates when enforcement is stayed, and no execution or other enforcement lien may thereafter be created or continued while the appeal is pending. These rules continue existing California law.⁶⁰⁹

The proposed law also provides rules concerning enforcement liens when enforcement of a money judgment is stayed by the trial court. The proposed law makes clear that the trial court has authority to grant a stay for a limited time ending not later than 10 days after the last date on which a notice of appeal could be filed.⁶¹⁰ Such a stay may be granted, for example, to allow time to perfect the appeal if one is to be taken or to give the judgment debtor time to arrange for the payment of the judgment. Unless the court otherwise expressly orders, the trial court's stay will not affect the creation or continuance of a judgment lien on real or personal property; but, unless the court otherwise expressly orders, no other enforcement liens may be continued or created during the period of the stay of enforcement. These rules are consistent with existing law under which a judgment lien may be created on real property during the period of a trial court stay.⁶¹¹

Where a California judgment has been entered on the basis of a sister state judgment upon application of the judgment creditor, existing law permits the California court to stay the California judgment on such terms and conditions as are just.⁶¹² The proposed law makes clear the effect of the stay on an enforcement lien by providing that an enforcement lien may be created or remain in effect

⁶⁰⁹ See Sections 674, 916.

⁶¹⁰ See Section 918. See also Section 681a which prescribes limitations inconsistent with later enacted Section 918.

⁶¹¹ See *Industrial Indem. Co. v. Levine*, 49 Cal. App.3d 698, 122 Cal. Rptr. 712 (1975) (granting of stay by trial court under Section 681a and pursuant to stipulation does not prevent the recording of an abstract of judgment to create judgment lien on real property).

⁶¹² See Section 1710.50.

during the stay only if the court expressly so orders. The proposed law applies the same rule to a registered foreign support order.⁶¹³

The proposed law also codifies the judicially developed rule permitting the court, in its discretion, to stay the enforcement of a judgment where the judgment debtor has another action pending on a disputed claim against the judgment creditor.⁶¹⁴ If the enforcement of the judgment is not stayed, the judgment debtor may be deprived of the right of offset and, with a judgment-proof creditor, of the right to recover anything at all.

ASSIGNMENT OF JUDGMENTS

Existing Law

Existing law concerning the manner and the consequences of an assignment of a judgment is unclear. The existing statute requires an "assignee of record" to give an acknowledgment of satisfaction if the judgment is satisfied,⁶¹⁵ but the procedure for becoming an "assignee of record" is not covered by statute. The Commission has been advised that an assignee cannot obtain a writ of execution unless the assignment is a matter of court record, but existing statutes are silent on this matter and provide no procedure for making the assignment a matter of court record. Finally, priorities between conflicting assignments to bona fide assignees for value "without notice" depend on which assignee first notifies the judgment debtor in writing of the assignment.⁶¹⁶

Proposed Law

The proposed law clarifies and improves the law relating to assignments of judgments as follows:

(1) An assignee of a judgment may become an "assignee of record" by filing an acknowledgment of assignment of the judgment with the clerk of the court where the

⁶¹³ See Section 1699.

⁶¹⁴ See *Erlich v. Superior Court*, 63 Cal.2d 551, 407 P.2d 649, 47 Cal. Rptr. 473 (1965); *Airfloor Co. v. Regents of the Univ. of Cal.* 97 Cal. App.3d 739, 158 Cal. Rptr. 856 (1979).

⁶¹⁵ Section 675.

⁶¹⁶ Civil Code § 955.1.

judgment is entered.⁶¹⁷ The contents and manner of execution of the acknowledgment of assignment is prescribed by the proposed law.⁶¹⁸ This fills a gap in existing law, but does not limit any other method by which an assignee may become an "assignee of record."

(2) As between conflicting assignments made to bona fide assignees for value without notice, the assignee first filing an acknowledgment of assignment with the court clerk or otherwise becoming an assignee of record has priority.⁶¹⁹ This changes the rule under existing law that gives such an assignee of a judgment priority if the assignee first gives notice of the assignment in writing to the judgment debtor.⁶²⁰

(3) An assignee of a judgment can obtain a writ of execution or use other remedies to enforce the judgment only if the acknowledgment of assignment has been filed with the court clerk or the assignee has otherwise become an assignee of record.⁶²¹

(4) Notwithstanding the filing of the acknowledgment of assignment with the court, a judgment debtor who makes payment to the judgment creditor without notice of the assignment is protected. The filing is not, of itself, notice to the judgment debtor so as to invalidate any payments made by the judgment debtor. This provision is consistent with existing law.⁶²²

The proposed law does not require the filing of an acknowledgment of assignment with the court clerk in order to accomplish the transfer of the assigned interest as between the parties to the assignment.

⁶¹⁷ This clarifies the duty of an assignee to give an acknowledgment of satisfaction of a judgment if the judgment has been satisfied. See the discussion in the text under "Satisfaction of Judgment" beginning at note 591 *supra*. See also Welf. & Inst. Code § 11477 (county to which support rights assigned becoming an assignee of record).

⁶¹⁸ A new Section 673 is added to the Code of Civil Procedure to prescribe the contents and manner of execution of an acknowledgement of assignment of judgment. This new provision is consistent with the provision of the proposed law prescribing the contents and manner of execution of an acknowledgment of satisfaction of judgment.

⁶¹⁹ A new Section 954.5 is added to the Civil Code to deal with the manner of transferring a right represented by a judgment, to make clear the priorities among bona fide assignees of the same right without notice, and to protect the judgment debtor on the assigned judgment who pays without notice of the assignment.

⁶²⁰ See Civil Code § 955.1.

⁶²¹ This codifies existing practice.

⁶²² Civil Code § 955.1.

SERVICE OF WRITS, NOTICES, AND OTHER PAPERS

Existing law provides a variety of methods for serving writs, notices, and other papers in connection with the enforcement of a judgment.⁶²³ Some provisions permit use of ordinary mail, some require certified or registered mail, and others permit service by personal delivery or ordinary mail.

In each case where service of a writ, notice, or other paper is required under the proposed law, the proposed law prescribes the type of service required. A particular provision may require personal service or service by mail or may permit either personal or mail service. The proposed law contains general provisions that prescribe the manner of personal service and mail service. These general provisions apply unless a particular provision otherwise provides. Where mail service is permitted, the proposed law provides the general rule that service may be made by first-class mail, postage prepaid. First-class mail is preferable to certified or registered mail because it is cheaper and more likely to be received expeditiously.

The proposed law requires service on the attorney for the judgment creditor (rather than on the judgment creditor) if the judgment creditor has an attorney of record in the action or proceeding and the attorney still represents the judgment creditor. When some action is required within a short time to protect the judgment creditor's interests, serving the attorney directly will give the attorney more time to take the necessary action.

⁶²³ Notice provisions vary under existing law. See, e.g., Sections 11 (certified mail complies with registered mail requirement), 682a (bank notice to holder of joint account levied upon sent by registered mail), 682.1 (copy of writ of execution mailed to judgment debtor after levy), 688(b) (service of writ of execution on judgment debtor by personal delivery or by mail), 689 (demand for undertaking sent to judgment creditor by registered or certified mail), 689b(3) (demand for undertaking or deposit sent to judgment creditor by registered or certified mail), 690.2(d) (notification by levying officer to judgment debtor of multiple vehicle registration), 690.30(b)(2) (notification by levying officer to judgment creditor of nature of account into which social security payments are directly deposited), 690.31(f) (copies of papers in dwelling exemption proceedings sent to judgment debtor and certain third persons by first-class mail), 692, para. 2 (notice of personal property sale mailed or delivered to judgment debtor), 692, para. 3 (notice of real property sale sent by certified mail or delivered to judgment debtor), 692a (notice of sale mailed to persons requesting notice), 710(d) (notice mailed by court clerk to parties interested in condemnation award).

The proposed law permits the judgment debtor to file a request in the action that service be made on the judgment debtor's attorney rather than on the judgment debtor. This provision is also designed to give the attorney more time to take any action needed to protect the interests of the judgment debtor.

The wage garnishment statute under existing law includes a provision that permits the judgment debtor or the judgment debtor's agent to personally deliver a notice or document that otherwise would be served by the levying officer.⁶²⁴ This is permitted only if the notice or document runs in the judgment debtor's favor and the permission of the levying officer is obtained. The proposed law generalizes this provision to cover an order, notice, or other paper (other than a writ or notice of levy) and extends the provision to cover personal delivery by the judgment creditor or the judgment creditor's agent. Permission of the levying officer must be obtained. The cost of service is not a recoverable cost, but this would not affect the right to recover the cost of service by a registered process server to the extent otherwise permitted.⁶²⁵

Whenever the proposed law requires service of notice of a court hearing, proof of service must be made at or before the hearing to the satisfaction of the court.⁶²⁶ This general requirement supersedes comparable provisions of existing law applicable to particular notices.⁶²⁷

The proposed law requires the judgment creditor to include in the instructions to the levying officer the correct name and address of any person who is required to be given notice by the levying officer. The judgment creditor is required to use reasonable diligence to ascertain the correct name and address of the person. The levying officer may rely on the instructions unless the levying officer has actual knowledge that the name or address included in the instructions is incorrect.

⁶²⁴ Section 723.101(c).

⁶²⁵ See the discussion in the text at notes 144 and 145 *supra*.

⁶²⁶ The proposed law specifies methods for proof of service consistent with existing law.

⁶²⁷ See, e.g., Section 723.105(e) (hearing on claim of exemption from wage garnishment).

PROTECTION OF LEVYING OFFICER AGAINST LIABILITY

Existing law contains various provisions that give the levying officer protection against liability for actions taken in connection with the enforcement of a judgment.⁶²⁸ The proposed law replaces these provisions with a general provision that the levying officer is not liable for actions taken in conformance with the statutes. The immunity under the proposed law extends to actions taken in reliance on information contained in the written instructions of the judgment creditor *or information supplied by a registered process server*, except to the extent the levying officer has actual knowledge that the information is incorrect. This immunity does not limit any liability the judgment creditor *or registered process server* may have for incorrect information given in the instructions.⁶²⁹

The Attachment Law protects the levying officer from liability for loss by fire, theft, injury, or damage to personal property while in the possession of the levying officer either in a warehouse or in the custody of a keeper or in transit to or from a warehouse unless the levying officer is negligent in the care or handling of the property.⁶³⁰ A levying officer acting under the proposed law is given the same protection.

RULES OF PRACTICE AND FORMS

The proposed law gives the Judicial Council authority to make rules for practice and procedure under the law and to prescribe forms for applications, notices, orders, writs, and other documents.⁶³¹ The proposed law provides forms

⁶²⁸ See Sections 262 (judgment creditor's instructions must be in writing to discharge levying officer from liability), 262.1 (levying officer required to execute all process regular on its face and issued by competent authority), 689 (levying officer not liable to third person for levy, etc., if no third-party claim delivered or if provisions of Section 689 followed), 689b(9) (levying officer not liable for levy, etc., if undertaking given), 697 (levying officer not liable for more than amount bid by subsequent purchaser where first bidder fails or refuses to pay amount bid at execution sale).

⁶²⁹ The proposed law imposes on the judgment creditor a duty to provide the levying officer with adequate instructions and to use reasonable diligence to ascertain the correct name and address of any person required to be given notice and to include that information in the written instructions given to the levying officer.

⁶³⁰ Section 488.060(b).

⁶³¹ Under existing law, the Judicial Council has issued approved forms for the general writ of execution (covering money judgments and judgments for the possession of property) and for the writ of execution against a dwelling house. A statutory form of the writ of execution on a money judgment is provided by Section 682.1 and a statutory form for notice of proposed levy on a dwelling is provided by Section 690.31.

for writs and some other important notices and documents, but the Judicial Council is given the authority to supersede and supplement the statutory forms.

GENERAL PROCEDURAL PROVISIONS CONTINUED WITHOUT SUBSTANTIAL CHANGE

Provisions concerning enforcement of judgments after the death of the judgment debtor or the judgment creditor,⁶³² contribution among judgment debtors,⁶³³ entry of costs on writs,⁶³⁴ execution of commercial paper by the levying officer,⁶³⁵ judgment creditor's instructions to the levying officer,⁶³⁶ the manner of custody of property levied upon,⁶³⁷ and the deposit of fees prior to performance of a duty by the levying officer⁶³⁸ are continued in the proposed law without substantial change.

⁶³² See Code Civ. Proc. §§ 686.010, 686.020; Prob. Code § 732.

⁶³³ See Section 709. The proposed law makes clear, however, that the right to contribution is to be determined at a hearing on noticed motion and that the Title 9 procedures do not apply to the determination of the right to contribution among joint tortfeasors governed by Title 11 (commencing with Section 875).

⁶³⁴ See Section 682.2. The proposed law also provides for the entry of costs on a writ of sale, whereas existing law applies only to writs of execution—apparently referring only to writs employed to enforce money judgments and judgments for the possession of property. *Cf.* Section 684 (writ of execution used to enforce judgments for money or possession).

⁶³⁵ See Section 688(g) (incorporating Section 488.520). The proposed law permits execution of commercial paper regardless of the type of writ under which it comes into the levying officers' hands.

⁶³⁶ See Sections 262, 488.010(a) (incorporated by Section 688(b)), 692, subsds. 2, 3.

⁶³⁷ See Section 688(c). The proposed law extends this provision to custody under any writ, not only a writ of execution.

⁶³⁸ See Code Civ. Proc. § 488.050 (incorporated by Section 688(b)); Gov't Code §§ 6100, 24350.5. The proposed law permits the levying officer to make an oral demand for advance of additional costs whereas Section 488.050 requires a written demand.

ATTACHMENT

In its recommendation proposing the Enforcement of Judgments Law, the Commission recommended that the Attachment Law be revised to eliminate liability for wrongful attachment of property of a third person. See the discussion in the text at notes 549.1-549.3 supra. The legislation enacted in 1982 eliminated liability for wrongful attachment of property of a third person.

In a separately published recommendation, the Commission proposed other revisions of the Attachment Law to conform it to the proposed Enforcement of Judgments Law and to make other substantive and technical changes. See "Recommendation Relating to Attachment," 16 Cal. L. Revision Comm'n Reports 701 (1982). The text of this separate recommendation is set out below. The recommendation has been editorially revised to reflect changes made in the Commission recommended legislation before it was enacted.¹

Introduction

This recommendation proposes revision of the Attachment Law (Code of Civil Procedure Sections 481.010-493.060) to:

(1) Deal with problems that have come to the Commission's attention since the Attachment Law was last amended.²

¹ The discussion in the editorial note on page 1009 applies to the editorial changes made in the Commission recommendation which follows.

² For Commission recommendations on attachment, see *Recommendation Relating to Prejudgment Attachment*, 11 Cal. L. Revision Comm'n Reports 701 (1973), enacted as 1974 Cal. Stats. ch. 1516; *Recommendation Relating to Revision of Attachment Law*, 13 Cal. L. Revision Comm'n Reports 801 (1976), enacted as 1976 Cal. Stats. ch. 437; *Recommendation Relating to the Attachment Law—Effect of Bankruptcy Proceedings, Effect of General Assignments for the Benefit of Creditors*, 14 Cal. L. Revision Comm'n Reports 61 (1978), enacted as 1977 Cal. Stats. ch. 499; *Recommendation Relating to Court Commissioners Under the Attachment Law*, 14 Cal. L. Revision Comm'n Reports 93 (1978), enacted as 1978 Cal. Stats. ch. 151; *Recommendation Relating to Technical Revisions in the Attachment Law—Unlawful Detainer Proceedings, Bond for Levy on Joint Deposit Account or Safe Deposit Box, Definition of "Chose in Action,"* 14 Cal. L. Revision Comm'n Reports 241 (1978), enacted as 1978 Cal. Stats. ch. 273; *Recommendation Relating to Effect of New Bankruptcy Law on the Attachment Law*, 15 Cal. L. Revision Comm'n Reports 1043 (1980), enacted as 1979 Cal. Stats. ch. 177. See also *Recommendation Relating to Enforcement of Obligations After Death*, 15 Cal. L. Revision Comm'n Reports 1327 (1980) (attachment not terminated by death of defendant whose property has been attached), enacted as 1980 Cal. Stats. ch. 124.

(2) Bring the Attachment Law into conformity with the separately recommended Enforcement of Judgments Law.³

(3) Make other changes of a minor or technical nature.⁴

The recommended legislation would become operative only if and when the proposed Enforcement of Judgments Law is enacted and becomes operative.

Recommendations

Manner of Service

Section 482.070 provides for the manner of service under the Attachment Law. The proposed Enforcement of Judgments Law provides much more detailed rules governing (1) the service of writs, notices, orders, and other papers, (2) whether a party's attorney must or may be served, (3) the extension of time where service is by mail, and (4) the manner of proof of service. The proposed legislation makes the provisions of the proposed Enforcement of Judgments Law generally applicable to service under the Attachment Law.⁵

[Material omitted.]

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

⁴ Some changes of a minor or technical nature are noted in the following discussion; others are noted in the Comments which follow the text of each section of the recommended legislation.

⁵ The provisions of the proposed Enforcement of Judgments Law apply to service under the Attachment Law subject to three qualifications:

(1) A defendant who has not appeared in the action must be served under the Attachment Law in the manner provided for service of summons.

(2) If the defendant has an attorney of record in the action, service under the Attachment Law must be made on the attorney rather than the defendant (except for a subpoena or other process to require the attendance of the defendant or a paper to bring the defendant into contempt).

(3) Service may be made personally or by mail under the Attachment Law unless otherwise provided.

⁶ [Omitted.]

⁷ [Omitted.]

Dwelling Exemption

Existing law provides a number of methods by which a defendant can protect his or her dwelling from attachment. Since all property exempt from execution is exempt from attachment,⁸ the defendant whose dwelling is attached may claim the exemption which is available when execution is levied upon real or personal property used as the dwelling of the debtor or the family of the debtor.⁹ This exemption may be waived if it is not timely claimed.¹⁰ As an alternative, the defendant may defeat a prior attachment lien by recording a homestead declaration.¹¹ The protection provided by both of these methods is limited to the amount of the exemption established by statute.¹² The defendant may also be able to exempt his or her dwelling under a special exemption provided by the Attachment Law which exempts from attachment property that is necessary for the support of the individual defendant or the defendant's family supported in whole or in part by the defendant.¹³

[Material omitted.]

The new law permits attachment of a declared homestead and makes clear that the prior or subsequent recording of a homestead declaration does not prevent an attachment lien from reaching the surplus amount over the total of (1) all liens and encumbrances on the homestead at the time the attachment lien is created and (2) the amount of the homestead exemption. The new law also makes clear that the attachment lien does not affect any exemption the defendant may have for property that is necessary for the support of the defendant or the defendant's family.¹⁴ If the

⁸ Section 487.020(a).

⁹ See Sections 690.3, 690.31.

¹⁰ See Sections 484.070, 484.350, 484.530, 485.610. See also Section 482.100 (claim of exemption under changed circumstances). The proposed law makes clear that a failure to claim an exemption for real property under these procedures is not a waiver of the exemption.

¹¹ *Becker v. Lindsay*, 16 Cal.3d 188, 545 P.2d 260, 127 Cal. Rptr. 348 (1976); *Jacobson v. Pope & Talbot*, 214 Cal. 758, 7 P.2d 1017 (1932).

¹² See Civil Code § 1260; Code Civ. Proc. §§ 690.3, 690.31(a).

¹³ See Section 487.020(b).

¹⁴ See Section 487.020(b).

*attaching creditor attempts to sell the homestead on execution after judgment is obtained, the normal rules provided in the new Enforcement of Judgments Law for determining the amount of the minimum bid at an execution sale of a homestead apply.*¹⁵

Time for Claiming Real Property Exemption

Under existing law, an exemption is generally waived if the defendant does not claim it under the applicable procedure within the time allowed.¹⁸ To avoid inadvertent failure to claim the exemption for a dwelling, the proposed legislation permits the defendant to claim an exemption for real property at any time before judgment.

Property Subject to Attachment

The proposed legislation makes clear that the community property, including the interest of the spouse of the defendant, is subject to attachment if it is of a type that is subject to attachment where the defendant is a natural person.¹⁹ This provision incorporates the rules in the Civil Code governing the liability of community property²⁰ and is consistent with a provision in the proposed Enforcement of Judgments Law.

Terminology

The proposed Enforcement of Judgments Law uses the terminology of the Commercial Code to the extent

¹⁵ See the discussion in text at note 304 *supra*.

¹⁶ [Omitted.]

¹⁷ [Omitted.]

¹⁸ See Sections 484.070, 484.350, 484.530, 485.610.

¹⁹ See Section 487.010(c) (property of natural person subject to attachment).

²⁰ See Civil Code §§ 5100-5132.

practicable. Although the existing Attachment Law is generally consistent with Commercial Code terminology, some terms used in the Attachment Law are not consistent with the Commercial Code.²¹ The proposed legislation conforms the Attachment Law more closely to the Commercial Code terminology and makes revisions needed because of recent changes in the Commercial Code.²² To the extent practicable, the proposed legislation incorporates by reference the appropriate sections of the Commercial Code rather than duplicating the text of the Commercial Code definitions. This avoids the need to amend the definitions when changes are made in the Commercial Code.

Levy Procedures

The proposed legislation generally replaces the existing statutory provisions governing the methods of levy of attachment with new provisions that incorporate the methods of levy under a writ of execution under the proposed Enforcement of Judgments Law.²³ Special provisions governing attachment levies on particular types of property are retained where appropriate. The important changes are as follows:

Growing crops and timber to be cut. The Attachment Law provides for the attachment of growing crops and timber to be cut by filing a notice on a form prescribed by the Secretary of State with the county recorder where the crops or timber are located.²⁴ Upon recording, the plaintiff has the rights of a secured party who perfects a security interest in such crops or timber by recording a financing

²¹ For example, "choses in action" which is defined in Section 481.050 is not used in the Commercial Code; the proposed legislation revises the Attachment Law to substitute "general intangibles" as defined in Commercial Code Section 9106 for "choses in action." Additionally, under the proposed legislation, a nonnegotiable instrument is considered an "instrument" as defined in Commercial Code Section 9105 rather than a "choses in action" as now provided by Section 481.050.

²² For example, since "honey" has been deleted from the list of "farm products" in Commercial Code Section 9109(3), the proposed legislation deletes "honey" from the definition of "farm products" in Section 481.110.

²³ See the discussion in the text at notes 159-208 *supra*.

²⁴ Section 488.360(c).

statement. The proposed legislation provides for levy by recording a copy of the writ of attachment and a notice of attachment. The recording provides constructive notice making the attachment lien good against any later transferee or encumbrancer of the attached property. The provision of Section 488.360 giving the plaintiff a lien on identifiable cash proceeds of the crops or timber is not continued in the proposed legislation since it does not provide much protection to the plaintiff. The plaintiff would lose the lien whenever the crops or timber are harvested and then sold since a security interest in farm products (as distinct from growing crops or timber to be cut) is perfected by filing with the Secretary of State, not by recording with the county recorder.²⁵

Minerals to be extracted. The proposed legislation adds a new provision permitting the attachment (in the same manner as growing crops) of minerals and the like (including oil and gas) to be extracted and accounts receivable resulting from the sale thereof at the wellhead or minehead. This is consistent with the proposed Enforcement of Judgments Law and the manner of perfection of a security interest in such property.²⁶

Tangible personal property already in custody of levying officer. The proposed legislation incorporates the provision in the proposed Enforcement of Judgments Law governing levy on property already in the custody of a levying officer,²⁷ such as under another attachment. The Attachment Law currently contains no special provisions governing this type of levy.

Vehicle, vessel, mobilehome, or commercial coach that is equipment of going business. The proposed legislation contains a provision that recognizes that jurisdiction over the registration of mobilehomes and commercial coaches has been transferred to the Department of Housing and Community Development.²⁸ The method of levy on a

²⁵ See Com. Code §§ 9306(3) (security interest in proceeds), 9401(1) (place of filing).

²⁶ See Com. Code §§ 9103(5), 9401(1)(b).

²⁷ See the discussion in the text at notes 165-166 *supra*.

²⁸ See, e.g., Health & Safety Code §§ 18075, 18075.29, 18076.21, 18077.1-18077.3.

vehicle, vessel, mobilehome, or commercial coach which is equipment of a going business in the possession or control of the defendant remains the same, *i.e.*, by filing a notice of attachment with the Department of Motor Vehicles or Department of Housing and Community Development, whichever is appropriate.²⁹

Farm products and inventory of going business. The proposed legislation retains the scheme of the existing statute that permits the plaintiff to attach farm products and inventory of a going business either by installing a keeper or by filing with the Secretary of State.³⁰ However, the provision that the keeper be installed for 10 days unless the defendant objects is limited to situations where the defendant is a natural person, since such a defendant should be able to claim an exemption for property necessary for the support of the defendant and the defendant's family³¹ before the business is closed down. If the defendant is not a natural person and thus is not entitled to claim an exemption, the keeper period is limited to two days in the proposed legislation. If the plaintiff elects to attach by filing with the Secretary of State, the proposed legislation makes clear that the attachment lien automatically covers identifiable cash proceeds consistent with the Commercial Code,³² whereas existing law requires specific authorization in the writ or a court order.

*and
ex parte
writ*

Personal property used as a dwelling. Existing law provides no special rules governing attachment of personal property used as a dwelling. The proposed legislation adopts the applicable provisions in the proposed Enforcement of Judgments Law.³³

Property in safe deposit box. Existing law provides no special rules governing attachment of property in a safe deposit box, although a special undertaking is required

²⁹ See Section 488.350 (attachment of equipment consisting of motor vehicle or vessel by filing with Department of Motor Vehicles).

³⁰ See Section 488.360.

³¹ See Section 487.020(b) (necessities exemption).

³² See Com. Code §§ 9203(3), 9306(3)(b).

³³ See the discussion in the text at notes 172-175 *supra*.

where a safe deposit box to be attached does not stand in the name of the defendant exclusively.³⁴ The proposed legislation provides a special procedure for attaching property in a safe deposit box drawn from the proposed Enforcement of Judgments Law.³⁵

Property that is subject of pending action or proceeding. The proposed legislation provides rules governing the effect of attachment of property that is the subject of a pending action or proceeding based on the new provision proposed in the Enforcement of Judgments Law.³⁶ These rules make ineffective a levy on tangible personal property not in the possession of the defendant or a levying officer or on intangible personal property but permit a lien to be obtained in the pending action or proceeding.

Final money judgment. Under existing Section 488.420, a final judgment may be attached by both filing in the action and serving the defendant's judgment debtor. The proposed legislation provides that the levy is made by filing with the court clerk consistent with the manner of levy in the proposed Enforcement of Judgments Law.³⁷ The defendant's judgment debtor is to receive notice of attachment, but this is not a prerequisite to a valid attachment.

Interest in personal property of estate of decedent. Existing Section 488.430 permits attachment of the interest of the defendant in personal property in the estate of a decedent by filing with the court clerk where the estate is being administered and serving the personal representative of the decedent. The proposed legislation eliminates the requirement of filing in the office of the court clerk.

Personal property located in private place. Existing law provides no special rules governing attachment of personal

³⁴ See Section 489.240.

³⁵ See the discussion in the text at note 196 *supra*.

³⁶ See the discussion in the text at notes 203-205 *supra*.

³⁷ See the discussion in the text at notes 206-207 *supra*.

property in a private place. The proposed legislation adopts the applicable provisions in the proposed Enforcement of Judgments Law.³⁸

Attachment Lien

Section 488.500 provides with one exception that an attachment lien is valid against all subsequent transferees of the property. This provision is defective insofar as it conflicts with the rights of a holder in due course of a negotiable instrument, a holder to whom a negotiable document has been duly negotiated, a bona fide purchaser of a security, a purchaser of chattel paper or an instrument who gives new value and takes possession of the chattel paper or instrument in the ordinary course of business, or a buyer in the ordinary course of business. The proposed legislation incorporates the rules in the proposed Enforcement of Judgments Law governing the effect of an execution lien.³⁹ Special rules are provided in the proposed legislation governing the effect of an attachment lien on equipment, farm products, and inventory created by filing with the appropriate state agency.

Duties and Liabilities of Third Persons

The proposed legislation adopts by reference the provisions of the proposed Enforcement of Judgments Law relating to the duties and liabilities of third persons after levy.⁴⁰ This will provide necessary detail and certainty in place of the incomplete provisions of the Attachment Law.

Attachment by Registered Process Server

The proposed legislation would permit registered process servers to levy under a writ of attachment in cases where the following types of property are to be attached: (1) real property, (2) growing crops, timber to be cut, and minerals and the like (including oil and gas) to be extracted and accounts receivable resulting from the sale thereof at the

³⁸ See the discussion in the text at note 146 *supra*.

³⁹ See the discussion in the text at notes 103-115 *supra*.

⁴⁰ See the discussion in the text at notes 209-216 *supra*. These rules will supersede Sections 488.080(b) (garnishee's memorandum), 488.330(b) (custody of property in third person's possession), 488.540 (payment by account debtor), 488.550(b) (liability of obligor).

wellhead or minehead, (3) personal property in custody of a levying officer, (4) personal property used as a dwelling where levy is by posting or serving an occupant, (5) equipment of a going business, (6) farm products and inventory of a going business levied upon by filing, (7) deposit accounts, (8) property in a safe deposit box, (9) accounts receivable, (10) general intangibles, (11) final money judgments, and (12) the interest of an heir, devisee, or legatee in personal property in the estate of a decedent. This provision is drawn from a comparable provision in the proposed Enforcement of Judgments Law.⁴¹ After levy and any other required service or posting are accomplished, the registered process server is required by the proposed legislation to file the writ with the levying officer along with an affidavit stating the activities of the registered process server. The remaining duties are performed by the levying officer.

Determination of Adverse Claim in Examination Proceeding

Sections 491.010 to 491.040 of existing law provide for the examination of a third person who is indebted to the defendant or has possession or control of property of the defendant. The proposed legislation would completely replace these sections with new provisions drawn from the procedure for examination of a third person in the proposed Enforcement of Judgments Law.⁴² A third person who is indebted to the defendant could not be examined unless the amount of the debt exceeds \$250. Existing law contains no qualifying amount. The proposed legislation would permit the court at an examination to determine the third person's adverse claim in appropriate cases. Under existing law, if the third person makes an adverse claim, the court is without power to proceed and the plaintiff is relegated to bringing an action against the third person.⁴³

⁴¹ See the discussion in the text at notes 141-145 *supra*.

⁴² See the discussion in the text at notes 425-447 *supra*.

⁴³ See Section 491.010(d).

Creditor's Suit

The proposed legislation provides a more detailed scheme governing an action by the plaintiff against a third person who has possession or control of property of the defendant or who is indebted to the defendant where the property or debt has been subjected to an attachment lien. Existing law permits the plaintiff to bring such an action at any time if the third person admits possession or liability or only when the defendant could bring such an action if the third person denies possession or liability.⁴⁴ The proposed law adopts the rules governing the time for bringing a creditor's suit in the proposed Enforcement of Judgments Law⁴⁵ under which the plaintiff may bring an action when the defendant may sue the third person concerning the property or debt or, if a lien is created on the property or debt within such time, the plaintiff may bring an action within one year following creation of the lien.

Review of Issuance of Attachment

The Attachment Law provides for review of the issuance of right to attach orders and writs of attachment that are issued *ex parte* or against nonresident defendants, but not where the right to attach order and writ are issued on noticed motion.⁴⁶ Code of Civil Procedure Sections 904.1 (e) and 904.2 (f), which provide for an appeal from an "order discharging or refusing to discharge an attachment," do not provide specifically for the taking of an appeal from issuance of an attachment on noticed motion.⁴⁷ The proposed legislation revises Sections 904.1 and 904.2 to permit an appeal from an order granting the issuance of a right to attach order and writ of attachment on noticed motion.

⁴⁴ See Section 488.550.

⁴⁵ See the discussion in the text at notes 460-464 *supra*.

⁴⁶ See Section 485.240 (application to set aside *ex parte* right to attach order).

⁴⁷ Until the decision in *Randone v. Appellate Dep't*, 5 Cal.3d 536, 488 P.2d 13, 96 Cal. Rptr. 709 (1971), held the attachment statute unconstitutional, a writ of attachment was issued by the court clerk without prior court approval. The defendant could seek the discharge of the writ of attachment and the release of any attached property on the grounds that the writ was improperly or irregularly issued by a motion under former Section 556—hence the wording of Sections 904.1 (e) and 904.2 (f) relating to an appeal from an order discharging or refusing to discharge an attachment.



OUTLINE OF ENFORCEMENT OF JUDGMENTS LAW

[Added to Part 2 of the Code of Civil Procedure]

TITLE 9. ENFORCEMENT OF JUDGMENTS

DIVISION 1. DEFINITIONS AND GENERAL PROVISIONS

CHAPTER 1. SHORT TITLE AND DEFINITIONS

- § 680.010. Short title
- § 680.110. Application of definitions
- § 680.120. Account debtor
- § 680.130. Account receivable
- § 680.140. Chattel paper
- § 680.150. Costs
- § 680.160. Court
- § 680.170. Deposit account
- § 680.180. Document of title
- § 680.190. Equity
- § 680.200. Financial institution
- § 680.210. General intangibles
- § 680.220. Instrument
- § 680.230. Judgment
- § 680.240. Judgment creditor
- § 680.250. Judgment debtor
- § 680.260. Levying officer
- § 680.270. Money judgment
- § 680.280. Person
- § 680.290. Personal property
- § 680.300. Principal amount of the judgment
- § 680.310. Property
- § 680.320. Real property
- § 680.330. Registered process server
- § 680.340. Secured party
- § 680.345. Security
- § 680.350. Security agreement
- § 680.360. Security interest
- § 680.365. Spousal support
- § 680.370. Tangible personal property
- § 680.380. Writ

CHAPTER 2. GENERAL PROVISIONS

- § 681.010. Provisions for enforcing judgments
- § 681.020. Enforcement by assignee
- § 681.030. Rules for practice and procedure; forms
- § 681.040. Effective time of filing with levying officer
- § 681.050. Severability

CHAPTER 3. PERIOD FOR ENFORCEMENT AND RENEWAL OF JUDGMENTS

Article 1. Period for Enforcement of Judgments

- § 683.010. Judgment enforceable upon entry
- § 683.020. Ten-year period for enforcement of judgment
- § 683.030. Time for enforcement of installment judgment
- § 683.040. Application for writ more than 10 years after entry of judgment
- § 683.050. Right of action on judgment preserved

Article 2. Renewal of Judgments

- § 683.110. Renewal of judgment authorized
- § 683.120. Judgment renewed upon filing of application; effect of renewal
- § 683.130. Time for filing application
- § 683.140. Contents of application
- § 683.150. Entry of renewal by court clerk
- § 683.160. Service of notice of renewal
- § 683.170. Vacation or modification of renewal
- § 683.180. Extending duration of judgment lien on real property
- § 683.190. Continuation of other liens
- § 683.200. Continuation of enforcement proceedings
- § 683.210. Renewal during stay of enforcement
- § 683.220. Limitation period for action on renewed judgment

Article 3. Application of Chapter

- § 683.310. Judgments enforceable under Family Law Act
- § 683.320. Judgments against public entities

CHAPTER 4. MANNER OF SERVICE OF WRITS, NOTICES, AND OTHER PAPERS

Article 1. Service on Attorney of Creditor or Debtor

- § 684.010. Service on attorney of judgment creditor
- § 684.020. Service on attorney designated by judgment debtor
- § 684.030. When service on party instead of attorney required
- § 684.040. Manner of service on attorney
- § 684.050. Effect of service on attorney

Article 2. Manner of Service Generally

- § 684.110. Manner of personal service
- § 684.120. Manner of service by mail; extension of prescribed period of notice and time for exercising right or performing act
- § 684.130. Name and address supplied by judgment creditor
- § 684.140. Service by person authorized by levying officer to make service

Article 3. Proof of Service

- § 684.210. Proof of service of notice of court hearing
- § 684.220. Proof of service, posting, or publication

Article 4. Application of Chapter

- § 684.310. Provisions not applicable to wage garnishment

CHAPTER 5. INTEREST AND COSTS

- § 685.010. Rate of interest on judgment
- § 685.020. Commencement of interest on judgment payable in installments

- § 685.030. Cessation of interest
- § 685.040. Right to costs of enforcing judgment
- § 685.050. Costs and interest under writ
- § 685.070. Memorandum of costs of enforcing judgment
- § 685.080. Motion for costs of enforcing judgment
- § 685.090. Addition of costs to judgment
- § 685.100. Deposit of levying officer's costs
- § 685.110. Law relating to prejudgment interest not affected

**CHAPTER 6. ENFORCEMENT AFTER DEATH OF
JUDGMENT CREDITOR OR JUDGMENT DEBTOR**

- § 686.010. Enforcement after death of judgment creditor
- § 686.020. Enforcement after death of judgment debtor

CHAPTER 7. LEVYING OFFICERS

- § 687.010. Instructions to levying officer
- § 687.020. Endorsement and collection of certain instruments by levying officer
- § 687.030. Manner of custody
- § 687.040. Liability of levying officer
- § 687.050. Levying officer's lien

CHAPTER 8. ENFORCEMENT OF STATE TAX LIABILITY

Article 1. Enforcement Pursuant to Warrant or Notice of Levy

- § 688.010. Jurisdiction of courts
- § 688.020. Remedies of state when warrant may be issued
- § 688.030. Exemptions and third-party claims
- § 688.040. Meaning of terms used elsewhere for purpose of this article
- § 688.050. Date of creation of tax lien

Article 2. Enforcement of Judgment for Taxes

- § 688.110. Enforcement of judgment for taxes

CHAPTER 19. FORMS

- § 693.010. Form of writ of execution, possession, and sale
- § 693.020. Form of notice of levy
- § 693.030. Form of garnishee's memorandum
- § 693.040. Notice of renewal of judgment
- § 693.050. Notice of hearing for order for sale of dwelling
- § 693.060. Notice of order for sale upon default

CHAPTER 20. TRANSITIONAL PROVISIONS

- § 694.010. Definitions
- § 694.020. General rule concerning application of title
- § 694.030. Period for enforcement of judgments
- § 694.040. Execution and return of writs and orders
- § 694.050. Redemption rights
- § 694.060. Creditor's suit
- § 694.070. Third-party proceedings

- § 694.080. Exemptions
- § 694.090. Effect of homestead declaration

DIVISION 2. ENFORCEMENT OF MONEY JUDGMENTS

CHAPTER 1. GENERAL PROVISIONS

Article 1. Property Subject to Enforcement of Money Judgment

- § 695.010. Property subject to enforcement of money judgment
- § 695.020. Community property
- § 695.030. Property not subject to enforcement of money judgment
- § 695.035. Real property leases subject to enforcement
- § 695.040. Release of property not subject to enforcement
- § 695.050. Enforcement against public entity
- § 695.060. License to engage in business
- § 695.070. Property subject to lien after transfer

Article 2. Amount to Satisfy Money Judgment

- § 695.210. Amount required to satisfy judgment
- § 695.220. Order of application of money received

CHAPTER 2. LIENS

Article 1. General Provisions

- § 697.010. Amount of lien generally
- § 697.020. Relation back of liens
- § 697.030. Duration of liens generally
- § 697.040. Effect of stay of enforcement of judgment
- § 697.050. Effect of extinction of lien
- § 697.060. Judgment liens under federal judgments

Article 2. Judgment Lien on Real Property

- § 697.310. Creation and duration of judgment lien on real property generally
- § 697.320. Judgment lien for installments under support judgment or judgment against health care provider
- § 697.330. Judgment lien for workers' compensation award
- § 697.340. Interests subject to judgment lien on real property
- § 697.350. Amount of judgment lien on real property
- § 697.360. Effect of modification of judgment
- § 697.370. Release or subordination of judgment lien
- § 697.380. Priority of judgment liens generally
- § 697.390. Effect of transfer or encumbrance of interest subject to judgment lien
- § 697.400. Recording of documents extinguishing or subordinating judgment lien on real property
- § 697.410. Release of erroneous judgment lien on real property

Article 3. Judgment Lien on Personal Property

- § 697.510. Creation and duration of judgment lien on personal property
- § 697.520. Use of other procedures
- § 697.530. Property subject to judgment lien
- § 697.540. Amount of judgment lien on personal property
- § 697.550. Notice of judgment lien on personal property; execution and contents
- § 697.560. Service of copy of notice of judgment lien on judgment debtor
- § 697.570. Filing, marking, and indexing of notice of judgment lien
- § 697.580. Certificate showing liens on file; copies of notices

- § 697.590. Priority of judgment lien against security interests
- § 697.600. Priority of judgment lien against other judgment liens
- § 697.610. Effect of transfer of property upon which judgment lien exists
- § 697.620. Lien on identifiable cash proceeds of transferred property
- § 697.640. Recording of documents extinguishing judgment lien on personal property
- § 697.650. Release or subordination of judgment lien on personal property
- § 697.660. Release of erroneous judgment lien on personal property
- § 697.670. Forms prescribed by Secretary of State

Article 4. Execution Lien

- § 697.710. Creation and duration of execution lien
- § 697.720. Lien on real property remains after transfer or encumbrance
- § 697.730. Effect on lien of transfer or encumbrance of tangible personal property in custody of levying officer
- § 697.740. Effect on lien of transfer or encumbrance of property not in custody of levying officer
- § 697.750. Effect on lien of transfer or encumbrance of growing crops, timber to be cut, or minerals to be extracted

Article 5. Other Liens Created by Enforcement Process

- § 697.910. Application of article
- § 697.920. Effect of lien

CHAPTER 3. EXECUTION

Article 1. General Provisions

- § 699.010. Application of chapter
- § 699.020. Payment by debtor of judgment debtor
- § 699.030. Levy on property in private place
- § 699.040. Turnover order in aid of execution
- § 699.060. Release of property from lien and custody
- § 699.070. Appointment of receiver, sale, or other action to preserve value of property
- § 699.080. Levy by registered process server
- § 699.090. Liability for levy based on record ownership

Article 2. Writ of Execution and Notice of Levy

- § 699.510. Issuance of writ of execution
- § 699.520. Contents of writ of execution
- § 699.530. Delivery and execution of writ; limitation on time for levy
- § 699.540. Contents of notice of levy
- § 699.550. Effect of failure to give notice of levy or to serve list of exemptions
- § 699.560. Return of writ of execution

Article 3. Property Subject to Execution

- § 699.710. Property subject to execution
- § 699.720. Property not subject to execution

Article 4. Methods of Levy

- § 700.010. Service of writ, notice of levy, and list of exemptions on judgment debtor
- § 700.015. Real property
- § 700.020. Growing crops, timber to be cut, minerals to be extracted
- § 700.030. Tangible personal property in possession of judgment debtor
- § 700.040. Tangible personal property in possession of third person
- § 700.050. Personal property in custody of levying officer
- § 700.060. Bailed goods not covered by negotiable document of title
- § 700.070. Tangible personal property of going business

- § 700.080. Personal property used as dwelling
- § 700.090. Vehicle, boat, mobilehome, or commercial coach for which certificate of ownership is issued
- § 700.100. Chattel paper
- § 700.110. Instruments
- § 700.120. Negotiable documents of title
- § 700.130. Securities
- § 700.140. Deposit accounts
- § 700.150. Safe deposit boxes
- § 700.160. Deposit accounts and safe deposit boxes not exclusively in name of judgment debtor
- § 700.170. Accounts receivable and general intangibles
- § 700.180. Levy on property that is subject of pending action or proceeding
- § 700.190. Final money judgment
- § 700.200. Interest in personal property of estate of decedent

Article 5. Duties and Liabilities of Third Persons After Levy

- § 701.010. Duty of garnishee
- § 701.020. Liability of third person for noncompliance with levy
- § 701.030. Garnishee's memorandum
- § 701.040. Rights and duties of secured party
- § 701.050. Duty of account debtor
- § 701.060. Duty of obligor under instrument

Article 6. Sale and Collection

- § 701.510. Sale of property levied upon
- § 701.520. Collection; sale of collectible property
- § 701.530. Notice of sale of personal property
- § 701.540. Notice of sale of real property
- § 701.545. Period that must elapse before giving notice of sale
- § 701.547. Notice to prospective bidders
- § 701.550. Notice of sale to persons requesting notice
- § 701.555. Judgment creditor and judgment debtor may advertise sale
- § 701.560. Effect of sale without giving required notice
- § 701.570. Place, time, and manner of sale
- § 701.580. Postponement of sale
- § 701.590. Manner of payment
- § 701.600. Defaulting bidder
- § 701.610. Persons ineligible to purchase
- § 701.620. Minimum bid
- § 701.630. Extinction of liens upon sale
- § 701.640. Interest acquired by purchaser
- § 701.650. Delivery of possession or of certificate of sale of personal property
- § 701.660. Deed of sale of real property
- § 701.670. Contents of certificate or deed of sale
- § 701.680. Sales absolute; liability

Article 7. Distribution of Proceeds of Sale or Collection

- § 701.810. Distribution of proceeds of sale or collection
- § 701.820. Time for distribution of proceeds
- § 701.830. Procedure where conflicting claims to proceeds

CHAPTER 4. EXEMPTIONS

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- § 703.010. Application of exemptions
- § 703.020. Persons entitled to exemptions

- § 703.030. Manner of claiming exemptions; effect of failure to claim
- § 703.040. Prior waiver of exemptions
- § 703.050. Exemptions in effect at time of lien govern
- § 703.060. Reserved power of state
- § 703.070. Application of exemptions where judgment is for child or spousal support
- § 703.080. Tracing exempt funds
- § 703.090. Costs in case of subsequent levy on exempt property
- § 703.100. Time for determination of exemptions
- § 703.110. Application of exemptions to marital property
- § 703.120. Continuing review of exemptions
- § 703.130. Exemptions in bankruptcy

Article 2. Procedure for Claiming Exemptions After Levy

- § 703.510. Application of article
- § 703.520. Claim of exemption
- § 703.530. Financial statement
- § 703.540. Notice of claim of exemption
- § 703.550. Opposition to exemption claim; release
- § 703.560. Contents of notice of opposition
- § 703.570. Notice of hearing on motion
- § 703.580. Hearing and order
- § 703.590. Extension of time
- § 703.600. Appeal
- § 703.610. Disposition of property during pendency of proceedings

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- § 704.010. Motor vehicles
- § 704.020. Household furnishings and personal effects
- § 704.030. Materials for repair or improvement of dwelling
- § 704.040. Jewelry, heirlooms, works of art
- § 704.050. Health aids
- § 704.060. Personal property used in trade, business, or profession
- § 704.070. Paid earnings
- § 704.080. Deposit account in which social security payments are directly deposited
- § 704.090. Inmate's trust account
- § 704.100. Life insurance, endowment, annuity policies
- § 704.110. Public retirement and related benefits and contributions
- § 704.113. Public employee vacation credits
- § 704.115. Private retirement and related benefits and contributions
- § 704.120. Unemployment benefits and contributions; strike benefits
- § 704.130. Disability and health benefits
- § 704.140. Damages for personal injury
- § 704.150. Damages for wrongful death
- § 704.160. Workers' compensation
- § 704.170. Aid provided to needy persons
- § 704.180. Relocation benefits
- § 704.190. Financial aid provided to student by educational institution
- § 704.200. Cemetery plot
- § 704.210. Property not subject to enforcement

Article 4. Homestead Exemption

- § 704.710. Definitions
- § 704.720. Homestead exemption
- § 704.730. Amount of homestead exemption
- § 704.740. Court order for sale; exemption claim where court order for sale not required
- § 704.750. Application for order for sale
- § 704.760. Contents of application

- § 704.770. Notice of hearing
- § 704.780. Hearing
- § 704.790. Procedure after order of sale upon default
- § 704.800. Minimum bid
- § 704.810. Acceleration clauses and prepayment penalties
- § 704.820. Procedure where judgment debtor is co-owner or owns less than a fee
- § 704.830. Extensions of time and appeals
- § 704.840. Costs
- § 704.850. Distribution of proceeds of sale of homestead

Article 5. Declared Homesteads

- § 704.910. Definitions
- § 704.920. Manner of selection of homestead
- § 704.930. Execution and contents of homestead declaration
- § 704.940. Right to convey or encumber not limited; evidentiary effect of homestead declaration
- § 704.950. Attachment of judgment lien to homestead
- § 704.960. Proceeds exemption after voluntary sale; reinvestment of proceeds of voluntary or involuntary sale and effect of new declaration
- § 704.970. Effect of article on rights after levy of execution
- § 704.980. Declaration of abandonment
- § 704.990. Abandonment of homestead by recording homestead declaration for different property

CHAPTER 5. WAGE GARNISHMENT

Article 1. Short Title; Definitions

- § 706.010. Short title
- § 706.011. Definitions

Article 2. General Provisions

- § 706.020. Withholding earnings; use of provisions of chapter
- § 706.021. Levy of execution; service of earnings withholding order
- § 706.022. Employer's duty to withhold; immunity from liability
- § 706.023. Priority of earnings withholding order
- § 706.025. Payments to levying officer by employer
- § 706.026. Receipt and account by levying officer; payments to entitled person
- § 706.027. Satisfaction of judgment prior to termination of order; notices
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- § 706.029. Lien created by service of earnings withholding order
- § 706.030. Withholding order for support
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Article 3. Restrictions on Earnings Withholding

- § 706.050. Amount of earnings exempt
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- § 706.071. Collection of state tax liability; limitations
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- § 706.073. Application of chapter to withholding order for taxes
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- § 706.102. Application for order by judgment creditor; issuance
- § 706.103. Service on employer; documents and instructions; limitations
- § 706.104. Duties of employer on service of order
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- § 708.210. Creditor's suit
- § 708.220. Joinder of judgment debtor
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- § 708.290. Costs

Article 4. Charging Orders

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- § 708.430. Intervention; judgment creditor deemed a party for certain purposes
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- § 708.770. Notice of deposit with court; exemption claim
- § 708.775. Distribution of money
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- § 712.020. Contents of writ
- § 712.030. Delivery and execution of writ
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CHAPTER 2. JUDGMENT FOR POSSESSION OF PERSONAL PROPERTY

- § 714.010. Writ of possession of personal property
- § 714.020. Execution of writ of possession of personal property
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CHAPTER 3. JUDGMENT FOR POSSESSION OF REAL PROPERTY

- § 715.010. Writ of possession of real property
- § 715.020. Execution of writ of possession of real property
- § 715.030. Disposition of personal property
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CHAPTER 4. JUDGMENT FOR SALE OF PROPERTY

- § 716.010. Writ of sale
- § 716.020. Execution of writ of sale
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DIVISION 4. THIRD-PARTY CLAIMS AND RELATED PROCEDURES**CHAPTER 1. DEFINITIONS**

- § 720.010. Application of definitions
- § 720.020. Creditor
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CHAPTER 2. THIRD-PARTY CLAIMS OF OWNERSHIP AND POSSESSION

- § 720.110. Application of chapter
- § 720.120. Time and manner of making third-party claim
- § 720.130. Contents of claim
- § 720.140. Service on creditor and debtor of notice and copy of claim
- § 720.150. Effect of filing or not filing third-party claim
- § 720.160. Effect, amount, and contents of creditor's undertaking
- § 720.170. Release for creditor's failure to file undertaking

CHAPTER 3. THIRD-PARTY CLAIM OF SECURITY INTEREST OR LIEN

- § 720.210. Application of chapter
- § 720.220. Time and manner of making third-party claim
- § 720.230. Contents of claim
- § 720.240. Service on creditor and debtor of notice and copy of claim
- § 720.250. Effect of filing or not filing third-party claim
- § 720.260. Effect of undertaking and statement or deposit; amount and contents of undertaking; notice by public entity in lieu of undertaking
- § 720.270. Release for creditor's failure to make deposit or file undertaking and statement or file notice
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- § 720.340. Filing and service of statement in opposition to claim of secured party
- § 720.350. Pleadings
- § 720.360. Burden of proof
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- § 720.380. Stay of sale or enjoining transfer during pendency of proceedings
- § 720.390. Determination of claim; disposition of property
- § 720.400. Findings
- § 720.410. No right to jury trial
- § 720.420. Appeal
- § 720.430. Satisfaction from released property

CHAPTER 5. CREDITOR'S DEMAND FOR THIRD-PARTY CLAIM BY SECURED PARTY OR LIENHOLDER

- § 720.510. Creditor's right to demand third-party claim
- § 720.520. Demand for claim; filing and service
- § 720.530. Contents of demand for claim

- § 720.540. Prohibition of release, sale, or other disposition
- § 720.550. Effect of failure to make third-party claim

CHAPTER 6. THIRD-PARTY UNDERTAKING TO RELEASE PROPERTY

- § 720.610. Application of chapter
- § 720.620. Filing of undertaking to release property
- § 720.630. Contents of undertaking
- § 720.640. Service of undertaking to release property
- § 720.650. Effective date of undertaking
- § 720.660. Release of property pursuant to undertaking

CHAPTER 7. UNDERTAKINGS

- § 720.710. Application of chapter
- § 720.720. Definitions
- § 720.730. Number of sureties
- § 720.740. Estimate of value of property
- § 720.750. Undertaking effective upon filing
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- § 720.770. Hearing on objection
- § 720.780. Acceptance of beneficiary's estimate of value
- § 720.790. Liability of surety
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DIVISION 5. SATISFACTION OF JUDGMENT

CHAPTER 1. SATISFACTION OF JUDGMENT

- § 724.010. Satisfaction of money judgment
- § 724.020. Entry of satisfaction of money judgment
- § 724.030. Judgment creditor to file acknowledgment of satisfaction of judgment
- § 724.040. Judgment creditor's duty where abstract of judgment recorded
- § 724.050. Demand for filing or delivery of acknowledgment of satisfaction of judgment
- § 724.060. Contents and manner of execution of acknowledgment of satisfaction of judgment
- § 724.070. Liability for requiring additional performance or payment
- § 724.080. Attorney's fees
- § 724.090. Other remedies preserved
- § 724.100. Certificate of satisfaction of judgment

CHAPTER 2. ACKNOWLEDGMENT OF PARTIAL SATISFACTION OF JUDGMENT

- § 724.110. Demand for delivery of acknowledgment of partial satisfaction of judgment
- § 724.120. Contents and manner of execution of acknowledgment of partial satisfaction of judgment

CHAPTER 3. ACKNOWLEDGMENT OF SATISFACTION OF MATURED INSTALLMENTS UNDER INSTALLMENT JUDGMENT

- § 724.210. Definitions
- § 724.220. Demand for delivery of acknowledgment of satisfaction of matured installments
- § 724.230. Proceeding to compel compliance with demand

§ 724.240. Damages and penalty for failure to comply with demand

§ 724.250. Contents and manner of execution of acknowledgment of satisfaction of matured installments

§ 724.260. Attorney's fees

TITLE 9. ENFORCEMENT OF JUDGMENTS

Note. The Enforcement of Judgments Law, added to the Code of Civil Procedure by Chapter 1364 of the Statutes of 1982, operative July 1, 1983, is set out below. The official Comment follows the text of the section. Unless otherwise indicated, the Comment is taken from the Law Revision Commission's *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980). The Comments designated as "Legislative Committee Comment—Assembly" are taken from the Assembly Judiciary Committee report noted in the Assembly Journal for January 18, 1982; the Comments designated as "Legislative Committee Comment—Senate" are taken from the Senate Journal for June 24, 1982.

DIVISION 1. DEFINITIONS AND GENERAL PROVISIONS

CHAPTER 1. SHORT TITLE AND DEFINITIONS

§ 680.010. Short title

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

Comment. Section 680.010 is new and provides a convenient means of referring to this title. See also Section 706.010 (Wage Garnishment Law).

§ 680.110. Application of definitions

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

Comment. Section 680.110 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.

§ 680.120. Account debtor

680.120. “Account debtor” means “account debtor” as defined in Section 9105 of the Commercial Code.

Comment. Section 680.120 is new.

Note. The term “account debtor” is used in Sections 700.100, 700.170, and 701.050.

§ 680.130. Account receivable

680.130. “Account receivable” means “account” as defined in Section 9106 of the Commercial Code.

Comment. Section 680.130 incorporates the Commercial Code definition of “account.” The term “account receivable” is used in this title because it is more descriptive than “account” and because it avoids confusion with the term “deposit account.” See Section 680.170 (“deposit account” defined).

Note. The term “account receivable” is used in Sections 697.530, 699.080, 700.170, 701.050, and 701.520.

§ 680.140. Chattel paper

680.140. “Chattel paper” means “chattel paper” as defined in Section 9105 of the Commercial Code.

Comment. Section 680.140 is new.

Note. The term “chattel paper” is used in Sections 680.370, 697.530, 697.610, 697.740, 700.100, 701.050, and 701.520.

§ 680.150. Costs

680.150. “Costs” means costs and disbursements, including but not limited to statutory fees, charges, commissions, and expenses.

Comment. Section 680.150 defines costs broadly to include all types of expenditures in the collection process. This permits use of the term “costs” throughout the title in place of such terms as fees, charges, commissions, expenses, and the like. Section 680.150 does not determine the extent to which an expenditure of a particular type is recoverable. See Sections 685.040-685.090. As used in this title, the term may in some cases be limited, such as in Section 685.100 (costs of levying officer). Attorney’s fees incurred in enforcing a judgment are not included in costs collectible under this title unless otherwise provided by law. See Section 685.040.

§ 680.160. Court

680.160. “Court” means the court where the judgment sought to be enforced was entered.

Comment. The definition of “court” in Section 680.160 may in some cases be inapplicable. See, *e.g.*, Section 708.160 (court of similar jurisdiction in another county). See also Section 680.110 (application of definitions).

§ 680.170. Deposit account

680.170. “Deposit account” means “deposit account” as defined in Section 9105 of the Commercial Code.

Comment. Section 680.170 is new.

Note. The term “deposit account” is used in Sections 684.110, 697.620, 699.080, 700.140, 700.160, 703.080, 704.070, and 704.080.

§ 680.180. Document of title

680.180. “Document of title” means “document” as defined in Section 9105 of the Commercial Code. A document of title is negotiable if it is negotiable within the meaning of Section 7104 of the Commercial Code.

Comment. Section 680.180 is new.

Note. The term “document of title” is used in Sections 680.370, 697.530, 697.610, 697.740, 700.040, 700.060, and 700.120.

§ 680.190. Equity

680.190. “Equity” means the fair market value of the interest of the judgment debtor in property, or in the case of community property the fair market value of the interest of the judgment debtor and the spouse of the judgment debtor in the property, over and above all liens and encumbrances on the interest superior to the judgment creditor’s lien.

Comment. Section 680.190 is intended to simplify drafting. It makes clear that the judgment creditor’s lien and junior liens are excluded in a determination of “equity” for purposes of applying certain exemptions. See, *e.g.*, Sections 703.560, 704.030, and 704.060. See also Section 704.010 (use of used price guides in determining value of motor vehicle).

§ 680.200. Financial institution

680.200. “Financial institution” means a state or national bank, state or federal savings and loan association or credit union, or like organization, and includes a corporation engaged in a safe deposit business.

Comment. Section 680.200 is new.

Note. The term “financial institution” is used in Sections 684.110, 687.020, 700.140, 700.150, 700.160, 704.070, and 704.080.

§ 680.210. General intangibles

680.210. “General intangibles” means “general intangibles”, as defined in Section 9106 of the Commercial Code, consisting of rights to payment.

Legislative Committee Comment—Assembly

Comment. Section 680.210 is new. The limitation of general intangibles to rights to payment is consistent with Civil Code Section 955.1.

Note. The term “general intangibles” is used in Sections 699.080, 700.170, 701.050, and 701.520.

§ 680.220. Instrument

680.220. “Instrument” means “instrument”, as defined in Section 9105 of the Commercial Code, but does not include a security.

Legislative Committee Comment—Assembly

Comment. Section 680.220 is new. In some cases, the term “instrument” may be used with a more limited meaning. See Section 687.020 (endorsement and collection by levying officer). See also Section 680.110 (application of definitions). Securities are excluded from this definition because they are treated separately in many cases under this title. See, *e.g.*, Sections 697.740, 700.130.

Note. The term “instrument” is used in Sections 680.370, 697.740, 700.110, 701.060, and 701.520.

§ 680.230. Judgment

680.230. “Judgment” means a judgment, order, or decree entered in a court of this state.

Comment. Section 680.230 is new and it continues the effect of former Section 1007 (order enforceable as judgment). For a discussion of the requirement that the judgment be entered “in

a court of this state,” see the Comment to Section 681.010. A judgment is not effectual for any purpose until entered. See Sections 664, 683.010.

§ 680.240. Judgment creditor

680.240. “Judgment creditor” means the person in whose favor a judgment is rendered or, if there is an assignee of record, means the assignee of record. Unless the context otherwise requires, the term also includes the guardian or conservator of the estate, personal representative, or other successor in interest of the judgment creditor or assignee of record.

Comment. “Judgment creditor,” as defined by Section 680.240, includes the person in whose favor the following types of judgments are rendered: money judgments, judgments for the possession of personal property, judgments for the possession of real property, and judgments for the sale of real or personal property. For special provisions on enforcement by an assignee or successor in interest, see Sections 681.020 (assignee), 686.010 (death of judgment creditor).

§ 680.250. Judgment debtor

680.250. “Judgment debtor” means the person against whom a judgment is rendered.

Comment. “Judgment debtor,” as defined by Section 680.250, includes persons against whom the following types of judgments are rendered: money judgments, judgments for the possession of personal property, judgments for the possession of real property, and judgments for the sale of real or personal property.

§ 680.260. Levying officer

680.260. “Levying officer” means the sheriff, marshal, or constable.

Legislative Committee Comment—Assembly

Comment. Section 680.260 is new. In certain situations, other persons are authorized to perform the duties of a levying officer. See, *e.g.*, Code Civ. Proc. §§ 262.8-262.10 (elisor to perform certain duties when sheriff and coroner are parties to action), 699.080 (levy under writ of execution by registered process server), 715.040 (service of writ of possession of real property by registered process server); Gov’t Code § 27469 (coroner to discharge duties of sheriff where sheriff is party to action or

proceeding). See also Section 706.101 (service of earnings withholding order by registered process server).

§ 680.270. Money judgment

680.270. “Money judgment” means that part of a judgment that requires the payment of money.

Legislative Committee Comment—Senate

Comment. Section 680.270 is drawn from Section 1710.10 (“sister state judgment” defined). See also Section 577.5 (amount of judgment shall be computed and stated in dollars and cents); 65 Harv. L. Rev. 887 (1952) (obligation payable in foreign currency is converted into dollars by judgment in court in United States).

As used in this title, “money judgment” includes judgments and orders for child or spousal support that are payable in installments. See also Sections 680.230 (judgment includes order), 680.365 (spousal support includes support for a former spouse).

§ 680.280. Person

680.280. “Person” includes a natural person, a corporation, a partnership or other unincorporated association, and a public entity.

Comment. Section 680.280 is new. See also Section 708.710 (“public entity” defined for purposes of collection of money judgment where judgment debtor is creditor of public entity).

§ 680.290. Personal property

680.290. “Personal property” includes both tangible and intangible personal property.

Comment. Section 680.290 is new.

§ 680.300. Principal amount of the judgment

680.300. “Principal amount of the judgment” means the total amount of the judgment as entered or as last renewed, together with the costs thereafter added to the judgment pursuant to Section 685.090, reduced by any partial satisfactions of such amount and costs and by any amounts no longer enforceable.

Comment. Section 680.300 is a new provision that recognizes that costs are a part of the principal amount of the judgment (Section 685.090) when the defined phrase is used in this title.

§ 680.310. Property

680.310. “Property” includes real and personal property and any interest therein.

Comment. Section 680.310 is new.

§ 680.320. Real property

680.320. “Real property” includes any right in real property, including but not limited to a leasehold interest in real property.

Legislative Committee Comment—Senate

Comment. Section 680.320 is new. Under prior law, a leasehold interest in real property was treated as personal property in some instances. See the Comment to Section 700.015. Under this title, a leasehold interest is treated as real property. See, e.g., Section 700.015 and the Comment thereto (method of levy on real property). For some purposes, however, leases having unexpired terms of less than two years are treated differently from other leases. See, e.g., Sections 701.545 (notice of sale of real property), 704.740 (homestead exemption), 704.910 (“dwelling” defined for purposes of declared homestead).

§ 680.330. Registered process server

680.330. “Registered process server” means a person registered as a process server pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code.

Comment. Section 680.330 is drawn from subdivision (b) of former Section 687 and from subdivision (e) of former Section 723.101.

Note. The term “registered process server” is used in Sections 684.140, 699.080, 699.510, 706.101, and 708.170.

§ 680.340. Secured party

680.340. “Secured party” means “secured party” as defined in Section 9105 of the Commercial Code.

Comment. Section 680.340 is new.

§ 680.345. Security

680.345. “Security” means a “security” as defined in Section 8102 of the Commercial Code.

Legislative Committee Comment—Assembly

Comment. Section 680.345 is new.

§ 680.350. Security agreement

680.350. “Security agreement” means “security agreement” as defined in Section 9105 of the Commercial Code.

Comment. Section 680.350 is new.

Note. The term “security agreement” is used in Sections 700.100, 700.170, and 720.230.

§ 680.360. Security interest

680.360. “Security interest” means “security interest” as defined in Section 1201 of the Commercial Code.

Comment. Section 680.360 is new.

Note. The term “security interest” is used in Sections 697.530, 697.590, 697.610, 697.620, 697.740, 700.060, 720.210, 720.230, 720.250, 720.280, 720.360, 720.530, 720.550, and 720.610.

§ 680.365. Spousal support

680.365. “Spousal support” includes support for a former spouse.

Legislative Committee Comment—Senate

Comment. Section 680.365 makes clear that a reference to spousal support includes not only the obligation owed to the judgment debtor’s spouse but also the obligation owed to a former spouse of the judgment debtor in the case where an obligation exists to support a former spouse.

§ 680.370. Tangible personal property

680.370. “Tangible personal property” includes chattel paper, documents of title, instruments, securities, and money.

Legislative Committee Comment—Assembly

Comment. Section 680.370 is a new provision that makes clear that tangible personal property includes chattel paper, documents of title, instruments, securities, and money.

§ 680.380. Writ

680.380. “Writ” includes a writ of execution, a writ of possession of personal property, a writ of possession of real property, and a writ of sale.

Comment. Section 680.380 defines “writ” for the purpose of general provisions pertaining to all writs issuable under this title. See also Section 680.110 (application of definitions).

CHAPTER 2. GENERAL PROVISIONS

§ 681.010. Provisions for enforcing judgments

681.010. Except as otherwise provided by statute:

(a) A money judgment is enforceable as provided in Division 2 (commencing with Section 695.010).

(b) A judgment for possession of personal property is enforceable as provided in Chapter 2 (commencing with Section 714.010) of Division 3.

(c) A judgment for possession of real property is enforceable as provided in Chapter 3 (commencing with Section 715.010) of Division 3.

(d) A judgment for sale of real or personal property is enforceable as provided in Chapter 4 (commencing with Section 716.010) of Division 3.

(e) A judgment requiring performance of an act not described in subdivisions (a) to (d), inclusive, or requiring forbearance from performing an act, is enforceable as provided in Chapter 5 (commencing with Section 717.010) of Division 3.

Comment. Section 681.010 supersedes former Section 684. It refers to the provisions of this title that provide the means available for the enforcement of a judgment entered in this state. The introductory clause recognizes that this title does not provide the exclusive means for enforcing all judgments entered in this state. See, *e.g.*, Civil Code §§ 4380 (enforcement of judgment, order, or decree under Family Law Act), 4701 (payment of child support enforceable by order for wage assignment), 4801.6 (payment of spousal support enforceable by order for wage assignment). See also Section 117.7 (enforcement of small claims court judgment); Section 695.050 and Gov’t Code §§ 942, 965.6, 965.7, 965.8, 965.9, 970.1, 970.2 (enforcement of money judgments against public entities).

A money judgment entered in another state is not enforceable pursuant to this title until a California judgment has been entered based on the sister state money judgment. See Sections 1710.10(c) (“sister state judgment” defined), 1710.25 (entry of California judgment), 1710.35 (enforcement), 1710.60 (action on judgment). A support order issued in another state is enforceable

in the same manner as a support order rendered in this state after it has been registered in California. See Sections 1698 (registration of foreign support order), 1699 (enforcement). A federal district court judgment entered or registered in this state is enforceable in the manner provided by federal law which to some extent incorporates state enforcement procedures. See Fed. R. Civ. P. 69(a) (enforcement of district court money judgment); 28 U.S.C. § 1963 (1976) (registration of judgment of one district court in another district). A money judgment of a court of a foreign nation is enforceable pursuant to Section 1713.3.

§ 681.020. Enforcement by assignee

681.020. An assignee of a judgment is not entitled to enforce the judgment under this title unless an acknowledgment of assignment of judgment to that assignee has been filed under Section 673 or the assignee has otherwise become an assignee of record.

Comment. Section 681.020 is a new provision that codifies a requirement of former practice. The Commission has been advised that as a matter of practice under the former law an assignee of a judgment was not permitted to obtain a writ of execution unless the assignment was made a matter of record.

§ 681.030. Rules for practice and procedure; forms

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

(b) The Judicial Council may prescribe the form of the applications, notices, orders, writs, and other papers under this title. A form prescribed by the Judicial Council under this section is deemed to comply with this title and supersedes any corresponding form provided in this title. The Judicial Council may prescribe forms in languages other than English.

(c) The Judicial Council shall prepare a form containing both of the following:

(1) A list of each of the federal and this state's exemptions from enforcement of a money judgment against a natural person.

(2) A citation to the relevant statute of the United States or this state which creates each of the exemptions.

Comment. Section 681.030 authorizes the Judicial Council to provide for practice and procedure under this title and to adopt and revise forms authorized or required by this title. The forms adopted are deemed to comply with this title and may contain additional information not specified in this title and may omit information otherwise required by a relevant provision of this title. The Judicial Council may adopt forms that supersede those provided in Chapter 19 (commencing with Section 693.010). The first sentence of subdivision (b) is comparable to Section 706.120 (wage garnishment). The last two sentences of subdivision (b) are drawn from comparable provisions contained in former Section 723.120 (wage garnishment). See also Section 697.670 (certain forms prepared by Secretary of State), 706.081 (forms relating to withholding for taxes under Wage Garnishment Law), 706.100 (rules for practice and procedure under Wage Garnishment Law).

§ 681.040. Effective time of filing with levying officer

681.040. If a paper is required or permitted to be filed with a levying officer under this title, the paper is considered filed when it is actually received by the levying officer.

Legislative Committee Comment—Assembly

Comment. Section 681.040 is a new section that prescribes the effective time of filing with the levying officer under this title. If a paper is required to be filed within a particular time period, the requirement of this section must be satisfied and there is no extension of time if the paper is mailed to the levying officer.

§ 681.050. Severability

681.050. If any provision or clause of this title or application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

Legislative Committee Comment—Assembly

Comment. Section 681.050 is the same in substance as Section 3 of the Evidence Code, Section 1108 of the Commercial Code, and Section 11 of the Probate Code.

CHAPTER 3. PERIOD FOR ENFORCEMENT AND RENEWAL OF JUDGMENTS

Article 1. Period for Enforcement of Judgments

§ 683.010. Judgment enforceable upon entry

683.010. Except as otherwise provided by statute or in the judgment, a judgment is enforceable under this title upon entry.

Comment. Section 683.010 continues the substance of a portion of former Section 681. Nothing in Section 683.010 limits the authority of the court to stay enforcement of a judgment under any other applicable statutory provisions, such as Sections 916-923. See also Sections 117.7 (automatic stay of small claims court judgment), 1174(c) (delay of enforcement of certain unlawful detainer judgments). Section 683.010 does not apply to judgments under the Family Law Act (Section 683.310) or to a money judgment against a public entity (Section 683.320).

§ 683.020. Ten-year period for enforcement of judgment

683.020. Except as otherwise provided by statute, upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property:

- (a) The judgment may not be enforced.
- (b) All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease.
- (c) Any lien created by an enforcement procedure pursuant to the judgment is extinguished.

Comment. Section 683.020 supersedes the first sentence of former Section 681 (which provided a 10-year enforcement period). Unless the judgment is renewed by action (see Section 683.050) or pursuant to Article 2 (commencing with Section 683.110), a judgment is enforceable only for 10 years; at the end of this period, enforcement of the judgment is barred and any liens created by the enforcement process are extinguished. No further action, including levy, sale, collection, or delivery pursuant to the judgment, or pursuant to a writ or order issued to enforce the judgment, may take place. The rule announced in *Alonso Inv. Corp. v. Doff*, 17 Cal.3d 539, 541-43, 551 P.2d 1243, 131 Cal. Rptr. 411 (1976), permitting the enforcement of a writ of

execution after the expiration of the 10-year period if the writ had been timely issued, is not continued, subject to an exception where the judgment is renewed. See Section 683.200 (continuation of enforcement procedures upon renewal).

Section 683.020 applies only to money judgments and judgments for the possession or sale of property. Accordingly, other judgments—such as those governed by Section 717.010—are not subject to the 10-year rule of Section 683.020. Section 683.030 provides a special rule applicable to money judgments payable in installments. See also Sections 683.310 (judgments under Family Law Act excluded from this chapter), 683.320 (money judgment against public entity excluded from this chapter). As to judgments entered prior to the operative date of this section, see Section 694.030.

Unlike former Section 681, the 10-year period provided by Section 683.020 is not extended because enforcement of the judgment has been stayed or enjoined by court order or by operation of law. Nor is the 10-year period tolled for any reason. The statement in *Nutt v. Nutt*, 247 Cal. App.2d 166, 168, 55 Cal. Rptr. 380 (1966)—that the absence from the state of the judgment debtor and the debtor's property tolls the running of the time to seek a writ of execution under former Section 681—does not apply to this chapter. However, a judgment may be used as an offset after the expiration of the 10-year period if the claim of the judgment debtor (against which the judgment is offset) existed during the 10-year period during which the judgment was enforceable. See Section 431.70 and the Comment thereto. The judgment creditor may also be able to bring an action on the judgment after the 10-year enforcement period of this section has expired if the statute of limitations provided by Section 337.5 has not yet run. See Section 683.050 and the Comment thereto.

§ 683.030. Time for enforcement of installment judgment

683.030. If a money judgment is payable in installments, the 10-year period of enforceability prescribed by Section 683.020 runs as to each installment from the date the installment becomes due and runs as to costs from the date the costs are added to the judgment pursuant to Section 685.090.

Comment. Section 683.030 codifies case law concerning the time within which installment judgments may be enforced. *Cf. Wolfe v. Wolfe*, 30 Cal.2d 1, 4, 180 P.2d 345 (1947) (installment

judgment for support). For provisions authorizing installment judgments, see Civil Code § 3347 (installment payment of damages caused by slayer in a duel); Code Civ. Proc. §§ 85 (installment payment of municipal or justice court money judgment), 117 (time of payment of small claims court money judgment), 667.7 (periodic payment of certain future damages); Labor Code §§ 5801, 5806 (installment payment of workers' compensation award); Penal Code § 1205 (installment payment of fine); Veh. Code § 16380 (installment payment of vehicle accident damage judgment). Some installment judgments are not governed by this chapter. See Sections 683.310 (spousal or child support), 683.320 (money judgment against public entity). As to judgments entered prior to the operative date of this section, see Section 694.030.

§ 683.040. Application for writ more than 10 years after entry of judgment

683.040. If the judgment creditor applies for a writ for the enforcement of a judgment and the application is made more than 10 years after the date the judgment was entered or renewed, the application shall be accompanied by an affidavit of a person having knowledge of the facts stating facts showing that the issuance of the writ sought in the application is not barred under this chapter. A copy of the affidavit shall be attached to the writ when issued.

Comment. Section 683.040 establishes a new requirement designed to provide information to the court clerk and levying officer when a writ of execution, possession, or sale is sought more than 10 years after the judgment was entered or renewed. Where the judgment is a money judgment payable in installments, the affidavit will be sufficient if it states that the 10-year limitation period (Section 683.030) has not run as to the installment or installments covered by the application for the writ. Section 683.040 does not apply to a judgment for child or spousal support; Civil Code Section 4380 requires the creditor to obtain a court order to enforce support obligations that are more than 10 years overdue. See Section 683.310. See also Civil Code Section 4383. As to the period of enforcement of a money judgment against a public entity, see Section 683.320 and Gov't Code §§ 965.5, 970.1.

§ 683.050. Right of action on judgment preserved

683.050. Nothing in this chapter limits any right the judgment creditor may have to bring an action on a judgment, but any such action shall be commenced within the period prescribed by Section 337.5.

Comment. Section 683.050 makes clear that the 10-year period of enforcement prescribed by Section 683.020 and the renewal procedure provided by Article 2 (commencing with Section 683.110) do not affect the right to bring an action on a judgment. The limitation period for commencing the action is prescribed by Section 337.5. The 10-year period provided by Section 683.020 and the 10-year statute of limitations provided by Section 337.5 are not coterminous. The period prescribed in Section 683.020 commences on the date of entry and is not tolled for any reason. The statute of limitations commences to run when the judgment is final (see *Turner v. Donovan*, 52 Cal. App.2d 236, 126 P.2d 187 (1942)) and may be tolled such as by the debtor's absence from the state (see Section 351). See also Section 683.220 (action on renewed judgment).

Article 2. Renewal of Judgments**§ 683.110. Renewal of judgment authorized**

683.110. (a) The period of enforceability of a money judgment or a judgment for possession or sale of property may be extended by renewal of the judgment as provided in this article.

(b) A judgment shall not be renewed under this article if the application for renewal is filed within five years from the time the judgment was previously renewed under this article.

Comment. Sections 683.110-683.220 provide a new procedure for renewing judgments. This procedure is drawn from the procedure for enforcing sister state money judgments (Sections 1710.10-1710.65). Renewal under this article permits enforcement of a judgment beyond the 10-year period prescribed by Section 683.020. This procedure supersedes the procedure under former Section 685 pursuant to which a judgment could be enforced upon noticed motion after the expiration of 10 years in the discretion of the court upon a showing of the reasons for failure to enforce the judgment during

the first 10 years. This article does not require the judgment creditor to demonstrate diligence in enforcing the judgment, but if renewal is not accomplished within 10 years after entry of the judgment, the judgment becomes unenforceable. See Sections 683.020, 683.130(a). See also Section 683.050 (right of action on judgment preserved). This article does not apply to a judgment under the Family Law Act (Section 683.310) or to a money judgment against a public entity (Section 683.320).

By preventing the renewal of a judgment more often than once every five years, subdivision (b) of Section 683.110 prevents the judgment creditor from renewing a judgment more frequently merely to compound the interest on the judgment. Renewal has the effect of compounding the interest on the judgment, since interest accrues on the total amount of the judgment as renewed (Sections 680.300, 685.010(a), 695.210) and the judgment as renewed includes accrued interest on the date of filing the application for renewal (Sections 683.150(b), 685.010(a), 695.210).

§ 683.120. Judgment renewed upon filing of application; effect of renewal

683.120. (a) The judgment creditor may renew a judgment by filing an application for renewal of the judgment with the court in which the judgment was entered.

(b) Except as otherwise provided in this article, the filing of the application renews the judgment in the amount determined under Section 683.150 and extends the period of enforceability of the judgment as renewed for a period of 10 years from the date the application is filed.

(c) In the case of a money judgment payable in installments, for the purposes of enforcement and of any later renewal, the amount of the judgment as renewed shall be treated as a lump-sum money judgment entered on the date the application is filed.

Comment. Under Section 683.120 the enforceability of the judgment is extended until 10 years from the date the application for renewal is filed. Renewal under this article does not result in entry of a new judgment as would be the case where an action is brought on a California or sister state judgment or where a California judgment is entered on the basis of a sister state

judgment. See Sections 683.050 (right of action on judgment preserved), 1710.25, 1710.35 (entry of California judgment on basis of sister state judgment).

Subdivision (c) makes clear that the application for renewal of an installment judgment reduces past due amounts of principal (including allowed costs) and interest (see Section 683.150) to a lump sum enforceable for an additional 10 years. Only those past due amounts that are not barred by the 10-year period of enforceability may be renewed. See Sections 683.030, 683.130(b), 683.150(c), (d). Future installments continue to accrue under the judgment as originally entered or as modified according to its terms.

This renewal procedure does not apply to the enforcement of judgments for support. See Section 683.310. See also Civil Code §§ 4380, 4384.

§ 683.130. Time for filing application

683.130. (a) In the case of a lump-sum money judgment or a judgment for possession or sale of property, the application for renewal of the judgment may be filed at any time before the expiration of the 10-year period of enforceability provided by Section 683.020 or, if the judgment is a renewed judgment, at any time before the expiration of the 10-year period of enforceability of the renewed judgment provided by Section 683.120.

(b) In the case of a money judgment payable in installments, the application for renewal of the judgment may be filed:

(1) If the judgment has not previously been renewed, at any time as to past due amounts that at the time of filing are not barred by the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

(2) If the judgment has previously been renewed, within the time specified by subdivision (a) as to the amount of the judgment as previously renewed and, as to any past due amounts that became due and payable after the previous renewal, at any time before the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

Comment. Subdivision (a) of Section 683.130 prescribes the general rule that renewal may be accomplished at any time when the judgment is still enforceable. See also Section 683.210 (renewal permitted during stay of enforcement). Renewal may take place during the initial 10-year period of enforcement (see Section 683.020) or during any subsequent renewal period (see subdivision (b) of Section 683.120). There is no limit on the number of renewals.

Subdivision (b) states a special application of the general rule to installment judgments. Renewal as to any installment must take place within 10 years after the installment becomes due. See Section 683.030 (time for enforcement of installment judgment). Subdivision (b) governs the type of installment judgments listed in the Comment to Section 683.030. When an installment judgment is renewed as to past due amounts, the renewed judgment is a lump-sum judgment (see subdivision (c) of Section 683.120) which thereafter is governed by subdivision (a) of Section 683.130 as to the amount of the renewed judgment. See also Section 683.150. Costs are included in the principal amount of the renewed judgment only if added to the judgment within the 10-year period. See Section 683.030.

This section does not apply to the enforcement of judgments for support. See Section 683.310. See also Civil Code §§ 4380, 4384. As to the renewal of judgments entered prior to the operative date of this section, see Section 694.030.

§ 683.140. Contents of application

683.140. The application for renewal of the judgment shall be executed under oath and shall include all of the following:

(a) The title of the court where the judgment is entered and the cause and number of the action.

(b) The date of entry of the judgment and of any renewals of the judgment and where entered in the records of the court.

(c) The name and address of the judgment creditor and the name and last known address of the judgment debtor.

(d) In the case of a money judgment, the information necessary to compute the amount of the judgment as renewed. In the case of a judgment for possession or sale of property, a description of the performance remaining due.

Comment. Section 683.140 sets forth the contents of the application for renewal of a judgment. It is drawn in part from Section 1710.15 (application for entry of judgment based on sister state judgment). As to the amount of the judgment as renewed, see Section 683.150.

§ 683.150. Entry of renewal by court clerk

683.150. (a) Upon the filing of the application, the court clerk shall enter the renewal of the judgment in the court records.

(b) In the case of a money judgment, the entry of renewal shall show the amount of the judgment as renewed. Except as provided in subdivisions (c) and (d), this amount is the amount required to satisfy the judgment on the date of the filing of the application for renewal and includes the fee for the filing of the application for renewal.

(c) In the case of a money judgment payable in installments not previously renewed, the amount of the judgment as renewed is the total of the past due installments, the costs added to the judgment pursuant to Section 685.090, and the accrued interest, which remains unsatisfied and is enforceable on the date of the filing of the application for renewal and includes the fee for the filing of the application for renewal.

(d) In the case of a money judgment payable in installments previously renewed, the amount of the judgment as renewed under the latest renewal is the total of the following which remains unsatisfied and is enforceable on the date of the filing of the application for the latest renewal:

(1) The amount of the judgment as renewed under the previous renewal.

(2) The past due installments that became due and payable after the previous renewal.

(3) The costs that have been added to the judgment pursuant to Section 685.090 after the previous renewal.

(4) The interest that has accrued on the amounts described in paragraphs (1), (2), and (3) since the last renewal.

(5) The fee for filing the application for renewal.

(e) In the case of a judgment for possession or sale of property, the entry of renewal shall describe the performance remaining due.

Comment. Section 683.150 requires that the court clerk enter the renewal of the judgment based on the application. The entry of the renewal by the court clerk is a ministerial act. In the case of a money judgment payable in installments, past due installments and costs that are not enforceable on the date of filing the application for renewal may not be renewed. See Section 683.030 (period of enforceability).

§ 683.160. Service of notice of renewal

683.160. (a) The judgment creditor shall serve a notice of renewal of the judgment on the judgment debtor. Service shall be made personally and proof of service shall be filed with the court clerk. The notice shall be in a form prescribed by Section 693.040 and shall inform the judgment debtor that the judgment debtor has 30 days within which to make a motion to vacate or modify the renewal.

(b) Until proof of service is filed pursuant to subdivision (a), no writ may be issued, nor may any enforcement proceedings be commenced to enforce the judgment, except to the extent that the judgment would be enforceable had it not been renewed.

Comment. Subdivision (a) of Section 683.160 is derived from subdivision (a) of Section 1710.30 and a portion of subdivision (b) of Section 1710.40 pertaining to sister state judgments. Under Section 683.150, the entry and filing of the renewal is a ministerial act. The judgment debtor is protected, however, by the provisions for notice under Section 683.160 and the opportunity to seek an order vacating or modifying the renewal pursuant to Section 683.170.

Subdivision (b) is designed to prevent enforcement after the 10-year period in a case where the judgment creditor has failed to serve notice of renewal on the judgment debtor. See also Section 683.040 (application for writ after 10 years). The notice of renewal may be served after the 10-year period has expired if the application for renewal is timely filed, and the judgment is enforceable after proof of service of the notice of renewal is filed unless the renewal is vacated.

§ 683.170. Vacation or modification of renewal

683.170. (a) The renewal of a judgment pursuant to this article may be vacated on any ground that would be a defense to an action on the judgment, including the ground that the amount of the renewed judgment as entered pursuant to this article is incorrect, and shall be vacated if the application for renewal was filed within five years from the time the judgment was previously renewed under this article.

(b) Not later than 30 days after service of the notice of renewal pursuant to Section 683.160, the judgment debtor may apply by noticed motion under this section for an order of the court vacating the renewal of the judgment. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail.

(c) Upon the hearing of the motion, the renewal may be ordered vacated upon any ground provided in subdivision (a), and another and different renewal may be entered, including, but not limited to, the renewal of the judgment in a different amount if the decision of the court is that the judgment creditor is entitled to renewal in a different amount.

Comment. Section 683.170 is derived from Section 1710.40 pertaining to sister state judgments. If it is determined at the hearing that the amount of the judgment as renewed (Section 683.150) is not correct, the court may order renewal in the correct amount pursuant to subdivision (c). On the other hand, if the court determines that the judgment has been fully satisfied or offset, the renewal should be vacated. If a motion to vacate is not made within the time stated in subdivision (b), the judgment remains enforceable in the amount stated in the entry of renewal. See Section 683.150. But nothing in this section affects or limits any remedies otherwise available to the judgment debtor after the time for making a motion to vacate has expired.

§ 683.180. Extending duration of judgment lien on real property

683.180. (a) If a judgment lien on an interest in real property has been created pursuant to a money judgment and the judgment is renewed pursuant to this

article, the duration of the judgment lien is extended until 10 years from the date of the filing of the application for renewal if, before the expiration of the judgment lien, a certified copy of the application for renewal is recorded with the county recorder of the county where the real property subject to the judgment lien is located.

(b) A judgment lien on an interest in real property that has been transferred subject to the lien is not extended pursuant to subdivision (a) if the transfer was recorded before the application for renewal was filed unless both of the following requirements are satisfied:

(1) A copy of the application for renewal is personally served on the transferee.

(2) Proof of such service is filed with the court clerk within 30 days after the filing of the application for renewal.

Comment. Section 683.180 provides a special procedure for extending the duration of a judgment lien on an interest in real property. See generally Article 2 (commencing with Section 697.310) of Chapter 2 of Division 2 (judgment liens on interests in real property). As to renewal of a judgment lien on real property under a judgment for support or against a health care provider, see Section 697.320. Section 683.180 does not apply to judgment liens under judgments for support. See Section 683.310. See also Civil Code §§ 4380, 4384.

Extension of the judgment lien for an additional 10 years under this section is analogous to the result obtained where a judgment in an action on a money judgment is recorded while a judgment lien under the original judgment is still in effect. See *Provisor v. Nelson*, 234 Cal. App.2d Supp. 876, 44 Cal. Rptr. 894 (1965). The priority of the judgment lien on an interest in real property remains the same, but the extension adds 10 years to the life of the lien dating from the time the application for renewal is filed. See also Section 697.030 (duration of liens). The judgment lien is extended only if the certified copy of the application for renewal is recorded while the judgment lien is still in effect. If the judgment lien is not so extended, the judgment creditor may record an abstract of the renewed judgment to obtain a new judgment lien dating from the recording of such abstract. As provided in subdivision (b), if the interest in real property has been transferred subject to the lien and the transfer has been recorded, an extension pursuant to this section extends the lien

on the property in the hands of the transferee only if the transferee is served notice of the renewal and proof of service is filed within the prescribed time.

§ 683.190. Continuation of other liens

683.190. If a lien (other than a judgment lien on an interest in real property or an execution lien) has been created by an enforcement procedure pursuant to a judgment and the judgment is renewed pursuant to this article, the duration of the lien is extended, subject to any other limitations on its duration under this title, until 10 years from the date of the filing of the application for renewal of the judgment if, before the expiration of the lien, a certified copy of the application for renewal is served on or filed with the same person and in the same manner as the notice or order that created the lien.

Comment. Section 683.190 permits the continuation of liens, except for judgment liens on interests in real property and execution liens, both of which are governed by other provisions. Under Section 683.190, however, a lien of limited duration, such as a judgment lien on personal property (five years), is not increased in duration but is permitted to continue past the 10-year period specified in Section 683.020. See Section 697.510 (duration of judgment lien on personal property). A judgment lien on real property is continued by recording a certified copy of the application for renewal as provided in Section 683.180. An execution lien is continued by filing with the levying officer under Section 683.200. However, other liens governed by the general rule that the lien exists as long as the judgment is enforceable (see Section 697.030) are increased in duration pursuant to Section 683.190.

§ 683.200. Continuation of enforcement proceedings

683.200. If a judgment is renewed pursuant to this article, any enforcement proceeding previously commenced pursuant to the judgment or to a writ or order issued pursuant to the judgment that would have ceased pursuant to Section 683.020 had the judgment not been renewed may be continued, subject to any other limitations provided in this title, if, before the expiration of the prior 10-year period of enforceability, a certified

copy of the application for renewal of the judgment is filed with the levying officer, receiver, or other officer acting pursuant to such writ or order or, in other cases, is filed in the enforcement proceeding.

Comment. Section 683.200 permits the continuation of enforcement proceedings under this title that would otherwise have ceased because of the expiration of the period of enforceability. See Section 683.020. For example, a sale of real property pursuant to a writ of execution may proceed after the expiration of 10 years from the date of entry of the judgment if the judgment is renewed within the time allowed and a certified copy of the application for renewal is filed with the levying officer in charge of the sale before the expiration of the 10-year period. Likewise, an examination proceeding may continue if the certified copy of the application for renewal is filed with the court that is to conduct the examination.

§ 683.210. Renewal during stay of enforcement

683.210. A judgment may be renewed notwithstanding any stay of enforcement of the judgment, but the renewal of the judgment does not affect the stay of enforcement.

Comment. Section 683.210 permits the judgment creditor to obtain an extension of the enforceability of a judgment even though a stay of enforcement is in effect. Renewal may be necessary if a judgment is temporarily stayed during the time that the 10-year enforcement period prescribed by Section 683.020 is running out. Renewal during a stay of enforcement does not affect the stay, but merely prevents the termination of the period of enforceability.

§ 683.220. Limitation period for action on renewed judgment

683.220. If a judgment is renewed pursuant to this article, the date of the filing of the application for renewal shall be deemed to be the date that the period for commencing an action on the renewed judgment commences to run under Section 337.5.

Comment. Section 683.220 gives the judgment creditor a right to bring an action on a renewed judgment comparable to that which would have existed had the judgment creditor earlier resorted to an action on the judgment instead of the renewal

procedure provided by this article. See Section 683.050 (right of action on judgment preserved).

Article 3. Application of Chapter

§ 683.310. Judgments enforceable under Family Law Act

683.310. This chapter does not apply to judgments made, entered, or enforceable pursuant to the Family Law Act, Part 5 (commencing with Section 4000) of Division 4 of the Civil Code.

Legislative Committee Comment—Senate

Comment. Section 683.310 excludes judgments enforceable under the Family Law Act from the coverage of this chapter. See Civil Code §§ 4383 (enforcement for amounts not more than 10 years overdue), 4384 (enforcement after 10 years), 4385 (judgments enforceable under Family Law Act). Foreign support orders registered pursuant to the Revised Uniform Reciprocal Enforcement of Support Act (Sections 1650–1699) are also excluded from this chapter. See Section 1699 (registered foreign support order treated as domestic support order) and Civil Code Section 4385. See also Section 697.320 (judgment lien on real property under installment judgment for support).

§ 683.320. Judgments against public entities

683.320. This chapter does not apply to a money judgment against a public entity that is subject to Section 965.5 or 970.1 of the Government Code.

Comment. Section 683.320 recognizes that the period of enforceability of a money judgment against the state or a local public entity is governed by provisions of the Government Code. But see Gov't Code § 965.9 (judgment against the Regents of the University of California). The period of enforceability of a money judgment against a public entity may not be extended using the renewal procedure under Sections 683.110–683.220. This does not, however, affect the right to bring an action on the judgment. See Sections 337.5 and 683.050. See also Sections 695.050 (enforcement of money judgment against public entity), 712.070 (enforcement of nonmoney judgment against public entity).

CHAPTER 4. MANNER OF SERVICE OF WRITS, NOTICES, AND OTHER PAPERS

Article 1. Service on Attorney of Creditor or Debtor

§ 684.010. Service on attorney of judgment creditor

684.010. Subject to Chapter 1 (commencing with Section 283) of Title 5 of Part 1 of this code and Section 4809 of the Civil Code, when a notice, order, or other paper is required to be served under this title on the judgment creditor, it shall be served on the judgment creditor's attorney of record rather than on the judgment creditor if the judgment creditor has an attorney of record.

Comment. Section 684.010 is drawn from the second and third sentences of Section 1015. The introductory clause recognizes (1) that, if the applicable procedure is followed, an attorney of record may withdraw from the case, be discharged, or be replaced by another attorney, and (2) that service must be made on the party rather than the attorney in certain Family Law Act matters after entry of final judgment.

§ 684.020. Service on attorney designated by judgment debtor

684.020. (a) Except as provided in subdivision (b), when a writ, notice, order, or other paper is required to be served under this title on the judgment debtor, it shall be served on the judgment debtor instead of the attorney for the judgment debtor.

(b) The writ, notice, order, or other paper shall be served on the attorney specified by the judgment debtor rather than on the judgment debtor if all of the following requirements are satisfied:

(1) The judgment debtor has filed with the court and served on the judgment creditor a request that service on the judgment debtor under this title be made by serving the attorney specified in the request. Service on the judgment creditor of the request shall be made personally or by mail. The request shall include a consent, signed by the attorney, to receive service under this title on behalf of the judgment debtor.

(2) The request has not been revoked by the judgment debtor.

(3) The consent to receive service has not been revoked by the attorney.

(c) A request or consent under subdivision (b) may be revoked by filing with the court a notice revoking the request or consent. A copy of the notice revoking the request or consent shall be served on the judgment creditor. Service shall be made personally or by mail. The judgment creditor is not bound by the revocation until the judgment creditor has received a copy of the notice revoking the request or consent.

Legislative Committee Comment—Assembly

Comment. Section 684.020 is a new provision that gives the judgment debtor the option to have papers served either on the judgment debtor or, with the consent of the attorney, on the attorney designated by the judgment debtor. The reference to service of other papers includes such items as interrogatories served pursuant to Section 708.020.

§ 684.030. When service on party instead of attorney required

684.030. Sections 684.010 and 684.020 do not apply to either of the following:

(a) A subpoena or other process to require the attendance of a party.

(b) A paper to bring a party into contempt.

Comment. Section 684.030 is drawn from a provision of Section 1015.

§ 684.040. Manner of service on attorney

684.040. If service on an attorney is required under this article, service on the attorney shall be made in any of the following ways:

(a) By personal delivery to the attorney.

(b) By service in the manner provided in subdivision (1) of Section 1011.

(c) By mail in the manner provided in Section 684.120.

Comment. Subdivisions (a) and (b) of Section 684.040 are comparable to the relevant portions of Section 1011. Subdivision (c) refers to a provision that is comparable to a portion of the first sentence of Section 1013(a).

§ 684.050. Effect of service on attorney

684.050. Service on the attorney for the judgment creditor or the judgment debtor pursuant to the provisions of this article constitutes service on the judgment creditor or judgment debtor for the purposes of this title.

Comment. Section 684.050 makes clear that, subject to Section 684.040, service on the attorney pursuant to this article satisfies any requirement of this title that the judgment creditor or judgment debtor be served.

Article 2. Manner of Service Generally**§ 684.110. Manner of personal service**

684.110. (a) Subject to subdivisions (b), (c), and (d), if a writ, notice, order, or other paper is required to be personally served under this title, service shall be made in the same manner as a summons is served under Chapter 4 (commencing with Section 413.10) of Title 5.

(b) If the paper is required to be personally served under this title and service on an attorney is required under Article 1 (commencing with Section 684.010), service shall be made on the attorney in the manner provided in Section 684.040.

(c) If the service is on (1) a financial institution, (2) a title insurer (as defined in Section 12340.4 of the Insurance Code) or underwritten title company (as defined in Section 12340.5 of the Insurance Code), or (3) an industrial loan company (as defined in Section 18003 of the Financial Code), service shall be made at the office or branch that has actual possession of the property levied upon or at which a deposit account levied upon is carried and shall be made upon the officer, manager, or other person in charge of the office or branch at the time of service.

(d) Subject to subdivision (c), if a levy is made by personally serving a copy of the writ and notice of levy on a third person, service on the third person shall be made in the same manner as a summons may be served under Section 415.10 or 415.20.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 684.110 adopts by reference the manner for service of summons. Subdivision (b) makes clear that when personal service is required on the judgment debtor or judgment creditor, service on the attorney in the manner provided in Section 684.040 is required in cases where service is required on the attorney instead of on the judgment debtor or judgment creditor (Sections 684.010 and 684.020). Subdivision (c) is the same in substance as Section 488.040 (a) (prejudgment attachment). Subdivision (d) limits the manner in which service of a copy of the writ and notice of levy shall be made on a third party by requiring that service be made in the manner provided in Section 415.10 (personal delivery) or 415.20 (substituted service). Various levy procedures require personal service on a third party. See, *e.g.*, Sections 700.040 (tangible personal property in possession of third person), 700.060 (bailed goods not covered by negotiable document), 700.100 (chattel paper in possession of third person), 700.110 (instrument in possession of third person), 700.120 (negotiable document in possession of third person), 700.140 (deposit account), 700.150 (safe deposit box). See also Section 700.190(c) (service on judgment debtor's judgment debtor under a final money judgment levied upon). Specific sections may provide for the manner of service on a third person. See *e.g.*, Section 700.015 (service on occupant of real property).

§ 684.120. Manner of service by mail; extension of prescribed period of notice and time for exercising right or performing act

684.120. (a) Except as otherwise provided in this title, if a writ, notice, order, or other paper is to be served by mail under this title, it shall be sent by first-class mail (unless some other type of mail is specifically required) and shall be deposited in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed as follows:

(1) If an attorney is being served in place of the judgment creditor or judgment debtor as provided in Section 684.010 or 684.020, to the attorney at the last

address given by the attorney on any paper filed in the proceeding and served on the party making the service.

(2) If any other person is being served, to such person at the person's current mailing address if known or, if unknown, at the address last given by the person on any paper filed in the proceeding and served on the party making the service.

(3) If the mailing cannot be made as provided in paragraph (1) or (2), to the person at the person's last known address.

(b) Service by mail is complete at the time of deposit; but, unless the court prescribes a shorter period of time, any prescribed period of notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after a paper is served by mail is extended:

(1) Five days if the place of address is within the State of California.

(2) Ten days if the place of address is outside the State of California but within the United States.

(3) Twenty days if the place of address is outside the United States.

(c) The writ, notice, order, or other paper served by mail under this section shall bear a notation of the date and place of mailing or be accompanied by an unsigned copy of the affidavit or certificate of mailing. This subdivision is directory only.

Legislative Committee Comment—Assembly

Comment. Section 684.120 is drawn in part from Sections 1005 and 1013. The manner of computing time under subdivision (b) is the same as under the comparable portions of Sections 1005 and 1013.

§ 684.130. Name and address supplied by judgment creditor

684.130. (a) If the levying officer is required by any provision of this title to serve any writ, order, notice, or other paper on any person, the judgment creditor shall include in the instructions to the levying officer the correct name and address of the person. The judgment creditor shall use reasonable diligence to ascertain the correct name and address of the person.

(b) Unless the levying officer has actual knowledge that the name or address included in the instructions is incorrect, the levying officer shall rely on the instructions in serving the writ, order, notice, or other paper on the person.

Legislative Committee Comment—Assembly

Comment. Section 684.130 is a specific application of Section 687.010 (instructions to levying officer). The address to be supplied by the judgment creditor varies in particular provisions of this title. See, *e.g.*, Sections 684.120 (address for service), 700.015 (b) and 700.020 (b) (address shown by the records of tax assessor or county recorder). See also Section 687.040 (liability of levying officer for action taken in reliance on written instructions of judgment creditor).

§ 684.140. Service by person authorized by levying officer to make service

684.140. If a provision of this title provides for service by the levying officer of an order, notice, or other paper that runs in favor of a particular person, personal service of the paper may be made by the person or the person's agent if the levying officer gives permission. The levying officer's permission may be evidenced by a certificate signed by the levying officer. This section does not authorize the levying officer to give permission to serve a writ or notice of levy. If service is made by a person or the person's agent pursuant to this section, the cost of the service is not a recoverable cost. Nothing in this section limits the authority of a registered process server provided in this title.

Legislative Committee Comment—Assembly

Comment. Section 684.140 is derived from a sentence contained in former Section 723.101(c) (personal service of notice or document by wage garnishment debtor). The second to last sentence of Section 684.140 is new, but does not affect the right to recover cost of service by a registered process server to the extent otherwise permitted. See Sections 699.080, 706.101 (e), and 715.040.

Article 3. Proof of Service

§ 684.210. Proof of service of notice of court hearing

684.210. If service of notice of a court hearing is required under this title, proof of service of the notice shall be made at or before the hearing to the satisfaction of the court.

Legislative Committee Comment—Assembly

Comment. Section 684.210 is a new provision that establishes a general requirement that supersedes comparable requirements of former law, such as that of former Section 723.105(e). As to the manner of making proof of service, see Section 684.220. As to the time for giving notice by mail, see Section 684.120.

§ 684.220. Proof of service, posting, or publication

684.220. Proof of service or of posting or publication under this title may be made by, but is not limited to, the following means:

(a) If service is made in the same manner as a summons is served under Chapter 4 (commencing with Section 413.10) of Title 5, proof of service may be made in the manner provided in Article 5 (commencing with Section 417.10) of that chapter.

(b) If service is made in the same manner as a summons is served under Section 415.10 or 415.20, proof of service may be made by affidavit of the person making the service showing the time, place, and manner of service and the facts showing that the service was made in accordance with the applicable statutory provisions. The affidavit shall recite or in other manner show the name of the person to whom the papers served were delivered and, if appropriate, the title of the person or the capacity in which the person was served.

(c) Proof of service by mail as provided in Section 684.120 may be made in the manner prescribed in Section 1013a.

(d) Proof of posting may be made by the affidavit of the person who posted the notice, showing the time and place of posting.

(e) Proof of publication may be made by the affidavit of the publisher or printer, or the foreman or principal clerk of the publisher or printer, showing the time and place of publication.

(f) Proof of service may be made by the written admission of the person served.

(g) Proof of service however made, or of posting or publication, may be made by testimonial evidence.

Comment. Section 684.220 provides methods for proof of service or of posting or publication. Subdivision (a) incorporates the proof of service provisions applicable to service of summons and applies when this title requires service in the manner provided for service of a summons. See, *e.g.*, Section 684.110(a). Subdivision (b) is drawn from Section 417.10 and applies when this title requires service in the manner provided for service of a summons under Sections 415.10 and 415.20. See, *e.g.*, Section 684.110(d). Subdivision (c) applies where service by mail is made pursuant to Section 684.120. The remainder of Section 684.220 is consistent with civil practice generally. Subdivision (g) is an alternative to the other methods of proof provided in this section and permits proof to be made by testimonial evidence without regard to how the service was made.

Article 4. Application of Chapter

§ 684.310. Provisions not applicable to wage garnishment

684.310. Except for Sections 684.130 and 684.140, the provisions of Article 1 (commencing with Section 684.010) and Article 2 (commencing with Section 684.110) do not apply to service under Chapter 5 (commencing with Section 706.010) of Division 2 (wage garnishment).

Comment. Section 684.310 makes certain service provisions of this chapter not applicable to wage garnishments. The Wage Garnishment Law contains special provisions governing service under that law. See, *e.g.*, Sections 706.021, 706.101, and 706.104.

CHAPTER 5. INTEREST AND COSTS

§ 685.010. Rate of interest on judgment

685.010. (a) Interest accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied.

(b) The Legislature reserves the right to change the rate of interest provided in subdivision (a) at any time to a rate of less than 10 percent per annum, regardless of the date of entry of the judgment or the date any obligation upon which the judgment is based was incurred. A change in the rate of interest may be made applicable only to the interest that accrues after the operative date of the statute that changes the rate.

Legislative Committee Comment—Senate

Comment. Section 685.010 supersedes former Section 685.010 (as enacted by 1982 Cal. Stats. ch. 150). Subdivision (a) continues subdivision (a) of former Section 685.010 which set the legal rate of interest on judgments at 10 percent as permitted by Section 1 of Article 15 of the California Constitution. Subdivision (b), which supersedes subdivision (b) of former Section 685.010, states the reserved power of the state to alter the interest rate as to interest that accrues after the operative date of the statute that changes the rate and omits the minimum rate provided in the former provision.

§ 685.020. Commencement of interest on judgment payable in installments

685.020. Unless the judgment otherwise provides, if a money judgment is payable in installments, interest commences to accrue as to each installment on the date the installment becomes due.

Legislative Committee Comment—Senate

Comment. Subdivision (a) of Section 685.020 [provision deleted before section was enacted] continues the general rule as to the time postjudgment interest commences to run. See former Section 682.2, Section 1033; *Dixon Mobile Homes, Inc. v. Walters*, 48 Cal. App.3d 964, 122 Cal. Rptr. 202 (1975). See also Sections 695.210 and 724.010 (amount to satisfy a judgment).

Subdivision (b) [now Section 685.020] codifies the rule concerning accrual of interest on support judgments payable in installments and extends the rule to other judgments payable in installments. See, *e.g.*, *Huellmantel v. Huellmantel*, 124 Cal. 583, 589-90, 57 P. 582 (1899); *In re Marriage of Hoffee*, 60 Cal. App.3d 337, 131 Cal. Rptr. 637 (1976). The introductory clause of subdivision (b) also recognizes that in certain circumstances the court may have the authority to order that interest accrues from the date of entry of a judgment rendered in an amount certain but payable in installments. See Section 85 (municipal or justice court may fix terms and conditions of payment of money

judgment), 117 (small claims court may fix terms and conditions of payment).

Section 685.020 does not affect the rules that determine the extent to which prejudgment interest is to be included in a judgment. See Section 685.110.

§ 685.030. Cessation of interest

685.030. (a) If a money judgment is satisfied in full pursuant to a writ under this title, interest ceases to accrue on the judgment:

(1) If the proceeds of collection are paid in a lump sum, on the date of levy.

(2) In any other case, on the date the proceeds of sale or collection are actually received by the levying officer.

(b) If a money judgment is satisfied in full other than pursuant to a writ under this title, interest ceases to accrue on the date the judgment is satisfied in full.

(c) If a money judgment is partially satisfied pursuant to a writ under this title or is otherwise partially satisfied, interest ceases to accrue as to the part satisfied on the date the part is satisfied.

(d) For the purposes of subdivisions (b) and (c), the date a money judgment is satisfied in full or in part is the earliest of the following times:

(1) The date satisfaction is actually received by the judgment creditor.

(2) The date satisfaction is tendered to the judgment creditor or deposited in court for the judgment creditor.

(3) The date of any other performance that has the effect of satisfaction.

Legislative Committee Comment—Senate

Comment. Section 685.030 supersedes portions of former Sections 682.1 and 682.2 (interest to date of levy). In order to facilitate full satisfaction in a case where a garnishee pays the full amount due on the judgment pursuant to a levy, subdivision (a) (1) cuts off interest as of the date of levy. In other cases, such as where property is to be sold at an execution sale or where a garnishee does not pay the full amount due on the judgment in a lump sum, subdivision (a) (2) cuts off interest when proceeds are received by the levying officer.

Subdivisions (b) and (c) implement statements in the cases that interest runs until a judgment is paid. See *State v. Day*, 76 Cal. App.2d 536, 556, 173P.2d 399 (1946); *City of Los Angeles v. Aitken*, 32 Cal. App.2d 524, 531-32, 90 P.2d 377 (1939). Hence, if the judgment debtor

voluntarily pays the judgment, the judgment creditor is entitled to interest to the date of satisfaction, as provided in subdivision (b). Similarly, if the judgment is partially satisfied, whether pursuant to a writ or otherwise, subdivision (c) makes clear that interest runs on the part satisfied until the date the satisfaction is made.

Subdivision (d) recognizes that a judgment may be satisfied other than by a writ or voluntary payment to the judgment creditor. See, e.g., *Beeler v. American Trust Co.*, 28 Cal.2d 435, 170 P.2d 439 (1946) (tender of amount due); *Pinecrest Prods., Inc. v. RKO Teleradio Pictures, Inc.*, 14 Cal. App.3d 6, 92 Cal. Rptr. 44 (1970) (deposit with court). See also Section 724.010 (judgment deemed satisfied if judgment creditor accepts a lesser sum in full satisfaction). For additional discussion concerning methods of satisfying a money judgment, see the Comment to Section 724.010.

For provisions governing the distribution of proceeds and the allocation of proceeds between interest and principal, see Sections 695.220, 701.810–701.830, 704.850.

§ 685.040. Right to costs of enforcing judgment

685.040. The judgment creditor is entitled to the reasonable and necessary costs of enforcing a judgment. Attorney's fees incurred in enforcing a judgment are not included in costs collectible under this title unless otherwise provided by law.

Legislative Committee Comment—Assembly

Comment. Section 685.040 supersedes former Section 1032.6. The reference to superior, municipal, and justice courts in former Section 1032.6 is not continued because it is unnecessary. Recoverable costs may be limited by statute or may be subject to procedural restrictions. See, e.g., Sections 685.070 (memorandum of costs incurred must be filed within specified period), 699.080, 706.101(e), and 715.040 (cost of registered process server). The second sentence of Section 685.040 makes clear that attorney's fees are not collectible under the section. Specific provisions may prevent recovery of costs in some circumstances. See, e.g., Sections 703.090, 704.840, 708.290.

§ 685.050. Costs and interest under writ

685.050. (a) If a writ is issued pursuant to this title to enforce a judgment, the costs and interest to be satisfied in a levy under the writ are the following:

- (1) The statutory fee for issuance of the writ.
- (2) The amount of interest that has accrued from the date of entry or renewal of the judgment to the date of

issuance of the writ, as adjusted for partial satisfactions, if the judgment creditor has filed an affidavit with the court clerk stating such amount.

(3) The amount of interest that accrues on the principal amount of the judgment remaining unsatisfied from the date of issuance of the writ until the date interest ceases to accrue.

(4) The levying officer's statutory costs for performing the duties under the writ.

(b) In a levy under the writ, the levying officer shall do all of the following:

(1) Collect the amount of costs and interest entered on the writ pursuant to paragraphs (1) and (2) of subdivision (a).

(2) Compute and collect the amount of additional interest required to be collected by paragraph (3) of subdivision (a) by reference to the daily interest entered on the writ.

(3) Determine and collect the amount of additional costs pursuant to paragraph (4) of subdivision (a).

Comment. Section 685.050 supersedes former Section 682.2 and a portion of former Section 1033.7. In addition to the costs collected pursuant to this section, the levying officer will also collect previously allowed costs that have been added to the judgment and are included in the principal amount of the judgment remaining unsatisfied. See Section 685.090. This section applies not only to writs of execution but also to writs of possession and of sale. See Section 712.040 (collection of money amounts included in judgment for possession or sale). For provisions applicable to earnings withholding orders, see Section 706.010 *et seq.*

§ 685.070. Memorandum of costs of enforcing judgment

685.070. (a) The judgment creditor may claim under this section the following costs of enforcing a judgment:

(1) Statutory fees for preparing and issuing, and recording and indexing, an abstract of judgment or a certified copy of a judgment.

(2) Statutory fees for filing a notice of judgment lien on personal property.

(3) Statutory fees for issuing a writ for the enforcement of the judgment to the extent that the fees are not satisfied pursuant to Section 685.050.

(4) Statutory costs of the levying officer for performing the duties under a writ to the extent that the costs are not satisfied pursuant to Section 685.050 and the statutory fee of the levying officer for performing the duties under the Wage Garnishment Law to the extent that the fee has not been satisfied pursuant to the wage garnishment.

(5) Costs incurred in connection with any proceeding under Chapter 6 (commencing with Section 708.010) of Division 2 that have been approved as to amount, reasonableness, and necessity by the judge or referee conducting the proceeding.

(b) Before the judgment is fully satisfied but not later than two years after the costs have been incurred, the judgment creditor claiming costs under this section shall file a memorandum of costs with the court clerk and serve a copy on the judgment debtor. Service shall be made personally or by mail. The memorandum of costs shall be executed under oath by a person who has knowledge of the facts and shall state that to the person's best knowledge and belief the costs are correct, are reasonable and necessary, and have not been satisfied.

(c) Within 10 days after the memorandum of costs is served on the judgment debtor, the judgment debtor may apply to the court on noticed motion to have the costs taxed by the court. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. The court shall make an order allowing or disallowing the costs to the extent justified under the circumstances of the case.

(d) If no motion to tax costs is made within the time provided in subdivision (c), the costs claimed in the memorandum are allowed.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 685.070 continues the substance of subdivisions (a)-(f) of the first paragraph of former Section 1033.7, with the exception of the references in former law to the fee for issuance of a writ of prohibition. Subdivisions (b)

and (c) continue the substance of the procedural provisions of the first paragraph of former Section 1033.7, except that costs may be claimed within two years after they are incurred rather than six months. Subdivision (d) is consistent with the last paragraph of former Section 1033.7. A motion under this section may be determined at chambers. See Section 166.

The fee for issuance of a writ and the levying officer's costs are automatically added to the amount to be collected under the writ as provided by Section 685.050. The fee of the levying officer for serving an earnings withholding order is automatically added to the amount to be collected under the wage garnishment. See Section 706.125(e). If the amount collected under the writ or wage garnishment is insufficient to satisfy the accrued costs, the judgment creditor must resort to the memorandum of costs procedure in this section in order to have the unsatisfied costs added to the judgment. See Section 685.090 (addition of costs to judgment).

§ 685.080. Motion for costs of enforcing judgment

685.080. (a) The judgment creditor may claim costs authorized by Section 685.040 by noticed motion. The motion shall be made before the judgment is satisfied in full, but not later than two years after the costs have been incurred. The costs claimed under this section may include, but are not limited to, costs that may be claimed under Section 685.070 and costs incurred but not approved by the court or referee in a proceeding under Chapter 6 (commencing with Section 708.010) of Division 2.

(b) The notice of motion shall describe the costs claimed, shall state their amount, and shall be supported by an affidavit of a person who has knowledge of the facts stating that to the person's best knowledge and belief the costs are correct, are reasonable and necessary, and have not been satisfied. The notice of motion shall be served on the judgment debtor. Service shall be made personally or by mail.

(c) The court shall make an order allowing or disallowing the costs to the extent justified under the circumstances of the case.

Legislative Committee Comment—Assembly

Comment. Section 685.080 continues the substance of the second paragraph of former Section, 1033.7, except that a motion for costs may be made within two years, rather than six months, after the costs have been incurred. Section 685.080 also permits the judgment creditor by motion to claim costs that could have been claimed pursuant to the memorandum procedure set forth in Section 685.070.

§ 685.090. Addition of costs to judgment

685.090. (a) Costs are added to and become a part of the judgment:

(1) Upon the filing of an order allowing the costs pursuant to this chapter.

(2) If a memorandum of costs is filed pursuant to Section 685.070 and no motion to tax is made, upon the expiration of the time for making the motion.

(b) The costs added to the judgment pursuant to this section are included in the principal amount of the judgment remaining unsatisfied.

(c) If a writ is outstanding at the time the costs are added to the judgment pursuant to this section, the levying officer shall add the amount of such costs to the amount to be collected pursuant to the writ if the levying officer receives either of the following before the writ is returned:

(1) A certified copy of the court order allowing the costs.

(2) A certificate from the clerk of the court that the costs have been added to the judgment where the costs have been added to the judgment after a memorandum of costs has been filed pursuant to Section 685.070 and no motion to tax has been made within the time allowed for making the motion.

(d) The levying officer shall include the costs described in subdivision (c) in the amount of the sale or collection distributed to the judgment creditor only if the levying officer receives the certified copy of the court order or the clerk's certificate before the distribution is made.

Legislative Committee Comment—Senate

Comment. Subdivisions (a) and (b) of Section 685.090 supersede the last paragraph of former Section 1033.7. Subdivisions (c) and (d) provide a new procedure for adding certain costs to the amount to be satisfied under a writ after the writ has been issued. See Section 685.050 (costs added to writ).

§ 685.100. Deposit of levying officer's costs

685.100. (a) Except as otherwise provided by law:

(1) 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 performing the duty.

(2) As a prerequisite to the taking of property into custody 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 costs of taking the property and keeping it safely for a period not to exceed 15 days. If continuation of the custody of the property is required, the levying officer shall, from time to time, demand orally or in writing that the judgment creditor deposit additional amounts to cover estimated costs for periods not to exceed 30 days each. A written demand may be mailed or delivered to the judgment creditor. The judgment creditor has not less than three business days after receipt of the demand within which to comply with the demand. If the amount demanded is not paid within the time specified in the oral or written demand, the levying officer shall release the property.

(b) The levying officer is not liable for failure to take or hold property unless the judgment creditor has complied with the provisions of this section.

Comment. Subdivision (a) (1) of Section 685.100 makes more specific the requirement that costs of the levying officer be paid in advance. See Gov't Code §§ 6100, 24350.5. Subdivision (a) (2) is comparable to Section 488.050 (expenses in attachment) and recognizes the practice under former law of making an oral demand for costs.

The introductory clause of subdivision (a) recognizes that there are exceptions to the general rule stated in Section 685.100, such as where certain governmental agencies are judgment creditors. See, e.g., Labor Code § 101 (Labor Commissioner).

Similarly, certain creditors may not be required to prepay costs. See Section 1677 (collection of support payments under Uniform Reciprocal Enforcement of Support Act); *Martin v. Superior Court*, 176 Cal. 289, 296-97, 168 P. 135 (1917) (actions in forma pauperis).

Subdivision (b) is comparable to Section 488.060(a) (attachment).

§ 685.110. Law relating to prejudgment interest not affected

685.110. Nothing in this chapter affects the law relating to prejudgment interest.

CHAPTER 6. ENFORCEMENT AFTER DEATH OF JUDGMENT CREDITOR OR JUDGMENT DEBTOR

§ 686.010. Enforcement after death of judgment creditor

686.010. After the death of the judgment creditor, the judgment may be enforced as provided in this title by the judgment creditor's executor or administrator or successor in interest.

Comment. Section 686.010 continues former Section 686.010. The judgment is enforceable by the executor or administrator or successor in interest in the same manner as by a judgment creditor.

§ 686.020. Enforcement after death of judgment debtor

686.020. After the death of the judgment debtor, enforcement of a judgment against the judgment debtor is governed by the Probate Code.

Comment. Section 686.020 continues former Section 686.020 and makes clear that, although various provisions of the Probate Code permit use of enforcement procedures provided in this title, the enforcement of a judgment against the judgment debtor after the death of the judgment debtor is governed by the Probate Code. See, *e.g.*, Prob. Code §§ 716, 730, 732, 950.

CHAPTER 7. LEVYING OFFICERS

§ 687.010. Instructions to levying officer

687.010. (a) The judgment creditor shall give the levying officer instructions in writing. The instructions shall be signed by the judgment creditor's attorney of record or, if the judgment creditor does not have an attorney of record, by the judgment creditor. The instructions shall contain the information needed or requested by the levying officer to comply with the provisions of this title, including but not limited to:

(1) An adequate description of any property to be levied upon.

(2) A statement whether the property is a dwelling.

(3) If the property is a dwelling, whether it is real or personal property.

(b) Subject to subdivision (c), the levying officer shall act in accordance with the written instructions to the extent the actions are taken in conformance with the provisions of this title.

(c) Except to the extent the levying officer has actual knowledge that the information is incorrect, the levying officer may rely on any information contained in the written instructions.

Comment. Subdivision (a) of Section 687.010 is based on Section 488.010(a) (attachment) and on parts of subdivisions 2 and 3 of former Section 692 (sale of property). See also Sections 684.130 (address for notices), 699.530 (instructions for execution), 712.030 (instructions for writ of possession or sale).

Subdivisions (b) and (c) are consistent with Sections 262 (signed written instructions as excuse) and 687.040 (liability of levying officer). See also Section 684.130 (reliance on name and address given in instructions).

§ 687.020. Endorsement and collection of certain instruments by levying officer

687.020. (a) As used in this section, "instrument" means a check, draft, money order, or other order for the withdrawal of money from a financial institution, the United States, any state, or any public entity within any state.

(b) If an instrument is payable to the judgment debtor on demand and comes into the possession of a levying officer pursuant to this title, the levying officer shall promptly endorse and present the instrument for payment.

(c) The levying officer shall endorse the instrument by writing on the instrument (1) the name of the judgment debtor, (2) the name and official title of the levying officer, (3) the title of the court where the judgment is entered, and (4) the date of entry of the judgment and where entered in the records of the court. The endorsement is as valid as if the instrument were endorsed by the judgment debtor. No financial institution or public entity on which the instrument is drawn is liable to any person for payment of the instrument to the levying officer rather than to the judgment debtor by reason of the endorsement. No levying officer is liable by reason of endorsing, presenting, and obtaining payment of the instrument.

(d) If it appears from the face of the instrument that it has been tendered to the judgment debtor in satisfaction of a claim or demand and that endorsement of the instrument is considered a release and satisfaction by the judgment debtor of the claim or demand, the levying officer shall not endorse the instrument unless the judgment debtor has first endorsed it to the levying officer. If the judgment debtor does not endorse the instrument to the levying officer, the levying officer shall hold the instrument for 30 days and is not liable to the judgment debtor or to any other person for delay in presenting it for payment. At the end of the 30-day holding period, the levying officer shall return the instrument to the maker.

Comment. Section 687.020 continues the substance of former Section 688(g) (which incorporated Section 488.520 in the Attachment Law by reference) except that (1) the former provision was limited to situations where an instrument comes into the possession of a levying officer or a receiver pursuant to a writ of execution whereas Section 687.020 is not so limited and (2) Section 687.020 adds a new provision in subdivision (d) for the return of the instrument to the maker after 30 days in certain cases.

§ 687.030. Manner of custody

687.030. Except as otherwise provided by statute, where the method of levy upon property requires that the property be taken into custody or where the levying officer is otherwise directed to take property into custody, the levying officer may do so by any of the following methods:

- (a) Removing the property to a place of safekeeping.
- (b) Installing a keeper.
- (c) Otherwise obtaining possession or control of the property.

Comment. Section 687.030 continues the substance of the second sentence of former Section 688(c) except that Section 687.030 is not limited to custody under a writ of execution. The introductory clause recognizes exceptions to this general rule. See Sections 700.070 (keeper for tangible personal property of a going business), 700.080 (keeper for personal property used as dwelling).

Subdivision (c) is new and is intended to provide levying officers with a degree of flexibility in determining efficient and economical means of securing custody of personal property levied upon. Under this subdivision use of a keeper is not required in cases where the property is not moved to a place of safekeeping, but the custody obtained must be sufficient to prevent removal of the property. Such custody will be useful where property such as large construction equipment is levied upon.

§ 687.040. Liability of levying officer

687.040. (a) The levying officer is not liable for actions taken in conformance with the provisions of this title, including actions taken in conformance with the provisions of this title in reliance on information contained in the written instructions of the judgment creditor, or in reliance on information provided to the levying officer by a registered process server pursuant to subdivision (c) of Section 699.080 or subdivision (e) of Section 706.101 or subdivision (b) of Section 715.040 or other provision, except to the extent the levying officer has actual knowledge that the information is incorrect. Nothing in this subdivision limits any liability the

judgment creditor may have if the levying officer acts on the basis of incorrect information given in the written instructions. Nothing in this subdivision limits any liability the judgment creditor or registered process server may have if the levying officer acts on the basis of incorrect information provided by a registered process server.

(b) Unless the levying officer is negligent in the care or handling of the property, the levying officer is not liable to either the judgment debtor or the judgment creditor for loss by fire, theft, injury, or damage of any kind to personal property while (1) in the possession of the levying officer either in a warehouse or other storage place or in the custody of a keeper or (2) in transit to or from a warehouse or other storage place.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 687.040 supersedes the second sentence of the sixth paragraph of former Section 689, the third paragraph of former Section 689b(9), former Section 697, and the second sentence of Section 488.370(b) (attachment of accounts receivable and choses in action) insofar as it was incorporated by former Section 688(b). For other provisions concerning the levying officer's liability, see Sections 685.100 (failure to advance costs), 687.020 (endorsement and collection of instruments), 699.060 (release), 699.070 (quick sale of perishable property), 699.090 (levy based on record ownership), 700.070 (payment by cash equivalent in keeper levy on going business), 701.560 (sale without notice), 701.570 (manner of sale), 701.680 (irregular sale). Subdivision (b) is comparable to Section 488.060(b) (attachment).

§ 687.050. Levying officer's lien

687.050. The levying officer has a special lien, dependent upon possession, on personal property levied upon in the amount of the levying officer's costs for which an advance has not been made.

Legislative Committee Comment—Assembly

Comment. Section 687.050 continues the substance of a portion of former Civil Code Section 3057.

CHAPTER 8. ENFORCEMENT OF STATE TAX LIABILITY

Article 1. Enforcement Pursuant to Warrant or Notice of Levy

§ 688.010. Jurisdiction of courts

688.010. For the purpose of the remedies provided under this article, jurisdiction is conferred upon any of the following courts:

(a) The superior court, regardless whether the municipal or justice court also has jurisdiction under subdivision (b).

(b) The municipal or justice court if (1) the amount of liability sought to be collected does not exceed the jurisdictional amount of the court and (2) the legality of the liability being enforced is not contested by the person against whom enforcement is sought.

Comment. Section 688.010 supersedes a portion of former Section 689d, a portion of the second sentence of former Section 690.51, and a portion of the second sentence of former Section 722.5. Under former law, jurisdiction was in the superior court exclusively.

§ 688.020. Remedies of state when warrant may be issued

688.020. (a) Except as otherwise provided by statute, whenever a warrant may properly be issued by the state, or by a department or agency of the state, pursuant to any provision of the Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code, and the warrant may be levied with the same effect as a levy pursuant to a writ of execution, the state or the department or agency of the state authorized to issue the warrant may use any of the remedies available to a judgment creditor, including but not limited to, those provided in Chapter 6 (commencing with Section 708.010) of Division 2.

(b) The proper court for the enforcement of such remedies is a court of any of the following counties:

(1) The county where the debtor resides.

(2) The county where the property against which enforcement is sought is located.

(3) If the debtor does not reside in this state, any county of this state.

Comment. Subdivision (a) of Section 688.020 continues the substance of the first sentence of former Section 722.5, except that the requirement that the tax statute provide that the warrant may be levied with the same effect as a levy pursuant to a writ of execution is new. For examples of statutes authorizing the issuance of a warrant and giving the levy pursuant to the warrant the same effect as a levy pursuant to a writ of execution, see Pub. Res. Code §§ 3423.2, 3772.2; Rev. & Tax. Code §§ 3202, 6776, 7881-7882, 9001, 16071, 18906-18907, 26191, 30341, 32365, 38541, 40161, 41125; Unemp. Ins. Code § 1785. For special provisions relating to wage garnishment for the collection of state taxes, see Sections 706.070-706.084.

Former Section 722.5 applied to nine enumerated sections giving authority to issue warrants. By applying to any provision of the Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code, Section 688.020 expands former law to apply to Sections 3423.2 (oil and gas conservation charges) and 3772.2 (geothermal resources charges) of the Public Resources Code and Sections 3201-3202 (postponed property taxes), 16071 (gift tax), 38541 (timber yield tax), 40161 (energy resources surcharge), and 41125 (emergency telephone surcharge) of the Revenue and Taxation Code, and to any comparable provisions added later.

Under subdivision (a), the miscellaneous remedies available to judgment creditors (such as interrogatories, examination proceedings, creditor's suits, charging orders, liens in pending actions) are given to the state if a warrant may properly be issued, whether or not the warrant is actually issued.

Subdivision (b) continues the substance of the venue provisions of the second sentence of former Section 722.5. See also Section 688.010 (jurisdiction).

§ 688.030. Exemptions and third-party claims

688.030. (a) Whenever pursuant to any provision of the Public Resources Code, Revenue and Taxation Code (excluding Sections 3201 to 3204, inclusive), or Unemployment Insurance Code, property is levied upon pursuant to a warrant or notice of levy issued by the state

or by a department or agency of the state for the collection of a liability:

(1) If the debtor is a natural person, the debtor is entitled to the same exemptions to which a judgment debtor is entitled. Except as provided in subdivisions (b) and (c), the claim of exemption shall be made, heard, and determined as provided in Chapter 4 (commencing with Section 703.010) of Division 2 in the same manner as if the property were levied upon under a writ of execution.

(2) A third person may claim ownership or the right to possession of the property or a security interest in or lien on the property. Except as provided in subdivisions (b) and (c) or as otherwise provided by statute, the third-party claim shall be made, heard, and determined as provided in Division 4 (commencing with Section 720.010) in the same manner as if the property were levied upon under a writ of execution.

(b) In the case of a levy pursuant to a notice of levy:

(1) The claim of exemption or the third-party claim shall be filed with the state department or agency that issued the notice of levy.

(2) The state department or agency that issued the notice of levy shall perform the duties of the levying officer, except that the state department or agency need not give itself the notices that the levying officer is required to serve on a judgment creditor or creditor or the notices that a judgment creditor or creditor is required to give to the levying officer. The state department or agency in performing the duties of the levying officer under this paragraph has no obligation to search public records or otherwise seek to determine whether any lien or encumbrance exists on property sold or collected.

(c) A claim of exemption or a third-party claim pursuant to this section shall be heard and determined in the court specified in Section 688.010 in the county where the property levied upon is located.

Legislative Committee Comment—Assembly

Comment. Section 688.030 supersedes former Sections 689d (third-party claims) and 690.51 (exemptions). Subdivision (a) continues former law by permitting exemption claims and

third-party claims when a notice of levy is issued pursuant to Section 1755 of the Unemployment Insurance Code or a warrant is issued pursuant to Section 1785 of the Unemployment Insurance Code or Section 6776, 7881, 9001, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code. By applying to all warrant and notice of levy provisions of the Public Resources Code, Revenue and Taxation Code (other than warrants to enforce liens for postponed real property taxes under Sections 3201-3204), and Unemployment Insurance Code, subdivision (a) includes warrants issued pursuant to the provisions referred to in the Comment to Section 688.020. Subdivision (a) (2) also applies to third-party claims of a security interest or lien whereas former Section 689d only applied to claims of title under Section 689.

Subdivision (b) makes the procedural adjustments required by the fact that a levying officer is not used in the case of a notice of levy. See Unemp. Ins. Code § 1755.

Subdivision (c) continues the venue provisions of former Sections 689d and 690.51 and picks up the new jurisdictional rules of Section 688.010.

§ 688.040. Meaning of terms used elsewhere for purpose of this article

688.040. For the purpose of this article, as used in this title:

(a) "Judgment creditor" or "creditor" means the state or the department or agency of the state seeking to collect the liability.

(b) "Judgment debtor" or "debtor" means the debtor from whom the liability is sought to be collected.

Comment. Section 688.040 is new and is to make clear the meaning of the defined terms when applied in the context of this article.

§ 688.050. Date of creation of tax lien

688.050. For the purpose of applying Section 694.080, 703.050, or 703.100, the date of creation of a tax lien is the earliest of the following times:

(a) The time when a notice of state tax lien is recorded or filed pursuant to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) The time when the property is levied upon pursuant to a warrant or notice of levy or notice to withhold issued by the state or by a department or agency of the state.

(c) The time when any other act is performed that creates or perfects a lien on specific property as distinguished from a lien on the debtor's property generally.

Legislative Committee Comment—Assembly

Comment. Section 688.050 is a new provision that facilitates the application of exemption provisions that depend upon the date of creation of a lien. Hence, under this section, the tax lien that arises when a tax liability is due and unpaid with nothing more, such as under Revenue and Taxation Code Section 18881, is not the date of creation of a tax lien for the purpose of Section 688.050.

Article 2. Enforcement of Judgment for Taxes

§ 688.110. Enforcement of judgment for taxes

688.110. Except as otherwise provided by statute, if a judgment is entered on a claim for taxes by a public entity, the judgment is enforceable pursuant to this title in the same manner as any other money judgment.

Comment. Section 688.110 is new and is consistent with Sections 3106, 6739, 14323, 14672, 16081, 16421, 18865, 32362, and 38524 of the Revenue and Taxation Code. For special provisions relating to wage garnishment for the collection of state taxes, see Sections 706.070-706.084.

CHAPTER 19. FORMS

Legislative Committee Comment—Assembly

Comment. This chapter provides the forms that are to be used until such time as the Judicial Council issues superseding forms pursuant to Section 681.030.

§ 693.010. Form of writ of execution, possession, and sale

693.010. Until superseded by a form prepared by the Judicial Council, a writ of execution, writ of possession of personal property, writ of possession of real property, and writ of sale shall be in substantially the following form:

Continued items:

4. Additional judgment debtor (name and address):

8. Notice of sale has been requested by (name and address):

9. Joint debtor was declared bound by the judgment (CCP 909-994)
a. On (date): a. On (date):
b. Name and address of joint debtor: b. Name and address of joint debtor:

c. Additional costs against certain joint debtors (itemize):

10. Judgment was entered for the following:

- a. Possession of personal property. If delivery cannot be had, then for the value (itemize in 10e) specified in the judgment or supplemental order.
- b. Possession of real property.
- c. Sale of personal property.
- d. Sale of real property.
- e. Description:

NOTICE TO PERSON SERVED

Writ of execution or sale. Your rights and duties are indicated on the accompanying Notice of Levy.

Writ of possession of personal property. If the levying officer is not able to take custody of the property, the levying officer will make a demand upon you for the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

Writ of possession of real property. If the premises are not vacated within five days after the date of service on an occupant or, if service is by posting, within five days after service on you, the levying officer will place the judgment creditor in possession of the property. Personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property 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 premises.

Legislative Committee Comment—Assembly
Comment Section 693.010 supersedes former Section 682.1 (statutory form of writ of execution). Section 577.5 requires that the amount be computed in dollars and cents, rejecting fractions.

§ 693.020. Form of notice of levy

693.020. Until superseded by a form prescribed by the Judicial Council, the notice of levy shall be in substantially the following form:

ATTORNEY OR PARTY WITHOUT ATTORNEY (name and address) <input type="checkbox"/> Recording requested by and return to		TELEPHONE NO	FOR RECORDER'S USE ONLY
ATTORNEY FOR (client) NAME OF COURT AND BRANCH IF ANY			
STREET ADDRESS MAILING ADDRESS CITY ZIP CODE			
PLAINTIFF			
DEFENDANT			
NOTICE OF Levy under: WRIT OF: <input type="checkbox"/> EXECUTION (MONEY JUDGMENT) <input type="checkbox"/> JOINT DEBTOR <input type="checkbox"/> SALE		CASE NUMBER	FOR RECORDER'S USE ONLY

NOTICE TO PERSON SERVED (name):

The judgment creditor (name) _____ seeks to levy upon property in which the judgment debtor (name) _____ has an interest and apply it to the satisfaction of a judgment. The property to be levied upon is described:

- In the accompanying writ of possession or writ of sale.
- As follows:

1. You are served as a judgment debtor. See item 3.
2. You are served as a person other than the judgment debtor. See items 4, 5, 6, 7, and 8.
3. Notice to judgment debtor:
 - a. The levying officer is required to take custody of property in your possession that is to be levied upon.

- b. You may claim any available exemption for your property. A list of exemptions is attached. If you wish to claim an exemption, you must do so within 10 days after this notice was delivered to you or 15 days after this notice was mailed to you by filing a claim of exemption with the levying officer, together with a copy thereof, as provided in Section 703.520 of the Code of Civil Procedure. If you wish to seek the advice of an attorney in this matter, you should do so immediately so that a claim of exemption may be filed on time.
- c. You are not entitled to claim an exemption for property that is levied upon under a judgment for sale of property. This property is described in the accompanying writ of sale. You may, however, claim available exemptions for property levied upon to satisfy damages or costs awarded in such a judgment.
- d. You may obtain the release of your property by paying the amount of a money judgment remaining unpaid and any interest and costs remaining unpaid.
- e. If your property is levied upon under a writ of execution or to satisfy damages and costs under a writ of possession or sale, the property may be sold at an execution sale, perhaps at a price substantially below its value. Notice of sale will be given to you. Notice of sale of real property (other than a leasehold estate with an unexpired term of less than two years) may not be given until at least 120 days after this notice is served on you. This grace period is intended to give you an opportunity to settle with the judgment creditor, obtain a satisfactory buyer for the property, or encourage other potential buyers to attend the execution sale.
- f. All sales at an execution sale are final; there is no right of redemption.
4. Notice to person other than the judgment debtor. You are served as:
- a. Person in possession of:
- | | |
|--|-------------------------------------|
| <input type="checkbox"/> Tangible personal property in general | <input type="checkbox"/> Money |
| <input type="checkbox"/> Negotiable document | <input type="checkbox"/> Instrument |
| <input type="checkbox"/> Chattel paper | |
- b. Bailee of goods not covered by negotiable document.
- c. Financial institution. Your rights and duties are set forth in CCP 700.140-700.160.
- d. As to a security:
- | | |
|---|---|
| <input type="checkbox"/> Person in possession | <input type="checkbox"/> Holder in escrow |
| <input type="checkbox"/> Issuer | |
- e. Person obligated on instrument. If the levying officer has custody of the instrument, you must make payments to the levying officer as they come due.

- 7. If you claim ownership or the right to possession of real or personal property levied upon or if you claim a security interest in or lien on personal property levied upon you may make a third-party claim and obtain the release of the property pursuant to CCP 720.010-720.800.
- 8. The amount necessary to satisfy the judgment creditor's judgment is \$_____ (total of amount due under writ less partial satisfactions and plus daily interest from the date of the writ until the date of levy).

(name of levying officer)

(address of levying officer)

- Date mailed:
- Date delivered:
- Date posted:
- Date filed:
- Date recorded:

Signed by:

- Levying officer:
- Registered process server:

§ 693.030. Form of garnishee's memorandum

693.030. Until superseded by a form prescribed by the Judicial Council, the garnishee's memorandum shall be in substantially the following form:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):		TELEPHONE NO.:	LEVYING OFFICER (Name and Address):	
ATTORNEY FOR (Name):				
Name of court, judicial district or branch court, if any:				
PLAINTIFF:				
DEFENDANT:				
MEMORANDUM OF GARNISHEE		LEVYING OFFICER FILE NUMBER	COURT CASE NUMBER	

Notice to person served with writ and notice of levy: This memorandum must be completed and mailed or delivered to the levying officer within 10 days after service on you of the writ and notice of levy unless you have fully complied with the levy. Failure to complete and return this memorandum may render you liable for the costs and attorney's fees incurred in obtaining the required information.

This memorandum does not apply to garnishment of earnings.

1. If you will not deliver to the levying officer any property levied upon, describe the property and the reason for not delivering it:

2. Describe any property of the judgment debtor not levied upon that is in your possession or under your control:

3. If you owe money to the judgment debtor which you will not pay to the levying officer, describe the amount and terms of the obligation and the reason for not paying it to the levying officer:

§ 693.040. Notice of renewal of judgment

693.040. Until superseded by a form prescribed by the Judicial Council, the notice of renewal of judgment required by Section 683.160 shall be in substantially the following form:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address) <input type="checkbox"/> Recording required by and return to		TELEPHONE NO	FOR RECORDER'S USE ONLY
ATTORNEY FOR (Name) NAME OF COURT AND BRANCH, IF ANY STREET ADDRESS MAILING ADDRESS CITY, ZIP CODE			
PLAINTIFF			
DEFENDANT			
NOTICE OF RENEWAL OF JUDGMENT			CASE NUMBER
			FOR COURT USE ONLY

TO JUDGMENT DEBTOR (name and last known address):

1. Upon application of the judgment creditor, the following judgment against you has been renewed.
 - a. Judgment creditor (name and address):
 - b. Judgment originally entered on (date):
 - c. Judgment originally entered in
 - (1) Judgment book Minute book Docket
 - (2) Volume no.: _____ Page no.: _____
 - d. Judgment has previously been renewed.
 - (1) Judgment renewed on (dates):
 - (2) Renewal entered in
 - (a) Judgment book Minute book Docket
 - (b) Volume no.: _____ Page no.: _____
2. Application for this renewal filed (date):
3. This renewal is entered in
 - a. Judgment book Minute book Docket
 - b. Volume no.: _____ Page no.: _____

4. Renewal of money judgment.
- a. If judgment not previously renewed, total judgment as entered (including principal, attorney's fees, interest, and costs): \$ _____
 - b. If judgment previously renewed, total amount of judgment as last renewed: \$ _____
 - c. Principal amount of judgment on date of renewal
 - (1) Costs (per filed order or memo--CCP 685.090) added after entry or renewal: \$ _____
 - (2) Total (add 4a or 4b to 4c(1) and subtract partial satisfactions of principal amount): \$ _____
 - d. Accrued interest from date of entry or prior renewal to date of renewal as adjusted for partial satisfactions: \$ _____
 - e. AMOUNT OF RENEWED JUDGMENT (total amount required to satisfy judgment on date of renewal) (add 4c(2), 4d): \$ _____

5. Renewal of judgment for possession.
 sale.
- a. If judgment not previously renewed, terms of judgment as entered:
 - b. If judgment previously renewed, terms of judgment as last renewed:
 - c. Terms of judgment remaining unsatisfied:

6. THIS RENEWAL EXTENDS THE PERIOD OF ENFORCEABILITY OF THE JUDGMENT UNTIL 10 YEARS FROM THE DATE THE APPLICATION FOR RENEWAL WAS FILED. IF YOU OBJECT TO THIS RENEWAL, YOU MAY MAKE A MOTION TO VACATE OR MODIFY THE RENEWAL WITH THIS COURT. YOU MUST MAKE THIS MOTION WITHIN 30 DAYS AFTER SERVICE OF THIS NOTICE ON YOU.

Date: _____ Clerk, By _____ Deputy

(SEAL)

7. NOTICE TO THE PERSON SERVED: You are served
- a. As an individual judgment debtor.
 - b. Under the fictitious name of:
 - c. On behalf of:
- Under CCP 416.10 (Corporation) CCP 416.60 (Minor)
 CCP 416.20 (Defunct Corporation) CCP 416.70 (Ward)
 CCP 416.40 (Association or Partnership) CCP 416.90 (Individual)
 Other:

§ 693.050. Notice of hearing for order for sale of dwelling

693.050. Until superseded by a form prepared by the Judicial Council, the notice of the hearing required by Section 704.770 shall be in both English and Spanish, in at least 10-point bold type, and in substantially the following form:

IMPORTANT LEGAL NOTICE TO HOMEOWNER AND RESIDENT

1. Your house will be offered for sale to satisfy a judgment obtained in court. You may be able to exempt the proceeds of sale of the house and real property described in the accompanying application if you or your family now actually reside on the property. YOU OR YOUR SPOUSE SHOULD COME TO THE HEARING TO SHOW THIS FACT.

2. If you or your spouse want to exempt the proceeds of sale of this property, you or your spouse should appear at

_____ on _____
 (Location set forth in OSC) (Date and time)

and be prepared to answer questions concerning the statements made in the attached application. THE ONLY PURPOSE OF THE HEARING WILL BE TO DETERMINE WHETHER THE PROCEEDS OF SALE ARE EXEMPT, NOT WHETHER YOU OWE THE MONEY.

3. FOR YOUR OWN PROTECTION, YOU SHOULD PROMPTLY SEEK THE ADVICE OF AN ATTORNEY IN THIS MATTER. IF YOU ARE A RESIDENT OF THIS PROPERTY AND ARE NOT THE DEBTOR, THIS NOTICE DOES NOT AFFECT YOU. PLEASE GIVE IT TO YOUR LANDLORD.

IMPORTANTE AVISO LEGAL AL PROPIETARIO DE CASA Y RESIDENTE

1. Su casa será puesta en venta para cumplir con una orden judicial obtenida en la corte. Usted podría exentar las ganancias de la venta de la casa y los bienes raíces descritos en la solicitud adjunta si usted o su familia actualmente residen en la propiedad. USTED O SU ESPOSO(A) DEBEN VENIR A LA AUDIENCIA PARA DEMOSTRAR ESTE PUNTO.

2. Si usted o su esposo(a) quieren exentar las ganancias de la venta de esta propiedad, usted o su esposo(a) deben presentarse a

_____ el _____
 (Location set forth in O.S.C.) (Date and time)

y estar preparados para contestar las preguntas acerca de las declaraciones puestas en la solicitud adjunta. EL ÚNICO PROPÓSITO DE ESTA AUDIENCIA SERÁ EL DE DETERMINAR SI LAS GANANCIAS DE LA VENTA SON EXENTAS, Y NO SI USTED DEBE DINERO.

3. PARA SU PROPIA PROTECCIÓN, USTED DEBERÍA PRONTAMENTE PROCURAR EL CONSEJO DE UN ABOGADO EN ESTE ASUNTO. SI USTED ES UN RESIDENTE EN ESTA PROPIEDAD Y NO ES EL DEUDOR(A), ESTE AVISO NO LE AFECTA A USTED. POR FAVOR DESELO A SU ARRENDADOR.

Comment. Section 693.050 supersedes former Civil Code Section 1246 and former Code of Civil Procedure Section 690.31(d) and (o).

§ 693.060. Notice of order for sale upon default

693.060. (a) Until superseded by a form prepared by the Judicial Council, the notice of order for sale required by Section 704.790 shall be in both English and Spanish, in at least 10-point bold type, and in substantially the following form:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):		TELEPHONE NO.:	LEVYING OFFICER (Name and Address):	
ATTORNEY FOR (Name):				
Name of court, judicial district or branch court, if any:				
PLAINTIFF:				
DEFENDANT:				
DECLARATION FOR REHEARING ON HOMESTEAD EXEMPTION		LEVYING OFFICER FILE NUMBER	COURT CASE NUMBER	

IMPORTANT LEGAL NOTICE TO HOMEOWNER AND RESIDENT

1. You were recently served with a court order requiring your presence at a hearing to determine why the court should not issue an order for the forced sale of your home in accordance with the application of the creditor. **YOU AND YOUR SPOUSE FAILED TO APPEAR AT THE HEARING AND THE COURT HAS ORDERED THAT YOUR HOME BE SOLD TO SATISFY A JUDGMENT AGAINST YOU.**

2. Your absence at the hearing has contributed to the issuance of the accompanying order for sale in accordance with the application of the creditor. If the absence of you or your attorney at the hearing was legally excusable and you believe in good faith that the proceeds of sale of your home may be entitled to an exemption, you should complete the form below and date, sign, and return the form below no later than _____ . (Insert date no later than 10 days after date of service or 15 days if service is by mail in this state.)

3. FOR YOUR OWN PROTECTION, YOU SHOULD IMMEDIATELY SEEK THE ADVICE OF AN ATTORNEY. IF YOU ARE A RESIDENT OF THIS PROPERTY AND ARE NOT THE DEBTOR, THIS NOTICE DOES NOT AFFECT YOU. PLEASE GIVE IT TO YOUR LANDLORD.

Return This Form to:

(Name and title of levying officer)

(Street address and city)

(Area code and telephone number of levying officer)

I declare that my absence from the previous hearing on whether this property should be sold in accordance with the application of the creditor was legally excusable. I, or my spouse, currently reside in this property and I wish a further hearing so that I may claim my exemption of the proceeds of the sale of my home. I understand that I will be notified of the date and place for this hearing if I return this form immediately and that I must attend this hearing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date _____
(Signature of debtor or debtor's spouse)

(Type or print name)

IMPORTANTE AVISO LEGAL AL PROPIETARIO DE CASA Y RESIDENTE

1. Recientemente se le entregó una orden de la corte exigiendo su presencia en una audiencia para determinar el porqué la corte no debería extenderle una orden para la venta forzosa de su casa de acuerdo con la solicitud del acreedor. USTED Y SU ESPOSO(A) NO VINIERON A LA AUDIENCIA Y LA CORTE HA ORDENADO QUE SU CASA SEA VENDIDA PARA SATISFACER EL JUDICIO EN CONTRA USTEDES.

2. Su ausencia en la audiencia ha contribuído para la emisión de la orden de venta adjunta de acuerdo con la solicitud del acreedor. Si la ausencia de ustedes o de su abogado en la audiencia es excusable legalmente y creen de buena fe que las ganancias de la venta de su casa pueden tener derecho a una exención, debería completar el formato que esta debajo, fecharlo, firmarlo, y devolverlo a no mas tardar del _____.

(Insert date no later than 10 days after date service or 15 days if service is by mail in this state.)

3. PARA SU PROPIA PROTECCIÓN, USTED DEBERÍA INMEDIATAMENTE PROCURAR EL CONSEJO DE UN ABOGADO. SI USTED ES UN RESIDENTE EN ESTA PROPIEDAD Y NO ES EL DEUDOR(A), ESTE AVISO NO LE AFECTA A USTED. POR FAVOR DESELO A SU ARRENDADOR.

Devuelva Este Formato a:

(Name and title of levying officer)

(Street address and city)

(Area code and telephone number of levying officer)

Declaro que mi ausencia en la pasada audiencia sobre si esta propiedad debería ser vendida de acuerdo con la solicitud del acreedor fue legalmente excusable. Yo, o mi esposo(a), acualmente residimos en esta propiedad y deseo una audiencia adicional para reclamar mi exención de las ganancias de la venta de mi casa. Entiendo que seré notificado de la fecha y del lugar de esta audiencia si devuelvo este formato inmediatamente y que debo asistir a esta audiencia.

Declaro bajo pena de perjurio bajo las leyes del Estado de California que lo anterior es verdadero y está correcto.

Fecha _____

(Firma del Deudor(a) o de la Esposa(o) del Deudor(a))

(Nombre escrito a máquina o en letra de molde)

(b) Timely completion and return of the Spanish language form has the same force and effect as timely completion and return of the English language form.

Comment. Section 693.060 continues the substance of former Civil Code Section 1251 and former Code of Civil Procedure Section 690.31 (g) and (p).

CHAPTER 20. TRANSITIONAL PROVISIONS

§ 694.010. Definitions

694.010. As used in this chapter:

(a) "Operative date" means July 1, 1983.

(b) "Prior law" means the applicable law in effect on June 30, 1983.

Legislative Committee Comment—Assembly

Comment. Section 694.010 is drafted on the assumption that the Enforcement of Judgments Law will become effective on January 1, 1983, and will become operative on July 1, 1983.

§ 694.020. General rule concerning application of title

694.020. Except as otherwise provided in this chapter, this title on and after its operative date applies to all proceedings commenced prior thereto unless in the opinion of the court application of a particular provision of this title would substantially interfere with the effective conduct of the proceedings or the rights of the parties or other interested persons, in which case the particular provision of this title does not apply and prior law applies.

Legislative Committee Comment—Assembly

Comment. Section 694.020 states the general rule governing the application of the Enforcement of Judgments Law to pending matters. See also Section 697.510 (judgment lien on personal property available only if judgment first entered in California after June 30, 1983).

§ 694.030. Period for enforcement of judgments

694.030. (a) Except for a judgment described in Section 683.310 or 683.320, the period for enforcement of a money judgment or a judgment for possession or sale of property entered prior to the operative date is governed on and after the operative date by Chapter 3 (commencing with Section 683.010).

(b) Notwithstanding subdivision (a), even though a judgment to which subdivision (a) applies is not renewable pursuant to Chapter 3 (commencing with Section 683.010) because the time for filing an application for renewal has expired, the judgment may be renewed

under Chapter 3 (commencing with Section 683.010) if the court which entered the judgment determines, on noticed motion filed within two years after the operative date, that authority to enforce the judgment after the 10-year period provided in former Section 681 would have been granted if a motion had been made under former Section 685 and the court, in its discretion, makes an order authorizing the renewal of the judgment. The notice of motion shall be served personally or by mail on the judgment debtor.

Legislative Committee Comment—Senate

Comment. Section 694.030 makes the 10-year period for enforcement of a judgment applicable to a judgment entered prior to the operative date (defined in Section 694.010). The 10-year period commences to run when the judgment is entered (Section 683.020) or when the installment on an installment judgment becomes due (Section 683.030). Accordingly, for a lump-sum judgment entered prior to the operative date the period will have commenced to run prior to the operative date. The judgment may be renewed after the operative date under the general provisions applicable to renewal of judgments. See Sections 683.110–683.220. This permits renewal of the judgment if the application for renewal is filed at any time before the expiration of the 10-year period of enforceability of the judgment. See Section 683.130.

Subdivision (b) of Section 694.030 is a special provision applicable where the period of enforceability of the judgment under Section 683.020 or 683.030 has expired on the operative date or will expire before the end of two years after the operative date. Subdivision (b) permits the court to make an order authorizing renewal of the judgment if the requirements of the subdivision are satisfied, even though the judgment could not be renewed under the general provisions applicable to renewal because the time for filing the application for renewal under Section 683.130 has expired.

The introductory clause of subdivision (a) makes clear that Section 694.030 does not apply to a judgment described in Section 683.310 (judgment under Family Law Act) or Section 683.320 (money judgment against public entity). The limitations as to the time within which these judgments may be enforced are governed by other provisions. See the Comments to Sections 683.310 and 683.320.

§ 694.040. Execution and return of writs and orders

694.040. (a) Except as provided in subdivision (c), property levied upon or otherwise subjected to process for enforcement of a money judgment or a judgment for possession or sale of property prior to the operative date is subject to prior law relating to sale or delivery of possession.

(b) The duties to be performed in the execution of a writ or order for the enforcement of a money judgment or a judgment for possession or sale of property that is served prior to the operative date are governed by prior law.

(c) The manner of payment at a sale of property pursuant to a writ or order after the operative date is governed by Section 701.590.

Comment. Subdivisions (a) and (b) of Section 694.040 make clear that writs and orders served prior to the operative date are governed by prior law rather than this title, except that any sale is subject to the credit transaction provision of Section 701.590.

§ 694.050. Redemption rights

694.050. (a) Except as provided in subdivision (b), property levied upon, or property to be sold upon which foreclosure or other proceedings for sale have been commenced, prior to the operative date that would have been sold subject to the right of redemption under prior law shall be sold subject to the right of redemption and may be redeemed as provided by prior law.

(b) If the judgment creditor and judgment debtor agree in writing, property described in subdivision (a) may be sold as provided in this title rather than subject to the right of redemption.

(c) Property sold prior to the operative date subject to the right of redemption under prior law may be redeemed as provided by prior law.

Legislative Committee Comment—Assembly

Comment. Section 694.050 preserves the right of redemption from execution and foreclosure sales where property has been levied upon or foreclosure proceedings or other proceedings for sale have been commenced prior to the operative date unless the parties agree in writing to application of the provisions of this title. See Sections 701.545 (delayed sale), 701.680 (sales absolute). See also Sections 729.010-729.090 (redemption where trust deed or mortgage foreclosed.)

§ 694.060. Creditor's suit

694.060. Notwithstanding Section 708.230, an action may be commenced pursuant to Section 708.210 within

one year after the operative date if the action could have been commenced under prior law on the day before the operative date.

Comment. Section 694.060 provides a one-year grace period for bringing a creditor's suit that would otherwise be barred by Section 708.230.

§ 694.070. Third-party proceedings

694.070. (a) A third-party claim filed prior to the operative date is governed by prior law.

(b) A demand for a third-party claim served on a secured party prior to the operative date is governed by prior law.

Comment. Section 694.070 provides exceptions to the general rule governing application of this title provided by Section 694.020.

§ 694.080. Exemptions

694.080. The exemptions from enforcement of a money judgment provided by this title do not apply to property levied upon or otherwise subjected to a lien prior to the operative date. Whether such property is exempt is determined by the exemptions provided by law at the time the lien was created.

Comment. Section 694.080 facilitates the early application of Section 703.050 (exemptions in effect at time of lien govern). See Sections 703.050 and 703.060 and the Comments thereto.

§ 694.090. Effect of homestead declaration

694.090. On and after the operative date, a declaration of homestead made under prior law pursuant to Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code is effective only to the extent provided in Article 5 (commencing with Section 704.910) of Chapter 4 of Division 2.

Legislative Committee Comment—Senate

Comment. Section 694.090 makes clear that a homestead declaration recorded pursuant to former Civil Code Sections 1237–1304 is effective as an exemption from creditors only as provided in Sections 704.910–704.990. A homestead declaration under prior law is not effective as a restriction on conveyance or encumbrance. See Section 704.940.

DIVISION 2. ENFORCEMENT OF MONEY JUDGMENTS

CHAPTER 1. GENERAL PROVISIONS

Article 1. Property Subject to Enforcement of Money Judgment

§ 695.010. Property subject to enforcement of money judgment

695.010. Except as otherwise provided by law, all property of the judgment debtor is subject to enforcement of a money judgment.

Comment. Section 695.010 supersedes the first portion of subdivision (a) of former Section 688. The reference in former law to “any interest” in property and the enumeration of types of property subject to enforcement is not continued; all property of the judgment debtor, regardless of type or interest, is subject to enforcement of a money judgment unless an exception is provided by law. See also Civil Code §§ 1390.3, 1390.4 (enforcement against property subject to general power of appointment).

Some property that is not the judgment debtor’s may also be subject to enforcement of a money judgment against the judgment debtor. See Section 695.020 (community property). For provisions governing liens on property that is transferred, see Sections 697.390 (judgment lien on real property), 697.610 (judgment lien on personal property), 697.720-697.750 (execution lien). The introductory clause of Section 695.010 recognizes that some property of the judgment debtor is by law not subject to enforcement of a money judgment despite the general rule stated in Section 695.010. Property that is exempt by statute without the need to make an exemption claim is not subject to enforcement of a money judgment unless a particular exemption provision otherwise provides. See Section 703.030(b) (general rule). See also Sections 704.110(c) (public retirement plan benefits), 704.113 (public vacation credit), 704.115(c) (private retirement plan benefits), 706.052 (wage garnishment). Property of a public entity is not subject to enforcement of a money judgment under this division. See Section 695.050; Gov’t Code §§ 965.5, 970.1. Property that is not transferable is generally not subject to enforcement. See Section 695.030. Certain property held in a fiduciary capacity may not be subject to

enforcement. See, *e.g.*, Civil Code § 986(a)(6) (amounts held for payment of artists); Educ. Code § 21116 (educational endowment property); Health & Saf. Code § 32508 (hospital endowment property); Labor Code § 270.5 (property held by logging employer as fund for wages). Specific property may be made not subject to enforcement by other statutes. See, *e.g.*, Civil Code § 765 (estate at will); Health & Saf. Code § 7925 (cemetery funds); Labor Code § 4901 (workers' compensation). Federal law protects certain property from enforcement. See, *e.g.*, 42 U.S.C. § 407 (social security).

Property of the judgment debtor that is by law not subject to enforcement of a money judgment may not be reached by any enforcement process, whether execution or otherwise. Certain property of the judgment debtor may be subject to enforcement by some, but not all, enforcement procedures. See, *e.g.*, Section 699.720 (property not subject to execution but subject to other enforcement procedures).

§ 695.020. Community property

695.020. (a) Community property is subject to enforcement of a money judgment as provided in Title 8 (commencing with Section 5100) of Part 5 of Division 4 of the Civil Code.

(b) Unless the provision or context otherwise requires, if community property that is subject to enforcement of a money judgment is sought to be applied to the satisfaction of a money judgment:

(1) Any provision of this division that applies to the property of the judgment debtor or to obligations owed to the judgment debtor also applies to the community property interest of the spouse of the judgment debtor and to obligations owed to the either spouse that are community property.

(2) Any provision of this division that applies to property in the possession or under the control of the judgment debtor also applies to community property in the possession or under the control of the spouse of the judgment debtor.

Comment. Section 695.020 recognizes the rule that community property, including the interest of a nondebtor spouse, is generally subject to enforcement of a money judgment. For exceptions to this rule, see Civil Code Section 5100 *et seq.*

§ 695.030. Property not subject to enforcement of money judgment

695.030. (a) Except as otherwise provided by statute, property of the judgment debtor that is not assignable or transferable is not subject to enforcement of a money judgment.

(b) The following property is subject to enforcement of a money judgment:

(1) An interest in a spendthrift trust, to the extent provided by law.

(2) A cause of action for money or property that is the subject of a pending action or special proceeding.

Legislative Committee Comment—Senate

Comment. Subdivision (a) of Section 695.030 states the general rule that property is not subject to enforcement unless it is assignable or transferable. See, e.g., 1 A. Freeman, *Law of Executions* § 109 (3d ed. 1900); *Murphy v. Allstate Ins. Co.*, 17 Cal.3d 937, 553 P.2d 584, 132 Cal. Rptr. 424 (1976) (chase in action founded upon tort subject to creditor's suit only if assignable by the law of the state).

Paragraph (1) of subdivision (b) codifies existing case law. See, e.g., *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 87 P.2d 880 (1939) (spendthrift trust). See also 7 B. Witkin, *Summary of California Law Trusts* §§ 94–99, at 5452-60 (8th ed. 1974). As to the method of enforcement against a judgment debtor's interest as a beneficiary of a trust, see Section 709.010 and Civil Code Section 859. Paragraph (2) continues a principle inherent in former Section 688.1. This provision recognizes that a nonassignable cause of action, such as for negligently caused personal injury, may be subject to a lien pursuant to Article 5 (commencing with Section 708.410) of Chapter 6, if it is the subject of a pending action.

Property that is exempt by statute without the need to claim the exemption is not subject to any procedure for enforcement of a money judgment unless a particular exemption provision otherwise provides. See Section 703.030(b) and the Comment thereto.

§ 695.035. Real property leases subject to enforcement

695.035. (a) A lessee's interest in real property may be applied to the satisfaction of a money judgment in any of the following circumstances:

(1) If the lessee has the right voluntarily to sublet the property or assign the interest in the lease.

(2) If the lessee has the right voluntarily to sublet the property or assign the interest in the lease subject to standards or conditions and the purchaser at the execution sale or other assignee agrees to comply with

the standards or conditions that would have had to be complied with had the lessee voluntarily sublet the property or assigned the interest in the lease.

(3) If the lessee has the right voluntarily to sublet the property or assign the interest in the lease with the consent of the lessor, in which case the obligation of the lessor to consent to the assignment is subject to the same standard that would apply had the lessee voluntarily sublet the property or assigned the interest in the lease.

(4) In any other case, if the lessor consents in writing.

(b) A provision in a lease for the termination or modification of the lease upon an involuntary transfer or assignment of the lessee's interest is ineffective to the extent that such provision would prevent the application of the lessee's interest to the satisfaction of the money judgment under subdivision (a).

Legislative Committee Comment—Assembly

Comment. Section 695.035 is a new provision that sets conditions on the application of leasehold interests to the satisfaction of money judgments, whether by execution sale, receiver, assignment order, or otherwise. Subdivision (a) of Section 695.035 is drawn from a portion of Civil Code Section 1951.4 pertaining to the lessor's right to enforce a lease after the lessee has breached the lease and abandoned the property. A potential purchaser at an execution or other sale of the judgment debtor's leasehold interest would be wise to negotiate with the lessor before the sale to avoid disputes that might otherwise arise after the sale.

Subdivision (b) makes clear that a provision against involuntary transfer or assignment has no effect if the lease may be reached under subdivision (a). Under former law it appeared that a lessor could avoid an involuntary transfer by providing for a forfeiture upon involuntary transfer. See *Farnum v. Hefner*, 79 Cal. 575, 21 P. 955 (1889) (dictum).

§ 695.040. Release of property not subject to enforcement

695.040. Property that is not subject to enforcement of a money judgment may not be levied upon or in any other manner applied to the satisfaction of a money judgment. If property that is not subject to enforcement of a money judgment has been levied upon, the property

may be released pursuant to the claim of exemption procedure provided in Article 2 (commencing with Section 703.510) of Chapter 4.

Comment. Section 695.040 is comparable to Section 703.510(b) (release of property exempt without making a claim).

§ 695.050. Enforcement against public entity

695.050. A money judgment against a public entity is not enforceable under this division if the money judgment is subject to Chapter 1 (commencing with Section 965) of, or Article 1 (commencing with Section 970) of Chapter 2 of, Part 5 of Division 3.6 of Title 1 of the Government Code.

Comment. Section 695.050 continues existing law. See Government Code Sections 965.5(b) (state) and 970.1(b) (local public entities). See also Sections 683.320 and Comment to that section (period for enforcement of judgment), 712.070 (nonmoney judgments).

§ 695.060. License to engage in business

695.060. Except as provided in Section 708.630, a license issued by a public entity to engage in any business, profession, or activity is not subject to enforcement of a money judgment.

Legislative Committee Comment—Assembly

Comment. Section 695.060 is derived from a portion of subdivision (f) of former Section 688 which preclude levy or execution sale of a “license issued by this state to engage in any business, profession, or activity.” See also Sections 708.630 (receiver to sell liquor license), 708.910-708.930 (enforcement against franchise).

§ 695.070. Property subject to lien after transfer

695.070. Notwithstanding the transfer or encumbrance of property subject to a lien created under this division, if the property remains subject to the lien after the transfer or encumbrance, the money judgment may be enforced against the property in the same manner and to the same extent as if it had not been transferred or encumbered.

Legislative Committee Comment—Assembly

Comment. Section 695.070 is new. For provisions governing the continuation of liens on property that is transferred or encumbered, see Sections 697.390 (judgment lien on real property), 697.610 (judgment lien on personal property), 697.720-697.750 (execution lien), 697.920 (other liens).

Article 2. Amount to Satisfy Money Judgment**§ 695.210. Amount required to satisfy judgment**

695.210. The amount required to satisfy a money judgment is the total amount of the judgment as entered or renewed with the following additions and subtractions:

(a) The addition of costs added to the judgment pursuant to Section 685.090.

(b) The addition of interest added to the judgment as it accrues pursuant to Sections 685.010 to 685.030, inclusive.

(c) The subtraction of the amount of any partial satisfactions of the judgment.

(d) The subtraction of the amount of any portion of the judgment that is no longer enforceable.

Comment. Section 695.210 is new. For a related provision, see Section 680.300 (“principal amount of the judgment” defined). See also Section 577.5 (amount to be computed and stated in dollars and cents, rejecting fractions).

§ 695.220. Order of application of money received

695.220. Money received in satisfaction of a money judgment is to be credited as follows:

(a) The money is first to be credited against the amounts described in subdivision (b) of Section 685.050 that are collected by the levying officer.

(b) Any remaining money is next to be credited against the accrued interest that remains unsatisfied.

(c) Any remaining money is to be credited against the principal amount of the judgment remaining unsatisfied. If the judgment is payable in installments, the remaining money is to be credited against the matured installments in the order in which they matured.

Comment. Section 695.220 is drawn from a portion of former Section 682.1 (writ of execution issued on money judgment), but Section 695.220 applies to any money received in satisfaction of the judgment, not just that received pursuant to a levy of execution. See also the Comment to Section 724.010.

CHAPTER 2. LIENS

Article 1. General Provisions

§ 697.010. Amount of lien generally

697.010. Except as otherwise provided by statute, a lien created under this division or under Title 6.5 (commencing with Section 481.010) (attachment) is a lien for the amount required to satisfy the money judgment.

Comment. Section 697.010 makes clear that a lien is for the amount required to satisfy the judgment. See Section 695.210. For special rules as to the amount of the lien in the case of particular liens, see, *e.g.*, Sections 697.350 (judgment lien on real property), 697.540 (judgment lien on personal property), 706.029 (lien created by wage garnishment). These special rules prevail over Section 697.010 where applicable.

§ 697.020. Relation back of liens

697.020. (a) If a lien is created on property pursuant to Title 6.5 (commencing with Section 481.010) (attachment) and after judgment in the action a lien is created pursuant to this division on the same property under the same claim while the earlier lien is in effect, the priority of the later lien relates back to the date the earlier lien was created.

(b) If a lien is created on property pursuant to this division and a later lien of the same or a different type is created pursuant to this division on the same property under the same judgment while the earlier lien is in effect, the priority of the later lien relates back to the date the earlier lien was created.

(c) Nothing in this section affects priorities or rights of third persons established while the earlier lien was in effect under the law governing the earlier lien.

Legislative Committee Comment—Assembly

Comment. Section 697.020 states the general rule regarding the relation back of liens to preserve the judgment creditor's priority as of the time of the creation of the first in a series of overlapping liens on the same property. This principle is consistent with case law. See *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242 (1909); *Riley v. Nance*, 97 Cal. 203, 205, 31 P. 1126 (1893); *Bagley v. Ward*, 37 Cal. 121, 131 (1869) (dictum); *Durkin v. Durkin*, 133 Cal. App.2d 283, 294, 284 P.2d 185 (1955); *Balzano v. Traeger*, 93 Cal. App. 640, 643-44, 270 P. 249 (1928).

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

Various liens are provided by this title. See Sections 697.310 (judgment lien on real property), 697.510 (judgment lien on personal property), 697.710 (execution lien), 706.029 (lien of earnings withholding order), 708.110 (lien by service of order of examination on judgment debtor), 708.120 (lien by service of order of examination on third person), 708.205 (lien of order in examination proceedings), 708.250 (lien of creditor's suit), 708.320 (lien of charging order), 708.410 (lien in pending action or proceeding), 708.780 (lien on money owed judgment debtor by public entity).

Subdivision (c) of Section 697.020 makes clear that the relation back doctrine does not affect the priority or rights of a third person established while the earlier lien was in effect. Thus, for example, if an earlier judgment lien on personal property was subject to the priority of a later purchase money security interest (see Section 697.590), a later execution lien on the same property will be subject to the earlier established priority. Likewise, if the earlier judgment lien on personal property is no longer in existence at the time of execution because it was terminated by the transfer of the property subject to the judgment lien to a buyer in the ordinary course of business (see Section 697.610), the relation back doctrine of Section 697.020 has no application. Similarly, a transfer by a defendant in violation of a temporary protective order under the Attachment Law to a good faith purchaser will terminate the lien created by the temporary protective order (see Section 486.110) and the relation back doctrine will not apply.

General provisions concerning the priority of liens appear in Civil Code Sections 2897-2899. Note that a lien on after-acquired property arises as of the time when the property is acquired by the person whose property is subject to the lien. Civil Code § 2883. Special rules may, however, be applicable in such case. See Sections 697.380(g) (judgment lien on real property), 697.590(b)-(c) and 697.600(b) (judgment lien on personal property).

§ 697.030. Duration of liens generally

697.030. Subject to Sections 683.180 to 683.200, inclusive, and to Section 697.040, except where a shorter period is provided by statute, a lien created pursuant to this title is effective during the period of enforceability of the judgment.

Legislative Committee Comment—Assembly

Comment. Section 697.030 is new. It makes clear that a lien terminates when the period of enforceability of the judgment expires. For the period of enforceability of a judgment, see Chapter 3 (commencing with Section 683.010) of Division 1. See also Sections 683.180-683.200 (extension of lien under renewed judgment). This section includes language which recognizes that a particular lien may be more limited in duration. See Sections 697.510(b) (five-year judgment lien on personal property), 697.710 (two-year lien of execution).

A lien may also be extinguished in connection with an order staying enforcement of the judgment as provided in Section 697.040.

§ 697.040. Effect of stay of enforcement of judgment

697.040. (a) If enforcement of the judgment is stayed on appeal by the giving of a sufficient undertaking under Chapter 2 (commencing with Section 916) of Title 13:

(1) Existing liens created under this division are extinguished.

(2) New liens may not be created under this division during the period of the stay.

(b) Unless the court otherwise expressly orders, a stay of enforcement of the judgment under Section 918 does not extinguish or prevent the creation of a lien under Article 2 (commencing with Section 697.310) or Article 3 (commencing with Section 697.510); but, unless the court

otherwise expressly orders, no other liens may be created or continued under this division during the period of the stay of enforcement.

(c) Unless the court expressly orders otherwise, if enforcement of the judgment is stayed pursuant to Section 1699 or 1710.50:

(1) Existing liens created under this division are extinguished.

(2) New liens may not be created under this division during the period of the stay.

Legislative Committee Comment—Assembly

Comment. Subdivisions (a) and (c) of Section 697.040 supersede and generalize provisions formerly found in Section 674. Subdivision (a) and Section 697.050 also supersede former subdivision (b) of Section 916. Section 1710.50, which is referred to in subdivision (c), relates to enforcement of sister state money judgments. Section 1699, also referred to in subdivision (c), relates to enforcement of sister state support orders.

Subdivision (b) is a new provision that applies to the situation where the trial court stays enforcement of a judgment under Section 918 (stay for a limited time which cannot extend more than 10 days after the last date on which a notice of appeal could be filed). Subdivision (b) makes clear that, unless the court otherwise expressly orders, the granting of a stay under Section 918 does not affect the creation or continuance of a judgment lien on real or personal property. No other enforcement lien may be created or continued during the period of the stay unless the court expressly orders otherwise. These rules are consistent with prior law. See *Industrial Indem. Co. v. Levine*, 49 Cal. App.3d 698, 122 Cal. Rptr. 712 (1975) (granting of stay by trial court under former Section 681a and pursuant to stipulation did not prevent the recording of an abstract of judgment to create a judgment lien on real property). The subdivision, however, authorizes the court to make an order expressly providing another rule appropriate to the circumstances of the particular case. Such an order might provide, for example, that the stay of enforcement shall prevent the creation of a judgment lien, that a judgment lien in existence shall terminate, that property levied on shall continue to be subject to the execution lien but that further proceedings under the levy shall be deferred during the period of the stay, or that specific property may be levied on despite the stay. See also Section 1268.160 (excess withdrawal of deposit in eminent domain proceeding).

§ 697.050. Effect of extinction of lien

697.050. If a lien created pursuant to this division is extinguished, property held subject to the lien shall be released unless the property is to be held under another lien or the property is ordered by the court to be held pending resolution of a dispute concerning its proper disposition.

Comment. Section 697.050 is new and supersedes former subdivision (b) of Section 916. Section 697.050 requires the release of property when the lien is extinguished, except if it is subject to another lien (such as an execution lien in favor of another creditor) or if the court has ordered property to be retained (such as in proceedings on a third-party claim). See also Article 5 (commencing with Section 701.010) of Chapter 3 (duties and liabilities of third persons). If the property was levied upon by a levying officer, release is governed by Section 699.060.

§ 697.060. Judgment liens under federal judgments

697.060. (a) An abstract or certified copy of a money judgment of a court of the United States that is enforceable in this state may be recorded to create a judgment lien on real property pursuant to Article 2 (commencing with Section 697.310).

(b) A notice of judgment lien based on a money judgment of a court of the United States that is enforceable in this state may be filed to create a judgment lien on personal property pursuant to Article 3 (commencing with Section 697.510).

Legislative Committee Comment—Assembly

Comment. Section 697.060 makes clear that judgment liens on real and personal property are available to enforce federal money judgments. See 28 U.S.C. § 1962 (1976) (judgment lien of federal judgment to same extent and in same manner as state judgment if so authorized by state law). Subdivision (a) continues the substance of a portion of former Section 674(a). See also 28 U.S.C. § 1963 (1976) (registration of judgment of one district court in another district).

Article 2. Judgment Lien on Real Property

§ 697.310. Creation and duration of judgment lien on real property generally

697.310. (a) Except as otherwise provided by statute, a judgment lien on real property is created under this section by recording an abstract of a money judgment with the county recorder.

(b) Unless the money judgment is satisfied or the judgment lien is released, subject to Section 683.180 (renewal of judgment), a judgment lien created under this section continues until 10 years from the date of entry of the judgment.

(c) The creation and duration of a judgment lien under a money judgment entered pursuant to Section 85 or 117 of this code or Section 16380 of the Vehicle Code or under a similar judgment is governed by this section, notwithstanding that the judgment may be payable in installments.

Legislative Committee Comment—Assembly

Comment. Subdivisions (a) and (b) of Section 697.310 supersede provisions formerly found in Section 674 (a). However, unlike the former provision, the 10-year period under subdivision (b) of Section 697.310 is not extended in certain cases where the enforcement of the judgment is stayed. The lien does not continue after the expiration of the period of enforceability of the judgment. See Sections 683.020, 697.030.

Section 697.310 applies to lump-sum money judgments, including certain lump-sum judgments payable in installments. See subdivision (c) (municipal, justice, and small claims court judgments payable in installments and certain vehicle accident judgments payable in installments) and Section 697.330 (judgments entered on workers' compensation awards in a lump sum). Only lump-sum judgments payable in installments like those listed in subdivision (c) are included under subdivision (c). As to support judgments and certain other judgments requiring periodic payments, see Sections 697.320 and 697.330. See also Welf. & Inst. Code § 908 (order for support of ward or dependent child deemed judgment for purposes of this article). As to the procedure for extending the duration of the judgment lien when the judgment is renewed, see Section 683.180.

§ 697.320. Judgment lien for installments under support judgment or judgment against health care provider

697.320. (a) A judgment lien on real property is created under this section by recording a certified copy of any of the following money judgments with the county recorder:

(1) A judgment for spousal or child support payable in installments.

(2) A judgment entered pursuant to Section 667.7 (judgment against health care provider requiring periodic payments).

(b) Unless the money judgment is satisfied or the judgment lien is released, a judgment lien created under this section continues for a period of 10 years from the date of its creation. The duration of a judgment lien created under this section may be extended any number of times by recording during the time the judgment lien is in existence a certified copy of the judgment in the manner provided in this section for the initial recording. Such rerecording has the effect of extending the duration of the judgment lien created under this section until 10 years from the date of such rerecording.

Legislative Committee Comment—Senate

Comment. Section 697.320 supersedes portions of former Sections 674.5 (support judgment) and 674.7 (judgment against health care provider). This section also applies to a judgment requiring installment payment of workers' compensation. See Section 697.330(a)(2). The amount of a judgment lien created under this section is determined pursuant to Section 697.350(c) and includes past due installments that remain enforceable. If the judgment lien is not extended by rerecording within the time prescribed in subdivision (b), this does not prevent the creation of a new judgment lien by recording under subdivision (a), but the new lien does not cover any amounts of the judgment that are not enforceable at the time the new lien is created. The lien does not continue after the expiration of the period of enforceability of the judgment. See Sections 683.020, 697.030

§ 697.330. Judgment lien for workers' compensation award

697.330. (a) In the case of a money judgment entered on an order, decision, or award made under Division 4 (commencing with Section 3200) of the Labor Code (workers' compensation):

(1) If the judgment is for a lump sum, a judgment lien on real property is created by recording an abstract of the judgment as provided in Section 697.310 and, except as otherwise provided in Division 4 (commencing with Section 3200) of the Labor Code, the judgment lien is governed by the provisions applicable to a judgment lien created under Section 697.310.

(2) If the judgment is for the payment of money in installments, a judgment lien on real property is created by recording a certified copy of the judgment as provided in Section 697.320 and, except as otherwise provided in Division 4 (commencing with Section 3200) of the Labor Code, the lien is governed by the provisions applicable to a judgment lien created under Section 697.320.

(b) Nothing in this section limits or affects any provision of Division 4 (commencing with Section 3200) of the Labor Code.

Comment. Section 697.330 is a new provision intended to make clear the effect of a judgment lien where the judgment is entered on a workers' compensation award. No cases have been found where a judgment lien (as distinguished from an execution lien) was sought to be created pursuant to a workers' compensation award. However, subdivision (a)(1) of Section 697.330 states the result that would appear to have been reached under former law, since an abstract of a lump-sum money judgment could be recorded to create a judgment lien under a provision formerly found in Section 674 and there was no exclusion of lump-sum judgments entered on workers' compensation awards. Subdivision (a)(2) treats an installment judgment entered on a workers' compensation award the same as an installment judgment for support.

Subdivision (a) is subject to the provisions of Division 4 of the Labor Code which provide the manner of enforcement of an order, decision, or award made under that division. See, e.g., Labor Code §§ 5300 (exclusive jurisdiction of appeals board for enforcement of award), 5808 (stay of execution of judgment entered upon an order, decision, or award), 5809 (order for entry of satisfaction of the judgment). See also Labor Code §§ 5600-5603 (issuance of writs of attachment upon order of appeals board), 5800 (interest on awards), 5806 (entry of judgment on award), 5955-6002 (stay of enforcement by court). It should be noted that the appeals board has authority to

commute a workers' compensation award payable in installments to a lump sum. Labor Code §§ 5100-5106. If this authority is exercised, a judgment lien can then be created as provided in subdivision (a) (1) of Section 697.330.

§ 697.340. Interests subject to judgment lien on real property

697.340. Except as provided in Section 704.950:

(a) A judgment lien on real property attaches to all interests in real property in the county where the lien is created (whether present or future, vested or contingent, legal or equitable) that are subject to enforcement of the money judgment against the judgment debtor pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 at the time the lien was created, but does not reach a right to rents or a leasehold estate with an unexpired term of less than two years or the interest of a beneficiary under a trust.

(b) If any interest in real property in the county on which a judgment lien could be created under subdivision (a) is acquired after the judgment lien was created, the judgment lien attaches to such interest at the time it is acquired.

Legislative Committee Comment—Senate

Comment. Subdivision (a) of Section 697.340 expands the class of interests covered under former law by a judgment lien. Under a provision formerly found in Section 674, the judgment lien reached only vested legal ownership interests. See, e.g., *Summerville v. Stockton Milling Co.*, 142 Cal. 529, 537-39, 76 P. 243 (1904); *Lang v. Klinger*, 34 Cal. App.3d 987, 991, 110 Cal. Rptr. 532 (1973); *Belieu v. Power*, 54 Cal. App. 244, 210 P. 620 (1921); *Shirran v. Dallas*, 21 Cal. App. 405, 418-21, 132 P. 454 (1913). Under subdivision (a), the judgment lien will reach any interest in real property that is subject to enforcement of a money judgment (see Sections 695.010-695.035) but will not reach a right to rents, a leasehold interest with less than two years to run, or the interest of a beneficiary under a trust. (For the procedure for reaching rents, see Sections 700.170 (garnishment of rents), 708.510 (assignment of right to rents). For the procedure for reaching the interest of a trust beneficiary, see Section 709.010.) Hence, contingent remainders and equitable interests, such as that of a purchaser under a land sale contract, are subject to the judgment lien. See also Section 709.020 (motion procedure to reach contingent interest). Subdivision (a) also recognizes that a judgment lien reaches the community property interest of the judgment debtor's spouse by reference to the provisions concerning property subject to enforcement of a money judgement. See Section 695.020. The

judgment lien also attaches to real property used as a dwelling, even though it may later be found to be totally or partially exempt. However, as recognized by the introductory clause, a judgment lien does not attach to property if a homestead declaration describing such property was first recorded. See Section 704.950. See also Health & Safety Code § 18551 (mobilehome installed on foundation system deemed a fixture and a real property improvement). As to real property subject to a general power of appointment, see Civil Code §§ 1390.1–1390.5.

Subdivision (b) continues former law as to the time a judgment lien arises on after-acquired property. See former subdivision (a) of Section 674; *Hertweck v. Fearon*, 180 Cal. 71, 179 P. 190 (1919). The priority of a lien on after-acquired property is determined pursuant to Section 697.380(g).

§ 697.350. Amount of judgment lien on real property

697.350. (a) Except as otherwise provided by statute, a judgment lien on real property is a lien for the amount required to satisfy the money judgment.

(b) A judgment lien on real property created under a money judgment payable in installments pursuant to Section 85 or 117 of this code or Section 16380 of the Vehicle Code or under a similar judgment is in the full amount required to satisfy the judgment, but the judgment lien may not be enforced for the amount of unmatured installments unless the court so orders.

(c) A judgment lien created pursuant to Section 697.320 is a lien for the amount of the installments as they mature under the terms of the judgment, plus accrued interest and the costs as they are added to the judgment pursuant to Chapter 5 (commencing with Section 685.010) of Division 1, and less the amount of any partial satisfactions, but does not become a lien for any installment until it becomes due and payable under the terms of the judgment.

Comment. Subdivision (a) of Section 697.350 provides the general rule governing the amount of judgment liens on real property. The lien is for the amount required to satisfy the judgment (Section 695.210).

Subdivision (b) makes clear that liens under three types of installment judgments are for the full amount required to satisfy the judgment (Section 695.210). This provision protects the judgment lienholder's priority over subsequent transferees and encumbrancers. See Section 697.390. However, as provided in subdivision (b), only the matured installments are enforceable in

the absence of a court order. This will preclude enforcement of the judgment lien for amounts not yet due where such enforcement would defeat the purpose of permitting installment payments.

Subdivision (c) continues the substance of portions of former Sections 674.5 (support judgments) and 674.7 (installment judgment against health care provider) and provides the same rule for workers' compensation judgments payable in installments (Section 697.330). As to the duration of the lien, see Section 697.320(b) and the Comment to that section.

§ 697.360. Effect of modification of judgment

697.360. (a) If a judgment lien on real property has been created under a money judgment that is thereafter modified as to its amount, an abstract of the modified judgment or a certified copy of the order modifying the judgment may be recorded in the same manner as an abstract of judgment or a certified copy of the judgment is recorded to create a judgment lien.

(b) If a judgment lien on real property has been created under a money judgment that is thereafter modified to reduce its amount, the judgment lien continues under the terms of the judgment as modified, whether or not the modification is recorded as provided in subdivision (a).

(c) If a judgment lien on real property has been created under a money judgment that is thereafter modified to increase its amount, the judgment lien continues under the terms of the original judgment until such time as the modification is recorded as provided in subdivision (a). Upon such recording, the judgment lien extends to the judgment as modified, but the priority for the additional amount under the judgment as modified dates from the time the modification is recorded.

Comment. Section 697.360 governs the amount of the judgment lien in a case where the judgment is modified in amount. The most common application of the section will be a case where a support order requiring periodic payments is modified to change the amount of the periodic payment. Under subdivision (a) the abstract of the modified judgment or the certified copy of the order modifying the judgment may be

recorded and has the effect of conforming the terms of the judgment lien with the modified judgment.

Under subdivision (b), a new recording is not required if the amount of the judgment has been reduced; the judgment lien may be enforced only for the judgment as so modified. However, subdivision (c) makes clear that, prior to recording, a modification that increases the amount of the judgment does not affect a judgment lien and that the priority as to the additional amounts dates from the time of recording; the priority as to the original amounts is not affected, whether or not the modification is recorded.

§ 697.370. Release or subordination of judgment lien

697.370. (a) The judgment creditor may do either of the following:

(1) Release from the judgment lien all or a part of the real property subject to the lien.

(2) Subordinate to another lien or encumbrance the judgment lien on all or a part of the real property subject to the judgment lien.

(b) A release or subordination is sufficient if it is executed by the judgment creditor in the same manner as an acknowledgment of satisfaction of judgment and contains all of the following:

(1) A description of the real property being released or on which the lien is being subordinated. If the judgment debtor does not have an interest of record in the real property, the release or subordination shall show the name of the record owner.

(2) The date the judgment lien was created and where in the records of the county the abstract of judgment or certified copy of the judgment was recorded to create the lien.

(3) The title of the court where the judgment is entered and the cause and number of the action.

(4) The date of entry of the judgment and of any subsequent renewals and where entered in the records of the court.

(5) The name and address of the judgment creditor and the judgment debtor.

(c) A release or subordination substantially complying with the requirements of this section is effective even

though it contains minor errors that are not seriously misleading.

Legislative Committee Comment—Senate

Comment. Section 697.370 is a new provision that recognizes the practice of releasing all or a part of the property from a judgment lien on real property or subordinating a judgment lien on real property to another lien or encumbrance. The provision excusing minor errors that are not seriously misleading is drawn from Commercial Code Section 9402(5), (7) (contents of financing statement). As to the date a judgment lien on real property is created, see Sections 697.310 and 697.320.

§ 697.380. Priority of judgment liens generally

697.380. (a) As used in this section:

(1) “Installment judgment lien” means a judgment lien created under Section 697.320.

(2) “Lump-sum judgment lien” means a judgment lien created under Section 697.310.

(b) Except as otherwise provided by law, the rules stated in this section govern the priorities of judgment liens on real property.

(c) A lump-sum judgment lien has priority over any other lump-sum judgment lien thereafter created.

(d) A lump-sum judgment lien has priority over an installment judgment lien as to all of the following:

(1) Installments that mature on the installment judgment after the lump-sum judgment lien is created.

(2) Interest that accrues on the installment judgment after the lump-sum judgment lien is created.

(3) Costs that are added to the installment judgment after the lump-sum judgment lien is created.

(e) An installment judgment lien has priority over a lump-sum judgment lien as to all of the following:

(1) Installments that have matured on the installment judgment before the lump-sum judgment lien is created.

(2) Interest that has accrued on the installment judgment before the lump-sum judgment lien is created.

(3) Costs that have been added to the installment judgment before the lump-sum judgment lien is created.

(f) If an installment judgment lien has been created and another installment judgment lien is thereafter created, the first installment judgment lien has priority

over the second installment judgment lien as to the installments that have matured on the judgment at the time the second installment judgment lien is created, the interest that has accrued prior to that time on the judgment, and the costs that have been added prior to that time to the judgment pursuant to Chapter 5 (commencing with Section 685.010) of Division 1. Thereafter, priorities are determined by the time at which each installment matures on a judgment, the time the interest accrues on a judgment, and the time costs are added to a judgment pursuant to Chapter 5 (commencing with Section 685.010) of Division 1.

(g) For the purposes of this section, if two judgment liens attach to the same property at the same time under subdivision (b) of Section 697.340 (after-acquired property), the judgment lien that was first created has priority as to all amounts that are due and payable on that judgment at the time the property is acquired.

Comment. Section 697.380 provides general rules that determine priorities of judgment liens created under this article.

Subdivision (b) makes clear that the rules set out in this section are subject to specific rules provided by other sections. See, *e.g.*, Section 697.020 (judgment lien dates back to effective date of prior lien).

Subdivision (c) gives a lien created by recording an abstract of a lump-sum money judgment priority over later lump-sum judgment liens unless the later lien relates back to an earlier time (as where the judgment lien is on property attached in the action in which the second judgment is obtained). See subdivision (b) (rules in this section subject to rules otherwise provided by law).

Subdivisions (d) and (e) set out the rules governing priorities where there is a competing lump-sum judgment lien and an installment judgment lien. Since the installment judgment lien is only a lien for installments as they mature (see subdivision (c) of Section 697.350), a lump-sum judgment lien is given priority over unmatured installments but not over matured installments. Subdivision (f) sets out the rules governing priorities where there are two competing installment judgment liens. In this case, the matured installments under each installment judgment have priority over later maturing installments under the other judgment. Prior law provided no rules for determining priority in these situations.

Subdivision (g) changes the former rule under which judgment liens on after-acquired property of the debtor in a county where two or more abstracts of judgments had been recorded were granted the same priority, but the creditor who acted first by levying upon the property under execution was given priority over the other judgment liens. See *Hertweck v. Fearon*, 180 Cal. 71, 75, 179 P. 190 (1919).

§ 697.390. Effect of transfer or encumbrance of interest subject to judgment lien

697.390. If an interest in real property that is subject to a judgment lien is transferred or encumbered without satisfying the judgment lien:

(a) The interest transferred or encumbered remains subject to a judgment lien created pursuant to Section 697.310 in the same amount as if the interest had not been transferred or encumbered.

(b) The interest transferred or encumbered remains subject to a judgment lien created pursuant to Section 697.320 in the amount of the lien at the time of transfer or encumbrance plus interest thereafter accruing on such amount.

Comment. Section 697.390 states rules governing judgment liens on interests in real property that have been transferred (sold, exchanged, or otherwise transferred) or encumbered. As to the continuation of the lien on transferred property after renewal of the judgment, see Section 683.180(b).

Under subdivision (a), the lien on the property interest transferred remains a lien in the same amount as is provided by subdivision (a) or (b) of Section 697.350 and includes interest that accrues and costs that are added to the judgment after the transfer. Under subdivision (a), the judgment lien has priority over any subsequent encumbrance in the same amount as is provided by subdivision (a) or (b) of Section 697.350 and this priority extends to interest that accrues and costs that are added to the judgment after the encumbrance of the interest. Subdivision (a) is consistent with prior case law. See, *e.g.*, *Kinney v. Vallentyne*, 15 Cal.3d 475, 479, 541 P.2d 537, 124 Cal. Rptr. 897 (1975).

Subdivision (b) provides a special rule derived from portions of former Sections 674.5 and 674.7 applicable to the transfer of property subject to certain installment judgment liens.

Subdivision (b) makes clear that interest accrues on the judgment lien for matured but unsatisfied installments after property is transferred or encumbered subject to the judgment lien. However, unmatured installments that fall due after the transfer or encumbrance, interest that accrues on such unmatured installments, and additional costs added to the judgment after the transfer or encumbrance are not added to the amount of the judgment lien on the property transferred or to the amount of the judgment lien given priority over the encumbrance.

Section 697.390 deals only with the situation where the transfer or encumbrance is made after the judgment lien is created. However, if the transfer is in fraud of the creditor, the creditor may follow the property into the hands of the transferee even if the transfer took place before the judgment lien attached. See, *e.g.*, *McGee v. Allen*, 7 Cal.2d 468, 473, 60 P.2d 1026 (1936); *Liuzza v. Bell*, 40 Cal. App.2d 417, 429, 104 P.2d 1095 (1940). The same reasoning would require that preference be given to the judgment lien where an earlier encumbrance was in fraud of the creditor.

§ 697.400. Recording of documents extinguishing or subordinating judgment lien on real property

697.400. (a) The judgment creditor, judgment debtor, or owner of real property subject to a judgment lien on real property created under Section 697.310, may record in the office of the county recorder an acknowledgment of satisfaction of judgment executed as provided in Section 724.060 or a court clerk's certificate of satisfaction of judgment issued pursuant to Section 724.100. Upon such recording, the judgment lien created under the judgment that has been satisfied is extinguished as a matter of record.

(b) The judgment creditor, judgment debtor, or owner of real property subject to a judgment lien on real property created under Section 697.320, may record in the office of the county recorder an acknowledgment of satisfaction of matured installments under an installment judgment if the acknowledgment is executed as provided in Section 724.250. Upon such recording, the judgment lien is extinguished as a matter of record to the extent of the satisfied installments described in the acknowledgment of satisfaction.

(c) The judgment creditor, the judgment debtor, or the owner of real property subject to a judgment lien, including a property owner described in Section 697.410, may record in the office of the county recorder a release or subordination of a judgment lien on real property if the release or subordination is executed as provided in Section 697.370.

Comment. Section 697.400 is a new provision for recording the satisfaction of a judgment to extinguish as a matter of record the judgment lien on real property and for recording other documents affecting a judgment lien on real property.

§ 697.410. Release of erroneous judgment lien on real property

697.410. (a) If a recorded abstract of a money judgment or certified copy of a money judgment appears to create a judgment lien on real property of a person who is not the judgment debtor because the name of the property owner is the same as or similar to that of the judgment debtor, the erroneously identified property owner may deliver to the judgment creditor a written demand for a recordable document releasing the lien. The demand shall be accompanied by proof to the satisfaction of the judgment creditor that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment against the judgment debtor.

(b) Within 15 days after receipt of the property owner's demand and proof satisfactory to the judgment creditor that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment, the judgment creditor shall deliver to the property owner a recordable document releasing the lien on the property of such owner. If the judgment creditor improperly fails to deliver a recordable document releasing the lien within the time allowed, the judgment creditor is liable to the property owner for all damages sustained by reason of such failure and shall also forfeit one hundred dollars (\$100) to the property owner.

(c) If the judgment creditor does not deliver a recordable document pursuant to subdivision (b), the property owner may apply to the court on noticed motion for an order releasing the judgment lien on the property of such owner. Notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. Upon presentation of evidence to the satisfaction of the court that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment, the court shall order the judgment creditor to prepare and deliver a recordable document releasing the lien or shall itself order the release of the judgment lien on the property of such owner. The court order may be recorded in the office of the county recorder with the same effect as the recordable document demanded by the property owner.

(d) The court shall award reasonable attorney's fees to the prevailing party in any proceeding maintained pursuant to this section.

(e) The damages provided by this section are not in derogation of any other damages or penalties to which an aggrieved person may be entitled by law.

Comment. Section 697.410 is drawn from subdivisions (e), (f), and (g) of former Section 675. The phrase "and that the property is not subject to the enforcement of the judgment" has been added in subdivision (a) to make clear that Section 697.410 does not permit a spouse who is not a judgment debtor to use this procedure to release a lien on community property that is subject to enforcement of a judgment obtained against the other spouse.

Article 3. Judgment Lien on Personal Property

Comment. Article 3 (Sections 697.510-697.670) provides a new procedure for obtaining a judgment lien on certain personal property (see Section 697.530) in a manner analogous to the procedure in the Commercial Code for perfecting a security interest by filing with the Secretary of State. As Section 697.520 makes clear, this procedure may be used in conjunction with other enforcement procedures (such as levy of execution or examination proceedings) or may be used alone as a means of establishing a priority over other creditors.

In certain cases, a judgment creditor will attempt to enforce a judgment through a procedure such as an examination

proceeding (Sections 708.110-708.205) or a creditor's suit (Sections 708.210-708.290). In such a case, the judgment creditor will obtain a lien that can be defeated by the transfer of the property to a bona fide purchaser. See Section 697.920. However, use of the procedure provided in this article will in certain cases enable the judgment creditor to preclude transfer to a bona fide purchaser; the notice of judgment lien filed under this article is constructive notice to certain transferees. Section 697.610. See also Sections 697.590, 697.600 (priorities). Although the judgment lien will not protect against a transfer to a person described in Section 697.610, it may give the judgment creditor a priority over other creditors with respect to the identifiable cash proceeds (Section 697.620) or specified kinds of after-acquired property to which the judgment lien will automatically attach (Sections 697.530(b), 697.590(b), and 697.600(b)).

The judgment creditor may use the procedure provided in this article in order to establish a priority dating from the creation of the lien by filing with the Secretary of State. Although levy of execution creates an execution lien, a levy may be significantly delayed because of the time required to obtain a writ of execution and the time required by the levying officer to levy on property under the writ. Moreover, if the property is subject to a perfected security interest of a third person, the judgment creditor may not desire to levy upon the property because if the property is levied upon the judgment creditor may have to deal with a claim under the third-party claims procedure. See Section 720.010 *et seq.* The use of the procedure under this article gives the judgment creditor a priority over other unsecured creditors but avoids the need to levy on the property and thus avoids the possibility of the third-party claim by the secured party having priority.

If the lien on personal property is not voluntarily satisfied, it is anticipated that the normal remedy for enforcing the lien will be by levy of execution. See Chapter 3 (commencing with Section 699.010). In certain circumstances, the judgment creditor may need to use the remedies provided by Chapter 6 (commencing with Section 708.010). An action to foreclose the judgment lien on personal property may be necessary in certain circumstances, such as where the judgment debtor dies before the judgment is satisfied. See Section 686.020. In this sense the judgment lien on personal property is analogous to the judgment lien on real property which is normally enforced by execution and infrequently by foreclosure. However, absent the consent of the judgment debtor, the judgment creditor is not entitled to the

other remedies provided in Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code, such as self-help repossession or private sale.

General provisions concerning liens are set forth in Article 1 (commencing with Section 697.010).

§ 697.510. Creation and duration of judgment lien on personal property

697.510. (a) A judgment lien on personal property described in Section 697.530 is created by filing a notice of judgment lien in the office of the Secretary of State pursuant to this article. A judgment lien may be created under this article only if the judgment is a money judgment that was first entered in this state after June 30, 1983. Except as provided in subdivision (b) of Section 697.540, a judgment lien may not be created under this article if the money judgment is payable in installments unless all of the installments under the judgment have become due and payable at the time the notice of judgment lien is filed.

(b) Unless the money judgment is satisfied or the judgment lien is terminated or released, the judgment lien continues for five years from the date of filing.

(c) Notwithstanding Section 697.020, the priority of a judgment lien created under this article does not relate back to the date an earlier judgment lien was created under this article.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 697.510 provides for the creation of a judgment lien on personal property by filing pursuant to this article. Only money judgments entered on or after the operative date of this title may be enforced pursuant to this article. The property that becomes subject to the lien is described in Section 697.530. Subdivision (a) permits the creation of a judgment lien under this article only where the money judgment is a lump-sum money judgment. Because of the disruptive effect of a judgment lien on the business of the judgment debtor, a lien cannot be created under this article pursuant to an installment judgment if there are unmaturing installments at the time of filing. Compare Sections 697.320 and 697.330 (judgment lien on real property under certain installment judgments).

Subdivision (b) makes the duration of the judgment lien on personal property the same as the effective period of a filed financing statement under Commercial Code Section 9403(2). Unlike a security interest, however, the judgment lien on personal property may not be extended beyond the five-year period. The five-year period is sufficient to permit the judgment creditor to apply the property to the satisfaction of the judgment by execution or otherwise. If the judgment creditor files a second notice of judgment lien on the same property, the second filing does not affect the first lien nor extend the five-year period of its duration. Subdivision (c) makes clear that the priority and duration of the second lien is based on its date of filing and does not relate back to the date of the filing of the notice of the first lien. However, if a judgment lien is created under this article, it may relate back to an earlier attachment lien. See Section 697.020 and the Comment thereto.

§ 697.520. Use of other procedures

697.520. A judgment lien on personal property may be created pursuant to this article as an alternative or in addition to a lien created by levy under a writ of execution pursuant to Chapter 3 (commencing with Section 699.010) or by use of an enforcement procedure provided by Chapter 6 (commencing with Section 708.010).

Comment. Section 697.520 makes clear that the lien procedure under this article may be used in connection with other enforcement procedures (such as levy of execution or examination proceedings) or may be used alone as a means of establishing a priority over other creditors as to certain property. See the Comment to this article.

§ 697.530. Property subject to judgment lien

697.530. (a) A judgment lien on personal property is a lien on all interests in the following personal property that are subject to enforcement of the money judgment against the judgment debtor pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 at the time the lien is created if a security interest in the property could be perfected under the Commercial Code by filing a financing statement at that time with the Secretary of State:

- (1) Accounts receivable.
- (2) Chattel paper.
- (3) Equipment.
- (4) Farm products.
- (5) Inventory.
- (6) Negotiable documents of title.

(b) If any interest in personal property on which a judgment lien could be created under subdivision (a) is acquired after the judgment lien was created, the judgment lien attaches to the interest at the time it is acquired.

(c) To the extent provided by Section 697.620, a judgment lien on personal property continues on the proceeds received upon the sale, collection, or other disposition of the property subject to the judgment lien.

(d) Notwithstanding any other provision of this section, the judgment lien does not attach to:

(1) A vehicle or vessel required to be registered with the Department of Motor Vehicles or a mobilehome or commercial coach required to be registered pursuant to the Health and Safety Code.

(2) The inventory of a retail merchant held for sale except to the extent that the inventory of the retail merchant consists of durable goods having a unit retail value of at least five hundred dollars (\$500). For the purposes of this paragraph, "retail merchant" does not include (A) a person whose sales for resale exceeded 75 percent in dollar volume of the person's total sales of all goods during the 12 months preceding the filing of the notice of judgment lien on personal property or (B) a cooperative association organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code (agricultural cooperative associations) or Part 3 (commencing with Section 13200) of Division 3 of Title 1 of the Corporations Code (Fish Marketing Act).

(e) If property subject to a lien under this article becomes a fixture (as defined in Section 9313 of the Commercial Code), the judgment lien on such property is extinguished.

(f) Notwithstanding the filing of a notice of judgment lien, subject to the provisions of Chapter 6 (commencing with Section 708.010), a person obligated on an account receivable or chattel paper is authorized to pay or compromise the amount without notice to or consent of the judgment creditor unless and until there is a levy pursuant to Chapter 3 (commencing with Section 699.010).

Legislative Committee Comment—Assembly

Comment. Section 697.530 specifies the types of personal property that are subject to a judgment lien. Under subdivision (a), the property subject to a judgment lien must be property of the described kind in which a security interest could be perfected by filing a financing statement with the Secretary of State. Thus, for example, money, instruments and securities that do not constitute part of chattel paper, and letters and advices of credit are omitted from subdivision (a) because under the Commercial Code security interests in such collateral are generally perfected by taking possession. See Com. Code §§ 5116, 9304, 9305. If possession of a type of property would be required for perfection of a security interest under the Commercial Code, the judgment creditor will generally find it necessary to take possession by means of a levy of execution if the property is in the possession of the judgment debtor. See, e.g., Sections 700.030 (levy on tangible personal property in possession of judgment debtor), 700.110 (levy on instruments), 700.130 (levy on securities).

If the property would be included within one of the types listed in subdivision (a), a judgment lien cannot be created under this article if a security interest in the property would be perfected by a filing in a place other than in the office of the Secretary of State. Thus, a judgment lien cannot be created under this article on consumer goods (Com. Code § 9109), growing crops, or timber to be cut or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead because the filing under the Commercial Code in such cases is made in the office of the county recorder rather than in the office of the Secretary of State. See Com. Code § 9401 (place of filing under Commercial Code). Similarly, if equipment has become a fixture, the judgment lien will not attach to the property. See Com. Code § 9313 (fixture filing). See also subdivision (e) (judgment lien extinguished when property becomes fixture).

Under subdivision (b), the judgment lien on personal property is a lien on after-acquired property of a type described in subdivision (a). This lien on after-acquired property is analogous to the one provided by Commercial Code Section 9204. As to the priorities in the case of after-acquired property, see Sections 697.590(b)-(c), 697.600(b).

Despite the unavailability of a judgment lien on money, checks, and deposit accounts by filing under this article, Section 697.620 provides for the continuation of the judgment lien in identifiable cash proceeds of a transfer of property that is subject to a judgment lien. This provision for a lien on proceeds is consistent with but more limited than Commercial Code Section 9306. See the Comment to Section 697.620.

Subdivision (d) (1) precludes creation of a judgment lien on a vehicle or vessel required to be registered with the Department of Motor Vehicles, or on a mobilehome or commercial coach required to be registered with the Department of Housing and Community Development, even though a security interest in such property may be perfected by filing with the Secretary of State in some circumstances.

Subdivision (d) (2) recognizes an important limitation on the judgment lien on inventory consistent with the limitation on a non-purchase money nonpossessory security interest in the inventory of a retail merchant under Commercial Code Section 9102(4).

§ 697.540. Amount of judgment lien on personal property

697.540. (a) Except as otherwise provided by statute, a judgment lien on personal property is a lien for the amount required to satisfy the money judgment.

(b) A judgment lien on personal property created under a money judgment payable in installments pursuant to Section 85 or 117 of this code or pursuant to Section 16380 of the Vehicle Code is in the full amount required to satisfy the judgment, but the judgment lien may not be enforced for the amount of unmatured installments unless the court so orders.

Comment. Section 697.540 states the amount of the judgment lien. See Section 695.210 (amount required to satisfy the judgment). Section 697.540 is consistent with the treatment given lump-sum judgments under Section 697.350 (judgment lien on real property). Except as provided in subdivision (b) of

this section, a judgment lien may not be created on personal property pursuant to an installment judgment if there are unmatured installments at the time of filing. See Section 697.510(a).

§ 697.550. Notice of judgment lien on personal property; execution and contents

697.550. The notice of judgment lien on personal property shall be executed under oath by the judgment creditor's attorney if the judgment creditor has an attorney of record or, if the judgment creditor does not have an attorney of record, by the judgment creditor and shall contain the following information:

(a) The name and mailing address of the judgment creditor.

(b) The name and last known mailing address of the judgment debtor.

(c) A statement that: "All property subject to enforcement of a money judgment against the judgment debtor to which a judgment lien on personal property may attach under Section 697.530 of the Code of Civil Procedure is subject to this judgment lien."

(d) The title of the court where the judgment is entered and the cause and number of the action.

(e) The date of entry of the judgment and of any subsequent renewals and where entered in the records of the court.

(f) The amount required to satisfy the judgment at the date of the notice.

(g) The date of the notice.

Comment. Section 697.550, which lists the contents of the notice of judgment lien, is subject to Section 697.670 which gives the Secretary of State authority to prepare a form of notice.

§ 697.560. Service of copy of notice of judgment lien on judgment debtor

697.560. At the time of filing the notice of judgment lien on personal property or promptly thereafter, the judgment creditor shall serve a copy of the notice of judgment lien on the judgment debtor. Service shall be

made personally or by mail. The failure to comply with this requirement does not affect the validity of the judgment lien.

Comment. Section 697.560 is analogous to provisions of this title concerning service of notice of levy on the judgment debtor. See Sections 699.550, 700.010. The last sentence applies only to the validity of the lien; it does not affect any liability the judgment creditor may have to the judgment debtor for failure to give the notice. This is consistent with the notice of levy provisions which provide that the levy is valid notwithstanding the failure to serve the required notice of levy on the judgment debtor.

§ 697.570. Filing, marking, and indexing of notice of judgment lien

697.570. Upon presentation of a notice of judgment lien on personal property for filing and tender of the filing fee to the office of the Secretary of State, the notice of judgment lien shall be filed, marked, and indexed in the same manner as a financing statement. The fee for filing in the office of the Secretary of State is the same as the fee for filing a financing statement in the standard form. A notice shall not be filed if it is presented for filing more than 10 days after the date of the notice.

Comment. Section 697.570 is adapted from Section 9403 of the Commercial Code.

§ 697.580. Certificate showing liens on file; copies of notices

697.580. (a) Upon the request of any person, the Secretary of State shall issue a certificate showing whether there is on file in that office on the date and hour stated therein any notice of judgment lien on personal property filed against the property of a particular person named in the request. If a notice of judgment lien is on file, the certificate shall state the date and hour of filing of each such notice and any notice affecting any such notice of judgment lien and the name and address of the judgment creditor. The fee for a certificate issued pursuant to this subdivision is the same as the fee for a certificate issued pursuant to Section 9407 of the Commercial Code.

(b) Upon request, the Secretary of State shall furnish a copy of any notice of judgment lien or notice affecting a notice of judgment lien for the fee for a copy prescribed by subdivision (2) of Section 9407 of the Commercial Code.

Comment. Section 697.580 is based on portions of Sections 488.340 and 488.360 and of Commercial Code Section 9407. See also Com. Code § 9409 (combined certificate issued by Secretary of State).

§ 697.590. Priority of judgment lien against security interests

697.590. (a) As against a security interest, a judgment lien on personal property has priority to the extent provided in Section 9301 of the Commercial Code.

(b) For the purpose of this section, a judgment lien on personal property under subdivision (b) of Section 697.530 (after-acquired property) has priority over a security interest in the property if the date the financing statement was filed with respect to the security interest is after the date the notice of judgment lien was filed under this article unless the secured party files a financing statement with respect to a purchase money security interest (Section 9107 of the Commercial Code) in the property subject to the judgment lien before or within 10 days after the debtor receives possession of the property.

(c) If a perfected purchase money security interest in inventory has priority over a judgment lien on after-acquired inventory pursuant to subdivision (b) and a conflicting security interest has priority over the purchase money security interest in the same inventory pursuant to subdivision (3) of Section 9312 of the Commercial Code, the conflicting security interest also has priority over the judgment lien on after-acquired inventory notwithstanding that the conflicting security interest would not otherwise have priority over the judgment lien.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 697.590 makes clear that Commercial Code Section 9301 applies to judgment liens on

personal property. The general rule in subdivision (b) is consistent with Commercial Code Section 9312. The last portion of subdivision (b) is drawn from Commercial Code Section 9301 (2). Subdivision (c) resolves a circular priority problem that could arise under subdivision (b).

§ 697.600. Priority of judgment lien against other judgment liens

697.600. (a) A judgment lien on personal property has priority over any other judgment lien thereafter created on the property.

(b) For the purpose of this section, if two or more judgment liens attach to after-acquired property at the same time under subdivision (b) of Section 697.530, the judgment lien first filed has priority.

Comment. Section 697.600 establishes the rules of priority between competing judgment liens. Subdivision (b) governs the priority of liens on after-acquired property and is consistent with subdivision (g) of Section 697.380 (judgment lien on real property). See the Comment to Section 697.380.

§ 697.610. Effect of transfer of property upon which judgment lien exists

697.610. Except as provided in Section 9504 of the Commercial Code, a judgment lien on personal property continues notwithstanding the sale, exchange, or other disposition of the property, unless the person receiving the property is one of the following:

(a) A buyer in ordinary course of business (as defined in Section 1201 of the Commercial Code) who, under Section 9307 of the Commercial Code, would take free of a security interest created by the seller.

(b) A holder to whom a negotiable document of title has been duly negotiated within the meaning of Section 7501 of the Commercial Code.

(c) A purchaser of chattel paper who gives new value and takes possession of the chattel paper in the ordinary course of business.

Legislative Committee Comment—Senate

Comment. Section 697.610 specifies the effect of a judgment lien on personal property if the property is transferred.

Section 697.610 has no effect on the rights of transferees or assignees of persons other than the judgment debtor in the property subject to the lien. An assignee of a security interest that has priority over the judgment creditor's lien may enforce the security interest under the terms of the Commercial Code and is not restricted in any way by this section. See, *e.g.*, Com. Code § 9318. As to payment or compromise by a person obligated on an account receivable or chattel paper, see Section 697.530(f).

§ 697.620. Lien on identifiable cash proceeds of transferred property

697.620. (a) As used in this section:

(1) "Cash proceeds" means money, checks, deposit accounts, and the like.

(2) "Proceeds" means identifiable cash proceeds received upon the sale, exchange, collection, or other disposition of property subject to a judgment lien on personal property.

(b) Except as provided in subdivision (c), the judgment lien on personal property continues in the proceeds with the same priority.

(c) In the event of insolvency proceedings (as defined in Section 1201 of the Commercial Code) instituted by or against the judgment debtor, the judgment lien continues under subdivision (b) only in the following proceeds:

(1) Proceeds in a separate deposit account containing only proceeds.

(2) Proceeds in the form of money which are neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings.

(3) Proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings.

Comment. Section 697.620 provides for the continuation of the judgment lien on identifiable cash proceeds of an interest in property subject to a judgment lien. For example, a judgment lien on inventory sold for identifiable cash proceeds continues on the proceeds. This is consistent with Commercial Code Section 9306(3)(b). The lien extends to the proceeds only if the lien of a perfected security interest would extend to the proceeds. As to proceeds not in the form of identifiable cash proceeds, the judgment lien will attach to the proceeds only if the proceeds are

a type of property (such as inventory) that is subject to a judgment lien under this article. See Section 697.530(a). In this case, the lien will attach to the property as after-acquired property under subdivision (b) of Section 697.530. The lien will not attach if the proceeds are neither property of a type to which a judgment lien under this article would attach nor identifiable cash proceeds, since the lien will not attach under the after-acquired property provision of subdivision (b) of Section 697.530 nor under the identifiable cash proceeds provision of this section.

§ 697.640. Recording of documents extinguishing judgment lien on personal property

697.640. (a) The judgment creditor, judgment debtor, owner of property subject to a judgment lien on personal property created under the judgment, or a person having a security interest in or a lien on the property subject to the judgment lien, may file in the office of the Secretary of State an acknowledgment of satisfaction of judgment executed as provided in Section 724.060 or a court clerk's certificate of satisfaction of judgment issued pursuant to Section 724.100. Upon such filing, the judgment lien created under the judgment that has been satisfied is extinguished as a matter of record. The fee for filing the acknowledgment or certificate is the same as the fee for filing a termination statement under Section 9404 of the Commercial Code.

(b) The filing officer shall treat an acknowledgment of satisfaction of judgment, or court clerk's certificate of satisfaction of judgment, filed pursuant to this section in the same manner as a termination statement filed pursuant to Section 9404 of the Commercial Code.

Legislative Committee Comment—Assembly

Comment. Section 697.640 provides a procedure for extinguishing of record judgment liens on personal property. Section 724.050 provides a procedure for obtaining an acknowledgment of satisfaction of judgment. See also Sections 724.060 (contents of acknowledgment of satisfaction), 724.100 (clerk's certificate).

§ 697.650. Release or subordination of judgment lien on personal property

697.650. (a) The judgment creditor may by a writing do either of the following:

(1) Release the judgment lien on all or a part of the personal property subject to the lien.

(2) Subordinate to a security interest or other lien or encumbrance the judgment lien on all or a part of the personal property subject to the judgment lien.

(b) A statement of release or subordination is sufficient if it is signed by the judgment creditor and contains a description of the property being released or on which the lien is being subordinated, the name and address of the judgment debtor, and the file number of the notice of judgment lien.

(c) The filing officer shall treat a statement of release or subordination filed pursuant to this section in the same manner as a statement of release filed pursuant to Section 9405 of the Commercial Code. The fee for filing the statement is the same as that provided in Section 9405 of the Commercial Code.

Comment. Section 697.650 is drawn from Commercial Code Section 9405 for the sake of uniformity and provides a procedure for the release or subordination of the judgment lien on all or a part of the property subject to the judgment lien. The Secretary of State may provide a form for the statement of release or subordination. See Section 697.670. See also Section 697.660 (release of erroneous judgment lien).

§ 697.660. Release of erroneous judgment lien on personal property

697.660. (a) If a notice of judgment lien on personal property filed in the office of the Secretary of State appears to create a judgment lien on personal property of a person who is not the judgment debtor because the name of the property owner is the same as or similar to that of the judgment debtor, the erroneously identified property owner or a person having a security interest in or a lien on the property may deliver to the judgment creditor a written demand that the judgment creditor file in the office of the Secretary of State a statement

releasing the lien as to the property of such owner. The demand shall be accompanied by proof to the satisfaction of the judgment creditor that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment against the judgment debtor.

(b) Within 15 days after receipt of the demand and proof satisfactory to the judgment creditor that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment, the judgment creditor shall file in the office of the Secretary of State a statement releasing the lien on the property of such owner. If the judgment creditor improperly fails to file the statement of release within the time allowed, the judgment creditor is liable to the person who made the demand for all damages sustained by reason of such failure and shall also forfeit one hundred dollars (\$100) to such person.

(c) If the judgment creditor does not file a statement of release pursuant to subdivision (b), the person who made the demand may apply to the court on noticed motion for an order releasing the judgment lien on the property of such owner. Notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. Upon presentation of evidence to the satisfaction of the court that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment, the court shall order the judgment creditor to prepare and file the statement of release or shall itself order the release of the judgment lien on the property of such owner. The court order may be filed in the office of the Secretary of State with the same effect as the statement of release demanded under subdivision (a).

(d) The court shall award reasonable attorney's fees to the prevailing party in any action or proceeding maintained pursuant to this section.

(e) The damages provided by this section are not in derogation of any other damages or penalties to which an aggrieved person may be entitled by law.

(f) The fee for filing a statement of release or court order under this section is the same as that provided in Section 9405 of the Commercial Code.

Legislative Committee Comment—Assembly

Comment. Section 697.660 is comparable to Section 697.410, but also permits a secured party to seek the release of an erroneous judgment lien. See the Comment to Section 697.410.

§ 697.670. Forms prescribed by Secretary of State

697.670. The Secretary of State may prescribe the forms for the notice of judgment lien on personal property and the statement of release or subordination provided for in this article.

Comment. Section 697.670 is an exception to the general provision (Section 681.030) giving the Judicial Council authority to prescribe forms. The Secretary of State is authorized to prepare similar forms under the Attachment Law. See, *e.g.*, Sections 488.340(a) (notice of attachment of equipment) and 488.360(c) (notice of attachment of farm products or inventory).

Article 4. Execution Lien

§ 697.710. Creation and duration of execution lien

697.710. A levy on property under a writ of execution creates an execution lien on the property from the time of levy until the expiration of two years after the date of issuance of the writ unless the judgment is sooner satisfied.

Legislative Committee Comment—Assembly

Comment. Section 697.710 supersedes a portion of the first sentence of former Section 688(e). The one-year execution lien under former law is superseded by the two-year lien provided by Section 697.710. The running of the lien is not tolled during a stay of enforcement and the lien may in some cases be extinguished under Section 697.040 (effect of stay of enforcement of judgment). Property is not affected by issuance of a writ or the delivery of a writ to the levying officer and no execution lien attaches to the property until levy. For general provisions governing liens, see Article 1 (commencing with Section 697.010). For a special provision applicable to an execution lien on an interest in personal property in the estate of a decedent,

see Section 700.200(d). Failure to post, serve, or mail a copy of the writ and notice of levy does not affect an execution lien created by levy of execution. See Section 699.550.

§ 697.720. Lien on real property remains after transfer or encumbrance

697.720. Subject to Section 701.630, if an interest in real property subject to an execution lien is transferred or encumbered, the interest transferred or encumbered remains subject to the lien after the transfer or encumbrance.

Comment. Section 697.720 is a new provision that is consistent with case law. See, *e.g.*, *Kinney v. Vallentyne*, 15 Cal.3d 475, 479, 541 P.2d 537, 124 Cal. Rptr. 897 (1975). See also Section 697.390 (effect of judgment lien on real property where property transferred or encumbered).

§ 697.730. Effect on lien of transfer or encumbrance of tangible personal property in custody of levying officer

697.730. Subject to Section 701.630, if tangible personal property subject to an execution lien is in the custody of a levying officer and is transferred or encumbered, the property remains subject to the lien after the transfer or encumbrance.

Comment. Section 697.730 is based on the principle that a potential transferee or encumbrancer of tangible personal property has a duty to determine whether the person attempting to transfer the property has possession of it and can deliver possession. *Cf.* Civil Code § 3440 (transfer without delivery conclusively presumed fraudulent). This principle applies where the property is in the levying officer's custody pursuant to execution. Compare Section 697.740 (effect of transfer or encumbrance where property not in custody of levying officer). See also Section 701.630 (extinction of lien upon execution sale).

§ 697.740. Effect on lien of transfer or encumbrance of property not in custody of levying officer

697.740. Except as provided in Section 9504 of the Commercial Code and in Section 701.630, if personal property subject to an execution lien is not in the custody of a levying officer and the property is transferred or

encumbered, the property remains subject to the lien after the transfer or encumbrance except where the transfer or encumbrance is made to one of the following persons:

(a) A person who acquires an interest in the property under the law of this state for fair consideration (as defined in Section 3439.03 of the Civil Code) without knowledge of the lien.

(b) A buyer in ordinary course of business (as defined in Section 1201 of the Commercial Code) who, under Section 9307 of the Commercial Code, would take free of a security interest created by the seller or encumbrancer.

(c) A holder in due course (as defined in Section 3302 of the Commercial Code) of a negotiable instrument within the meaning of Section 3104 of the Commercial Code.

(d) A holder to whom a negotiable document of title has been duly negotiated within the meaning of Section 7501 of the Commercial Code.

(e) A bona fide purchaser (as defined in Section 8302 of the Commercial Code) of a security.

(f) A purchaser of chattel paper or an instrument who gives new value and takes possession of the chattel paper or instrument in the ordinary course of business.

(g) A holder of a purchase money security interest (as defined in Section 9107 of the Commercial Code).

(h) A collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Commercial Code.

(i) A person who acquires any right or interest in letters of credit, advices of credit, or money.

(j) A person who acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of the security interest.

Comment. Section 697.740 is drawn from Government Code Section 7170(c) (state tax liens). Section 697.740 covers tangible personal property not covered by Section 697.730 and intangible personal property such as accounts receivable and general

intangibles. See also Civil Code §§ 955, 955.1 (transfer of accounts and general intangibles). Although the section is based on the provision relating to state tax liens, it is also consistent with case law governing the effect of equitable liens. See *Jud Whitehead Heater Co. v. Obler*, 111 Cal. App.2d 861, 872-74, 245 P.2d 608, 616 (1952); *Wagner v. Sariotti*, 56 Cal. App.2d 693, 698, 133 P.2d 430, 433 (1943); *cf. Taylor v. S & M Lamp Co.*, 190 Cal. App.2d 700, 711-13, 12 Cal. Rptr. 323 (1961). It should be noted that even if the transferee gives fair consideration and has no notice of the existence of a lien on the property, the transfer may in certain circumstances be attacked as a fraudulent conveyance. See Civil Code §§ 3439-3440.

§ 697.750. Effect on lien of transfer or encumbrance of growing crops, timber to be cut, or minerals to be extracted

697.750. Notwithstanding Section 697.740, except as provided in Section 9504 of the Commercial Code and in Section 701.630, if (1) growing crops, (2) timber to be cut, or (3) minerals or the like (including oil or gas) to be extracted or accounts receivable resulting from the sale thereof at wellhead or minehead are subject to an execution lien and are transferred or encumbered, the property remains subject to the execution lien after the transfer or encumbrance.

Comment. Section 697.750 provides an exception to Section 697.740. Since a levy on growing crops, timber to be cut, or minerals to be extracted is accomplished by recording a copy of the writ and a notice of levy with the county recorder (Section 700.020), constructive notice is thereby given to any potential transferee or person taking an encumbrance of the property. *Cf.* Section 697.390 (effect of judgment lien on real property where property transferred or encumbered).

Article 5. Other Liens Created by Enforcement Process

§ 697.910. Application of article

697.910. This article applies to liens created by any of the following:

(a) An examination proceeding as provided in Section 708.110, 708.120, or 708.205.

(b) A creditor's suit as provided in Section 708.250.

(c) A charging order as provided in Section 708.320.

Comment. Section 697.910 limits the scope of this chapter to the liens listed in the section. The effect of liens not covered by this article or other statutory provisions is determined, as under former law, by judicial decisions applicable to the particular provision. See also Sections 708.440 (effect of lien in pending action or proceeding), 708.530 (effect of assignment ordered by court).

§ 697.920. Effect of lien

697.920. Except as provided in Section 9504 of the Commercial Code and in Section 701.630, a lien described in Section 697.910 continues on property subject to the lien, notwithstanding the transfer or encumbrance of the property subject to the lien, unless the transfer or encumbrance is made to a person listed in Section 697.740.

Legislative Committee Comment—Assembly

Comment. Section 697.920 gives a lien under this article the same effect as is given an execution lien where the property is not in custody of a levying officer, except that Section 697.920 applies to all property, real and personal, subject to the lien.

CHAPTER 3. EXECUTION

Article 1. General Provisions

§ 699.010. Application of chapter

699.010. Except as otherwise provided by statute, this chapter governs enforcement of a money judgment by a writ of execution.

Comment. Section 699.010 makes clear that this chapter governs the procedure under a writ of execution. For provisions applicable to a wage garnishment, see Sections 706.010-706.154. For provisions applicable to property levied upon or otherwise subjected to process for enforcement prior to the operative date of this chapter, see Sections 694.040, 694.050.

§ 699.020. Payment by debtor of judgment debtor

699.020. At any time after delivery of a writ of execution to a levying officer and before its return, a person indebted to the judgment debtor may pay to the levying officer the amount of the debt or so much thereof as is necessary to satisfy the money judgment. The levying officer shall give a receipt for the amount paid and such receipt is a discharge for the amount paid.

Comment. Section 699.020 continues the substance of former Section 716.

§ 699.030. Levy on property in private place

699.030. If personal property sought to be levied upon is located in a private place of the judgment debtor:

(a) The levying officer making the levy shall demand delivery of the property by the judgment debtor and shall advise the judgment debtor that the judgment debtor may be liable for costs and attorney's fees incurred in any further proceedings to obtain delivery of the property. If the judgment debtor does not deliver the property, the levying officer shall make no further effort to obtain custody of the property and shall promptly notify the judgment creditor of the failure to obtain custody of the property.

(b) The judgment creditor may apply to the court ex parte, or on noticed motion if the court so directs or a court rule so requires, for an order directing the levying officer to seize the property in the private place. The application may be made whether or not a writ has been issued and whether or not demand has been made pursuant to subdivision (a). The application for the order shall describe with particularity both the property sought to be levied upon, and the place where it is to be found, according to the best knowledge, information, and belief of the judgment creditor. The court may not issue the order unless the judgment creditor establishes that there is probable cause to believe that property sought to be levied upon is located in the place described. The levying

officer making the levy, at the time delivery of the property pursuant to the order is demanded, shall announce his or her identity, purpose, and authority. If the property is not voluntarily delivered, the levying officer may cause the building or enclosure where the property is believed to be located to be broken open in such manner as the levying officer reasonably believes will cause the least damage, but if the levying officer reasonably believes that entry and seizure of the property will involve a substantial risk of death or serious bodily harm to any person, the levying officer shall refrain from entering and shall promptly make a return to the court setting forth the reasons for believing that the risk exists. In such a case, the court shall make such orders as may be appropriate.

Comment. Subdivision (a) of Section 699.030 states the limit of a levying officer's authority to obtain property in a private place without further court authorization. Whether the judgment debtor who fails to deliver property is liable for costs of obtaining further court authorization depends on the circumstances of the case. See Sections 685.040 (reasonable and necessary costs) and 685.080 (motion for costs).

Subdivision (b) is based on comparable provisions relating to claim and delivery. See Sections 512.010, 512.060, 512.080, 514.010, and Comments thereto. If the levying officer gains entrance into a private place pursuant to an order issued under this section, the levying officer's authority to levy upon property is restricted by the terms of the order.

§ 699.040. Turnover order in aid of execution

699.040. (a) If a writ of execution is issued, the judgment creditor may apply to the court ex parte, or on noticed motion if the court so directs or a court rule so requires, for an order directing the judgment debtor to transfer to the levying officer either or both of the following:

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

(2) Possession of documentary evidence of title to property of or a debt owed to the judgment debtor that is sought to be levied upon. An order pursuant to this

paragraph may be served when the property or debt is levied upon or thereafter.

(b) The court may issue an order pursuant to this section upon a showing of need for the order.

(c) The order shall be personally served on the judgment debtor and shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to arrest and punishment for contempt of court.

Comment. Section 699.040 is analogous to Section 482.080 (providing for turnover order when a writ of attachment is issued). See also Section 512.070 (providing for turnover order when writ of possession issued under claim and delivery statute). As to duty of a third person to execute and deliver any documents necessary to effect the transfer of property levied upon, see Section 701.010.

§ 699.060. Release of property from lien and custody

699.060. (a) The levying officer shall release property levied upon when the levying officer receives a written direction to release the property from the judgment creditor's attorney of record or, if the judgment creditor does not have an attorney of record, from the judgment creditor or when the levying officer receives a certified copy of a court order for release or when otherwise required to release the property. The release extinguishes any execution lien or attachment lien in favor of the judgment creditor on the property released.

(b) If the property to be released has been taken into custody under the levy, it shall be released to the person from whom it was taken unless otherwise ordered by the court. If the person does not claim the property to be released, the levying officer shall retain custody of the property and shall serve on such person a notice of where possession of the property may be obtained. Service shall be made personally or by mail. If the person does not claim the property within 30 days after the notice is served, the levying officer shall sell the property (other than cash which does not have a value exceeding its face value) in the manner provided by Article 6

(commencing with Section 701.510). The levying officer shall deposit the proceeds of sale and cash, after first deducting the levying officer's costs, with the county treasurer of the county where the property is located, payable to the order of the person. If the amount deposited is not claimed by the person, or the legal representative of the person, within five years after the deposit is made, by making application to the treasurer or other official designated by the county, it shall be paid into the general fund of the county.

(c) If the property to be released has not been taken into custody under the levy, the levying officer shall release the property by issuing a written notice of release and serving it on the person who was served with a copy of the writ and a notice of levy to create the lien. Service shall be made personally or by mail.

(d) If the property to be released was levied upon by recording or filing a copy of the writ and a notice of levy, the levying officer shall record or file a written notice of release in the same office.

(e) The levying officer is not liable for releasing property in accordance with this section nor is any other person liable for acting in conformity with the release.

Legislative Committee Comment—Assembly

Comment. Section 699.060 supersedes the portion of subdivision (b) of former Section 688 that incorporated the manner of release of attachment. Section 699.060 is drawn from Section 488.560 (release of attachment). Subdivision (b), however, provides additional detail governing the disposition of unclaimed proceeds.

§ 699.070. Appointment of receiver, sale, or other action to preserve value of property

699.070. (a) The court may appoint a receiver or order the levying officer to take any action the court orders that is necessary to preserve the value of property levied upon, including but not limited to selling the property, if the court determines that the property is perishable or will greatly deteriorate or greatly depreciate in value or that for some other reason the interests of the parties will be best served by the order.

An order may be made under this subdivision upon application of the judgment creditor, the judgment debtor, or a person who has filed a third-party claim pursuant to Division 4 (commencing with Section 720.010). The application shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, the application may be made *ex parte*.

(b) If the levying officer determines that property levied upon is extremely perishable or will greatly deteriorate or greatly depreciate in value before a court order pursuant to subdivision (a) could be obtained, the levying officer may take any action necessary to preserve the value of the property or may sell the property. The levying officer is not liable for a determination made in good faith under this subdivision.

(c) Except as otherwise provided by order of the court, a sale of property pursuant to this section shall be made in the manner provided by Article 6 (commencing with Section 701.510) and the proceeds shall be applied to the satisfaction of the money judgment in the manner provided by Article 7 (commencing with Section 701.810). Notwithstanding subdivisions (b) and (d) of Section 701.530, notice of sale shall be posted and served at a reasonable time before the sale, considering the character and condition of the property.

(d) If a receiver is appointed, the court shall fix the daily fee of the receiver and may order the judgment creditor to pay the fees and expenses of the receiver in advance or may direct that the whole or any part of the fees and expenses be paid from the proceeds of any sale of the property. Except as otherwise provided in this section, 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 699.070 is analogous to Section 488.530 (attachment) and supersedes provisions relating to disposition of perishable property in former Sections 689 (third-party claims proceedings) and 690.50(g) (exemption proceedings). See also Section 703.610 (disposition of property pending exemption

proceedings). The second sentence of subdivision (c) continues the substance of subdivision 1 of former Section 692. As to the appointment of a receiver to enforce the judgment, see Sections 708.610-708.630.

§ 699.080. Levy by registered process server

699.080. (a) A registered process server may levy under a writ of execution on the following types of property:

- (1)** Real property, pursuant to Section 700.015.
- (2)** Growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead, pursuant to Section 700.020.
- (3)** Personal property in the custody of a levying officer, pursuant to Section 700.050.
- (4)** Personal property used as a dwelling, pursuant to subdivision (a) of Section 700.080.
- (5)** Deposit accounts, pursuant to Section 700.140 or 700.160.
- (6)** Property in a safe deposit box, pursuant to Section 700.150 or 700.160.
- (7)** Accounts receivable or general intangibles, pursuant to Section 700.170.
- (8)** Final money judgments, pursuant to Section 700.190.
- (9)** Interest of a judgment debtor in personal property in the estate of a decedent, pursuant to Section 700.200.

(b) If a registered process server levies on property pursuant to subdivision (a), the registered process server shall do all of the following:

- (1)** Comply with the applicable levy, posting, and service provisions of Article 4 (commencing with Section 700.010).
- (2)** Deliver any undertaking required by Section 700.160.
- (3)** Request any third person served to give a garnishee's memorandum to the levying officer in compliance with Section 701.030.

(c) Within five days after levy under this section, all of the following shall be filed with the levying officer:

- (1) The writ of execution.
 - (2) An affidavit of the registered process server stating the manner of levy performed.
 - (3) Proof of service of the copy of the writ and notice of levy on other persons as required by Article 4 (commencing with Section 700.010).
 - (4) Instructions in writing, as required by the provisions of Section 687.010.
- (d) Upon receipt of the fee provided by Section 26721 of the Government Code, the levying officer shall perform all other duties under the writ as if the levying officer had levied under the writ and shall return the writ to the court.
- (e) The fee for services of a registered process server under this section may, in the court's discretion, be allowed as a recoverable cost upon a motion pursuant to Section 685.080. If allowed, the amount of the fee to be allowed is governed by Section 1032.8.

Legislative Committee Comment—Assembly

Comment. Section 699.080 supersedes subdivisions (b) and (c) of former Section 687. This section expands and clarifies the role of the registered process server in levying on property pursuant to a writ of execution. See also Section 715.040 (service and posting of writ of possession of real property).

Subdivision (a) of Section 699.080 specifies the methods of levy that may be performed by a registered process server. This authority is limited to cases where the levy does not involve the possibility of taking immediate possession of the property.

Subdivision (b) makes clear that the registered process server is required to perform certain duties ancillary to the levy that would normally be performed by the levying officer at the time of levy or promptly thereafter. Subdivision (c) requires that the levying officer be provided with the information necessary to perform the remaining duties under the writ and to make a return on the writ. Subdivision (d) continues the substance of former Section 687(c). Subdivision (e) makes it discretionary with the court whether a fee for a registered process server will be allowed as costs. Whether the registered process server was used as a convenience to the judgment creditor or because service would not have been made if a public employee were used is an element to be considered by the court in exercising its discretion. If the court decides to allow a fee, subdivision (e)

incorporates the general standard for recovery of the costs of employing a registered process server. For a limitation on this provision, see Section 706.101 (e) (earnings withholding order).

§ 699.090. Liability for levy based on record ownership

699.090. If property that is required by law to be registered or recorded in the name of the owner is levied upon under a writ of execution and it appears at the time of the levy that the judgment debtor was the registered or record owner of the property and the judgment creditor caused the levy to be made and the lien maintained in good faith and in reliance upon such registered or recorded ownership, neither the judgment creditor, the levying officer, nor the sureties on an undertaking given by the judgment creditor pursuant to Chapter 2 (commencing with Section 720.110) or Chapter 3 (commencing with Section 720.210) of Division 4 is liable to a third person for the levy itself.

Legislative Committee Comment—Assembly

Comment. Section 699.090 continues the substance of a portion of the second paragraph of former Section 689. See also Section 700.090 (notice to legal owner of certain vehicles, vessels, mobilehomes, and commercial coaches).

Article 2. Writ of Execution and Notice of Levy

§ 699.510. Issuance of writ of execution

699.510. (a) Subject to subdivision (b), after entry of a money judgment, a writ of execution shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the levy is to be made and to any registered process server. A separate writ shall be issued for each county where a levy is to be made. Writs may be issued successively until the money judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 180 days after the issuance of a prior writ for that county unless the prior writ is first returned.

(b) If the judgment creditor seeks a writ of execution to enforce a judgment made, entered, or enforceable pursuant to the Family Law Act, Part 5 (commencing

with Section 4000) of Division 4 of the Civil Code, in addition to the requirements of this article, the judgment creditor shall satisfy the requirements of any applicable provisions of Sections 4380 to 4384, inclusive, of the Civil Code.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 699.510 supersedes portions of the first sentences of former Sections 681 and 682 pertaining to issuance of writs of execution, and continues the substance of the first and last sentences of subdivision (a) of former Section 687. The time during which a writ of execution may be issued is determined pursuant to Chapter 3 (commencing with Section 683.010) of Division 1. Where writs of execution are issued for two or more counties, the judgment creditor has a duty to see that an excessive levy is not made. *Cf.* *White Lighting Co. v. Wolfson*, 68 Cal.2d 336, 347-50, 438 P.2d 345, 66 Cal. Rptr. 697 (1968) (excessive attachment as abuse of process). The same duty to avoid an excessive levy would exist, for example, where one writ is retained after the 180-day period for the purpose of completing a sale or continuing a collection and the judgment creditor obtains another writ to reach other property in the same county. As to levy by a registered process server, see Section 699.080. See also Section 706.101(e) (wage garnishment).

Subdivision (a) also supersedes prior law under which no more than one writ could be outstanding in one county for the enforcement of the same judgment. See subdivision (b) of former Section 683. See also 32 Ops. Cal. Att'y Gen. 22 (1958). Subdivision (a) permits the issuance of a writ of execution for a particular county once every 180 days (unless the prior writ is earlier returned) and Section 699.530 provides a 180-day period during which property may be levied upon under the writ. During the 180-day period, any number of levies are permitted on the same writ. Hence, only one writ at a time provides authority for levy in a given county although several writs might be outstanding since Section 699.560 permits a writ to be retained for the completion of sale or collection until two years after the writ was issued. This arrangement provides the judgment creditor with needed flexibility; one writ may be retained by the levying officer for the purpose of completing a sale or continuing collection while another writ may be issued in the same county to reach newly discovered property after the 180-day period for levy under the first writ has expired.

Subdivision (b) makes clear that a judgment creditor seeking to enforce a support judgment is required to comply with Civil Code Section 4383 which permits enforcement of installments not more than 10 years overdue by execution without the need for prior court approval. As to installments more than 10 years overdue, see Civil Code Sections 4380 and 4384. See also Section 683.310 and the Comment thereto.

The provisions of this section are subject to limitations provided elsewhere. See, *e.g.*, Sections 683.010-683.220 (time for enforcement), 686.020 (enforcement after death of judgment debtor), 916-923 (stay of enforcement).

§ 699.520. Contents of writ of execution

699.520. The writ of execution shall require the levying officer to whom it is directed to enforce the money judgment and shall include the following information:

- (a) The date of issuance of the writ.
- (b) The title of the court where the judgment is entered and the cause and number of the action.
- (c) The name and address of the judgment creditor and the name and last known address of the judgment debtor.
- (d) The date of the entry of the judgment and of any subsequent renewals and where entered in the records of the court.
- (e) The total amount of the money judgment as entered or renewed, together with costs thereafter added to the judgment pursuant to Section 685.090 and the accrued interest on the judgment from the date of entry or renewal of the judgment to the date of issuance of the writ, reduced by any partial satisfactions and by any amounts no longer enforceable.
- (f) The amount required to satisfy the money judgment on the date the writ is issued.
- (g) The amount of interest accruing daily on the principal amount of the judgment from the date the writ is issued.
- (h) Whether any person has requested notice of sale under the judgment and, if so, the name and mailing address of such person.

Comment. Section 699.520 prescribes the essential elements of a writ of execution. It supersedes a portion of the introductory paragraph and subdivision 1 of former Section 682, former Section 682.1, and portions of former Sections 682.2 and 692a. See also Section 699.530 (execution of writ). For the statutory form of the writ, see Section 693.010. The writ of execution is directed to the levying officer and provides the basis for the levying officer's authority under this chapter. Some duties under the writ may be performed by a registered process server. See Section 699.080. See also Section 706.101(e) (wage garnishment).

Subdivision (g) provides for the computation of daily interest on the principal amount of the judgment (defined in Section 680.300). Under former Section 682.2, it appears that daily interest was computed on the total amount of the judgment remaining unpaid, including accrued interest. The change made by subdivision (g) avoids compounding of interest.

§ 699.530. Delivery and execution of writ; limitation on time for levy

699.530. (a) Upon delivery of the writ of execution to the levying officer to whom the writ is directed, together with the written instructions of the judgment creditor, the levying officer shall execute the writ in the manner prescribed by law.

(b) The levying officer may not levy upon any property under the writ after the expiration of 180 days from the date the writ was issued.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 699.530 continues the practice under former law that the levying officer will not act until the judgment creditor delivers the writ of execution and written instructions to levy upon specific property. See Sections 262 (instructions of a party or the party's attorney not an excuse from liability unless in writing), 684.130 (name and address for service), 687.010 (instructions to levying officer). Subdivision (a) also supersedes the first portion of the first sentence of former Section 691. The mandatory order of levy provided in subdivision 1 of former Section 682 is not continued, but the judgment creditor's instructions may designate the order of levy. See also Sections 685.050 (costs and interest under writ), 685.090 (addition of costs to judgment), 685.100 (deposit of levying officer's costs), 699.080 (levy by registered process server), 699.710 (property subject to levy of execution).

Subdivision (b) prescribes the time within which property may be levied upon under a writ of execution. The 180-day period runs from the date of issuance of the writ, whereas under subdivision (a) of former Section 683 the writ was to be returned within 60 days after its receipt by the levying officer.

§ 699.540. Contents of notice of levy

699.540. The notice of levy required by Article 4 (commencing with Section 700.010) shall inform the person notified of all of the following:

- (a) The capacity in which the person is notified.
- (b) The property that is levied upon.
- (c) The person's rights under the levy, including the right to claim an exemption pursuant to Chapter 4 (commencing with Section 703.010) and the right to make a third-party claim pursuant to Division 4 (commencing with Section 720.010).
- (d) The person's duties under the levy.

Legislative Committee Comment—Assembly

Comment. Section 699.540 prescribes the contents of the notice of levy. A statutory form is provided in Section 693.020. The Judicial Council has authority to supersede the statutory form. See Section 681.030. Under prior law, the notice of levy was recognized by Section 688(b), but there was no provision for an official form of the notice. Instead, the form of the notice of levy was determined by the levying officers. See, *e.g.*, Marshal's Manual of Procedure §§ 302.1, 344.1 (rev. 1980); Cal. State Sheriffs' Ass'n, Civil Procedural Manual 4.10, 4.10.4, 4.19-4.20, 4.23-4.24 (rev. 1980). The notice of levy is directed to the person being notified whereas the writ of execution is directed to the levying officer or a registered process server. See Sections 699.510 (issuance of writ) and 699.520 (contents of writ of execution). The judgment creditor must supply written instructions to the levying officer which provide sufficient information to complete the notice of levy. See Sections 684.130 (name and address for service), 687.010 (instructions to levying officer), 699.530 (delivery of instructions to levying officer).

§ 699.550. Effect of failure to give notice of levy or to serve list of exemptions.

699.550. In any case where property has been levied upon and, pursuant to a levy, a copy of the writ of execution and a notice of levy are required by statute to be posted or to be served on or mailed to the judgment debtor or other person, failure to post, serve, or mail the copy of the writ and the notice does not affect the execution lien created by the levy. Failure to serve on or mail to the judgment debtor a list of exemptions does not affect the execution lien created by the levy.

Comment. Section 699.550 is analogous to portions of Sections 488.310-488.430 (method of levy in attachment) which were incorporated by former Section 688. This section is intended to preserve the validity of a levy in a case where additional postings, service, or mailings have been omitted. For example, an instrument in the hands of a third person is levied upon at the time the third person is served. See Section 700.110(a) (2). The levy is effective to create a lien even though no notice is given the judgment debtor (as required by Section 700.010) or the obligor under the instrument (as provided by Section 700.110(b)), but the rights of the obligor are not affected until the obligor knows or has reason to know of the levy (see Sections 701.010, 701.060). As to failure to give notice of a sale, see Section 701.560.

§ 699.560. Return of writ of execution

699.560. (a) Except as provided in subdivision (b), the levying officer to whom the writ of execution is delivered shall return the writ to the court, together with a report of the levying officer's actions and an accounting of amounts collected and costs incurred, at the earliest of the following times:

- (1) Two years from the date of issuance of the writ.
- (2) Promptly after all of the duties under the writ are performed.
- (3) When return is requested in writing by the judgment creditor.
- (4) If no levy takes place under the writ within 180 days after its issuance, promptly after the expiration of the 180-day period.

(5) Upon expiration of the time for enforcement of the money judgment.

(b) If a levy has been made under Section 700.200 upon an interest in personal property in the estate of a decedent, the writ shall be returned within the time prescribed in Section 700.200.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 699.560 supersedes subdivisions (a), (c), and (d) of former Section 683. Under subdivision (a), the period at the end of which the writ must be returned runs from the date of issuance of the writ rather than from the date the writ was received by the levying officer. The provision of former Section 683 that the writ could not be returned before the expiration of 10 days is not continued. If a levy takes place under the writ, any sale of property or collection of a debt under the writ must be completed before the expiration of two years from the date of issuance of the writ under which levy took place (except in the case of an interest in a decedent's estate governed by Section 700.200). Ultimately, return must be made at the expiration of the period of enforceability of a judgment provided by Chapter 3 (commencing with Section 683.010) of Division 1. Redelivery of the writ, alias writs, and alias returns are not authorized as they were under former Sections 683 and 688(e).

Subdivision (b) recognizes that a special rule is provided in subdivision (e) of Section 700.200.

The provisions of this section are incorporated for the purpose of returns of writs of possession and writs of sale. See Section 712.050.

Article 3. Property Subject to Execution

§ 699.710. Property subject to execution

699.710. Except as otherwise provided by law, all property that is subject to enforcement of a money judgment pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 is subject to levy under a writ of execution to satisfy a money judgment.

Legislative Committee Comment—Assembly

Comment. Section 699.710 supersedes provisions of former law that purported to prescribe the property subject to execution. See subdivision 1 of former Section 682 (personal

property, real property, and real property subject to judgment lien) and former Section 688(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.”). The type of property that may be reached by levy under a writ of execution is limited by the general principles determining the classes of property that may be applied toward the satisfaction of a money judgment through any procedure. See Sections 695.010-695.070 and the Comments thereto. The introductory clause of Section 699.710 recognizes that certain types of property that are subject to enforcement of a money judgment are not subject to levy under a writ of execution. See Section 699.720 (property not subject to execution). See also Section 700.180 (limitation on levy on certain property that is subject of pending action).

§ 699.720. Property not subject to execution

699.720. (a) The following types of property are not subject to execution:

(1) An alcoholic beverage license that is transferable under Article 5 (commencing with Section 24070) of Chapter 6 of Division 9 of the Business and Professions Code.

(2) The interest of a partner in a partnership where the partnership is not a judgment debtor.

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

(4) A judgment in favor of the judgment debtor prior to the expiration of the time for appeal from such judgment or, if an appeal is filed, prior to the final determination of the appeal.

(5) A debt (other than earnings) owing and unpaid by a public entity.

(6) The loan value of an unmaturred life insurance, endowment, or annuity policy.

(7) A franchise granted by a public entity and all the rights and privileges thereof.

(8) The interest of a trust beneficiary.

(9) A contingent remainder, executory interest, or other interest in property that is not vested.

(10) Property in a guardianship or conservatorship estate.

(b) Nothing in subdivision (a) affects or limits the right of the judgment creditor to apply property to the satisfaction of a money judgment pursuant to any applicable procedure other than execution.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 699.720 describes certain types of property that are not subject to levy of execution. Subdivision (b) recognizes, however, that such property may be subject to enforcement of a money judgment through some other procedure in Chapter 6. See Article 4 (commencing with Section 708.310) (charging orders against interest of partner in partnership property), Article 5 (commencing with Section 708.410) (lien in pending action or proceeding), Article 6 (commencing with Section 708.510) (assignment order reaching such payments as payments and wages due from the federal government, rents, commissions, royalties, payments due from patent or copyright), Section 708.630 (receiver to transfer alcoholic beverage license), Article 8 (commencing with Section 708.710) (money, other than wages, owing and unpaid by a public entity to the judgment debtor), Section 708.920 (enforcement against franchise), Article 10 (commencing with Section 709.010) (interest as a beneficiary of a trust, interest in property that is not a vested interest, property in guardianship or conservatorship estate). See also Section 700.180 (limitation on levy on certain property that is subject of pending action).

Subdivision (a) (6) recognizes that life insurance loan values are not subject to execution. See *Equico Lessors, Inc. v. Metropolitan Life Ins. Co.*, 88 Cal. App.3d Supp. 6, 7-10, 151 Cal. Rptr. 618 (1978). As to the procedure for reaching the loan value, see the discussion in the Comment to Section 704.100. The cash surrender value is not subject to enforcement of a money judgment. See Sections 703.030(b), 704.100(a).

Subdivision (a) (7) supersedes former Section 724a which subjected franchises to levy and sale under execution. A franchise may be applied to the satisfaction of a money judgment pursuant to Article 9 (commencing with Section 708.910) of Chapter 6 (miscellaneous creditors' remedies).

Property that is exempt by statute without the need to make an exemption claim is not subject to any procedure for the enforcement of a money judgment. See Section 703.030(b).

Article 4. Methods of Levy

§ 700.010. Service of writ, notice of levy, and list of exemptions on judgment debtor

700.010. (a) At the time of levy pursuant to this article or promptly thereafter, the levying officer shall serve a copy of the following on the judgment debtor:

(1) The writ of execution.

(2) A notice of levy.

(3) If the judgment debtor is a natural person, a copy of the form listing exemptions prepared by the Judicial Council pursuant to subdivision (c) of Section 681.030.

(b) Service under this section shall be made personally or by mail.

Comment. Section 700.010 continues the requirement of former Section 682.1 and of the second sentence of subdivision (b) of former Section 688 that a copy of the writ be served on the judgment debtor and adds the requirement that a notice of levy also be served on the judgment debtor. The judgment creditor has the responsibility of furnishing the levying officer with the information necessary to comply with this provision. See Section 687.010 (instructions to levying officer). See also Section 699.080 (levy by registered process server). Failure to comply with Section 700.010 does not affect the validity of the execution lien created by the levy. See Section 699.550.

§ 700.015. Real property

700.015. (a) To levy upon real property, the levying officer shall record with the recorder of the county where the real property is located a copy of the writ of execution and a notice of levy that describes the property levied upon and states that the judgment debtor's interest in the described property has been levied upon. If the judgment debtor's interest in the real property stands upon the records of the county in the name of a person other than the judgment debtor, the notice of levy shall identify the third person and the recorder shall index the copy of the writ and notice of levy in the names of both the judgment debtor and the third person.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice

of levy on any third person in whose name the judgment debtor's interest in the real property stands upon the records of the county. Service shall be made personally or by mail. If service on the third person is by mail, it shall be sent to the person at the address for such person, if any, shown by the records of the office of the tax assessor of the county where the real property is located or, if no address is so shown, to the person at the address used by the county recorder for the return of the instrument creating the interest of the third person in the property.

(c) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy on one occupant of the real property. Service on the occupant shall be made by leaving the copy of the writ and a notice of levy with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found upon the real property when service is attempted who is either an employee or agent of the occupant or a member of the occupant's household. If unable to serve such an occupant at the time service is attempted, the levying officer shall post the copy of the writ and the notice of levy in a conspicuous place on the real property. If the real property described in the notice of levy consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lies with relation to any of the others so as to form one or more continuous, unbroken tracts, only one service or posting need be made under this subdivision as to each continuous, unbroken tract.

Legislative Committee Comment—Assembly

Comment. Section 700.015 is comparable to Section 488.310 (levy upon interests in real property pursuant to the Attachment Law) which was incorporated by former Section 688(b). Any legal or equitable interest in land that is subject to the enforcement of a money judgment is subject to execution unless another exclusive method of enforcement is specified, such as, for example, a partner's interest in partnership real property (where the partner and not the partnership is a judgment debtor) which may be reached by a charging order pursuant to Section 708.310. See Sections 695.010 (property subject to enforcement of money judgment), 699.710 (property subject to execution); *Lynch v. Cunningham*, 131 Cal. App. 164, 173-75, 21

P.2d 154, 21 P.2d 973 (1933). See also Sections 697.710 (execution lien), 697.720 (effect of transfer or encumbrance).

Leasehold interests are subject to levy as real property under Section 700.015. See Sections 680.320 ("real property" defined), 695.035 (leases subject to enforcement). It was the practice under former law to treat some leases as personal property and some as real property for purposes of levy. See Marshal's Manual of Procedure § 300.3 (rev. 1977).

Former law did not require recordation of the writ and notice of levy if there was an existing judgment lien on the property. See *Lehnhardt v. Jennings*, 119 Cal. 192, 195-97, 48 P. 56, 51 P. 195 (1897) (no levy required where judgment is lien). However, the practice has been to levy in every case. See Marshal's Manual of Procedure § 303.2 (rev. 1980); Cal. State Sheriffs' Ass'n, Civil Procedural Manual 4.10.1 (rev. 1980). Section 700.015 continues existing practice by requiring a complete levy to be made regardless of whether there is a prior judgment lien or attachment lien on the property in favor of the judgment creditor.

§ 700.020. Growing crops, timber to be cut, minerals to be extracted

700.020. (a) To levy upon (1) growing crops, (2) timber to be cut, or (3) minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead, the levying officer shall record with the recorder of the county where such crops, timber, or minerals or the like are located a copy of the writ of execution and a notice of levy that describes the property levied upon and states that the judgment debtor's interest in the described property has been levied upon and describes the real property where the crops, timber, or minerals or the like are located. If the judgment debtor's interest in the crops, timber, minerals or the like, or if the real property where the crops, timber, or minerals or the like are located, stands upon the records of the county in the name of a person other than the judgment debtor, the notice of levy shall identify the third person and the recorder shall index the copy of the writ and notice of levy in the names of both the judgment debtor and the third person.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy personally or by mail on the following persons:

(1) Any third person in whose name the judgment debtor's interest in the crops, timber, minerals or the like stands upon the records of the county and any third person in whose name the real property stands upon the records of the county. If service on the third person is by mail, it shall be sent to the person at the address for such person, if any, shown by the records of the office of the tax assessor of the county where the real property is located or, if no address is so shown, to the person at the address used by the county recorder for the return of the instrument creating the interest of the third person in the property.

(2) Any secured party who has filed a financing statement with respect to the crops, timber, or minerals or the like or the accounts receivable, prior to the date of levy on the property.

(c) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy on one occupant of the real property where the crops, timber, or minerals or the like are located. Service on the occupant shall be made by leaving the copy of the writ and a notice of levy with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found upon the real property when service is attempted who is either an employee or agent of the occupant or a member of the occupant's household. If unable to serve such an occupant at the time service is attempted, the levying officer shall post the copy of the writ and the notice of levy in a conspicuous place on the real property. If the real property described in the notice of levy consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lies with relation to any of the others so as to form one or more continuous, unbroken tracts, only one service or posting need be made under this subdivision as to each continuous, unbroken tract.

Legislative Committee Comment—Assembly

Comment. Section 700.020 is derived from a portion of Section 488.360(c) (attachment of growing crops and timber to be cut) which was incorporated by former Section 688(b), and from subdivisions 1a and 2a of former Section 542 (repealed by 1974 Cal. Stats. ch. 1516, § 12, operative January 1, 1977). The provision concerning levy on minerals or the like and accounts receivable resulting from the sale of minerals is drawn from Commercial Code Sections 9103(5) and 9401(1)(b). Once the crops are harvested, the timber is cut, or the minerals or the like are extracted, the property may be levied upon in the manner provided for levy upon tangible personal property. See Sections 700.030-700.070. The levying officer or a receiver may cultivate, care for, harvest, pack, and sell the property levied upon, if necessary, pursuant to court order under Section 699.070. Subdivision (b)(2) is new. As to the place of filing financing statement concerning growing crops, timber to be cut, and minerals or the like, see Com. Code § 9401(1)(b). See also Sections 697.710 (execution lien), 697.750 (effect of transfer).

§ 700.030. Tangible personal property in possession of judgment debtor

700.030. Unless another method of levy is provided by this article, to levy upon tangible personal property in the possession or under the control of the judgment debtor, the levying officer shall take the property into custody.

Legislative Committee Comment—Assembly

Comment. Section 700.030 continues the substance of the first sentence of subdivision (c) of former Section 688. For the manner of taking custody, see Section 687.030. The introductory clause of Section 700.030 recognizes that the general rule does not apply where another section of this article is applicable to a particular type of property. See Sections 700.070 (tangible personal property of going business) and 700.080 (personal property used as dwelling). See also Sections 697.710 (execution lien), 697.730-697.740 (effect of transfer).

§ 700.040. Tangible personal property in possession of third person

700.040. (a) Unless another method of levy is provided by this article, to levy upon tangible personal property in the possession or under the control of a third

person, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the third person.

(b) If goods are in the possession of a bailee who has issued a negotiable document of title therefor, the goods may not be levied upon but the negotiable document of title may be levied upon in the manner provided by Section 700.120. If goods are in the possession of a bailee other than one who has issued a negotiable document of title therefor, the goods may be levied upon in the manner provided by Section 700.060. As used in this subdivision, "bailee" means "bailee" as defined in Section 7102 of the Commercial Code.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 700.040 continues the substance of a portion of the last sentence of subdivision (b) of former Section 688. The introductory portion of subdivision (a) recognizes that the general rule is subject to exceptions, such as that provided in subdivision (b). See also Sections 700.050 (property in custody of levying officer), 700.060 (bailed goods not covered by negotiable document of title), 700.150-700.160 (safe deposit boxes). See also Sections 697.710 (execution lien), 697.740 (effect of transfer).

Subdivision (b) corresponds to subdivision (d) of Section 488.330 (attachment) which was incorporated by former Section 688(b).

§ 700.050. Personal property in custody of levying officer

700.050. (a) To levy upon personal property in the custody of a levying officer:

(1) If the writ of execution is directed to the levying officer having custody of the property, the judgment creditor shall deliver the writ to the levying officer.

(2) If the writ of execution is directed to a levying officer other than the levying officer having custody of the property, the levying officer to whom the writ is directed shall serve a copy of the writ and a notice of levy on the levying officer having custody. Service shall be made personally or by mail.

(b) The levying officer having custody of the property shall comply with the writs in the order they are received and is not subject to the provisions of Article 5

(commencing with Section 701.010) (duties and liabilities of third persons after levy).

Legislative Committee Comment—Assembly

Comment. Section 700.050 is restricted to cases where the property levied upon is already in the custody of a levying officer. Paragraph (1) of subdivision (a) is based on case law concerning a “paper levy” involving only one levying officer. See, *e.g.*, *O’Connor v. Blake*, 29 Cal. 312, 315 (1865); *Colver v. W.B. Scarborough Co.*, 73 Cal. App. 441, 443, 238 P. 1104 (1925). Under paragraph (1), the execution lien under Section 700.050 arises at the time the writ is delivered to the levying officer. See Section 697.710 (execution lien). Paragraph (1) applies in cases where the judgment creditor has previously attached the property as well as in cases where another judgment creditor has had the property taken into custody on attachment or execution. Paragraph (2) governs levies involving two levying officers, such as where property already levied upon and in the custody of a sheriff is sought to be levied upon under a writ directed to a marshal. See also Section 697.730 (effect of transfer).

Subdivision (b) clarifies the effect of a paper levy. See also Section 701.810(g) (distribution of excess proceeds under paper levies).

§ 700.060. Bailed goods not covered by negotiable document of title

700.060. (a) To levy upon goods in the possession of a bailee (as defined in Section 7102 of the Commercial Code) other than one who has issued a negotiable document of title therefor, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the bailee.

(b) If the goods described in subdivision (a) are subject to a security interest, the levying officer shall, if so instructed by the judgment creditor, serve a copy of the writ of execution and a notice of levy on the secured party. Service shall be made personally or by mail.

Legislative Committee Comment—Assembly

Comment. Section 700.060 is a new provision that changes the rule in *Crow v. Yosemite Creek Co.*, 149 Cal. App.2d 188, 308 P.2d 421 (1957). Although levy establishes the judgment creditor’s lien, it does not affect any superior rights the holder of a perfected security interest may have. See Section 701.040. A

levy on goods subject to a security interest pursuant to this section reaches both the judgment debtor's interest in any surplus remaining after satisfaction of the interest of the secured party and the judgment debtor's right to redeem the property from the security interest. See Civil Code § 2903; Com. Code §§ 9504, 9506. If a negotiable document of title has been issued, it may be levied upon pursuant to Section 700.120. See also Section 697.710 (execution lien), 697.740 (effect of transfer).

§ 700.070. Tangible personal property of going business

700.070. To levy upon tangible personal property of a going business in the possession or under the control of the judgment debtor, the levying officer shall comply with Section 700.030, except to the extent that the judgment creditor instructs that levy be made in the following manner:

(a) Subject to subdivision (b), the levying officer shall place a keeper in charge of the business for the period requested by the judgment creditor. During the period, the business may continue to operate in the ordinary course of business provided that all sales are final and are for cash or its equivalent. For the purpose of this subdivision, a check is the equivalent of cash. The levying officer is not liable for accepting payment in the form of a cash equivalent. The keeper shall take custody of the proceeds from all sales unless otherwise directed by the judgment creditor.

(b) The levying officer shall take the tangible personal property into exclusive custody at the earliest of the following times:

(1) At any time the judgment debtor objects to placement of a keeper in charge of the business.

(2) At any time when requested by the judgment creditor.

(3) At the end of 10 days from the time the keeper is placed in charge of the business.

Legislative Committee Comment—Senate

Comment. Section 700.070 supersedes the fifth through the tenth sentences of former Section 688(c) which required a keeper levy for at least two days on the tangible personal property of a going business if the judgment debtor consented. Under this section the keeper levy

is optional; unless the judgment creditor elects this option, the tangible personal property of a going business is levied upon as tangible personal property generally pursuant to Section 700.030. Article 3 (commencing with Section 697.510) of Chapter 2 provides an alternative procedure for obtaining a lien on certain property of a going business. See also Section 697.710 (execution lien).

Subdivision (b)(1) makes clear that, despite the judgment creditor's election to use the procedure provided by Section 700.070, the judgment debtor may prevent the placement of a keeper in the business, in which case the levying officer must take exclusive possession of the property if the judgment creditor's lien is to be maintained. This continues an aspect of former Section 688(c). The judgment creditor may instruct the levying officer to release the property rather than to take exclusive custody. See Section 699.060 (release). Subdivision (b)(3) is a new provision that establishes a maximum limit on the keeper period. See also Gov't Code § 26726 (keeper fee).

§ 700.080. Personal property used as dwelling

700.080. (a) To levy upon personal property used as a dwelling, the levying officer shall serve a copy of the writ of execution and a notice of levy on one occupant of the property. Service on the occupant shall be made by leaving the copy of the writ and the notice of levy with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found at the property when service is attempted who is a member of the occupant's family or household. If unable to serve such an occupant at the time service is attempted, the levying officer shall make the levy by posting the copy of the writ and the notice of levy in a conspicuous place on the property.

(b) If the judgment creditor so instructs, the levying officer shall place a keeper in charge of the property for a period requested by the judgment creditor.

(c) The judgment creditor may apply to the court on noticed motion for an order directing the levying officer to remove the occupants. The notice of motion shall be served on any legal owner who was served pursuant to Section 700.090, on the occupant, and, if the judgment debtor is not the occupant, on the judgment debtor. Service shall be made personally or by mail. At the

hearing on the motion the court shall determine the occupant's right to possession and shall make an order including such terms and conditions as are appropriate under the circumstances of the case.

Legislative Committee Comment—Assembly

Comment. Section 700.080 supersedes the third and fourth sentences of former Section 688(c). Levy is accomplished by notice to the occupant under subdivision (a) or, if such service cannot be made, by posting; but if the judgment creditor desires greater security, a keeper may be used pursuant to subdivision (b). See also Sections 697.710 (execution lien), 697.730-697.740 (effect of transfer). Subdivision (c) supersedes the fourth sentence of former Section 688(c) which required the keeper to take exclusive custody of the property at the end of two days or a longer period agreed upon by the parties. This subdivision recognizes the right of the occupant to have a judicial determination of the occupant's right of possession (including any claim to a dwelling exemption). See also Section 700.090 (notice to legal owner of vehicle, vessel, mobilehome, or commercial coach where certificate of ownership has been issued).

§ 700.090. Vehicle, boat, mobilehome, or commercial coach for which certificate of ownership is issued

700.090. If a vehicle or vessel is levied upon and a certificate of ownership has been issued by the Department of Motor Vehicles for such vehicle or vessel and the certificate of ownership is still in effect, or if a mobilehome or commercial coach is levied upon and a certificate of title has been issued by the Department of Housing and Community Development for such mobilehome or commercial coach and the certificate of title is still in effect, the levying officer shall determine from the appropriate department the name and address of the legal owner of the property levied upon. If the legal owner is not the judgment debtor and is not in possession of the vehicle, vessel, mobilehome, or commercial coach, the levying officer shall at the time of levy or promptly thereafter serve a copy of the writ of execution and a notice of levy on the legal owner. Service shall be made personally or by mail.

Comment. Section 700.090 supersedes subdivision (1) of former Section 689b. The provision for determining the legal owner of a mobilehome or commercial coach is new. See generally Health & Saf. Code §§ 18075-18077.4 (registration and titling of mobilehomes). Former law required notice to be given the legal owner if different from the registered owner. This section is worded so as to avoid duplicate notice in any case where the legal owner has already received notice in the course of the levy.

§ 700.100. Chattel paper

700.100. (a) To levy upon chattel paper, the levying officer shall:

(1) If the chattel paper is in the possession of the judgment debtor, take the chattel paper into custody.

(2) If the chattel paper is in the possession of a third person, personally serve a copy of the writ of execution and a notice of levy on the third person.

(b) If the levying officer obtains custody of the chattel paper or if pursuant to a security agreement the judgment debtor has liberty to collect or compromise the chattel paper or to accept the return of goods or make repossessions, the levying officer shall, if so instructed by the judgment creditor, serve a copy of the writ of execution and a notice of levy on the account debtor. Service shall be made personally or by mail.

(c) In addition to any other rights created by a levy on chattel paper, the levy creates a lien on the judgment debtor's rights in specific goods subject to the chattel paper.

Legislative Committee Comment—Assembly

Comment. Section 700.100 is derived from Section 488.380 (attachment of chattel paper) which was incorporated by former Section 688(b). For duties and liabilities of garnishees, see Sections 701.010-701.030. For duties and liabilities of account debtors, see Section 701.050. Article 3 (commencing with Section 697.510) of Chapter 2 provides an alternate method for obtaining a lien on chattel paper. See also Sections 697.710 (execution lien), 697.730-697.740 (effect of transfer).

The method of levy on chattel paper is not affected by the fact that the chattel paper may be subject to a perfected security interest:

(1) If the chattel paper is in the possession of a third person who claims to be a secured party, the third person may protect his or her rights by delivering the chattel paper to the levying officer and obtaining a determination of priority through the third-party claims procedure (Division 4 (commencing with Section 720.010)) or by refusing to deliver the chattel paper to the levying officer. See Section 701.010 (duty of garnishee in general). If the third person refuses to deliver and the security interest claimed is subordinate to the rights of the judgment creditor under the levy (see Com. Code § 9301), the third person is liable to the judgment creditor. See Section 701.020.

(2) If the chattel paper is in the possession of the judgment debtor, and a secured party has left the liberty in the judgment debtor to collect the chattel paper or to enforce or accept the return of property under the chattel paper (see Com. Code § 9205), the judgment creditor may disregard the security interest and seize the chattel paper; the secured party's remedy is by way of a third-party claim. If the secured party has possession of the chattel paper in such a case, the account debtor may be served with a copy of the writ and a notice of levy to guard against payment or the return of property to the judgment debtor, whether or not possession of the chattel paper is obtained by the levying officer.

Subdivision (c) makes clear that a levy on chattel paper reaches all the judgment debtor's rights in the property, the security interest in which or the lease of which resulted in the chattel paper. For example, the judgment debtor may have a reversionary right as a lessor. This enables a creditor who levies on chattel paper to have priority over another creditor who later levies on the property.

§ 700.110. Instruments

700.110. (a) To levy upon an instrument, the levying officer shall:

(1) If the instrument is in the possession of the judgment debtor, take the instrument into custody.

(2) If the instrument is in the possession of a third person, personally serve a copy of the writ of execution and a notice of levy on the third person.

(b) If the levying officer obtains custody of the instrument, the levying officer shall, if the judgment creditor so instructs, serve a copy of the writ of execution

and a notice of levy on the obligor. Service shall be made personally or by mail.

Legislative Committee Comment—Assembly

Comment. Section 700.110 is derived from a portion of Section 488.400 (attachment of negotiable instruments) which was incorporated by former Section 688(b). The coverage of this section is broader than former law because it is not restricted to negotiable instruments. See Section 680.220 (“instrument” defined). See also Sections 697.710 (execution lien), 697.730-697.740 (effect of transfer).

Subdivision (b) provides a new restriction on giving notice to the obligor under the instrument: such notice may be given only if the levying officer has obtained possession of the instrument. This limitation is intended to prevent interference with the rights of secured parties and holders in due course. As to the duties and liabilities of garnishees, see Sections 701.010-701.030. As to the duties and liabilities of obligors, see Section 701.060. As to the duty of the levying officer to endorse and present an instrument for payment, see Section 687.020.

§ 700.120. Negotiable documents of title

700.120. To levy upon a negotiable document of title, the levying officer shall:

(a) If the negotiable document of title is in the possession of the judgment debtor, take the negotiable document of title into custody.

(b) If the negotiable document of title is in the possession of a third person, personally serve a copy of the writ of execution and a notice of levy on the third person.

Legislative Committee Comment—Assembly

Comment. Section 700.120 continues the substance of a portion of Section 488.400 (attachment of negotiable documents) which was incorporated by former Section 688(b). See also Sections 697.710 (execution lien), 697.730-697.740 (effect of transfer). Section 700.040(b) precludes levy on goods in the possession of a third person that are covered by a negotiable document of title. See also Com. Code §§ 1201(15), 7602. Article 3 (commencing with Section 697.510) of Chapter 2 provides an alternate method of obtaining a lien on a negotiable document of title.

§ 700.130. Securities

700.130. To levy upon a security, the levying officer shall comply with Section 8317 of the Commercial Code.

Legislative Committee Comment—Assembly

Comment. Section 700.130 supersedes Section 488.410 (attachment of securities) insofar as it was incorporated by former Section 688(b) for the purposes of execution. See also Sections 697.710 (execution lien), 697.730-697.740 (effect of lien).

§ 700.140. Deposit accounts

700.140. (a) To levy upon a deposit account, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the financial institution with which the deposit account is maintained.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on any third person in whose name the deposit account stands. Service shall be made personally or by mail.

(c) Subject to Section 700.160, during the time the execution lien is in effect, the financial institution shall not honor a check or other order for the payment of money drawn against, and shall not pay a withdrawal from, the deposit account that would reduce the deposit account to an amount less than the amount levied upon. For the purposes of this subdivision, in determining the amount of the deposit account, the financial institution shall not include the amount of items deposited to the credit of the deposit account that are in the process of being collected.

(d) During the time the execution lien is in effect, the financial institution is not liable to any person for any of the following:

(1) Performance of the duties of a garnishee under the levy.

(2) Nonpayment of a check or other order for the payment of money drawn or presented against the deposit account where such nonpayment is pursuant to the requirements of subdivision (c).

(3) Refusal to pay a withdrawal from the deposit account where such refusal is pursuant to the requirements of subdivision (c).

(e) When the amount levied upon pursuant to this section is paid to the levying officer, the execution lien on the deposit account levied upon terminates.

Comment. Section 700.140 is analogous to Section 488.390 (attachment of deposit accounts), which was incorporated by former Section 688(b). Withdrawals made after the time of levy reduce any applicable exemption. See Section 704.070(f). For provisions governing levy on a deposit account standing in the name of a person other than the judgment debtor, see Section 700.160.

§ 700.150. Safe deposit boxes

700.150. (a) To levy upon property in a safe deposit box, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the financial institution with which the safe deposit box is maintained.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on any third person in whose name the safe deposit box stands. Service shall be made personally or by mail.

(c) Subject to Section 700.160, during the time the execution lien is in effect, the financial institution shall not permit the removal of any of the contents of the safe deposit box except pursuant to the levy.

(d) The levying officer may first give the person in whose name the safe deposit box stands an opportunity to open the safe deposit box to permit the removal pursuant to the levy of the property levied upon. The financial institution may refuse to permit the forcible opening of the safe deposit box to permit the removal of the property levied upon unless the judgment creditor pays in advance the cost of forcibly opening the safe deposit box and of repairing any damage caused thereby.

(e) During the time the execution lien is in effect, the financial institution is not liable to any person for any of the following:

(1) Performance of the duties of a garnishee under the levy.

(2) Refusal to permit access to the safe deposit box by the person in whose name it stands.

(3) Removal of any of the contents of the safe deposit box pursuant to the levy.

Legislative Committee Comment—Assembly

Comment. Section 700.150 is new. Subdivisions (a), (b), and (e) are analogous to Section 488.390 (attachment of deposit accounts). Subdivision (c) is drawn from a portion of the fourth sentence of former Section 682a. Subdivision (d) is drawn from the last sentence of former Section 682a. If the judgment creditor is required to pay the costs of forcibly opening a safe deposit box pursuant to subdivision (d), the costs may be later recovered from the judgment debtor. See Section 685.040. For provisions governing levy on a safe deposit box standing in the name of a person other than the judgment debtor, see Section 700.160. See also Sections 697.710 (execution lien), 697.730-697.740 (effect of lien).

§ 700.160. Deposit accounts and safe deposit boxes not exclusively in name of judgment debtor

700.160. (a) The provisions of this section apply in addition to the provisions of Sections 700.140 and 700.150 if any of the following property is levied upon:

(1) A deposit account standing in the name of a third person or in the names of both the judgment debtor and a third person.

(2) Property in a safe deposit box standing in the name of a third person or in the names of both the judgment debtor and a third person.

(b) The judgment creditor shall provide, and the levying officer shall deliver to the financial institution at the time of levy, an undertaking given by a corporate surety authorized to execute the undertaking by Section 1056. The undertaking shall be for not less than twice the amount of the judgment or, if a lesser amount in a deposit account is sought to be levied upon, not less than twice the lesser amount. The undertaking shall indemnify any third person rightfully entitled to the property against actual damage by reason of the levy on the property and shall assure to the third person the return of the property upon proof of the person's right thereto. The undertaking need not name the third person specifically but may refer to the third person generally in the same manner as in

this subdivision. If the provisions of this subdivision are not satisfied, the levy is ineffective and the financial institution shall not comply with the requirements of this section or with the levy.

(c) Upon delivery of the undertaking to the financial institution, the financial institution shall immediately mail or deliver a notice of the delivery of the undertaking to the third person in whose name the deposit account or safe deposit box stands. If mailed, the notice shall be sent by registered or certified mail addressed to the person's last address known to the financial institution. The financial institution shall deliver the undertaking as directed by the third person.

(d) Notwithstanding Article 5 (commencing with Section 701.010), from the time of levy and the delivery of the undertaking to the financial institution until 15 days after the notice is mailed or delivered under subdivision (c) if no objection to the undertaking is made or, if such objection is made, until the court determines that the undertaking is sufficient, the financial institution shall not do any of the following:

(1) Honor a check or other order for the payment of money drawn against, or pay a withdrawal from, the deposit account that would reduce the deposit account to less than the amount levied upon. For the purposes of this paragraph, in determining the amount of the deposit account, the financial institution shall not include the amount of items deposited to the credit of the deposit account that are in the process of being collected.

(2) Permit the removal of any of the contents of the safe deposit box except pursuant to the writ.

(e) The financial institution is not liable to any person for any of the following during the period prescribed in subdivision (d):

(1) Nonpayment of a check or other order for the payment of money drawn or presented against the deposit account where such nonpayment is pursuant to the requirements of subdivision (d).

(2) Refusal to pay a withdrawal from the deposit account where such refusal is pursuant to the requirements of subdivision (d).

(3) Refusal to permit access to the safe deposit box by the person in whose name it stands.

(4) Removal of any of the contents of the safe deposit box pursuant to the levy.

(f) An objection to the undertaking may be made by any person claiming to be rightfully entitled to the property levied upon. The objection shall be made in the manner provided by Chapter 7 (commencing with Section 720.710) of Division 4.

(g) Upon the expiration of the period prescribed in subdivision (d), the financial institution shall comply with the levy and Sections 700.140 and 700.150 apply.

Comment. Subdivision (a) of Section 700.160 continues the substance of the first portion of the first sentence of former Section 682a. Subdivision (b) continues the substance of the last portion of the first sentence and the second sentence of former Section 682a. Subdivision (c) continues the third and eighth sentences of former Section 682a. Subdivision (d) continues the substance of the fourth sentence and a portion of the fifth sentence of former Section 682a, except that subdivision (d) recognizes the practice of holding only so much of the account as is necessary to satisfy the levy. Subdivision (e) continues the substance of a portion of the fifth sentence of former Section 682a. Subdivision (f) continues the substance of the sixth and seventh sentences of former Section 682a, except that under subdivision (b) the undertaking must be issued by a corporate surety. Subdivision (g) continues the substance of a portion of the fifth sentence of former Section 682a.

§ 700.170. Accounts receivable and general intangibles

700.170. (a) Unless another method of levy is provided by this article, to levy upon an account receivable or general intangible, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the account debtor.

(b) If a levy is made under subdivision (a) and payments on the account receivable or general intangible are made to a person other than the judgment debtor (whether pursuant to a security agreement, assignment for collection, or otherwise), the levying officer shall, if so instructed by the judgment creditor, personally serve a copy of the writ of execution and a

notice of levy on such third person. Service of the copy of the writ and notice of levy on such third person is a levy on any amounts owed to the judgment debtor by such third person.

Legislative Committee Comment—Assembly

Comment. Section 700.170 supersedes a portion of the last sentence of former Section 688(b) and Section 488.370 (attachment of accounts receivable and choses in action) to the extent it was incorporated by former Section 688(b). The introductory portion of subdivision (a) recognizes that a different method of levy may be provided for some types of property. See, *e.g.*, Sections 700.020 (account receivable resulting from sale of minerals, oil, or gas at wellhead or minehead), 700.140 (deposit accounts). See also Sections 697.710 (execution lien), 697.740 (effect of lien).

Subdivision (b) is a new provision that recognizes the need for special provisions if the account receivable or general intangible is subject to collection by a third person, such as pursuant to a security interest or assignment for collection. In such a situation, the levy by service on the account debtor establishes the judgment creditor's priority. The account debtor continues payment to the third person pending resolution of any disputes. See Section 701.050 (duty of account debtor). See also Division 4 (commencing with Section 720.010) (third-party claims); Com. Code § 9301 (lien creditor has priority over unperfected security interest). Service of notice of levy on the third person operates as a levy on any amounts owed to the judgment debtor by the third person. This protects the rights of the judgment creditor, for example, to any surplus payments remaining after satisfaction of a security interest or to payments in the hands of a collecting agent. This preserves the rule in such cases as *Axe v. Commercial Credit Corp.*, 227 Cal. App.2d 216, 38 Cal. Rptr. 558 (1964) (surplus payments under pledged accounts receivable), and *Puissegur v. Yarbrough*, 29 Cal.2d 409, 175 P.2d 830 (1946) (note held for collection). See also Section 701.040 (duty of secured party upon levy). Article 3 (commencing with Section 697.510) of Chapter 2 provides an alternate method for obtaining a lien on accounts receivable and general intangibles.

§ 700.180. Levy on property that is subject of pending action or proceeding

700.180. (a) The following property may be levied upon pursuant to this article notwithstanding that the

property levied upon is the subject of a pending action or special proceeding:

(1) Real property.

(2) Growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead.

(3) Tangible personal property in the possession or under the control of the judgment debtor or in the custody of a levying officer.

(4) The interest of a judgment debtor in personal property in the estate of a decedent, whether the interest arises by testate or intestate succession.

(b) Except as provided in subdivision (a), a levy upon property that is the subject of an action or special proceeding pending at the time of the levy is not effective.

(c) If a levy is attempted but is ineffective under subdivision (b) and the levying officer has requested a garnishee's memorandum under Section 701.030 in connection with the ineffective levy, the garnishee's memorandum shall include the following information in addition to that required by Section 701.030:

(1) A statement that the levy on the property is not effective because the property is the subject of a pending action or special proceeding.

(2) The title of the court, cause, and number of the pending action or proceeding.

(d) For the purpose of this section, an action or proceeding is pending from the time the action or proceeding is commenced until judgment has been entered and the time for appeal has expired or, if an appeal is filed, until the appeal has been finally determined.

(e) Nothing in this section affects or limits the right of the judgment creditor to obtain a lien pursuant to Article 5 (commencing with Section 708.410) of Chapter 6.

Legislative Committee Comment—Assembly

Comment. Section 700.180 deals with the effect of a levy on property that is the subject of a pending action or special proceeding. Subdivision (a) describes the types of property that

may be levied upon regardless of whether the property is the subject of a pending action or proceeding. Such property is levied upon just as if there were no pending action or proceeding, and the levying officer serves the notice of levy upon the same persons and in the same manner as is required in connection with any other levy on such property. Subdivision (e) makes clear that the judgment creditor may also obtain a lien in the pending action or proceeding under Article 5 (commencing with Section 708.410) of Chapter 6. If a lien is obtained by the judgment creditor under Article 5, the judgment debtor cannot settle the action or proceeding without either satisfying the judgment of the judgment creditor or obtaining the written consent of the judgment creditor or court approval. See Section 708.440. See also Section 708.480 (enforcement of judgment creditor's lien after final judgment in action or proceeding). In addition, if a lien under Article 5 is obtained, the judgment debtor's right to enforce the judgment obtained in the action or proceeding is subject to the same limitations as the judgment debtor's right to settle the action or proceeding. See Section 708.440.

Subdivision (b) makes ineffective a levy upon property other than that described in subdivision (a) if the property is the subject of a pending action or proceeding. Generally this property is tangible personal property not in the possession of the judgment debtor or intangible personal property (such as a debt owed the judgment debtor). If property cannot be levied upon as provided in this section, subdivision (e) makes clear that the judgment creditor can obtain a lien on the property that is the subject of the pending action or proceeding by filing as provided under Article 5 (commencing with Section 708.410) of Chapter 6. This protects the rights of the judgment creditor and, at the same time, permits the third person to await the outcome of the pending litigation before making a decision concerning whether to deliver the property or to pay the debt that is the subject of the litigation.

Subdivision (c) requires that the garnishee's memorandum contain information to enable a judgment creditor who has made an ineffective levy upon property that is the subject of a pending action or proceeding (see subdivision (b) of this section) to file the necessary documents in the pending action or proceeding to obtain a lien under Article 5 (commencing with Section 708.410) of Chapter 6. The fact that the levy is ineffective does not negate

the duty to provide a garnishee's memorandum if requested by the levying officer. See Section 701.030(a).

Subdivision (d) clarifies the meaning of "pending action or special proceeding" as used in this section.

§ 700.190. Final money judgment

700.190. (a) As used in this section, "final money judgment" means a money judgment after the time for appeal from the judgment has expired or, if an appeal is filed, after the appeal has been finally determined.

(b) To levy upon a final money judgment, the levying officer shall file a copy of the writ of execution and a notice of levy with the clerk of the court that entered the final money judgment. The court clerk shall endorse upon the judgment a statement of the existence of the execution lien and the time it was created. If an abstract of the judgment is issued, it shall include a statement of the execution lien in favor of the judgment creditor.

(c) At the time of levy or promptly thereafter, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the judgment debtor obligated to pay the final money judgment levied upon. The filing with the court clerk pursuant to subdivision (b) is not, of itself, notice to the judgment debtor obligated to pay the judgment levied upon so as to invalidate any payments made by him or her that would otherwise be applied to the satisfaction of the judgment levied upon.

Comment. Section 700.190, which establishes the manner and effect of a levy upon a final money judgment, is drawn in part from Section 488.420 (attachment). Where a final judgment is not a money judgment, Section 700.190 has no effect on the manner of levy. A levy is made on tangible property just as if there were no final judgment relating to that property. The effect of the final judgment in such a case is its relevance as a determination of the judgment debtor's ownership of or other interest in the property. As to levy on property that is the subject of a pending action or proceeding, see Section 700.180 and Comment thereto. See also Article 5 (commencing with Section 708.410) of Chapter 6 (lien in a pending action or proceeding).

Subdivision (b) of former Section 688 provided that the manner of levy of execution was the same as in attachment, and

the Attachment Law (Section 488.420) provides for the attachment of a final judgment. Section 700.190, like Section 488.420, requires the filing of a copy of the writ and notice of levy in the court in which the judgment levied upon was entered. However, unlike Section 488.420, Section 700.190 does not require service of a copy of the writ and notice on the judgment debtor obligated to pay the judgment levied upon as an essential element of the levy. Although Section 700.190 requires the levying officer to serve a copy of the writ and notice on that judgment debtor, service is not a requisite for a valid levy under Section 700.190. See Section 699.550. However, subdivision (c) protects the judgment debtor obligated to pay the judgment levied upon who pays the judgment creditor under that judgment without notice of the levy. In this respect, Section 700.190 is consistent with Civil Code Section 954.5 (payment where acknowledgment of assignment of judgment is filed).

§ 700.200. Interest in personal property of estate of decedent

700.200. (a) To levy upon the interest of the judgment debtor in personal property in the estate of a decedent, whether the interest arises by testate or intestate succession, the levying officer shall personally serve a copy of the writ and a notice of levy on the personal representative of the decedent. The levy does not impair the powers of the representative over the property for the purposes of administration.

(b) The personal representative shall report the levy to the court in which the estate is being administered when any petition for distribution is filed. If a decree orders distribution to the judgment debtor, the court making the decree shall order the property levied upon to be delivered to the levying officer. The property may not be delivered to the levying officer until the decree distributing the property has become final. To the extent the property delivered to the levying officer is not necessary to satisfy the money judgment, it shall be released to the judgment debtor.

(c) Promptly after the property is delivered to the levying officer pursuant to subdivision (b), the levying officer shall serve a notice describing the property on the judgment debtor. Service shall be made personally or by

mail. Notwithstanding Section 703.520, a claim of exemption for the property described in the notice may be made within 10 days after the notice was served on the judgment debtor.

(d) Notwithstanding Section 697.710, an execution lien created by a levy pursuant to this section continues for a period of one year after the decree distributing the interest has become final unless the judgment is sooner satisfied.

(e) A writ under which a levy is made pursuant to this section shall be returned not later than one year after the date the decree distributing the interest has become final.

Comment. Subdivisions (a) and (b) of Section 700.200 provide a method of levy analogous to Section 488.430 (attachment of an interest in personal property of a decedent's estate) which was incorporated by former Section 688(b). Subdivision (c) affords the judgment debtor an opportunity to claim any available exemption for the property once it is delivered to the levying officer. The time for claiming the exemption is extended if service is by mail. See Section 684.120. Subdivision (d) supersedes a portion of the first sentence of former Section 688(e) and extends the period the execution lien is effective beyond the period set by Section 697.710 for execution liens generally. Subdivision (e) provides an exception to the general rules governing return of a writ of execution.

Article 5. Duties and Liabilities of Third Persons After Levy

§ 701.010. Duty of garnishee

701.010. (a) Except as otherwise provided by statute, when a levy is made by service of a copy of the writ of execution and a notice of levy on a third person, the third person at the time of levy or promptly thereafter shall comply with this section.

(b) Unless the third person has good cause for failure or refusal to do so:

(1) The third person shall deliver to the levying officer any of the property levied upon that is in the possession or under the control of the third person at the time of

levy unless the third person claims the right to possession of the property.

(2) To the extent that the third person does not deny an obligation levied upon, or claim a priority over the judgment creditor's lien, the third person shall pay to the levying officer both of the following:

(A) The amount of the obligation levied upon that is due and payable to the judgment debtor at the time of levy.

(B) Amounts that become due and payable to the judgment debtor on the obligation levied upon during the period of the execution lien.

(3) If the third person makes a delivery or payment to the levying officer pursuant to this section, the third person shall execute and deliver any documents necessary to effect the transfer of the property.

(c) For the purposes of this section, "good cause" includes, but is not limited to, a showing that the third person did not know or have reason to know of the levy from all the facts and circumstances known to the third person.

Comment. Section 701.010 is new. Service of the copy of the writ of execution and a notice of levy on the third person creates a lien on any personal property or obligation that is subject to levy of execution even if the garnishee refuses to turn the property over or to pay the obligation to the levying officer. See Section 697.710 (execution lien); *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212, 100 P. 242 (1909). See also Section 701.020 (liability of third person).

The introductory portion of subdivision (a) recognizes exceptions to the duty of the garnishee. See, *e.g.*, Sections 700.160 (delay by a financial institution), 700.050 (paper levy on a levying officer), 700.200 (power of personal representative over property in estate of a decedent), and 701.050 (duty of account debtor).

§ 701.020. Liability of third person for noncompliance with levy

701.020. (a) If a third person is required by this article to deliver property to the levying officer or to make payments to the levying officer and the third person fails or refuses without good cause to do so, the

third person is liable to the judgment creditor for whichever of the following is the lesser amount:

(1) The value of the judgment debtor's interest in the property or the amount of the payments required to be made.

(2) The amount required to satisfy the judgment pursuant to which the levy is made.

(b) The third person's liability continues until the earliest of the following times:

(1) The time when the property levied upon is delivered to the levying officer or the payments are made to the levying officer.

(2) The time when the property levied upon is released pursuant to Section 699.060.

(3) The time when the judgment is satisfied or discharged.

(c) If the third person's liability is established, the court that determines the liability may, in its discretion, require the third person to pay the costs and reasonable attorney's fees incurred by the judgment creditor in establishing the liability.

Comment. Section 701.020 is new and is comparable to Section 488.550 (attachment). The judgment creditor may seek to enforce compliance with the levy under Section 701.020 or to impose liability on the third person pursuant to Article 2 (commencing with Section 708.110) (examination proceedings) or Article 3 (commencing with Section 708.210) (creditor's suit) of Chapter 6. See also Section 697.710 (execution lien).

§ 701.030. Garnishee's memorandum

701.030. (a) At the time of service of a copy of the writ of execution and a notice of levy on a third person, the levying officer shall request the third person to give the levying officer a garnishee's memorandum containing the information required by this section. Within 10 days after the request is made, the third person shall mail or deliver the garnishee's memorandum to the levying officer whether or not the levy is effective.

(b) The garnishee's memorandum shall be executed under oath and shall contain the following information:

(1) A description of any property of the judgment debtor sought to be levied upon that is not delivered to the levying officer and the reason for not delivering the property.

(2) A description of any property of the judgment debtor not sought to be levied upon that is in the possession or under the control of the third person at the time of levy.

(3) A statement of the amount and terms of any obligation to the judgment debtor sought to be levied upon that is due and payable and is not paid to the levying officer, and the reason for not paying the obligation.

(4) A statement of the amount and terms of any obligation to the judgment debtor sought to be levied upon that is not due and payable at the time of levy.

(5) A statement of the amount and terms of any obligation to the judgment debtor at the time of levy not sought to be levied upon.

(6) A description of claims and rights of other persons to the property or obligation levied upon that are known to the third person and the names and addresses of such other persons.

(c) If a garnishee's memorandum is received from the third person, the levying officer shall promptly mail or deliver a copy of the memorandum to the judgment creditor and attach the original to the writ when it is returned to the court. If a garnishee's memorandum is not received from the third person, the levying officer shall so state in the return.

(d) Except as provided in subdivisions (e) and (f), if a third person does not give the levying officer a garnishee's memorandum within the time provided in subdivision (a) or does not provide complete information, the third person may, in the court's discretion, be required to pay the costs and reasonable attorney's fees incurred in any proceedings to obtain the information required in the garnishee's memorandum.

(e) Notwithstanding subdivision (a), when the levy is made upon a deposit account or upon property in a safe deposit box, the financial institution need not give a garnishee's memorandum to the levying officer if the

financial institution fully complies with the levy and, if a garnishee's memorandum is required, the garnishee's memorandum need provide information with respect only to property which is carried on the records available at the office or branch where the levy is made.

(f) Notwithstanding subdivision (a), the third person need not give a garnishee's memorandum to the levying officer if both of the following conditions are satisfied:

(1) The third person has delivered to the levying officer all of the property sought to be levied upon.

(2) The third person has paid to the levying officer the amount due at the time of levy on any obligation to the judgment debtor that was levied upon and there is no additional amount that thereafter will become payable on the obligation levied upon.

Comment. Section 701.030 is derived from Section 488.080 (b) but requires the garnishee to provide a broader range of information. The garnishee's memorandum may serve as an inexpensive alternative to an examination proceeding under Section 708.120. Subdivision (a) makes clear that the third person has a duty to give a memorandum even though the levy is ineffective. See, *e.g.*, Section 700.180 (levy on certain personal property ineffective where the property is the subject of a pending action or proceeding). Additional information may be required by another provision (see Section 700.180) where a levy is ineffective.

§ 701.040. Rights and duties of secured party

701.040. (a) Except as otherwise ordered by the court upon a determination that the judgment creditor's lien has priority over the security interest, if property levied upon is subject to a security interest that attached prior to levy, the property or obligation is subject to enforcement of the security interest without regard to the levy unless the property is in the custody of the levying officer; but, if the execution lien has priority over the security interest, the secured party is liable to the judgment creditor for any proceeds received by the secured party from the property to the extent of the execution lien.

(b) After the security interest is satisfied, the secured party shall deliver any excess property, and pay any excess payments or proceeds of property, remaining in the possession of the secured party to the levying officer for the purposes of the levy, as provided in Section 9504 of the Commercial Code, unless otherwise ordered by the court or directed by the levying officer.

Legislative Committee Comment—Senate

Comment. Section 701.040 reflects the principle that where practicable an execution levy should not affect the right of a prior secured party to resort to collateral and should not disrupt ongoing business relations between account debtors and secured parties in the absence of a determination or an admission that the judgment creditor's lien has priority. See also Com. Code § 9203 (attachment of security interest). The levy is generally intended to appropriate the rights of the judgment debtor to any excess remaining after satisfaction of the security interest. See subdivision (b). See also Com. Code §§ 9311 (permissibility of involuntary alienation of debtor's rights in collateral), 9504 (satisfaction of security interest). As recognized by the introductory clause of subdivision (a), this right of the secured party is subject to an exception where a court order determining that the judgment creditor has priority is obtained. See Com. Code § 9301 (1) (b) (lien creditor has priority over unperfected security interest). Of course, the secured party may voluntarily release the collateral if the secured party recognizes that the judgment creditor has a clear priority. The duties and liabilities of the secured party under this section may be enforced pursuant to Article 2 (commencing with Section 708.110) (examination proceedings) or Article 3 (commencing with Section 708.210) (creditor's suit) of Chapter 6.

Under subdivision (a), the secured party may enforce the security interest without interference from the levy only if the property or obligation levied upon is not in the custody of the levying officer. See also Section 701.050 (duty of account debtor).

§ 701.050. Duty of account debtor

701.050. After service of a copy of the writ of execution and a notice of levy on an account debtor obligated on an account receivable, chattel paper, or general intangible:

(a) If the account debtor has been making payments or is required to make payments to the judgment debtor, the account debtor shall make payments to the levying officer as they become due unless otherwise directed by court order or by the levying officer. Payments made to the judgment debtor after the account debtor has received notice of the levy do not discharge the

obligation of the account debtor to make payments as required by this subdivision.

(b) If the account debtor has been making payments to a third person or is required to make payments to a third person (whether pursuant to a security agreement, assignment for collection, or otherwise), the account debtor shall continue to make such payments to the third person notwithstanding the levy until the account debtor receives notice that the obligation to the third person is satisfied or is otherwise directed by court order or by the third person. After the account debtor receives notice that the obligation to the third person is satisfied, the account debtor shall make payments to the levying officer as they become due unless otherwise directed by court order or by the levying officer.

(c) If pursuant to a security agreement the judgment debtor has liberty to accept the return of goods or make repossessions under the account receivable or chattel paper, the account debtor shall deliver to the levying officer property returnable to the judgment debtor unless otherwise directed by court order or by the levying officer.

Comment. Section 701.050 sets forth the duties of an account debtor obligated on an account receivable, chattel paper, or general intangible. Like Section 701.040, this section is intended to preserve the status quo between the account debtor and a third person to whom the account debtor has been making or is required to make payments. See also the Comment to Section 701.040. Subdivisions (a) and (c) provide significant exceptions to this principle, however, in cases where the judgment debtor has the liberty to accept payments or the return of property. See Com. Code § 9205 (liberty in debtor to collect accounts and chattel paper).

§ 701.060. Duty of obligor under instrument

701.060. If the levying officer obtains custody of an instrument levied upon and serves the obligor under the instrument pursuant to the levy, the obligor shall make payments to the levying officer as they become due. Payments made to a person other than the levying officer do not discharge the obligation of the obligor to make

payments as required by this section if the payments are made after the obligor has received notice of the levy.

Legislative Committee Comment—Senate

Comment. Section 701.060 makes clear that the obligor under an instrument has a duty to make payments to the levying officer only if the levying officer has obtained possession of the instrument. See also Section 700.110 (method of levy on instruments). This is consistent with Commercial Code Section 3301 (rights of a holder of negotiable instrument). This section also applies to instruments that are not negotiable. For a provision governing the endorsement and presentation of demand instruments, see Section 687.020.

Article 6. Sale and Collection

§ 701.510. Sale of property levied upon

701.510. Subject to Sections 687.020 and 701.520, the levying officer shall sell all property that has been levied upon except:

(a) Tangible personal property may not be sold until the levying officer obtains custody of the property.

(b) Cash may not be sold unless it has a value exceeding its face value.

Comment. Section 701.510 continues the general authority of the levying officer to sell property after levy. See former Section 691. If sale is not made during the period of the lien of execution, the property must be released unless the property is to be held under another lien or is to be held pending resolution of a dispute as to its disposition. Section 697.050. After sale, the proceeds are applied in the manner provided by Section 701.810. Subdivisions (a) and (b) provide exceptions to the general rule. See also Section 701.520 (sale of collectible property). As to sale of property levied upon prior to operative date of this article, see Sections 694.040, 694.050.

§ 701.520. Collection; sale of collectible property

701.520. (a) Except as provided in this section, any of the following property that has been levied upon shall be collected rather than sold:

- (1) Accounts receivable.
- (2) Chattel paper.
- (3) General intangibles.
- (4) Final money judgments.

(5) Instruments that are not customarily transferred in an established market.

(6) Instruments that represent an obligation arising out of the sale or lease of property, a license to use property, the furnishing of services, or the loan of money where the property sold or leased or licensed for use, the services furnished, or the money loaned was used by an individual primarily for personal, family, or household purposes.

(b) At the time of levy on property described in subdivision (a) or thereafter, the judgment creditor may serve a notice of intended sale of the property on the judgment debtor. Service shall be made personally or by mail. A copy of the notice of intended sale and proof of service on the judgment debtor shall be filed with the court and with the levying officer. The notice of intended sale shall describe the property and state that it will be sold at an execution sale unless, within the time allowed after service of the notice of intended sale, the judgment debtor applies to the court on noticed motion for an order that the property be collected rather than sold.

(c) Within 10 days after service of the notice of intended sale, the judgment debtor may apply to the court on noticed motion for an order that the property be collected rather than sold. A judgment debtor who so applies shall, within the time allowed for the application, serve a copy of the notice of motion on the judgment creditor and file a copy of the notice of motion with the levying officer. Service of the copy of the notice of motion on the judgment creditor shall be made personally or by mail. If the copy of the notice of motion is not filed with the levying officer within the time allowed, the levying officer shall proceed to sell the property. If a copy of the notice of motion is filed with the levying officer within the time allowed, the levying officer shall continue to collect the property until otherwise ordered by the court.

(d) At the hearing on the motion, the court may in its discretion order that the property be sold or be collected depending on the equities and circumstances of the particular case. If the court orders that the property be sold, the order may specify terms and conditions of sale.

If the court orders that the property be collected, the court may condition its order on an assignment of the property by the judgment debtor to the judgment creditor pursuant to Article 6 (commencing with Section 708.510) of Chapter 6.

Comment. Subdivision (a) of Section 701.520 provides a degree of protection for types of property that are particularly susceptible to sacrifice and speculative sales. Former law did not contain such exceptions to the general rule that property levied upon is to be sold on execution (see Section 701.510), although former Section 691 directed the levying officer to collect *or* sell things in action. Section 701.520 clarifies the manner of applying a judgment in favor of the judgment debtor to the satisfaction of the judgment creditor's money judgment. See subdivision (a) (4). Prior law provided for the attachment of final judgments (see subdivision 5 of former Section 542, superseded by Section 488.420), but appeared to forbid levy and sale under execution (see former Section 688(f)). See also Sections 700.180 (levy on property that is subject of pending action), 700.190 (levy on final money judgment), 708.470-708.480 (enforcement of lien obtained in pending action). The effect of paragraphs (5) and (6) of subdivision (a) is to permit sale without court order of instruments that are regularly transferred on established markets so long as the instruments are not consumer paper. See Section 701.510.

Subdivisions (b)-(d) provide a procedure through which the judgment creditor may have the property sold if the judgment debtor does not object within 10 days. The time for objecting is extended if the judgment debtor is served by mail. See Section 684.120. The objection is made in the form of a motion that the property be collected rather than sold. Subdivision (d) provides the court with broad authority to determine whether a sale should take place depending, for example, on such factors as whether the obligation is currently being paid, the probable proceeds of a sale of the obligation, the costs of collection if it is not sold, and the availability of other useful remedies. If a sale is permitted, the court may set a minimum price or require court confirmation of sale. The sale may be conducted in the same manner as other execution sales or may be conducted in some other manner, *e.g.*, as a negotiated private sale through some commercial channel.

§ 701.530. Notice of sale of personal property

701.530. (a) Notice of sale of personal property shall be in writing, shall state the date, time, and place of sale, and shall describe the property to be sold.

(b) Not less than 10 days before a sale of personal property, notice of sale shall be posted and served on the judgment debtor by the levying officer. Service shall be made personally or by mail.

(c) Posting under this section shall be in three public places in:

(1) The city in which the property is to be sold if it is to be sold in a city.

(2) The judicial district in which the property is to be sold if it is not to be sold in a city.

(d) A sale of personal property of an individual may not take place until the expiration of the time during which the judgment debtor may make a claim of exemption under subdivision (a) of Section 703.520.

Legislative Committee Comment—Assembly

Comment. Subdivisions (a)-(c) of Section 701.530 continue the substance of the first sentence of subdivision 2 of former Section 692. The 10-day period provided in subdivision (b) is not extended if service on the judgment debtor is by mail (Section 684.120 extending time when service is by mail does not apply to this situation), but the time under subdivision (d) may be extended by Section 684.120. See the Comment to Section 703.520. Subdivision (d) is a new provision intended to afford an individual an opportunity to claim any available exemptions.

§ 701.540. Notice of sale of real property

701.540. (a) Notice of sale of an interest in real property shall be in writing, shall state the date, time, and place of sale, shall describe the interest to be sold, and shall give a legal description of the real property and its street address or other common designation, if any. If the real property has no street address or other common designation, the notice of sale shall include a statement that directions to its location may be obtained from the levying officer upon oral or written request or, in the discretion of the levying officer, the notice of sale may contain directions to its location. Directions are sufficient

if information as to the location of the real property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If an accurate legal description of the real property is given, the validity of the notice and sale is not affected by the fact that the street address or other common designation, or directions to its location, are erroneous or omitted.

(b) Not less than 20 days before the date of sale, notice of sale of an interest in real property shall be served, mailed, and posted by the levying officer as provided in subdivisions (c), (d), (e), and (f).

(c) Notice of sale shall be served on the judgment debtor. Service shall be made personally or by mail.

(d) Notice of sale shall be posted in the following places:

(1) One public place in the city in which the interest in the real property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the judicial district in which the interest in the real property is to be sold.

(2) A conspicuous place on the real property.

(e) At the time notice is posted pursuant to paragraph (2) of subdivision (d), notice of sale shall be served or service shall be attempted on one occupant of the real property. Service on the occupant shall be made by leaving the notice with the occupant personally or, in the occupant's absence, with any person of suitable age and discretion found upon the real property at the time service is attempted who is either an employee or agent of the occupant or a member of the occupant's household. If the levying officer is unable to serve such an occupant at the time service is attempted, the levying officer is not required to make any further attempts to serve an occupant.

(f) If the property described in the notice of sale consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lies with relation to any of the others so as to form one or more continuous, unbroken tracts, only one service pursuant to subdivision (e) and

posting pursuant to paragraph (2) of subdivision (d) need be made as to each continuous, unbroken tract.

(g) Notice of sale shall be published pursuant to Section 6063 of the Government Code, with the first publication at least 20 days prior to the time of sale, 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, in a newspaper of general circulation published in the judicial district in which the real property or a part thereof is situated. If no newspaper of general circulation is published in the city or judicial district, notice of sale shall be published in a newspaper of general circulation in the county in which the real property or a part thereof is situated.

(h) Not earlier than 30 days after the date of levy, the judgment creditor shall determine the names of all persons having liens on the real property on the date of levy that are of record in the office of the county recorder and shall instruct the levying officer to mail notice of sale to each such person at the address used by the county recorder for the return of the instrument creating the person's lien after recording. The levying officer shall mail notice to each such person, at the address given in the instructions, not less than 20 days before the date of sale.

Comment. Section 701.540 supersedes subdivision 3 of former Section 692. Notice of sale may not be given until the expiration of the period provided in Section 701.545. The responsibility of the levying officer under subdivision (a) to give directions to the location of property that has no street address or other common designation is derived from the provision of former Section 692 for giving directions by the beneficiary of a deed of trust. See also Section 687.010 (instructions to levying officer). Subdivision (b) continues a portion of subdivision 3 of former Section 692. Subdivision (c) requires personal service on the judgment debtor whereas subdivision 3 of former Section 692 permitted service by certified mail. Subdivisions (e) and (f) are the same as portions of Section 700.015(c) (notice of levy). Subdivisions (d) and (g) continue the substance of portions of subdivision 3 of former Section 692. Subdivision (h) requires notice not required by former law. For special provisions applicable to sale of a dwelling to enforce a money judgment, see Sections 704.770, 704.790.

§ 701.545. Period that must elapse before giving notice of sale

701.545. Notice of sale of an interest in real property, other than a leasehold estate with an unexpired term of less than two years at the time of levy, may not be given pursuant to Section 701.540 until the expiration of 120 days after the date notice of levy on the interest in real property was served on the judgment debtor.

Legislative Committee Comment—Assembly

Comment. Section 701.545 delays the giving of notice of a sale of real property for at least 120 days after the notice of levy is served on the judgment debtor. This 120-day delay is provided to give the judgment debtor an opportunity to redeem the property from the judgment creditor's lien before the sale or to seek potential purchasers. The statutory right of redemption from execution sales of real property provided by former Sections 700a-707 is repealed. See Section 701.680 and the Comment thereto (sales absolute). See also Section 729.010 (redemption from certain foreclosure sales).

§ 701.547. Notice to prospective bidders

701.547. A notice of sale shall contain the substance of the following statement: "Prospective bidders should refer to Sections 701.510 to 701.680, inclusive, of the Code of Civil Procedure for provisions governing the terms, conditions, and effect of the sale and the liability of defaulting bidders."

Legislative Committee Comment—Senate

Comment. Section 701.547 is a new provision not found in prior law. See also Section 729.010(b) (1) (statement concerning right of redemption where decree of foreclosure of a mortgage or trust deed on real property determines that a deficiency judgment may be ordered against the defendant).

§ 701.550. Notice of sale to persons requesting notice

701.550. (a) In addition to the notice of sale required by this article, the levying officer shall, at the time notice of sale is posted pursuant to Section 701.530 or 701.540, mail notice of sale to any person who has requested notice of the sale pursuant to this section.

(b) A request for notice of sale under this section made prior to the issuance of the writ shall be in writing

and shall be filed with the clerk of the court where the judgment is entered. The request shall specify the title of the court, the cause and number of the action in which the judgment was entered, and the date of entry thereof, and shall state the address to which the notice of sale is to be mailed. The name and address of the person requesting notice of sale under this subdivision shall be noted on the writ.

(c) A person who desires notice of sale of particular property that has been levied upon may file a request for notice of sale with the levying officer who will conduct the sale. The request shall contain the information specified by the levying officer as needed in order to comply with the request.

Legislative Committee Comment—Assembly

Comment. Subdivisions (a) and (b) of Section 701.550 continue the substance of portions of former Section 692a. This procedure applies to sales under writs of execution and other writs. The clerk must note the request for notice on the writ. See Sections 699.520 (writ of execution), 712.020 (writs of possession and sale). Sales of property take place under writs of execution and writs of sale as a matter of course (see Sections 701.510, 716.020) and under writs of possession of personal property as an ancillary matter (see Section 714.020). Notice of sale is required to be given to the judgment debtor and lienholders of record of real property in all cases. See Section 701.540.

Subdivision (c) is a new provision for requesting notice of sale of property that has already been levied upon.

§ 701.555. Judgment creditor and judgment debtor may advertise sale

701.555. In addition to the notice of sale required by this article, the judgment creditor may advertise the sale in the classified or other advertising section of a newspaper of general circulation or other publication and may recover reasonable costs of such advertising. The judgment debtor may also advertise the sale at the judgment debtor's own expense.

Legislative Committee Comment—Assembly

Comment. Advertising under Section 701.555 may be appropriate where certain types of property with a specialized market are to be sold, such as stamps, coins, or rare books.

Expenses of the judgment creditor's advertising in this manner are recoverable if reasonable, but as a practical matter the judgment creditor may be unable to recover such costs. See Sections 685.080, 685.090. Section 701.555 is permissive, not restrictive.

§ 701.560. Effect of sale without giving required notice

701.560. (a) Failure to give notice of sale as required by this article does not invalidate the sale.

(b) A levying officer who sells property without giving the required notice is liable to the judgment creditor and the judgment debtor for actual damages caused by failure to give notice.

Comment. Subdivision (a) of Section 701.560 codifies existing law. See *Smith v. Randall*, 6 Cal. 47, 50 (1856); *Hamilton v. Carpenter*, 52 Cal. App.2d 447, 448, 126 P.2d 395 (1942). Subdivision (b) continues the levying officer's liability for actual damages for failure to give proper notice of sale provided by former Section 693. Former Section 693 provided for liability to the "aggrieved party." 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, 518 (1883) (purchaser at execution sale not aggrieved party). The forfeiture of \$100 by the levying officer to the aggrieved party under former Section 693 is not continued.

§ 701.570. Place, time, and manner of sale

701.570. (a) A sale of property shall be held at the date, time, and place specified in the notice of sale, which shall be in the county where the property or a part thereof is situated and between the hours of nine in the morning and five in the afternoon. Subject to subdivision (d), real property consisting of one parcel, or of two or more contiguous parcels, situated in two or more counties may be sold in one county as instructed by the judgment creditor.

(b) The sale shall be made at auction to the highest bidder.

(c) If personal property capable of manual delivery is to be sold, it shall be within the view of those who attend

the sale unless, upon application of the judgment creditor or the judgment debtor, the court orders otherwise.

(d) Property shall be sold separately or in such groups or lots as are likely to bring the highest price. The judgment debtor may request that the property be sold separately or together and may request that the property be sold in a particular order. If the judgment debtor is not present at the sale, the request may be made in writing and delivered to the levying officer prior to the sale. The levying officer shall honor the request if, in the opinion of the levying officer, the requested manner of sale is likely to yield an amount at least equal to any other manner of sale or the amount required to satisfy the money judgment. The levying officer is not liable for a decision made in good faith under this subdivision.

(e) After sufficient property has been sold to yield the amount required to satisfy the money judgment, no more shall be sold.

Comment. Subdivisions (a) and (b) of Section 701.570 continue the substance of the first sentence of former Section 694. Subdivision (c) supersedes a portion of the fourth sentence of former Section 694 which required personal property to be in the view of the persons attending the sale.

Subdivision (d) supersedes a portion of the fourth sentence and the fifth sentence of former Section 694. See also the last sentence of former Section 691. Although former Section 694 appeared to require that real property must be sold in separate parcels, the cases interpreting that section suggest 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). There may be cases where sale as a unit will produce a substantially higher price than separate sale.

Subdivision (d) permits the judgment debtor to make reasonable requests concerning the manner of sale, but the levying officer is empowered to accept or reject the request. Under former Section 694, the judgment debtor appeared to have absolute control over the order and lots in which the property was sold. The authority for the judgment debtor to make a request in writing when not present at the sale is not found in prior law.

Subdivision (e) continues the second sentence of former Section 694.

§ 701.580. Postponement of sale

701.580. 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. 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. A postponed sale shall be held at the place originally fixed for the sale.

Comment. Section 701.580 continues the substance of the second paragraph of former Section 694.

§ 701.590. Manner of payment

701.590. (a) Except as otherwise provided in this section, the purchaser at a sale shall pay in cash or by certified check or cashier's check.

(b) The judgment creditor may bid by giving the levying officer a written receipt crediting all or part of the amount required to satisfy the judgment, except that the levying officer's costs remaining unsatisfied and the amount of preferred labor claims, exempt proceeds, and any other claim that is required by statute to be satisfied, shall be paid in cash or by certified check or cashier's check.

(c) If the highest bid for an interest in real property sold exceeds five thousand dollars (\$5,000), the highest bidder may elect to treat the sale as a credit transaction. A person who makes the election shall deposit at least five thousand dollars (\$5,000) or 10 percent of the amount bid, whichever is greater, and within 10 days after the date of the sale shall pay the balance due plus costs accruing with regard to the property sold and interest accruing at the rate on money judgments on the balance of the amount bid from the date of sale until the date of payment.

(d) If the highest bid for an item, group, or lot of personal property sold exceeds two thousand five hundred dollars (\$2,500), the highest bidder may elect to

treat the sale as a credit transaction. A person who makes the election shall deposit at least two thousand five hundred dollars (\$2,500) or 10 percent of the amount bid, whichever is greater, and within 10 days after the date of the sale shall pay the balance due plus costs accruing with regard to the property sold and interest accruing at the rate on money judgments on the balance of the amount bid from the date of sale until the date of payment.

(e) A person who makes the election under subdivision (c) or (d) is not entitled to possession of the property sold until the amount bid, plus accruing costs and interest, have been paid.

Legislative Committee Comment—Senate

Comment. Subdivisions (a) and (b) of Section 701.590 codify the practice under former law. Marshal's Manual of Procedure § 423.4 (rev. 1980); Cal. State Sheriffs' Ass'n, Civil Procedural Manual 6.10-6.11, 6.20 (1978). See also *Turner v. Donovan*, 64 Cal. App.2d 375, 148 P.2d 912 (1944); *Kelly v. Barnet*, 24 Cal. App. 119, 140 P. 605 (1914).

Under subdivision (b), if the judgment creditor bids at the auction, the judgment creditor may use the judgment as a credit to pay all or a portion of the bid instead of cash. However, the judgment creditor must pay in cash or its equivalent the costs of the officer conducting the sale, preferred labor claims, superior state tax liens, and exempt sale proceeds. See Sections 701.620 (minimum bid), 701.810 (distribution of proceeds). For special rules applicable to the sale of a homestead, see Sections 704.800 (minimum bid) and 704.850 (distribution of proceeds). See also Section 704.780 (manner of sale of homestead).

Subdivision (b) recognizes that a transfer of cash back and forth between the judgment creditor and the levying officer generally can be dispensed with. Under former law, the levying officer apparently had the discretion to refuse the judgment as a credit and to require cash payment. See *Mitchell v. Alpha Hardware & Supply Co.*, 7 Cal. App.2d 52, 60-61, 45 P.2d 442 (1935); *Kelly v. Barnet*, 24 Cal. App. 119, 140 P. 605 (1914).

Subdivisions (c) and (d) are derived from Revenue and Taxation Code Section 3693.1 (sales of tax deeded property to private persons). If additional costs—such as keeper or storage fees—accrue after the sale, the credit bidder must satisfy them. The credit bidder must also pay interest on the balance of the amount bid to compensate for the delay in payment. If the amount bid is not paid, Section 701.600 applies.

Subdivision (e) makes clear that a credit bidder under subdivision (c) or (d) is not entitled to the property until the full price has been paid. See also Sections 701.650, 701.660.

§ 701.600. Defaulting bidder

701.600. If the highest bidder does not pay the amount bid as prescribed by Section 701.590:

(a) The levying officer shall sell the property:

(1) If the default occurs at the sale, either to the next highest bidder at the amount of the next highest bid if such bidder agrees or to the highest bidder at a new sale held immediately.

(2) If the default occurs after the sale to a credit bidder pursuant to subdivision (c) of Section 701.590, to the highest bidder at a new sale.

(b) The levying officer shall apply the amount of any deposit made pursuant to subdivision (c) of Section 701.590 in the following order:

(1) To the satisfaction of costs accruing with regard to the property sold from the date of the sale until the date the property is resold, including costs of resale.

(2) To the satisfaction of interest at the rate on money judgments on the amount bid from the date of the sale until the date the property is resold.

(3) To the amount required to satisfy the money judgment in the order of distribution prescribed by Section 701.810 or Section 704.850, whichever is applicable.

(c) If there is a sale to the next highest bidder or to the highest bidder at a new sale, the defaulting bidder is liable for the following amounts in an action by the judgment creditor or judgment debtor:

(1) The amount bid, less the amount obtained from the resale of the property and the amount of any deposit applied pursuant to subdivision (b). The amount recovered pursuant to this paragraph shall be distributed in the manner prescribed by Section 701.810 or Section 704.850, whichever is applicable.

(2) Any costs accruing with regard to the property sold from the date of sale until the date the property is resold, including costs of resale.

(3) Interest at the rate on money judgments on the amount bid from the date of the sale until the date the property is resold.

(4) Costs and attorney's fees incurred in the action under this subdivision.

(d) The levying officer may, in the levying officer's discretion, reject any subsequent bid of the defaulting bidder.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 701.600 supersedes the first portion of former Section 695. See *Bell v. Redwine*, 98 Cal. App. 784, 787, 277 P. 1050 (1929) (officer must resell property). If a new sale is held, it must satisfy the requirements of notice, time, place, and manner of sale provided by this article.

Subdivision (b) is designed to handle situations where there is a default by a bidder who elects to treat the sale as a credit transaction pursuant to Section 701.590(c)-(d).

Subdivision (c) supersedes the latter portion of former Section 695. This subdivision authorizes the judgment creditor or the judgment debtor to sue the defaulting bidder whereas former Section 695 provided that the officer could recover the amount of the loss, with costs. However, case law under former Section 695 permitted the judgment debtor to recover from the defaulting bidder. See *Meherin v. Saunders*, 131 Cal. 681, 689-91, 63 P. 1084 (1901). Paragraph (1) of subdivision (c) codifies the case law rule that the amount of the loss is the difference between the unpaid bid and a lower price obtained at a later sale. See *Johns v. Trick*, 22 Cal. 511, 513 (1863); *Meherin v. Saunders*, 131 Cal. 681, 687-88, 63 P. 1084 (1901) (dictum).

Subdivision (d) continues the substance of former Section 696.

§ 701.610. **Persons ineligible to purchase**

701.610. The levying officer may not be a purchaser or have an interest in any purchase at a sale.

Comment. Section 701.610 continues the substance of the third sentence of former Section 694.

§ 701.620. **Minimum bid**

701.620. (a) Property may not be sold unless the amount bid exceeds the total of the following amounts:

(1) The amount of all preferred labor claims that are required by Section 1206 to be satisfied from the proceeds.

(2) The amount of any state tax lien (as defined in Section 7162 of the Government Code) that is superior to the judgment creditor's lien.

(3) If the purchaser is not the judgment creditor, the amount of any deposit made pursuant to Section 720.260 with interest thereon at the rate on money judgments from the date of the deposit to the date of the sale.

(b) Property for which a proceeds exemption is provided by Section 704.010 (motor vehicle), 704.020 (household furnishings and other personal effects), or 704.060 (tools of trade), may not be sold unless the amount bid exceeds the sum of any amount under subdivision (a) and the amount of the proceeds exemption.

(c) If a minimum bid required for the sale of property pursuant to this section is not received, the levying officer shall promptly release the property.

Legislative Committee Comment—Assembly

Comment. Section 701.620 is a new provision not found in prior law. Section 701.620 supersedes a portion of former Section 690.2(b) (minimum bid at sale of motor vehicle). See also Sections 701.810 (distribution of proceeds of sale or collection), 704.800 (minimum bid at sale of homestead).

§ 701.630. Extinction of liens upon sale

701.630. If property is sold pursuant to this article, the lien under which it is sold, any liens subordinate thereto, and any state tax lien (as defined in Section 7162 of the Government Code) on the property sold are extinguished.

Legislative Committee Comment—Assembly

Comment. Section 701.630 is new. The portion of Section 701.630 dealing with extinction of subordinate liens is consistent with the rule under prior law. See *Mitchell v. Alpha Hardware & Supply Co.*, 7 Cal. App.2d 52, 45 P.2d 442 (1935). See also Civil Code § 2910 (extinction of lien upon sale). Subordinate lienholders may be entitled to share in any excess proceeds of sale even though their liens are extinguished. See Section 701.810 (distribution of proceeds).

§ 701.640. Interest acquired by purchaser

701.640. The purchaser of property at an execution sale acquires any interest of the judgment debtor in the property sold (1) that is held on the effective date of the lien under which the property was sold or (2) that is acquired between such effective date and the date of sale.

Comment. Section 701.640 supersedes former Section 700 and portions of former Sections 698 and 699 and provides a single rule covering both real and personal property. It makes clear that the sale on execution conveys the interest that was liable for the satisfaction of the judgment on the date of levy or the date that the judgment became a lien on the property and any such interest in the property subject to the lien that is acquired before the date of sale, assuming that the lien has been maintained throughout such period. See Section 697.020 (relation back of liens); *Kenyon v. Quinn*, 41 Cal. 325, 329-30 (1871); *Frink v. Roe*, 70 Cal. 296, 305, 11 P. 820 (1886). If the property sold is community property, the interest of the judgment debtor's spouse also is sold. See Section 695.020. The interest of the execution sale purchaser is no longer subject to the statutory right of redemption formerly provided by Sections 700a-707. See Section 701.680 and the Comment thereto.

§ 701.650. Delivery of possession or of certificate of sale of personal property

701.650. (a) When the purchaser of personal property pays the amount due:

(1) If the property is capable of manual delivery, the levying officer shall deliver the property to the purchaser and, if the purchaser so requests, shall execute and deliver a certificate of sale to the purchaser.

(2) If the property is not tangible personal property or if it is otherwise not capable of manual delivery, the levying officer shall execute and deliver a certificate of sale to the purchaser.

(b) If property or a certificate is delivered pursuant to subdivision (a), the levying officer shall sign or endorse any document or instrument in the levying officer's possession relating to the title to or the right to possession of the property and deliver it to the purchaser.

Comment. Subdivision (a) of Section 701.650 supersedes portions of former Sections 698 and 699. Subdivision (b) is new. See also Sections 699.040 (turnover order for documentary evidence of title), 701.010 (delivery by third person of documents necessary to transfer title).

§ 701.660. Deed of sale of real property

701.660. When the purchaser of an interest in real property pays the amount due, the levying officer conducting the sale shall execute and deliver a deed of sale to the purchaser and record a duplicate of the deed of sale in the office of the county recorder.

Comment. Section 701.660 continues a portion of the third sentence of subdivision (a) of former Section 700a.

§ 701.670. Contents of certificate or deed of sale

701.670. The certificate of sale or deed of sale shall contain all of the following:

(a) The title of the court where the judgment was entered under which the sale was made and the cause and number of the action.

(b) The date of entry of the judgment and of any subsequent renewals and where entered in the records of the court.

(c) The name and address of the judgment creditor and the name and last known address of the judgment debtor.

(d) A description of the property sold.

(e) The date of sale.

Legislative Committee Comment—Senate

Comment. Section 701.670 makes general the requirements for the certificate of sale provided by subdivision (a) of former Section 700a (certificate of sale or real property). The provisions of former Section 700a requiring a statement of the price of the property and a notice of the right of redemption are not continued except as provided in Section 729.040 (certificate of foreclosure sale of property where deficiency judgment available). See Section 701.680 and the Comment thereto.

§ 701.680. Sales absolute; liability

701.680. (a) Except as provided in paragraph (1) of subdivision (c), a sale of property pursuant to this article is absolute and may not be set aside for any reason.

(b) If the judgment is reversed, vacated, or otherwise set aside, the judgment debtor may recover from the judgment creditor the proceeds of a sale pursuant to the judgment with interest at the rate on money judgments to the extent the proceeds were applied to the satisfaction of the judgment.

(c) If the sale was improper because of irregularities in the proceedings, because the property sold was not subject to execution, or for any other reason:

(1) An action may be commenced within six months after the date of sale to set aside the sale if the purchaser at the sale is the judgment creditor. Subject to paragraph (2), if the sale is set aside, the judgment of the judgment creditor is revived to reflect the amount that was satisfied from the proceeds of the sale and the judgment creditor is entitled to interest on the amount of the judgment as so revived as if the sale had not been made.

(2) The judgment debtor may recover damages caused by the impropriety. If damages are recovered against the judgment creditor, they shall be offset against the judgment to the extent the judgment is not satisfied. If damages are recovered against the levying officer, they shall be applied to the judgment to the extent the judgment is not satisfied.

Legislative Committee Comment—Assembly

Comment. Section 701.680 supersedes former Section 708 which provided rights for the purchaser in case the sale is set aside. Section 701.680 does not permit the sale to be set aside unless the sale was made to the judgment creditor and an action is brought within six months after the date of sale. The judgment debtor is protected by provisions permitting a stay of enforcement pending appeal and a court determination pending sale of whether property is exempt or not subject to enforcement. See Sections 695.040 (release of property not subject to enforcement), 703.510 (determination of exemptions), 916 (stay on appeal).

Section 701.680 also supersedes the first sentence of subdivision (a) of former Section 700a which made absolute only sales of

personal property and of leasehold estates with unexpired terms of less than two years. Section 701.680 reflects the repeal of the statutory right of redemption after execution sales. See former Sections 700a-707. Sales of interests in real property (except leasehold estates with less than two years' unexpired term at the time of levy) are delayed at least 140 days, however, in order to provide an opportunity for the judgment debtor to redeem the property from the judgment creditor's lien *before* sale, to advertise the sale and give notice to potential buyers, or to make a settlement with the judgment creditor. See Civil Code § 2903; Code Civ. Proc. § 701.545. The elimination of the statutory right to redeem after a sale pursuant to this article does not affect rights to redeem afforded by other law. See, *e.g.*, Code Civ. Proc. § 729.010 (redemption from certain foreclosure sales); Harb. & Nav. Code § 504 (20-day redemption period after sale of vessel on lien for repairs); Rev. & Tax. Code § 4101 (redemption of tax-deeded real property); Sts. & Hy. Code § 6530 (12-month redemption period after sale by treasurer to collect assessments under Improvement Act of 1911); I.R.C. § 6337 (120-day redemption period after sale of real property to collect federal taxes).

Article 7. Distribution of Proceeds of Sale or Collection

§ 701.810. Distribution of proceeds of sale or collection

701.810. Except as otherwise provided by statute, the levying officer shall distribute the proceeds of sale or collection in the following order:

(a) To persons having preferred labor claims that are required by Section 1206 to be satisfied from the proceeds, in the amounts required by Section 1206 to be satisfied.

(b) To the state department or agency having a state tax lien (as defined in Section 7162 of the Government Code) that is superior to the judgment creditor's lien, in the amount of the lien.

(c) If a deposit has been made pursuant to Section 720.260 and the purchaser at the sale is not the judgment creditor, to the judgment creditor in the amount required to repay the deposit with interest thereon at the rate on money judgments from the date of the deposit.

(d) To the judgment debtor in the amount of any applicable exemption of proceeds pursuant to Section 704.010 (motor vehicle), 704.020 (household furnishings and other personal effects), or 704.060 (tools of trade), except that such proceeds shall be used to satisfy all of the following in the order of their respective priorities:

(1) Any consensual liens and encumbrances, and any liens for labor or materials, that are subordinate to the judgment creditor's lien.

(2) Subject to Section 688.030, any state tax lien (as defined in Section 7162 of the Government Code) on the property sold if the notice of state tax lien on the property has been recorded or filed pursuant to Section 7171 of the Government Code prior to the time the levying officer received the proceeds of the sale or collection.

(e) To the levying officer for the reimbursement of the levying officer's costs for which an advance has not been made.

(f) To the judgment creditor to satisfy the following:

(1) First, costs and interest accruing after issuance of the writ pursuant to which the sale or collection is conducted.

(2) Second, the amount due on the judgment with costs and interest, as entered on the writ.

(g) To any other judgment creditors who have delivered writs to the levying officer, accompanied by instructions to levy upon the judgment debtor's property or the proceeds of its sale or collection, or any other persons actually known by the levying officer to have a claim, lien, or other interest subordinate to the judgment creditor's lien that is extinguished by the sale and that is not otherwise satisfied pursuant to this section, in the amounts to which they are entitled in order of their respective priorities.

(h) To the judgment debtor in the amount remaining.

Legislative Committee Comment—Senate

Comment. Section 701.810 supersedes former Sections 689c, portions of former Section 690.2(c)-(d), and a portion of former Section 691. See also former Sections 682.1 and 682.2. Section 701.810 applies to the distribution of the proceeds of a sale or collection pursuant to the enforcement of a money judgment and, by way of incorporation, to cases where levy takes place under a writ of possession for the recovery of costs and damages or the value of the

property, or under a writ of sale for the recovery of costs and damages. See Section 712.040, 714.020. The introductory portion of Section 701.810 recognizes that different schemes for the distribution of proceeds apply in some cases. Section 704.850 governs the distribution of proceeds where a homestead is sold. For other distribution provisions, see, *e.g.*, Section 726 (foreclosure of mortgage); Harb. & Nav. Code §§ 495.8, 495.9 (proceeds of sale of ship); Penal Code §§ 11231 (proceeds under Red Light Abatement Law), 11313 (proceeds of sale of gambling ship); Welf. & Inst. Code § 14124.74 (proceeds under Medi-Cal).

The levying officer determines the manner of distribution under this section, but may deposit proceeds with the court if there are conflicting claims. See Section 701.830.

Subdivision (a) recognizes that preferred labor claims may be entitled to priority under Section 1206.

Subdivision (b) makes clear that superior state tax liens are to be paid. See also Section 701.620 (minimum bid).

Subdivision (c) treats the judgment creditor as a third person with a superior interest to the extent that the judgment creditor is subrogated to the rights of a secured party pursuant to Section 720.290.

In certain circumstances, the judgment debtor will be entitled to receive a portion of the proceeds as provided by subdivision (d). The provision for satisfaction of subordinate consensual liens and encumbrances and liens for labor or materials out of exempt proceeds preserves the priority of the judgment creditor in any excess value of the property but recognizes that certain state tax liens, consensual liens, and liens for labor and materials are not subject to exemptions from enforcement of money judgments. See Section 703.010(b). The judgment debtor is free to use a prospective exemption of proceeds as a fund to secure a loan or to finance improvements or repairs of the property. Consensual liens that are not satisfied under subdivision (d) (such as where the proceeds are inadequate or where the judgment debtor is not entitled to an exemption of proceeds) may be satisfied out of any surplus remaining after the satisfaction of the judgment creditor's lien as provided in subdivision (g).

As a general rule, the costs of the levying officer are required to be prepaid. See Section 685.100. However, in some instances costs are not prepaid, such as where a governmental agency is the creditor. See, *e.g.*, Labor Code § 101. Subdivision (e) provides for the reimbursement of such costs before any payments are made to the creditor.

Subdivision (f) sets forth the order in which proceeds are allocated to the judgment creditor and is based on former Sections 682.1 and 682.2. This subdivision codifies the existing practice of first satisfying new costs and interest and then the principal amount of the judgment (including previously allowed costs) as entered on the writ. The interest accruing after issuance of the writ is computed on a daily basis as provided by Section 685.050. See also Section 695.220 (manner of crediting money received in satisfaction of judgment).

Subdivision (g) is based on the rule in *Mitchell v. Alpha Hardware & Supply Co.*, 7 Cal. App.2d 52, 57, 45 P.2d 442 (1935). *Cf. Caito v. United California Bank*, 20 Cal.3d 694, 701, 576 P.2d 466, 144 Cal. Rptr. 751 (1978); *Nomellini Constr. Co. v. Modesto Sav. & Loan Ass'n*, 275 Cal. App.2d 114, 118, 79 Cal. Rptr. 717 (1969).

§ 701.820. Time for distribution of proceeds

701.820. (a) Promptly after a sale or collection under this title, the levying officer shall distribute the proceeds to the persons entitled thereto or, in cases covered by Section 701.830, deposit the proceeds with the court.

(b) Except as otherwise provided by statute, the proceeds shall be paid to the persons entitled thereto within 30 days after they are received by the levying officer.

(c) If the proceeds are not to be received by the levying officer in one payment, the levying officer may accumulate proceeds received during a 30-day period and the accumulated proceeds shall be paid to the persons entitled thereto not later than 20 days after the expiration of the 30-day period.

(d) When proceeds are received by the levying officer in the form of a check or other form of noncash payment that is to be honored upon presentation by the levying officer for payment, the proceeds are not received for the purposes of this section until the check or other form of noncash payment has actually been honored upon presentation for payment.

(e) The provisions of Section 26680 of the Government Code apply to the levying officer only if all of the following conditions are satisfied:

(1) The levying officer has failed to pay the proceeds or deposit them with the court as provided in this article within the time provided in this section.

(2) Upon such failure, a person entitled to any of the proceeds has filed with the levying officer a written demand for the payment of the proceeds to the persons entitled thereto.

(3) The levying officer has failed within 10 days after the demand is filed to pay to the person filing the demand the proceeds to which that person is entitled.

Legislative Committee Comment—Assembly

Comment. Section 701.820 is a new provision intended to accomplish the prompt and orderly distribution of proceeds of a sale or collection under this title. For the determination of conflicting claims to proceeds, see Section 701.830.

§ 701.830. Procedure where conflicting claims to proceeds

701.830. (a) If there are conflicting claims to all or a portion of the proceeds of sale or collection known to the levying officer before the proceeds are distributed, the levying officer may deposit with the court the proceeds that are the subject of the conflicting claims instead of distributing such proceeds under Section 701.810. Any interested person may apply on noticed motion for an order for the distribution of the proceeds deposited with the court. A copy of the notice of motion shall be served on such persons as the court shall by order determine in such manner as the court prescribes. Any interested person may request time for filing a response to the motion for an order for the distribution of the proceeds, for discovery proceedings in connection with the motion, or for other preparation for the hearing on the motion, and the court shall grant a continuance for a reasonable time for any of these purposes.

(b) Except as provided in subdivision (c), at the hearing on the motion the court shall determine the issues presented by the motion and make an order for the distribution of the proceeds deposited with the court.

(c) The court shall not determine the issues presented by the motion and instead shall abate the hearing until the issues presented by the motion can be determined in a civil action in the following cases if:

(1) The court is not the proper court under any other provision of law for the trial of a civil action with respect to the subject matter of the motion and any interested person at or prior to the hearing objects to the determination of the issues presented by the motion by the court.

(2) A civil action is pending with respect to the subject matter of the motion and jurisdiction has been obtained in the court in which the civil action is pending.

(3) The court determines that the matter should be determined in a civil action.

Legislative Committee Comment—Assembly

Comment. Section 701.830 provides a new procedure for resolving conflicting claims to proceeds known to the levying officer. This procedure is drawn in part from Probate Code Sections 2522-2526 (guardianship and conservatorship).

CHAPTER 4. EXEMPTIONS

Article 1. General Provisions

§ 703.010. Application of exemptions

703.010. Except as otherwise provided by statute:

(a) The exemptions provided by this chapter or by any other statute apply to all procedures for enforcement of a money judgment.

(b) The exemptions provided by this chapter or by any other statute do not apply if the judgment to be enforced is for the foreclosure of a mortgage, deed of trust, or other lien or encumbrance on the property other than a lien created pursuant to this division or pursuant to Title 6.5 (commencing with Section 481.010) (attachment).

Comment. Subdivision (a) of Section 703.010 makes clear that exemptions apply regardless of the procedure selected for the enforcement of a money judgment. Subdivision (a) is comparable to but broader than former Section 690 in that subdivision (a) applies to exemptions prescribed by statute apart from this chapter and applies to all procedures for enforcement of a money judgment and not just execution. For exemptions not included in this chapter, see, *e.g.*, Civil Code § 986(a) (6) (artist's residual payment); Code Civ. Proc. §§ 706.050-706.052 (earnings); Health & Safety Code § 32508 (hospital endowments); 10 U.S.C. § 1035 (servicemen savings); 38 U.S.C. § 3101 (veterans benefits); 42 U.S.C. § 407 (federal OASDI benefits); 45 U.S.C. § 231m (railroad retirement pensions). The exemptions apply to the enforcement of costs and damages under nonmoney judgments. See Section 712.040.

For the application of exemptions to enforcement of support judgments, see Section 703.070. For the application of exemptions to tax obligations, see Section 688.030. As to the

exemptions applicable where the property was levied upon or otherwise subjected to a lien prior to the operative date of this chapter, see Section 694.080.

Subdivision (b) continues the substance of a portion of former Section 690.52. See also former Civil Code § 1241; former Code Civ. Proc. §§ 690.28, 690.31 (b) (3). The portion of former Section 690.52 that made exemptions inapplicable in the case of a judgment for the purchase price of the property is not continued because it was unenforceable in practice and because a security interest may be obtained in such a case.

§ 703.020. Persons entitled to exemptions

703.020. (a) The exemptions provided by this chapter apply only to property of a natural person.

(b) The exemptions provided in this chapter may be claimed by any of the following persons:

(1) In all cases, by the judgment debtor or a person acting on behalf of the judgment debtor.

(2) In the case of community property, by the spouse of the judgment debtor, whether or not the spouse is also a judgment debtor under the judgment.

Comment. Subdivision (a) of Section 703.020 codifies the rule of *Canal-Randolph Anaheim, Inc. v. Wilkoski*, 103 Cal. App.3d 282, 163 Cal. Rptr. 30 (1980).

The persons entitled to claim an exemption on behalf of a judgment debtor under subdivision (b) include the judgment debtor's agent and other persons acting on behalf of a judgment debtor, such as a public or private retirement plan (see Sections 704.110, 704.115). If community property is sought to be applied to the satisfaction of a judgment, either the judgment debtor or the spouse of the judgment debtor may claim exemptions for the property. *Cf. White v. Gobey*, 130 Cal. App. Supp. 789, 791, 19 P.2d 876 (1933) (nondebtor spouse permitted to claim wage garnishment exemption). See also Section 703.110 (application of exemptions to marital property) and the Comment thereto.

Section 703.020 is limited to exemptions provided by this chapter; the scope of exemptions provided by other statutes is determined by the other statutes, not by Section 703.020.

§ 703.030. Manner of claiming exemptions; effect of failure to claim

703.030. (a) An exemption for property that is described in this chapter or in any other statute as exempt may be claimed within the time and in the manner prescribed in the applicable enforcement procedure. If the exemption is not so claimed, the exemption is waived and the property is subject to enforcement of a money judgment.

(b) Except as otherwise specifically provided by statute, property that is described in this chapter or in any other statute as exempt without making a claim is not subject to any procedure for enforcement of a money judgment.

(c) Nothing in this section limits the authority of the court pursuant to Section 473 to relieve a person upon such terms as may be just from failure to claim an exemption within the time and in the manner prescribed in the applicable enforcement procedure.

Legislative Committee Comment—Assembly

Comment. Subdivisions (a) and (b) of Section 703.030 continue the substance of subdivisions (a) and (c) of former Section 690 but are broader in their application since they are not limited to exemptions provided in this chapter. Former law also referred to exemptions “from execution” whereas Section 703.010 makes clear that exemptions apply in all proceedings for the enforcement of a money judgment. The introductory clause of subdivision (b) recognizes that property described as “exempt without making a claim” may nevertheless be subject to enforcement of a money judgment in certain circumstances. See, *e.g.*, Section 704.110(c) (exception to public retirement exemption in case of enforcement of support judgment).

If property is levied upon by a levying officer, the applicable procedure for claiming an exemption is that provided in Article 2 (commencing with Section 703.510), with the exception of the homestead exemption which is governed by Article 4 (commencing with Section 704.710). The exemption procedure is also incorporated in other instances, *e.g.*, where property is attached under an *ex parte* writ of attachment (see Section 485.610) or where a warrant or notice of levy for the collection of taxes is treated as a writ of execution (see Section 688.030). If the property is sought to be reached by a procedure other than

by levy under a writ, a court hearing is required and exemption claims will be determined at such time or later upon noticed motion. See Sections 708.120 (examination proceedings), 708.260 (creditor's suit), 708.450 (lien in pending action), 708.550 (assignment orders), 708.770 (collection where public entity is debtor of judgment debtor).

Subdivision (c) recognizes the power of the court under Section 473 to relieve the claimant from the consequences of failure properly to file a claim of exemption through mistake, inadvertence, surprise, or excusable neglect.

§ 703.040. Prior waiver of exemptions

703.040. A purported contractual or other prior waiver of the exemptions provided by this chapter or by any other statute, other than a waiver by failure to claim an exemption required to be claimed or otherwise made at the time enforcement is sought, is against public policy and void.

Comment. Section 703.040 codifies existing case law. See, *e.g.*, *Industrial Loan & Inv. Co. v. Superior Court*, 189 Cal. 546, 209 P. 360 (1922). Of course, exemptions do not apply if the judgment to be enforced is for the foreclosure of a mortgage or other lien not created under this division. See Section 703.010(b).

§ 703.050. Exemptions in effect at time of lien govern

703.050. (a) The determination whether property is exempt or the amount of an exemption shall be made by application of the exemption statutes in effect (1) at the time the judgment creditor's lien on the property was created or (2) if the judgment creditor's lien on the property is the latest in a series of overlapping liens created when an earlier lien on the property in favor of the judgment creditor was in effect, at the time the earliest lien in the series of overlapping liens was created.

(b) This section applies to all judgments, whether based upon tort, contract, or other legal theory or cause of action that arose before or after the operative date of this section, and whether the judgment was entered before or after the operative date of this section.

(c) Notwithstanding subdivision (a), in the case of a levy of execution, the procedures to be followed in levying upon, selling, or releasing property, claiming,

processing, opposing, and determining exemptions, and paying exemption proceeds, shall be governed by the law in effect at the time the levy of execution is made on the property.

Comment. Section 703.050 applies exemptions in effect at the time a lien is created on the property. This is consistent with the holding in *San Diego White Truck Co. v. Swift*, 96 Cal. App.3d 88, 157 Cal. Rptr. 745 (1979), and *National Collection Agency, Inc. v. Fabila*, 93 Cal. App.3d Supp. 1, 155 Cal. Rptr. 356 (1979), and rejects the case law rule that the judgment debtor could take advantage only of the exemptions in effect at the time an obligation was incurred. See, e.g., *In re Rauer's Collection Co.*, 87 Cal. App.2d 248, 253-54, 196 P.2d 803 (1948); *Daylin Medical & Surgical Supply, Inc. v. Thomas*, 69 Cal. App.3d Supp. 37, 40-42, 138 Cal. Rptr. 878 (1977); *Smith v. Hume*, 29 Cal. App.2d Supp. 747, 749-51, 74 P.2d 566 (1937); *Medical Fin. Ass'n v. Wood*, 20 Cal. App.2d Supp. 749, 63 P.2d 1219 (1936). See also *Comment, The Contract Clause and the Constitutionality of Retroactive Application of Exemption Statutes: A Reconsideration*, 9 Pac. L.J. 889 (1978).

§ 703.060. Reserved power of state

703.060. (a) The Legislature finds and declares that generally persons who enter into contracts do not do so in reliance on an assumption that the exemptions in effect at the time of the contract will govern enforcement of any judgment based on the contract, that liens imposed on property are imposed not as a matter of right but as a matter of privilege granted by statute for purposes of priority, that no vested rights with respect to exemptions are created by the making of a contract or imposition of a lien, that application of exemptions and exemption procedures in effect at the time of enforcement of a judgment is essential to the proper balance between the rights of judgment debtors and judgment creditors and has a minimal effect on the economic stability essential for the maintenance of private and public faith in commercial matters, and that it is the policy of the state to treat all judgment debtors equally with respect to exemptions and exemption procedures in effect at the time of enforcement of a money judgment. To this end, the Legislature reserves the right to repeal, alter, or add

to the exemptions and the procedures therefor at any time and intends, unless otherwise provided by statute, that any repeals, alterations, or additions apply upon their operative date to enforcement of all money judgments, whether based upon tort, contract, or other legal theory or cause of action that arose before or after the operative date of the repeals, alterations, or additions, whether the judgment was entered before or after the operative date of the repeals, alterations, or additions.

(b) All contracts shall be deemed to have been made and all liens on property shall be deemed to have been created in recognition of the power of the state to repeal, alter, and add to statutes providing for liens and exemptions from the enforcement of money judgments.

Comment. Section 703.060 reserves the power of the state to change and add to existing exemptions in line with recent decisions in other jurisdictions. See, *e.g.*, *Wilkinson v. Carpenter*, 277 Or. 557, 561 P.2d 607, 610-11 (1977); *Hooter v. Wilson*, 273 So.2d 516, 521-22 (La. 1973). Section 703.060 makes clear that the Legislature may make changes in exemptions applicable to all enforcement proceedings after the operative date of the change, without regard to when the judgment was entered or when the underlying obligation or liability was created or arose.

§ 703.070. Application of exemptions where judgment is for child or spousal support

703.070. Except as otherwise provided by statute:

(a) The exemptions provided by this chapter or by any other statute apply to a judgment for child or spousal support.

(b) If property is exempt without making a claim, the property is not subject to being applied to the satisfaction of a judgment for child or spousal support.

(c) Except as provided in subdivision (b), if property sought to be applied to the satisfaction of a judgment for child or spousal support is shown to be exempt under subdivision (a) in appropriate proceedings, the court shall, upon noticed motion of the judgment creditor, determine the extent to which the exempt property nevertheless shall be applied to the satisfaction of the judgment. In making this determination, the court shall

take into account the needs of the judgment creditor, the needs of the judgment debtor and all the persons the judgment debtor is required to support, and all other relevant circumstances. The court shall effectuate its determination by an order specifying the extent to which the otherwise exempt property is to be applied to the satisfaction of the judgment.

Comment. Subdivisions (a) and (b) of Section 703.070 codify the case law rule that exemptions apply to the enforcement of support unless there is a specific exception. See, *e.g.*, *Miller v. Superior Court*, 69 Cal.2d 14, 442 P.2d 663, 69 Cal. Rptr. 583 (1968); *Ogle v. Heim*, 69 Cal.2d 7, 442 P.2d 659, 69 Cal. Rptr. 579 (1968); *Yager v. Yager*, 7 Cal.2d 213, 60 P.2d 422 (1936). Except to the extent that a particular exemption otherwise provides, property that is exempt without making a claim may not be applied to enforcement of a judgment for support. Section 703.070(b). As to property that is exempt if the exemption is claimed, subdivision (c) of Section 703.070 permits the court, when the exemption is claimed, to nevertheless make an equitable division of the otherwise exempt property based on the needs of the parties. Subdivision (c) is drawn from older case law concerning the equitable division of earnings levied upon to enforce a support judgment. See *Rankins v. Rankins*, 52 Cal. App.2d 231, 126 P.2d 125 (1942). See also Section 706.052 (equitable division of earnings). The introductory clause of Section 703.070 recognizes that other provisions may make some types of property that are exempt without making a claim subject to the enforcement of a support judgment and that other provisions may prescribe the extent to which particular types of property are subject to enforcement of a support judgment. See Sections 704.110(c) (public retirement plan benefits), 704.113 (public vacation credits), 704.115(c) (private retirement plan benefits), 706.052 (wage garnishment).

§ 703.080. Tracing exempt funds

703.080. (a) Subject to any limitation provided in the particular exemption, a fund that is exempt remains exempt to the extent that it can be traced into deposit accounts or in the form of cash or its equivalent.

(b) The exemption claimant has the burden of tracing an exempt fund.

(c) The tracing of exempt funds in a deposit account shall be by application of the lowest intermediate balance

principle unless the exemption claimant or the judgment creditor shows that some other method of tracing would better serve the interests of justice and equity under the circumstances of the case.

Legislative Committee Comment—Senate

Comment. Section 703.080 provides for the continuation of an exemption for amounts that can be traced into a deposit account and in the form of cash and its equivalent, such as cashier's checks, certified checks, and money orders.

Subdivision (a) is consistent with decisions under prior law. See, e.g., *Kruger v. Wells Fargo Bank*, 11 Cal.3d 352, 367, 521 P.2d 441, 113 Cal. Rptr. 449 (1974) (unemployment benefits in checking account); *Holmes v. Marshall*, 145 Cal. 777, 782-83, 79 P.534 (1905) (life insurance benefits deposited in bank account); *Bowman v. Wilkinson*, 153 Cal. App.2d 391, 395-96, 314 P.2d 574 (1957) (life insurance check converted to cashier's check and deposited in attorney's trust account). See also former Sections 690.18(a) (pension benefits exempt in debtor's possession and when deposited), 690.30 (direct deposit of social security payments); *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 416-17 (1973) (disability benefits in bank account); *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 162 (1962) (veterans' benefits in savings and loan account). This section applies to any fund that is exempt, but may be limited in its application. The introductory clause of subdivision (a) recognizes that certain proceeds may be traced as exempt only for a limited period. See Sections 704.010 (90 days in case of motor vehicle), 704.020 (90 days in case of household furnishings and other personal effects), 704.060 (90 days in case of tools), 704.720 (six months in case of claimed homestead), 704.960 (six months in case of declared homestead). See also Section 704.070 (earnings paid during previous 30 days).

Subdivision (b) continues existing law concerning the burden of tracing exempt funds. See, e.g., former Section 690.30(b) (2) (tracing Social Security payments). This is consistent with the general burden on the claimant in exemption proceedings. See Section 703.580(b).

Subdivision (c) prescribes the general rule for tracing exempt funds in deposit accounts. It rejects the rule in *California United States Bond & Mortgage Corp. v. Grodzins*, 139 Cal. App. 240, 242-43, 34 P.2d 192 (1934) (portion of life insurance benefits that exceeded exempt amount when received was earmarked for creditors even though benefits remaining at time of levy were below exempt amount). Under the lowest intermediate balance rule, the exempt fund may not exceed the lowest balance occurring at any time between the deposit of the exempt amount of money and the time of levy. New deposits do not replenish the original exempt fund although the new deposits may themselves be exempt. See *Republic Supply Co. v. Richfield Oil Co.*, 79 F.2d 375, 379 (9th Cir. 1935), concerning the determination of the lowest intermediate balance. As an example of the operation of the lowest intermediate balance principle, suppose the judgment debtor has a deposit account in which there is a balance of \$400 composed of nonexempt funds. The judgment debtor then makes a deposit of \$400 of exempt funds

(leaving a balance of \$800), a withdrawal of \$600 (leaving a balance of \$200), and a deposit of \$300 of nonexempt funds (leaving a balance of \$500). The total exempt funds deposited were \$400, but under the lowest intermediate balance rule, the \$600 withdrawal reduces first the nonexempt funds and then the exempt funds, leaving \$200 of exempt funds. The final \$300 deposit does not affect the exempt funds, which remain exempt in the amount of \$200, the lowest intermediate balance, despite the final balance of \$500.

§ 703.090. Costs in case of subsequent levy on exempt property

703.090. If a judgment creditor has failed to oppose a claim of exemption within the time allowed by Section 703.550 or if property has been determined by a court to be exempt, and the judgment creditor thereafter levies upon or otherwise seeks to apply the property toward the satisfaction of the same money judgment, the judgment creditor is not entitled to recover the subsequent costs of collection unless the property is applied to satisfaction of the judgment.

Comment. Section 703.090 is intended to limit repeated levies on the same property by the judgment creditor. Nothing in this section affects any right the judgment debtor may have to recover damages for abuse of process. In the case of a dwelling, if a minimum bid is not received at the sale, the dwelling is released and is not thereafter subject to execution sale at the behest of the same judgment creditor for one year. See Section 704.800.

§ 703.100. Time for determination of exemptions

703.100. (a) Subject to subdivision (b), the determination whether property is exempt shall be made under the circumstances existing at the earliest of the following times:

- (1) The time of levy on the property.
- (2) The time of the commencement of court proceedings for the application of the property to the satisfaction of the money judgment.
- (3) The time a lien is created under Title 6.5 (commencing with Section 481.010) (attachment) or under this title.

(b) The court, in its discretion, may take into consideration any of the following changes that have

occurred between the time of levy or commencement of enforcement proceedings or creation of the lien and the time of the hearing:

(1) A change in the use of the property if the exemption is based upon the use of property and if the property was used for the exempt purpose at the time of the levy or the commencement of enforcement proceedings or the creation of the lien but is used for a nonexempt purpose at the time of the hearing.

(2) A change in the value of the property if the exemption is based upon the value of property.

(3) A change in the financial circumstances of the judgment debtor and spouse and dependents of the judgment debtor if the exemption is based upon their needs.

Legislative Committee Comment—Senate

Comment. Subdivision (a) of Section 703.100 rejects the holding in California *United States Bond & Mortgage Corp. v. Grodzins*, 139 Cal. App. 240, 242–43, 34 P.2d 192 (1934) (portion of life insurance benefits that exceeded exempt amount when received was earmarked for creditors even though benefits remaining at time of levy were below exempt amount). It adopts the principle that the question of exemptions does not arise until the judgment creditor has sought to apply the judgment debtor's property toward the satisfaction of the judgment. See *Medical Fin. Ass'n v. Rambo*, 33 Cal. App.2d Supp. 756, 758–60, 86 P.2d 159 (1938). The creation of a judgment lien on real property is, for example, an event that establishes the time for determining under subdivision (a) whether the property is exempt.

For special provisions relating to the homestead exemption where a dwelling is acquired with exempt proceeds, see Sections 704.710 ("homestead" defined) and 704.960 (reinvestment of proceeds of declared homestead).

Subdivision (b) gives the court discretion to adjust the rule of subdivision (a) in cases where it appears appropriate to do so in light of the purposes of the exemption. Where the exemption is based upon the use made of the property, the judgment debtor is entitled to the exemption only if the property was used for the exempt use at the time of levy or commencement of enforcement proceedings or creation of the lien, but the court may disallow the exemption of the property if it is later devoted to another use.

§ 703.110. Application of exemptions to marital property

703.110. If the judgment debtor is married:

(a) The exemptions provided by this chapter or by any other statute apply to all property that is subject to enforcement of a money judgment, including the interest

of the spouse of the judgment debtor in community property. The fact that one or both spouses are judgment debtors under the judgment or that property sought to be applied to the satisfaction of the judgment is separate or community does not increase or reduce the number or amount of the exemptions.

(b) In determining an exemption based upon the needs of the judgment debtor and the spouse and dependents of the judgment debtor, the court shall take into account all property of the judgment debtor and of the spouse and dependents, including community property and separate property of the spouse, whether or not such property is subject to enforcement of the money judgment.

(c) If an exemption is required by statute to be applied first to property not before the court and then to property before the court, the application of the exemption to property not before the court shall be made to the community property and separate property of both spouses, whether or not such property is subject to enforcement of the money judgment.

(d) If the same exemption is claimed by the judgment debtor and the spouse of the judgment debtor for different property, and the property claimed by one spouse, but not both, is exempt, the exemption shall be applied as the spouses agree. If the spouses are unable to agree, the exemption shall be applied as directed by the court in its discretion.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 703.110 is an application of the basic rule that exemptions apply to property that is liable for the satisfaction of a judgment. If the judgment debtor is married, the property liable for the satisfaction of the judgment may include the community property and the separate property of both spouses in certain situations. See generally Civil Code § 5100 *et seq.* In such situations, both spouses may claim any applicable exemptions but the exemptions are not increased for the marital unit. The fact that one or both spouses are judgment debtors, or that community or separate property is sought to be applied to the satisfaction of the judgment, does not affect the exemptions applicable to the spouses as a marital unit.

Generally, property that is not liable for the satisfaction of a judgment does not enter into exemption determinations. Subdivision (b) creates an exception to this rule for exemptions based on the needs of the judgment debtor and the spouse and dependents of the judgment debtor. See Sections 704.020 (household furnishings), 704.050 (health aids), 704.060 (tools of the trade), 704.100(c) (life insurance benefits), 704.140 (damages for personal injury), 704.150 (damages for wrongful death). In such situations, the court must take into account both nonliable and liable property in making a determination of need. See also Sections 706.051 (earnings necessary for support), 706.052 (earnings withholding order for support).

An exemption may be required to be applied first to property not before the court. See Section 704.100(b) (life insurance policies). Subdivision (c) makes clear that in applying an exemption to property not before the court, the court should consider marital property that would not be liable for satisfaction of the judgment as well as property that would be liable for satisfaction.

Subdivision (d) recognizes that exemptions may be claimed by both the judgment debtor and the spouse of the judgment debtor. See Section 703.020 (persons entitled to claim exemptions). See also 704.720(c) (one homestead of spouses exempt).

§ 703.120. Continuing review of exemptions

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

(b) Nothing in this section precludes the commission from making recommendations concerning exempt amounts more frequently than required by subdivision (a) or from making recommendations concerning any other aspect of this title, and the commission is authorized to maintain a continuing review of and submit recommendations concerning enforcement of judgments.

Comment. Section 703.120 is intended to provide an institutional mechanism for periodically updating and modernizing the exemptions without mandating increases or decreases tied to the cost of living.

§ 703.130. Exemptions in bankruptcy

703.130. (a) Pursuant to the authority of paragraph (1) of subsection (b) of Section 522 of Title 11 of the United States Code, the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code (Bankruptcy) are not authorized in this state.

(b) Notwithstanding subdivision (a), if a husband and wife are joined in a petition filed under Title 11 of the United States Code (Bankruptcy), they jointly may elect to utilize the applicable exemption provisions under this chapter or to utilize the applicable exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code, but not both.

(c) Notwithstanding subdivision (a), if a petition under Title 11 of the United States Code (Bankruptcy) is filed individually, and not jointly, for a husband or a wife, the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code are authorized in this state if the husband and wife each effectively waive in writing the right to claim, during the period the case commenced by filing such petition is pending, the exemptions provided by the applicable exemption provisions of this chapter in any case commenced by filing a petition for either of them under Title 11 of the United States Code.

(d) Notwithstanding subdivision (a), if a petition is filed under Title 11 of the United States Code (Bankruptcy) for an unmarried person, the unmarried person may elect to utilize the applicable exemption provisions under this chapter or to utilize the applicable exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code, but not both.

Legislative Committee Comment—Assembly

Comment. Section 703.130 continues what appears to have been the substance of subdivision (b) of former Section 690. See 1981 Cal. Stats. ch. 455.

Subdivision (b) continues the substance of paragraph (1) of subdivision (b) of former Section 690. Subdivision (b) of Section 703.130 permits spouses in a joint case under the Bankruptcy Code (Title 11 of the United States Code) to jointly elect to claim either the federal exemptions under subdivision (d) of Section 522 of Title 11 of the United States Code or the state exemptions. However, in a joint case, one spouse may not claim the federal exemptions and the other state exemptions.

Subdivision (c) of Section 703.130 makes clear the apparent effect of paragraph (2) of subdivision (b) of former Section 690 which apparently was intended to preclude one spouse in an individual bankruptcy case from claiming the federal exemptions under subdivision (d) of Section 522 of Title 11 of the United States Code if the other spouse claimed exemptions under the applicable exemption provisions of state law in a separate bankruptcy case. The language of the former section has been revised to phrase the provision in terms that describe when the federal exemptions provided in Section 522(d) are authorized in this state so that the provision will more clearly conform to the authority of paragraph (1) of subsection (b) of Section 522 of Title 11 of the United States Code. The revision also makes clear that the rule stated in subdivision (c) of Section 703.130 applies only during the period that a case is pending under Title 11 of the United States Code; the former provision was not specifically so limited.

Subdivisions (b), (c), and (d) of Section 703.130 are severable from subdivision (a), and the invalidity of any or all of these subdivisions does not affect the rule stated in subdivision (a). See Section 681.050

Article 2. Procedure for Claiming Exemptions After Levy

§ 703.510. Application of article

703.510. (a) Except as otherwise provided by statute, property that has been levied upon may be claimed to be exempt as provided in this article.

(b) If property that is exempt without making a claim is levied upon, it may be released pursuant to the exemption procedure provided in this article.

Legislative Committee Comment—Senate

Comment. Subdivision (a) of Section 703.510 indicates the scope of this article. As recognized by the introductory clause, special

exemption procedures apply in certain cases where property has been levied upon. See, e.g., Sections 484.070 (attachment), 704.080 (deposit accounts consisting of Social Security benefits), 704.710–704.850 (real property homestead), 706.010–706.154 (earnings).

Subdivision (b) supersedes former Section 690(c) which provided that property for which a claim of exemption was not required was not subject to enforcement procedures. See also Section 703.030. Subdivision (b) makes clear that if such property is levied on, its release may be obtained through the exemption procedures. See also Section 695.040 (release of property not subject to enforcement of a money judgment).

§ 703.520. Claim of exemption

703.520. (a) The claimant may make a claim of exemption by filing with the levying officer a claim of exemption together with a copy thereof. The claim shall be made within 10 days after the date the notice of levy on the property claimed to be exempt was served on the judgment debtor.

(b) The claim of exemption shall be executed under oath and shall include all of the following:

(1) The name of the claimant and the mailing address where service of a notice of opposition to the claim may be made upon the claimant.

(2) The name and last known address of the judgment debtor if the claimant is not the judgment debtor.

(3) A description of the property claimed to be exempt. If an exemption is claimed pursuant to Section 704.010 or 704.060, the claimant shall describe all other property of the same type (including exempt proceeds of property of the same type) owned by the judgment debtor alone or in combination with others on the date of levy and identify the property, whether or not levied upon, to which the exemption is to be applied. If an exemption is claimed pursuant to subdivision (b) of Section 704.100, the claimant shall state the nature and amount of all other property of the same type owned by the judgment debtor or the spouse of the judgment debtor alone or in combination with others on the date of levy.

(4) A financial statement if required by Section 703.530.

(5) A citation of the provision of this chapter or other statute upon which the claim is based.

(6) A statement of the facts necessary to support the claim.

Legislative Committee Comment—Assembly

Comment. Section 703.520 supersedes subdivision (a) of former Section 690.50. Section 703.520 contains provisions (not included in the former law) that are designed to provide information necessary to determine certain exemption claims. Where the motor vehicle exemption (Section 704.010) is claimed, paragraph (3) of subdivision (b) requires that the claimant describe not only the motor vehicle or proceeds levied upon which are claimed to be exempt but also any other motor vehicle and the proceeds of any other motor vehicle if such motor vehicle or proceeds are claimed to be exempt. This requires that the claimant make an election as to the motor vehicle or proceeds to which the exemption is to be applied. Where the tools of the trade exemption (Section 704.060) is claimed, paragraph (3) requires the claimant to describe not only the items or proceeds levied upon which are claimed to be exempt but also any other tools of the trade and proceeds of tools of the trade if such tools or proceeds are claimed to be exempt. Here again, the claimant is required to make an election as to the tools of the trade and the proceeds to which the exemption is to be applied. It should be noted that the claimant may elect to apply the exemption to the items levied upon and to items not levied upon (to the extent that the aggregate equity in such items does not exceed the amount of the exemption). The items to which the exemption is not so applied are thereafter not exempt from levy by the same creditor. Where the insurance exemption is claimed, the listing of other insurance is required by paragraph (3) so that the provisions of the relevant exemption provisions can be implemented by the court, since the exemption is first applied to insurance not levied upon. See subdivision (b) of Section 704.100. See also Sections 703.020 (persons entitled to exemptions), 703.030 (manner of claiming exemptions; late claims). The 10-day period under subdivision (a) of Section 703.520 is extended if the notice of levy was served by mail. See Section 684.120.

§ 703.530. Financial statement

703.530. (a) If property is claimed as exempt pursuant to a provision exempting property to the extent necessary for the support of the judgment debtor and the

spouse and dependents of the judgment debtor, the claim of exemption shall include a financial statement.

(b) The financial statement shall include all of the following information:

(1) The name of the spouse of the judgment debtor.

(2) The name, age, and relationship of all persons dependent upon the judgment debtor or the spouse of the judgment debtor for support.

(3) All sources and the amounts of earnings and other income of the judgment debtor and the spouse and dependents of the judgment debtor.

(4) A list of the assets of the judgment debtor and the spouse and dependents of the judgment debtor and the value of such assets.

(5) All outstanding obligations of the judgment debtor and the spouse and dependents of the judgment debtor.

(c) The financial statement shall be executed under oath by the judgment debtor and, unless the spouses are living separate and apart, by the spouse of the judgment debtor.

Comment. Section 703.530 is drawn in part from former Section 723.124 (wage garnishment), but Section 703.530 requires a more comprehensive financial statement and requires that it be executed by the spouse of the judgment debtor (as well as by the judgment debtor) unless they are living separate and apart. An exemption based upon the need of the judgment debtor and the spouse and dependents of the judgment debtor must take into account the property of the spouse and dependents. See Section 703.110(b). Additional information is required in the financial statement in case of a wage garnishment. See Section 706.124.

§ 703.540. Notice of claim of exemption

703.540. Promptly after the filing of the claim of exemption, the levying officer shall serve both of the following on the judgment creditor personally or by mail:

(a) A copy of the claim of exemption.

(b) A notice of claim of exemption stating that the claim of exemption has been made and that the levying officer will release the property unless, within the time allowed as specified in the notice, both of the following are filed with the levying officer:

(1) A copy of the notice of opposition to the claim of exemption.

(2) A copy of the notice of motion for an order determining the claim of exemption.

Comment. Section 703.540 supersedes subdivision (b) of former Section 690.50.

§ 703.550. Opposition to exemption claim; release

703.550. Within 10 days after service of the notice of claim of exemption, a judgment creditor who opposes the claim of exemption shall file with the court a notice of opposition to the claim of exemption and a notice of motion for an order determining the claim of exemption and shall file with the levying officer a copy of the notice of opposition and a copy of the notice of motion. Upon the filing of the copies of the notice of opposition and notice of motion, the levying officer shall promptly file the claim of exemption with the court. If copies of the notice of opposition and notice of motion are not filed with the levying officer within the time allowed, the levying officer shall immediately release the property to the extent it is claimed to be exempt.

Legislative Committee Comment—Assembly

Comment. The first two sentences of Section 703.550 supersede portions of subdivisions (c), (e), and (i) of former Section 690.50. Section 703.550, unlike former law, does not provide the claimant with the right to request a hearing on the claim of exemption since, if the judgment creditor does not file a notice of opposition and file a notice of motion for an order determining the claim of exemption within the time provided, the property is released pursuant to Section 699.060, making a hearing unnecessary. Consequently, the delay between the filing of the counteraffidavit and the notice of motion provided by subdivision (e) of former Section 690.50 has been eliminated. The 10-day period for filing the notice of opposition and notice of motion runs from the date of service of the notice of claim of exemption. In the case of service by mail, the time is extended. See Section 684.120 (time for performing act). The third sentence of Section 703.550 supersedes subdivisions (d) (release if no counteraffidavit served) and (f) (release if no motion) of former Section 690.50.

§ 703.560. Contents of notice of opposition

703.560. The notice of opposition to the claim of exemption shall be executed under oath and shall include both of the following:

(a) An allegation either (1) that the property is not exempt under the provision of this chapter or other statute relied upon or (2) that the equity in the property claimed to be exempt is in excess of the amount provided in the applicable exemption.

(b) A statement of the facts necessary to support the allegation.

Comment. Section 703.560 supersedes a portion of subdivision (c) of former Section 690.50.

§ 703.570. Notice of hearing on motion

703.570. (a) The hearing on the motion shall be held not later than 20 days from the date the notice of motion was filed with the court unless continued by the court for good cause.

(b) Not less than 10 days prior to the hearing, the judgment creditor shall serve a notice of the hearing and a copy of the notice of opposition to the claim of exemption on the claimant and on the judgment debtor, if other than the claimant. Service shall be made personally or by mail.

Legislative Committee Comment—Assembly

Comment. Section 703.570 supersedes portions of subdivisions (c) and (e) of former Section 690.50. If service of the notice of the hearing is made by mail, an additional period of notice is required. See Section 684.120.

§ 703.580. Hearing and order

703.580. (a) The claim of exemption and notice of opposition to the claim of exemption constitute the pleadings, subject to the power of the court to permit amendments in the interest of justice.

(b) At a hearing under this section, the exemption claimant has the burden of proof.

(c) The claim of exemption is deemed controverted by the notice of opposition to the claim of exemption and

both shall be received in evidence. If no other evidence is offered, the court, if satisfied that sufficient facts are shown by the claim of exemption (including the financial statement if one is required) and the notice of opposition, may make its determination thereon. If not satisfied, the court shall order the hearing continued for the production of other evidence, oral or documentary.

(d) At the conclusion of the hearing, the court shall determine by order whether or not the property is exempt in whole or in part. Subject to Section 703.600, the order is determinative of the right of the judgment creditor to apply the property to the satisfaction of the judgment. No findings are required in a proceeding under this section.

(e) The court clerk shall promptly transmit a certified copy of the order to the levying officer. Subject to Section 703.610, the levying officer shall, in compliance with the order, release the property or apply the property to the satisfaction of the money judgment.

Comment. Subdivisions (a)-(d) of Section 703.580 continue the substance of a portion of subdivision (i) of former Section 690.50. Subdivision (e) continues the substance of the first sentence of subdivision (j) of former Section 690.50.

§ 703.590. Extension of time

703.590. If the court extends the time allowed for an act to be done under this article, written notice of the extension shall be filed with the levying officer and, unless notice is waived, shall be served promptly on the opposing party. Service shall be made personally or by mail.

Comment. Section 703.590 continues the substance of a portion of former Section 690.50(1).

§ 703.600. Appeal

703.600. An appeal lies from any order made under this article and shall be taken in the manner provided for appeals in the court in which the proceeding takes place.

Comment. Section 703.600 continues the substance of subdivision (m) of former Section 690.50.

§ 703.610. Disposition of property during pendency of proceedings

703.610. (a) Except as otherwise provided by statute, the levying officer shall not release, sell, or otherwise dispose of the property for which an exemption is claimed until the final determination of the exemption.

(b) At any time while the exemption proceedings are pending, upon motion of the judgment creditor or a claimant, or upon its own motion, the court may make such orders for disposition of the property as may be proper under the circumstances of the case. Such an order may be modified or vacated by the court at any time during the pendency of the exemption proceedings upon such terms as are just.

(c) If an appeal of the determination of a claim of exemption is taken, notice of the appeal shall be given to the levying officer and the levying officer shall hold, release, or dispose of the property in accordance with the provisions governing enforcement and stay of enforcement of money judgments pending appeal.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 703.610 continues the substance of subdivision (h) and the second sentence of subdivision (j) of former Section 690.50. Although the language in subdivision (j) of former Section 690.50 pertaining to waiver of an appeal has not been specifically continued, subdivision (a) of Section 703.610 continues its substance since an exemption is finally determined if an appeal is waived. Subdivision (a) requires, as did former Section 690.50(h), that the levying officer preserve the status quo by maintaining the levy on the property. For exceptions to the general rule provided in subdivision (a), see Sections 685.100 (release for failure to pay levying officer's costs), 699.060 (release in general), 699.070 (sale to preserve value of property), 720.660 (release pursuant to third person's undertaking). Subdivision (b) continues the substance of subdivision (g) of former Section 690.50, except that orders for the disposition of perishable property are governed by Section 699.070. Subdivision (c) is new. For provisions governing enforcement and stays pending appeal, see Sections 916-923.

Article 3. Exempt Property

§ 704.010. Motor vehicles

704.010. (a) Any combination of the following is exempt in the amount of one thousand two hundred dollars (\$1,200):

(1) The aggregate equity in motor vehicles.

(2) The proceeds of an execution sale of a motor vehicle.

(3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

(b) Proceeds exempt under subdivision (a) are exempt for a period of 90 days after the time the proceeds are actually received by the judgment debtor.

(c) For the purpose of determining the equity, the fair market value of a motor vehicle shall be determined by reference to used car price guides customarily used by California automobile dealers unless the motor vehicle is not listed in such price guides.

(d) If the judgment debtor has only one motor vehicle and it is sold at an execution sale, the proceeds of the execution sale are exempt in the amount of one thousand two hundred dollars (\$1,200) without making a claim. The levying officer shall consult and may rely upon the records of the Department of Motor Vehicles in determining whether the judgment debtor has only one motor vehicle. In the case covered by this subdivision, the exemption provided by subdivision (a) is not available.

Legislative Committee Comment—Assembly

Comment. Section 704.010 supersedes subdivisions (a), (d), and (e) of former Section 690.2.

Subdivision (a) increases the motor vehicle exemption from \$500 to \$1,200, which is the same amount as is provided in the Bankruptcy Code. See 11 U.S.C. § 522(d)(2) (Supp. III 1979). Paragraph (1) of subdivision (a) applies the exemption to the judgment debtor's total equity in motor vehicles. Paragraph (2) continues the exemption for execution sale proceeds provided by former Section 690.2(e). Paragraph (3) provides a new exemption for insurance proceeds. *Cf.* Houghton v. Lee, 50 Cal. 101, 103 (1875) (exemption of proceeds from insurance of homestead).

Subdivision (b) continues the exemption period of former Section 690.2(e).

Subdivision (c) continues a portion of former Section 690.2(a).

Subdivision (d) supersedes a portion of former Section 690.2(d) and makes clear that an exemption of proceeds is allowed without a claim where there is only one motor vehicle. See also Section 703.030 (waiver of exemption). Section 701.810 requires distribution of the exempt proceeds to the judgment debtor before any distribution is made to the judgment creditor. See also Section 701.620 (sale price must exceed proceeds exemption).

§ 704.020. Household furnishings and personal effects

704.020. (a) Household furnishings, appliances, provisions, wearing apparel, and other personal effects are exempt in the following cases:

(1) If ordinarily and reasonably necessary to, and personally used or procured for use by, the judgment debtor and members of the judgment debtor's family at the judgment debtor's principal place of residence.

(2) Where the judgment debtor and the judgment debtor's spouse live separate and apart, if ordinarily and reasonably necessary to, and personally used or procured for use by, the spouse and members of the spouse's family at the spouse's principal place of residence.

(b) In determining whether an item of property is "ordinarily and reasonably necessary" under subdivision (a), the court shall take into account both of the following:

(1) The extent to which the particular type of item is ordinarily found in a household.

(2) Whether the particular item has extraordinary value as compared to the value of items of the same type found in other households.

(c) If an item of property for which an exemption is claimed pursuant to this section is an item of the type ordinarily found in a household but is determined not to be exempt because the item has extraordinary value as compared to the value of items of the same type found in other households, the proceeds obtained at an execution sale of the item are exempt in the amount determined by

the court to be a reasonable amount sufficient to purchase a replacement of ordinary value if the court determines that a replacement is reasonably necessary. Proceeds exempt under this subdivision are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor.

Legislative Committee Comment—Assembly

Comment. Section 704.020 supersedes the first sentence of former Section 690.1 and makes clear that the exemption applies to a second household where the spouses live separate and apart. Section 704.020 continues the ordinarily and reasonably necessary standard but includes a new provision in subdivision (b) which is designed to permit the creditor to reach an item such as an antique having extraordinary value or an extraordinarily valuable piano or painting. Subdivision (b) is intended to change the result in cases such as *Independence Bank v. Heller*, 275 Cal. App.2d 84, 70 Cal. Rptr. 868 (1969), and *Newport Nat'l Bank v. Adair*, 2 Cal. App.3d 1043, 83 Cal. Rptr. 1 (1969). Subdivision (c) provides a new limited proceeds exemption. See also Sections 701.620 (sale price must exceed proceeds exemption), 701.810 (distribution of proceeds of execution sale).

§ 704.030. Materials for repair or improvement of dwelling

704.030. Material that in good faith is about to be applied to the repair or improvement of a residence is exempt if the equity in the material does not exceed one thousand dollars (\$1,000) in the following cases:

(a) If purchased in good faith for use in the repair or improvement of the judgment debtor's principal place of residence.

(b) Where the judgment debtor and the judgment debtor's spouse live separate and apart, if purchased in good faith for use in the repair or improvement of the spouse's principal place of residence.

Comment. Section 704.030 continues a portion of former Section 690.17 and makes clear that a second exemption is available where the spouses live separate and apart.

§ 704.040. Jewelry, heirlooms, works of art

704.040. Jewelry, heirlooms, and works of art are exempt to the extent that the aggregate equity therein does not exceed two thousand five hundred dollars (\$2,500).

Legislative Committee Comment—Assembly

Comment. Section 704.040 supersedes portions of former Section 690.1 which provided an exemption for wearing apparel, furnishings, and works of art “of or by the debtor and his resident family.”

§ 704.050. Health aids

704.050. Health aids reasonably necessary to enable the judgment debtor or the spouse or a dependent of the judgment debtor to work or sustain health, and prosthetic and orthopedic appliances, are exempt.

Comment. Section 704.050 supersedes former Section 690.5 which exempted prosthetic and orthopedic appliances used by the debtor. Section 704.050 is based on Section 5(2) of the Uniform Exemptions Act (1976). The requirement that health aids be reasonably necessary to enable the individual to work or sustain health permits the exemption of such items as a wheel chair for a person unable to walk to work or an air conditioner for a person afflicted with asthma, but does not permit the exemption of a swimming pool, sauna, bicycle, or golf clubs merely because their use is necessary to sustain good health.

§ 704.060. Personal property used in trade, business, or profession

704.060. (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:

(1) Two thousand five hundred dollars (\$2,500), if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.

(2) Two thousand five hundred dollars (\$2,500), if reasonably necessary to and actually used by the spouse

of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.

(3) Five thousand dollars (\$5,000), if reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exemptions provided in paragraphs (1) and (2) are not available.

(b) If property described in subdivision (a) is sold at an execution sale, or if it has been lost, damaged, or destroyed, the proceeds of the execution sale or of insurance or other indemnification are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor or the judgment debtor's spouse. The amount exempt under this subdivision is the amount specified in subdivision (a) that applies to the particular case less the aggregate equity of any other property to which the exemption provided by subdivision (a) for the particular case has been applied.

(c) Notwithstanding subdivision (a), a motor vehicle is not exempt under subdivision (a) if there is a motor vehicle exempt under Section 704.010 which is reasonably adequate for use in the trade, business, or profession for which the exemption is claimed under this section.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 704.060 supersedes former Section 690.4 and a portion of former Section 690.17 (building materials not exceeding \$1,000). Subdivision (a) makes clear that an additional exemption is available to the spouse of the judgment debtor as well as to the judgment debtor.

Subdivision (b) provides a new exemption for proceeds analogous to that provided by Section 704.010 (motor vehicle). See also Sections 701.620 (sale price must exceed proceeds exemption), 701.810 (distribution of proceeds of execution sale), 703.520 (contents of claim of exemption).

Subdivision (c) is a new provision that makes clear the relation between this section and Section 704.010 (motor vehicle exemption).

§ 704.070. Paid earnings

704.070. (a) As used in this section:

(1) "Earnings withholding order" means an earnings withholding order under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

(2) "Paid earnings" means earnings as defined in Section 706.011 that were paid to the employee during the 30-day period ending on the date of the levy. For the purposes of this paragraph, where earnings that have been paid to the employee are sought to be subjected to the enforcement of a money judgment other than by a levy, the date of levy is deemed to be the date the earnings were otherwise subjected to the enforcement of the judgment.

(3) "Wage assignment for support" means a wage assignment for support as defined in Section 706.011.

(b) Paid earnings that can be traced into deposit accounts or in the form of cash or its equivalent as provided in Section 703.080 are exempt in the following amounts:

(1) All of the paid earnings are exempt if prior to payment to the employee they were subject to an earnings withholding order or a wage assignment for support.

(2) Seventy-five percent of the paid earnings that are levied upon or otherwise sought to be subjected to the enforcement of a money judgment are exempt if prior to payment to the employee they were not subject to an earnings withholding order or a wage assignment for support.

Legislative Committee Comment—Assembly

Comment. Section 704.070 is new. Subdivision (b)(1) continues the protection of wages that have already been garnished or subjected to a wage assignment for support for 30 days after they are paid. Subdivision (b)(2) applies an exemption analogous to that provided by Section 706.050 to paid earnings that have not been garnished or subjected to a wage assignment for support in the hands of the employer.

§ 704.080. Deposit account in which social security payments are directly deposited

704.080. (a) For the purposes of this section:

(1) "Deposit account" means a deposit account in which payments authorized by the Social Security Administration are directly deposited by the United States government.

(2) "Payments authorized by the Social Security Administration" means regular retirement and survivors' benefits, supplemental security income benefits, coal miners' health benefits, and disability insurance benefits.

(b) A deposit account is exempt without making a claim in the following amount:

(1) Five hundred dollars (\$500) where one depositor is the designated payee of the directly deposited payments.

(2) Seven hundred fifty dollars (\$750) where two or more depositors are the designated payees of the directly deposited payments, unless such depositors are joint payees of directly deposited payments which represent a benefit to only one of the depositors, in which case the exempt amount is five hundred dollars (\$500).

(c) The amount of a deposit account that exceeds the exemption provided in subdivision (b) is exempt to the extent that it consists of payments authorized by the Social Security Administration.

(d) Notwithstanding Article 5 (commencing with Section 701.010) of Chapter 3, when a deposit account is levied upon or otherwise sought to be subjected to the enforcement of a money judgment, the financial institution that holds the deposit account shall either place the amount that exceeds the exemption provided in subdivision (b) in a suspense account or otherwise prohibit withdrawal of such amount pending notification of the failure of the judgment creditor to file the affidavit required by this section or the judicial determination of the exempt status of the amount. Within 10 business days after the levy, the financial institution shall provide the levying officer with a written notice stating (1) that the deposit account is one in which payments authorized by the Social Security Administration are directly deposited

by the United States government and (2) the balance of the deposit account that exceeds the exemption provided by subdivision (b). Promptly upon receipt of the notice, the levying officer shall serve the notice on the judgment creditor. Service shall be made personally or by mail.

(e) Notwithstanding the procedure prescribed in Article 2 (commencing with Section 703.510), whether there is an amount exempt under subdivision (c) shall be determined as follows:

(1) Within five days after the levying officer serves the notice on the judgment creditor under subdivision (d), a judgment creditor who desires to claim that the amount is not exempt shall file with the court an affidavit alleging that the amount is not exempt and file a copy with the levying officer. The affidavit shall be in the form of the notice of opposition provided by Section 703.560, and a hearing shall be set and held, and notice given, as provided by Sections 703.570 and 703.580. For the purpose of this subdivision, the "notice of opposition to the claim of exemption" in Sections 703.570 and 703.580 means the affidavit under this subdivision.

(2) If the judgment creditor does not file the affidavit with the levying officer and give notice of hearing pursuant to Section 703.570 within the time provided in paragraph (1), the levying officer shall release the deposit account and shall notify the financial institution.

(3) The affidavit constitutes the pleading of the judgment creditor, subject to the power of the court to permit amendments in the interest of justice. The affidavit is deemed controverted and no counteraffidavit is required.

(4) At a hearing under this subdivision, the judgment debtor has the burden of proving that the excess amount is exempt.

(5) At the conclusion of the hearing, the court by order shall determine whether or not the amount of the deposit account is exempt pursuant to subdivision (c) in whole or in part and shall make an appropriate order for its prompt disposition. No findings are required in a proceeding under this subdivision.

(6) Upon determining the exemption claim for the deposit account under subdivision (c), the court shall immediately transmit a certified copy of the order of the court to the financial institution and to the levying officer. If the order determines that all or part of the excess is exempt under subdivision (c), with respect to the amount of the excess which is exempt, the financial institution shall transfer the exempt excess from the suspense account or otherwise release any restrictions on its withdrawal by the judgment debtor. The transfer or release shall be effected within three business days of the receipt of the certified copy of the court order by the financial institution.

(f) If the judgment debtor claims that a portion of the amount is exempt other than pursuant to subdivision (c), the claim of exemption shall be made pursuant to Article 2 (commencing with Section 703.510). If the judgment debtor also opposes the judgment creditor's affidavit regarding an amount exempt pursuant to subdivision (c), both exemptions shall be determined at the same hearing, provided the judgment debtor has complied with Article 2 (commencing with Section 703.510).

Legislative Committee Comment—Assembly

Comment. Section 704.080 supersedes former Section 690.30. Social Security payments may be directly deposited pursuant to 31 U.S.C. § 492 (1976). Subdivision (a) continues a portion of the introductory clause and subdivision (c) of former Section 690.30. Subdivision (b) continues the substance of the first paragraph and subdivision (a) of former Section 690.30. Subdivision (c) continues the substance of the introductory paragraph of former Section 690.30(b). Subdivision (d) continues the substance of former Section 690.30(b) (1).

Subdivision (e) supersedes paragraphs (2), (3), and (4) of subdivision (b) of former Section 690.30. Subdivision (e), along with subdivision (f), clarifies the procedure applicable to claiming exemptions for excess amounts in deposit accounts described in this section and the relation between this procedure and the procedure provided by Article 2 (commencing with Section 703.510) (superseding former Section 690.50, incorporated by reference in former Section 690.30). The 5-day period under paragraph (1) is extended if the judgment creditor was served by mail. See Section 684.120. Paragraph (5)

supersedes former Section 690.30(b) (3). The provision of former law for an order determining priority or dividing the property between several creditors is superseded by Section 701.810 (distribution of proceeds). Paragraph (6) continues former Section 690.30(b) (4).

Where a deposit account is not one described by subdivision (a) or where an exemption of excess funds in a deposit account described in subdivision (a) is claimed under another exemption provision, the procedure provided in Article 2 (commencing with Section 703.510) applies to the determination of the exemption. See subdivision (f) of Section 704.080.

§ 704.090. Inmate's trust account

704.090. The funds of a judgment debtor confined in a prison or facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for or to the credit of the judgment debtor, in an inmate's trust account or similar account by the state, county, or city, or any agency thereof, are exempt without making a claim in the amount of one thousand dollars (\$1,000). If the judgment debtor is married, each spouse is entitled to a separate exemption under this section or the spouses may combine their exemptions.

Comment. Section 704.090 supersedes former Section 690.21, which provided an exemption of \$40.

§ 704.100. Life insurance, endowment, annuity policies

704.100. (a) Unmatured life insurance policies (including endowment and annuity policies), but not the loan value of such policies, are exempt without making a claim.

(b) The aggregate loan value of unexpired life insurance policies (including endowment and annuity policies) is subject to the enforcement of a money judgment but is exempt in the amount of four thousand dollars (\$4,000). If the judgment debtor is married, each spouse is entitled to a separate exemption under this subdivision, and the exemptions of the spouses may be

combined, regardless of whether the policies belong to either or both spouses and regardless of whether the spouse of the judgment debtor is also a judgment debtor under the judgment. The exemption provided by this subdivision shall be first applied to policies other than the policy before the court and then, if the exemption is not exhausted, to the policy before the court.

(c) Benefits from matured life insurance policies (including endowment and annuity policies) are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

Legislative Committee Comment—Assembly

Comment. Section 704.100 supersedes the exemptions provided in former Sections 690.9 (life insurance represented by \$500 annual premium), 690.10 (group life insurance), and 690.14 (fraternal benefit society). Under subdivision (a), the judgment creditor is precluded from reaching an unmaturred policy except for its loan value; this prevents the judgment creditor from forcing the judgment debtor to surrender a life insurance policy for its cash value.

Subdivision (b) protects a portion of the loan value of unmaturred insurance policies. It provides for doubling of the exemption in the case of a married judgment debtor. Each spouse may claim an exemption in the same policy or different policies. The loan value is not subject to execution (see Section 699.720(a)) but may be reached by some other appropriate procedure. See Sections 708.110 (examination of judgment debtor), 708.205 (order in examination proceedings), 708.510 (assignment order). The exemption is applied first to policies that are not levied upon. See Section 703.520 (exemption claim discloses policies not levied upon).

The exemption of benefits under subdivision (c) is available to the judgment debtor regardless of whether the judgment debtor was the insured or the beneficiary under the policy. This is consistent with prior law. See *Jackson v. Fisher*, 56 Cal.2d 196, 200, 363 P.2d 479, 14 Cal. Rptr. 439 (1961). Under subdivision (c), the exemption may be asserted against creditors of the insured or of the spouse or dependents of the insured. See *Holmes v. Marshall*, 145 Cal. 777, 779-82, 79 P. 534 (1905).

§ 704.110. Public retirement and related benefits and contributions

704.110. (a) As used in this section:

(1) "Public entity" means the state, or a city, city and county, county, or other political subdivision of the state, or a public trust, public corporation, or public board, or the governing body of any of them, but does not include the United States except where expressly so provided.

(2) "Public retirement benefit" means a pension or an annuity, or a retirement, disability, death, or other benefit, paid or payable by a public retirement system.

(3) "Public retirement system" means a system established pursuant to statute by a public entity for retirement, annuity, or pension purposes or payment of disability or death benefits.

(b) All amounts held, controlled, or in process of distribution by a public entity derived from contributions by the public entity or by an officer or employee of the public entity for public retirement benefit purposes, and all rights and benefits accrued or accruing to any person under a public retirement system, are exempt without making a claim.

(c) Notwithstanding subdivision (b), where an amount described in subdivision (b) becomes payable to a person and is sought to be applied to the satisfaction of a judgment for child or spousal support against that person:

(1) Except as provided in paragraph (2), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to a wage assignment for support as defined in Section 706.011 or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052. The paying entity may deduct from each payment made pursuant to a wage assignment under this

paragraph an amount reflecting the actual cost of administration caused by the wage assignment up to two dollars (\$2) for each payment.

(d) All amounts received by any person, a resident of the state, as a public retirement benefit or as a return of contributions and interest thereon from the United States or a public entity or from a public retirement system are exempt.

Comment. Section 704.110 continues the substance of subdivisions (a) and (b) of former Section 690.18, with drafting changes for purposes of clarity and uniformity. Subdivision (c) governs the application of the exemption for payable but unpaid benefits against the enforcement of child or spousal support judgments. Subdivision (c)(1) applies the general rule governing exemptions in support cases. Subdivision (c)(2) incorporates the standard applicable to wage garnishments to enforce support judgments. See Section 706.052 and the Comment thereto. See also Civil Code §§ 4701 (wage assignment for child support), 4801.6 (wage assignment for spousal support). The one dollar fee for administrative costs provided by former Section 690.18(b) is increased to two dollars in subdivision (c)(2) of this section. The two dollar fee is the same as that formerly provided in Government Code Section 21201 (public employees' retirement).

The exemption provided in subdivision (d) applies whether the benefits are in the actual possession of the retirement benefit recipient or have been deposited. See Section 703.080 (tracing exempt funds). The general rule governing exemptions in support cases provided by Section 703.070 applies to benefits after they have been paid. For the exemption of vacation credits, see Section 704.113. For the exemption of benefits under the Unemployment Insurance Code, see Section 704.120.

§ 704.113. Public employee vacation credits

704.113. (a) As used in this section, "vacation credits" means vacation credits accumulated by a state employee pursuant to Section 18050 of the Government Code or by any other public employee pursuant to any law for the accumulation of vacation credits applicable to the employee.

(b) All vacation credits are exempt without making a claim.

(c) Amounts paid periodically or as a lump sum representing vacation credits are subject to any earnings withholding order served under Chapter 5 (commencing with Section 706.010) or any wage assignment for support as defined in Section 706.011 and are exempt to the same extent as earnings of a judgment debtor.

Legislative Committee Comment—Assembly

Comment. Subdivision (b) of Section 704.113 continues a portion of former Section 690.18(b) which made vacation credits exempt without making a claim. Subdivision (c) supersedes the portion of former Section 690.18(b) that made vacation credits that were payable exempt except from enforcement of child or spousal support and makes clear that vacation pay is treated the same as earnings for exemption purposes. See Sections 706.050-706.052.

§ 704.115. Private retirement and related benefits and contributions

704.115. (a) As used in this section, “private retirement plan” means:

(1) Private retirement plans, including, but not limited to, union retirement plans.

(2) Profit-sharing plans designed and used for retirement purposes.

(3) Self-employed retirement plans and individual retirement annuities or accounts provided for in the Internal Revenue Code of 1954 as amended, to the extent the amounts held in the plans, annuities, or accounts do not exceed the maximum amounts exempt from federal income taxation under that code.

(b) All amounts held, controlled, or in process of distribution by a private retirement plan, for the payment of benefits as an annuity, pension, retirement allowance, disability payment, or death benefit from a private retirement plan are exempt.

(c) Notwithstanding subdivision (b), where an amount described in subdivision (b) becomes payable to a person and is sought to be applied to the satisfaction of a judgment for child or spousal support against that person:

(1) Except as provided in paragraph (2), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to a wage assignment for support as defined in Section 706.011 or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052.

(d) After payment, the amounts described in subdivision (b) and all contributions and interest thereon returned to any member of a private retirement plan are exempt.

(e) Notwithstanding subdivisions (b) and (d), except as provided in subdivision (f), the amounts described in paragraph (3) of subdivision (a) are exempt only to the extent necessary to provide for the support of the judgment debtor when the judgment debtor retires and for the support of the spouse and dependents of the judgment debtor, taking into account all resources that are likely to be available for the support of the judgment debtor when the judgment debtor retires. In determining the amount to be exempt under this subdivision, the court shall allow the judgment debtor such additional amount as is necessary to pay any federal and state income taxes payable as a result of the applying of an amount described in paragraph (3) of subdivision (a) to the satisfaction of the money judgment.

(f) Where the amounts described in paragraph (3) of subdivision (a) are payable periodically, the amount of such periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

Legislative Committee Comment—Assembly

Comment. Section 704.115 supersedes subdivision (d) of former Section 690.18. Subdivision (c) governs the application of the exemption for payable but unpaid benefits against enforcement of child or spousal support. Subdivision (c) (1) applies the general rule governing exemptions in support cases. Subdivision (c) (2) recognizes that federal law requires the protection of periodic payments pursuant to a pension or retirement program to the same extent as wages. See Section 706.052 and the Comment thereto. The exemption provided in subdivision (d) applies whether money received by the judgment debtor is in the actual possession of the recipient or has been deposited. See Section 703.080 (tracing exempt funds). The general rule governing exemptions in support cases provided by Section 703.070 applies to benefits after they have been paid.

Subdivisions (e) and (f) are new. Subdivision (e) requires that the court consider all resources—such as social security payments and other income and assets—that are likely to be available to the judgment debtor when the judgment debtor retires. Accordingly, where it will be a number of years before the judgment debtor will retire, the court will take into account not only all the assets of the judgment debtor at the time the exemption claim is determined but also all the assets and income (including pension rights) that the judgment debtor is likely to acquire prior to retirement. Subdivision (f) recognizes that the federal law requires the protection of periodic payments pursuant to a retirement program. See 15 U.S.C. §§ 1672(a), 1673(a).

**§ 704.120. Unemployment benefits and contributions;
strike benefits**

704.120. (a) Contributions by workers payable to the Unemployment Compensation Disability Fund and by employers payable to the Unemployment Fund are exempt without making a claim.

(b) Before payment, amounts held for payment of the following benefits are exempt without making a claim:

(1) Unemployment compensation benefits payable under Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code.

(2) Unemployment compensation disability benefits payable under Part 2 (commencing with Section 2601) of Division 1 of the Unemployment Insurance Code.

(3) Extended duration benefits payable under Part 3 (commencing with Section 3501) of Division 1 of the Unemployment Insurance Code.

(4) Federal-state extended benefits payable under Part 4 (commencing with Section 4001) of Division 1 of the Unemployment Insurance Code.

(5) Incentive payments payable under Division 2 (commencing with Section 5000) of the Unemployment Insurance Code.

(6) Benefits under a plan or system established by an employer that makes provision for employees generally or for a class or group of employees for the purpose of supplementing unemployment compensation benefits.

(7) Unemployment benefits by a fraternal organization to bona fide members.

(8) Benefits payable by a union due to a labor dispute.

(c) After payment, the benefits described in subdivision (b) are exempt.

(d) Notwithstanding subdivision (b), where benefits exempt under subdivision (b) become payable to a person and are sought to be applied to the satisfaction of a judgment for child support against that person:

(1) Except as provided in paragraph (2), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to a wage assignment for support as defined in Section 706.011 or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052. The paying entity may deduct from each payment made pursuant to a wage assignment under this paragraph an amount reflecting the actual cost of administration caused by the wage assignment up to two dollars (\$2) for each payment.

Legislative Committee Comment—Senate

Comment. Section 704.120 supersedes former Sections 690.13, 690.16, and 690.175 and portions of former Section 690.18(c) and (d)

and Unemployment Insurance Code Sections 988 and 1342. Subdivision (b)(8) is new. Subdivision (d) is a new provision designed to implement Section 2335 of the federal Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, pertaining to enforcement of child support. It is patterned after an exception applicable to the exemption for retirement benefits. See Section 704.110.

§ 704.130. Disability and health benefits

704.130. (a) Before payment, benefits from a disability or health insurance policy or program are exempt without making a claim. After payment, the benefits are exempt.

(b) Subdivision (a) does not apply to benefits that are paid or payable to cover the cost of health care if the judgment creditor is a provider of health care whose claim is the basis on which the benefits are paid or payable.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 704.130 supersedes former Sections 690.11 (disability or health insurance benefits represented by \$500 annual premium) and 690.14 (fraternal benefit society funds) and portions of former Sections 690.13 (money used exclusively in payment of sick benefits by fraternal organization to bona fide members), 690.18 (disability benefits from retirement plans).

§ 704.140. Damages for personal injury

704.140. (a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action for personal injury is exempt without making a claim.

(b) Except as provided in subdivisions (c) and (d), an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

(c) Subdivision (b) does not apply if the judgment creditor is a provider of health care whose claim is based on the providing of health care for the personal injury for which the award or settlement was made.

(d) Where an award of damages or a settlement arising out of personal injury is payable periodically, the

amount of such periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

Comment. Section 704.140 is new. An award or settlement that will result from a cause of action that is the subject of a pending action may be reached by the lien procedure provided by Article 5 (commencing with Section 708.410) of Chapter 6, but the exemption provided by subdivision (b) of Section 704.140 may be claimed in the pending action. See Section 708.450. See also Section 695.030 (property not subject to enforcement of money judgment).

§ 704.150. Damages for wrongful death

704.150. (a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action for wrongful death is exempt without making a claim.

(b) Except as provided in subdivision (c), an award of damages or a settlement arising out of the wrongful death of the judgment debtor's spouse or a person on whom the judgment debtor or the judgment debtor's spouse was dependent is exempt to the extent reasonably necessary for support of the judgment debtor and the spouse and dependents of the judgment debtor.

(c) Where an award of damages or a settlement arising out of the wrongful death of the judgment debtor's spouse or a person on whom the judgment debtor or the judgment debtor's spouse was dependent is payable periodically, the amount of such a periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

Comment. Section 704.150 is new. An award or settlement that will result from a cause of action that is the subject of a pending action may be reached by the lien procedure provided by Article 5 (commencing with Section 708.410) of Chapter 6. See the Comment to Section 704.140. See also Section 695.030 (property not subject to enforcement of money judgment).

§ 704.160. Workers' compensation

704.160. Except as provided by Chapter 1 (commencing with Section 4900) of Part 3 of Division 4 of the Labor Code, before payment, a claim for workers' compensation or workers' compensation awarded or adjudged is exempt without making a claim. After payment, the award is exempt.

Comment. Section 704.160 continues the substance of former Section 690.15.

§ 704.170. Aid provided to needy persons

704.170. Before payment, aid provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or similar aid provided by a charitable organization or a fraternal benefit society as defined in Section 10990 of the Insurance Code, is exempt without making a claim. After payment, the aid is exempt.

Comment. Section 704.170 is based on former Sections 690.14 and 690.19. Section 704.170 exempts local aid as well as federal aid administered by the state pursuant to the Welfare and Institutions Code. See also Welf. & Inst. Code § 10052 ("aid" defined). Section 704.170 also expands the category of nongovernmental aid that is exempt. Former Section 690.14 applied only to fraternal benefit societies.

§ 704.180. Relocation benefits

704.180. Before payment, relocation benefits for displacement from a dwelling which are to be paid pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code or the federal "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" (42 U.S.C. Sec. 4601 et seq.), as amended, are exempt without making a claim. After payment, the benefits are exempt.

Comment. Section 704.180 supersedes Section 690.8a. Section 704.180 expands the former exemption to include relocation benefits paid or payable by a public utility (Pub. Util. Code § 600) or a quasi-public entity (Gov't Code § 7260). The last sentence of this section requires the debtor to claim an exemption for such benefits after payment, whereas under

former law these benefits were designated as exempt without filing a claim.

§ 704.190. Financial aid provided to student by educational institution

704.190. (a) As used in this section, "institution of higher education" means "institution of higher education" as defined in Section 1141 (a) of Title 20 of the United States Code, as amended.

(b) Before payment, financial aid for expenses while attending school provided to a student by an institution of higher education is exempt without making a claim. After payment, the aid is exempt.

Legislative Committee Comment—Senate

Comment. Section 704.190 is a new provision that provides an exemption for financial aid provided to a student by an institution of higher education. The section adopts the definition found in Section 1141(a) of Title 20 of the United States Code, as amended. This provision, as amended by Pub. L. 44-382, Title I, § 181, Oct. 12, 1976, reads:

(a) The term "institution of higher education" means an educational institution in any State which (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, (2) is legally authorized within such State to provide a program of education beyond secondary education, (3) provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree, (4) is a public or other nonprofit institution, and (5) is accredited by a nationally recognized accrediting agency or association or, if not so accredited, (A) is an institution with respect to which the Commissioner has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or (B) is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited. Such term also includes any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of clauses (1), (2), (4), and (5). For purposes of this subsection, the Commissioner shall publish a list a nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of training offered. Such term also includes a public or nonprofit private educational institution in any State which, in lieu

of the requirement in clause (1), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution.

§ 704.200. Cemetery plot

704.200. (a) As used in this section:

(1) "Cemetery" has the meaning provided by Section 7003 of the Health and Safety Code.

(2) "Family plot" is a plot that satisfies the requirements of Section 8650 of the Health and Safety Code.

(3) "Plot" has the meaning provided by Section 7022 of the Health and Safety Code.

(b) A family plot is exempt without making a claim.

(c) Except as provided in subdivision (d), a cemetery plot for the judgment debtor and the spouse of the judgment debtor is exempt.

(d) Land held for the purpose of sale or disposition as cemetery plots or otherwise is not exempt.

Comment. Section 704.200 supersedes portions of former Section 690.24 which provided an exemption for a cemetery lot not exceeding one-quarter of an acre in size or, in the case of a religious or benevolent association or corporation, five acres in size. Subdivision (b) recognizes that family plots are inalienable. See Health & Saf. Code § 8650. Subdivision (c) exempts cemetery plots for the judgment debtor and spouse. See also Health & Saf. Code § 8601 (spouse's vested right of interment). Subdivision (d) continues the substance of the third paragraph of former Section 690.24. The fourth paragraph of former Section 690.24, relating to the application of the exemption against a judgment for the purchase price, is not continued because it is no longer necessary. See Comment to Section 703.010(b). The portion of land containing graves of human beings is not subject to enforcement of a money judgment. See *Peebler v. Danziger*, 104 Cal. App.2d 491, 493, 231 P.2d 895 (1951).

§ 704.210. Property not subject to enforcement

704.210. Property that is not subject to enforcement of a money judgment is exempt without making a claim.

Comment. Section 704.210 is consistent with Section 695.040 (release of property not subject to enforcement).

Article 4. Homestead Exemption

§ 704.710. Definitions

704.710. As used in this article:

(a) "Dwelling" means a place where a person actually resides and may include but is not limited to the following:

(1) A house together with the outbuildings and the land upon which they are situated.

(2) A mobilehome together with the outbuildings and the land upon which they are situated.

(3) A boat or other waterborne vessel.

(4) A condominium, as defined in Section 783 of the Civil Code.

(5) A planned development, as defined in Section 11003 of the Business and Professions Code.

(6) A stock cooperative, as defined in Section 11003.2 of the Business and Professions Code.

(7) A community apartment project, as defined in Section 11004 of the Business and Professions Code.

(b) "Family unit" means any of the following:

(1) The judgment debtor and the judgment debtor's spouse if the spouses reside together in the homestead.

(2) The judgment debtor and at least one of the following persons who the judgment debtor cares for or maintains in the homestead:

(A) The minor child or minor grandchild of the judgment debtor or the judgment debtor's spouse or the minor child or grandchild of a deceased spouse or former spouse.

(B) The minor brother or sister of the judgment debtor or judgment debtor's spouse or the minor child of a deceased brother or sister of either spouse.

(C) The father, mother, grandfather, or grandmother of the judgment debtor or the judgment debtor's spouse or the father, mother, grandfather, or grandmother of a deceased spouse.

(D) An unmarried relative described in this paragraph who has attained the age of majority and is unable to take care of or support himself or herself.

(3) The judgment debtor's spouse and at least one of the persons listed in paragraph (2) who the judgment debtor's spouse cares for or maintains in the homestead.

(c) "Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse actually resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse actually resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a dwelling within the six-month period provided by Section 704.720, "homestead" also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor's spouse actually resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

(d) "Spouse" does not include a married person following entry of a judgment decreeing legal separation of the parties, or an interlocutory judgment of dissolution of the marriage, unless such married persons reside together in the same dwelling.

Legislative Committee Comment—Senate

Comment. Subdivision (a) of Section 704.710 supersedes the provisions of former law pertaining to the property that could be exempt as a homestead or dwelling. See former Civil Code § 1237 (declared homestead); former Code Civ. Proc. §§ 690.3 (housetrailer, mobilehome, houseboat, boat, or other waterborne vessel), 690.31(a) (dwelling house). Subdivision (a) is intended to include all forms of property for which an exemption could be claimed under former law and any other property in which the judgment debtor or the judgment debtor's spouse actually resides.

Subdivision (b) continues the substance of former Civil Code Section 1261(2) except that the minor grandchild of a deceased spouse and a child or grandchild of a former spouse are included in the listing.

Subdivision (c) is intended to preclude a judgment debtor from moving into a dwelling after creation of a judgment lien or after levy in order to create an exemption. Subdivision (c) also makes clear that, even though an abstract of judgment has been recorded to create a judgment lien, the existence of such lien does not prevent

a homestead exemption on after-acquired property which is acquired as the principal dwelling using exempt proceeds. Subdivision (c) is an exception to the rule of Section 703.100 (time for determination of exemption). See also Section 704.960 (homestead declaration relating to dwelling acquired using exempt proceeds).

Subdivision (d) preserves the effect of former Civil Code Sections 1300–1304 (married person's separate homestead). The effect of subdivision (d) is to permit each spouse to claim a separate homestead after entry of a judgment decreeing legal separation or of an interlocutory judgment of dissolution of the marriage, because subdivision (c) of Section 704.720 is not applicable.

§ 704.720. Homestead exemption

704.720. (a) A homestead is exempt from sale under this division to the extent provided in Section 704.800.

(b) If a homestead is sold under this division or is damaged or destroyed or is acquired for public use, the proceeds of sale or of insurance or other indemnification for damage or destruction of the homestead or the proceeds received as compensation for a homestead acquired for public use are exempt in the amount of the homestead exemption provided in Section 704.730. The proceeds are exempt for a period of six months after the time the proceeds are actually received by the judgment debtor, except that, if a homestead exemption is applied to other property of the judgment debtor or the judgment debtor's spouse during that period, the proceeds thereafter are not exempt.

(c) If the judgment debtor and spouse of the judgment debtor reside in separate homesteads, only the homestead of one of the spouses is exempt and only the proceeds of the exempt homestead are exempt.

Legislative Committee Comment—Senate

Comment. Subdivision (a) of Section 704.720 supersedes former Civil Code Section 1240 (providing for a declared homestead) and former Code of Civil Procedure Sections 690.3 and 690.31(a) (providing for a claimed dwelling exemption). As to the effect of a declaration of homestead made under prior law, see Section 694.090. See also Section 704.970 (effect of declared homestead). Unlike the former provisions, Section 704.720 does not specify the interest that is protected and does not limit the homestead in a leasehold to a long-term lease; any interest sought to be reached by the judgment creditor in the homestead is subject to the exemption. The homestead exemption does not apply where a lien on the property other than an enforcement lien is being foreclosed. See Section 703.010.

Subdivision (b) provides an exemption for proceeds of an execution sale of a homestead, for proceeds from insurance or indemnifications for the damage or destruction of a homestead, and for an eminent domain award or proceeds of a sale of the homestead for public use. Subdivision (b) supersedes portions of former Civil Code Sections 1256 and 1265 and of former Code of Civil Procedure Sections 690.8 and 690.31 (k). The exemption for insurance proceeds was not found in former law. But see *Houghton v. Lee*, 50 Cal. 101, 103 (insurance proceeds for destruction of declared homestead exempt). See also Section 704.960 (proceeds of declared homestead). As under former law, proceeds of a voluntary sale of the homestead are not exempt under the proceeds exemption provided by subdivision (b). Compare Section 704.960 (exemption for proceeds of voluntary sale of declared homestead).

Subdivision (c) is new. The spouses may select which of the homesteads is exempt; if the spouses are unable to agree, the court determines which homestead is exempt. See Section 703.110 (application of exemptions to marital property). Note that a married person may, after a decree of legal separation or an interlocutory judgment of dissolution of marriage, be entitled to a homestead in his or her own right, and this right is not affected by subdivision (c). See Section 704.710(d) ("spouse" defined) and the Comment thereto. See also Section 704.930 (person entitled to execute homestead declaration).

§ 704.730. Amount of homestead exemption

704.730. (a) The amount of the homestead exemption is one of the following:

(1) Thirty thousand dollars (\$30,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2).

(2) Forty-five thousand dollars (\$45,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is either or both of the following:

(A) A person 65 years of age or older.

(B) A member of a family unit. This clause applies only if there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(b) Notwithstanding any other provision of this section, the combined homestead exemptions of spouses on the same judgment shall not exceed forty-five thousand dollars (\$45,000), regardless of whether the spouses are jointly obligated on the judgment and regardless of whether the homestead consists of

community or separate property or both. Notwithstanding any other provision of this article, if both spouses are entitled to a homestead exemption, the exemption of proceeds of the homestead shall be apportioned between the spouses on the basis of their proportionate interests in the homestead.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 704.730 continues the substance of portions of former Civil Code Section 1260(a) (amount of homestead exemption). Subdivision (a)(2)(B) replaces the phrase “head of a family” with the phrase “family unit” and makes clear there is no increased exemption if the members of the family unit also own interests in the homestead (except a community property interest).

Subdivision (b) is new. It is intended to preclude the exemption of unduly large amounts and the inequitable application of exemptions that might otherwise occur under subdivision (a) because of the variety of ways that spouses can hold property and attempt to qualify for increased exemptions.

§ 704.740. Court order for sale; exemption claim where court order for sale not required

704.740. (a) Except as provided in subdivision (b), a dwelling may not be sold under this division to enforce a money judgment except pursuant to a court order for sale obtained under this article.

(b) If the dwelling is personal property or is real property in which the judgment debtor has a leasehold estate with an unexpired term of less than two years at the time of levy:

(1) A court order for sale is not required and the procedures provided in this article relating to the court order for sale do not apply.

(2) An exemption claim shall be made and determined as provided in Article 2 (commencing with Section 703.510).

Comment. Subdivision (a) of Section 704.740 supersedes portions of former Civil Code Sections 1245, 1249, and 1250 and former Code of Civil Procedure Section 690.31(c) and (f).

Subdivision (b) incorporates the general procedures for claiming an exemption where the dwelling levied upon is not subject to the delay of sale provision of Section 701.545 (120-day

delay of notice of sale of an interest in real property other than a leasehold estate with an unexpired term of less than two years). Under former law, a housetrailer, mobilehome, houseboat, boat, or other waterborne vessel in which the judgment debtor or the judgment debtor's family actually resided could be claimed as exempt in a similar manner. See former Sections 690(a), 690.3, 690.50. This section also applies to claims of exemption for certain mobilehomes that under former law would have been determined as provided in former Section 690.31 (judgment creditor's application for writ of execution on dwelling, including a mobilehome as defined by Health & Safety Code § 18008). See also Health & Saf. Code § 18551(c) (mobilehome installed on foundation system deemed a fixture and a real property improvement). The judgment creditor's instructions to the levying officer must indicate whether property to be levied on is a dwelling. See Section 687.010.

§ 704.750. Application for order for sale

704.750. (a) Promptly after a dwelling is levied upon (other than a dwelling described in subdivision (b) of Section 704.740), the levying officer shall serve notice on the judgment creditor that the levy has been made and that the property will be released unless the judgment creditor complies with the requirements of this section. Service shall be made personally or by mail. Within 20 days after service of the notice, the judgment creditor shall apply to the court for an order for sale of the dwelling and shall file a copy of the application with the levying officer. If the judgment creditor does not file the copy of the application for an order for sale of the dwelling within the allowed time, the levying officer shall release the dwelling.

(b) If the dwelling is located in a county other than the county where the judgment was entered:

(1) The judgment creditor shall apply to a court of similar jurisdiction in the county where the dwelling is located or, if there is no court of similar jurisdiction, to a court of higher jurisdiction in that county.

(2) The judgment creditor shall file with the application an abstract of judgment in the form prescribed by Section 674 or, in the case of a judgment

described in Section 697.320, a certified copy of the judgment.

(3) The judgment creditor shall pay a filing fee of twelve dollars (\$12). No law library fee shall be charged.

Comment. Section 704.750 supersedes the introductory portion and the last two paragraphs of former Civil Code Section 1245 and former Code of Civil Procedure Section 690.31(c). Unlike the former provisions which required the judgment creditor to apply for issuance of a writ of execution, Section 704.750 requires the judgment creditor to apply for an order for sale after the execution levy. This ensures that all writs will be issued out of the court in which the judgment is entered. The 20-day period allowed to apply for the order and to file the copy of the application is extended if the notice of levy is served by mail. See Section 684.120. Notice of the application for an order for sale of the property must be given the levying officer or the dwelling will be released. This requirement applies only to real property dwellings and not to personal property dwellings or to dwellings with less than a two-year leasehold. See Section 704.740(b).

§ 704.760. Contents of application

704.760. The judgment creditor's application shall be made under oath, shall describe the dwelling, and shall contain all of the following:

(a) A statement whether or not the records of the county tax assessor indicate that there is a current homeowner's exemption or disabled veteran's exemption for the dwelling and the person or persons who claimed any such exemption.

(b) A statement, which may be based on information and belief, whether the dwelling is a homestead and the amount of the homestead exemption, if any, and a statement whether or not the records of the county recorder indicate that a homestead declaration under Article 5 (commencing with Section 704.910) that describes the dwelling has been recorded by the judgment debtor or the spouse of the judgment debtor.

(c) A statement of the amount of any liens or encumbrances on the dwelling, the name of each person having a lien or encumbrance on the dwelling, and the

address of such person used by the county recorder for the return of the instrument creating such person's lien or encumbrance after recording.

Comment. Section 704.760 supersedes subdivisions (a)-(c) of former Civil Code Section 1245 and paragraphs (1)-(2) of former Code of Civil Procedure Section 690.31(c).

§ 704.770. Notice of hearing

704.770. (a) Upon the filing of the application by the judgment creditor, the court shall set a time and place for hearing and order the judgment debtor to show cause why an order for sale should not be made in accordance with the application. The time set for hearing shall be not later than 45 days after the application is filed or such later time as the court orders upon a showing of good cause.

(b) Not later than 30 days before the time set for hearing, the judgment creditor shall do both of the following:

(1) Serve on the judgment debtor a copy of the order to show cause, a copy of the application of the judgment creditor, and a copy of the notice of the hearing in the form prescribed in Section 693.050. Service shall be made personally or by mail.

(2) Personally serve a copy of each document listed in paragraph (1) on an occupant of the dwelling or, if there is no occupant present at the time service is attempted, post a copy of each document in a conspicuous place at the dwelling.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 704.770 supersedes the introductory portions of former Civil Code Section 1246 and former Code of Civil Procedure Section 690.31(d). Subdivision (b) supersedes former Civil Code Section 1257 and former Code of Civil Procedure Section 690.31(1). A longer period of notice is required under subdivision (b) if the judgment debtor is served by mail. See Section 684.120.

§ 704.780. Hearing

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

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

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

(b) The court shall determine the amount of the homestead exemption, if any, and the fair market value of the dwelling and shall make an order for sale of the dwelling. The order for sale shall specify the amount of the proceeds of the sale that is to be distributed to each person having a lien or encumbrance on the dwelling and shall include the name and address of each such person. Subject to the provisions of this article, the sale is governed by Article 6 (commencing with Section 701.510) of Chapter 3.

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

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

Legislative Committee Comment—Senate

Comment. Section 704.780 supersedes former Civil Code Section 1247, a portion of former Civil Code Section 1250, and a portion of subdivision (c), subdivision (e), and a portion of subdivision (f) of

former Code of Civil Procedure Section 690.31. Subject to the requirements of Section 704.790, if an order for sale is obtained, the dwelling may be sold as provided in Sections 701.510 *et seq.* Notice of sale provisions (Sections 701.540–701.560) apply to the sale as well as the general provisions governing the sale itself (subject to Sections 704.800–704.850).

§ 704.790. Procedure after order of sale upon default

704.790. (a) This section applies in any case where the court makes an order for sale of the dwelling upon a hearing at which none of the following appeared:

- (1) The judgment debtor.
- (2) The judgment debtor's spouse.
- (3) The attorney for the judgment debtor.
- (4) The attorney for the judgment debtor's spouse.

(b) Not later than 10 days after the date of the order for sale, the judgment creditor shall serve a copy of the order and a notice of the order in the form prescribed in Section 693.060:

(1) Personally or by mail on the judgment debtor and the judgment debtor's spouse.

(2) Personally on an occupant of the dwelling or, if there is no occupant present at the time service is attempted, post a copy of the order and notice in a conspicuous place at the dwelling.

(c) Proof of service and of any posting shall be filed with the court and with the levying officer. If the judgment creditor fails to comply with this subdivision and with subdivision (b) in any case where this section applies, the dwelling may not be sold under the order for sale.

(d) If, within 10 days after service of notice of the order, the judgment debtor or the judgment debtor's spouse files with the levying officer a declaration that the absence of the judgment debtor and the judgment debtor's spouse or the attorney for the judgment debtor or the judgment debtor's spouse from the hearing was due to mistake, inadvertence, surprise, or excusable neglect and that the judgment debtor or spouse of the judgment debtor wishes to assert the homestead exemption, the levying officer shall transmit the declaration forthwith to the court. Upon receipt of the

declaration, the court shall set a time and place for hearing to determine whether the determinations of the court should be modified. The time set for hearing shall be not later than 20 days after receipt of the declaration. The court clerk shall cause notice of the hearing promptly to be given to the parties.

Comment. Subdivision (a) of Section 704.790 supersedes former Civil Code Sections 1251 and 1257 and former Code of Civil Procedure Section 690.31(g) and (I). Subdivision (d) supersedes former Civil Code Section 1252 and former Code of Civil Procedure Section 690.31(h).

§ 704.800. Minimum bid

704.800. (a) If no bid is received at a sale of a homestead pursuant to a court order for sale that exceeds the amount of the homestead exemption plus any additional amount necessary to satisfy all liens and encumbrances on the property, including but not limited to any attachment or judgment lien, the homestead shall not be sold and shall be released and is not thereafter subject to a court order for sale upon subsequent application by the same judgment creditor for a period of one year.

(b) If no bid is received at the sale of a homestead pursuant to a court order for sale that is 90 percent or more of the fair market value determined pursuant to Section 704.780, the homestead shall not be sold unless the court, upon motion of the judgment creditor, does one of the following:

(1) Grants permission to accept the highest bid that exceeds the amount of the minimum bid required by subdivision (a).

(2) Makes a new order for sale of the homestead.

Legislative Committee Comment—Senate

Comment. Section 704.800 supersedes former Civil Code Sections 1253 and 1254. If the property levied upon is not sold, the judgment creditor may not recover costs. See Section 704.840. See also Section 704.850 (distribution of proceeds).

§ 704.810. Acceleration clauses and prepayment penalties

704.810. Levy on a homestead that is subject to a lien or encumbrance is not by itself grounds for acceleration of the obligation secured by the lien or encumbrance, notwithstanding any provision of the obligation, lien, or encumbrance and if the homestead is sold pursuant to court order under this article the amount payable to satisfy a lien or encumbrance shall not include any penalty for prepayment.

Legislative Committee Comment—Senate

Comment. Section 704.810 is new. The first portion of Section 704.810 is intended to preserve existing financing on a homestead when it is levied upon but not sold. The latter portion is drawn from Section 1265.240 (no prepayment penalty where property acquired by eminent domain).

§ 704.820. Procedure where judgment debtor is co-owner or owns less than a fee

704.820. If the dwelling is owned by the judgment debtor as a joint tenant or tenant in common or if the interest of the judgment debtor in the dwelling is a leasehold or other interest less than a fee interest:

(a) At an execution sale of a dwelling, the interest of the judgment debtor in the dwelling and not the dwelling shall be sold. If there is more than one judgment debtor of the judgment creditor, the interests of the judgment debtors in the dwelling shall be sold together and each of the judgment debtors entitled to a homestead exemption is entitled to apply his or her exemption to his or her own interest.

(b) For the purposes of this section, all references in this article to the “dwelling” or “homestead” are deemed to be references to the interest of the judgment debtor in the dwelling or homestead.

Comment. Section 704.820 implements the intent of this article not to restrict the interest of the judgment debtor for which a homestead exemption is available. A homestead exemption is available to a judgment debtor regardless of whether the judgment debtor’s interest is a fee, leasehold, or lesser interest. See Section 704.710(a) and Comment thereto. If the judgment debtor’s interest is an interest in community

property, the whole community interest is subject to enforcement of the judgment. See Section 695.020 (liability of community property).

§ 704.830. Extensions of time and appeals

704.830. The provisions of Sections 703.590 and 703.600 apply to proceedings under this article.

Comment. Section 704.830 continues the substance of former Civil Code Sections 1258 (portion incorporating Code of Civil Procedure Section 690.50(*l*)) and 1259.1, and former Code of Civil Procedure Section 690.31 (*m*) (portion incorporating Code of Civil Procedure Section 690.50(*l*)) and (*n*). It incorporates the provisions in the general exemption procedure pertaining to extensions of time and appeals.

§ 704.840. Costs

704.840. (a) Except as provided in subdivision (b), the judgment creditor is entitled to recover reasonable costs incurred in a proceeding under this article.

(b) If no bid is received at a sale of a homestead pursuant to a court order for sale that exceeds the amount of the homestead exemption plus any additional amount necessary to satisfy all liens and encumbrances on the property, the judgment creditor is not entitled to recover costs incurred in a proceeding under this article or costs of sale.

Comment. Section 704.840 supersedes former Civil Code Section 1259.

§ 704.850. Distribution of proceeds of sale of homestead

704.850. (a) The levying officer shall distribute the proceeds of sale of a homestead in the following order:

(1) To the discharge of all liens and encumbrances, if any, on the property.

(2) To the judgment debtor in the amount of any applicable exemption of proceeds pursuant to Section 704.720.

(3) To the levying officer for the reimbursement of the levying officer's costs for which an advance has not been made.

(4) To the judgment creditor to satisfy the following:

(A) First, costs and interest accruing after issuance of the writ pursuant to which the sale is conducted.

(B) Second, the amount due on the judgment with costs and interest, as entered on the writ.

(5) To the judgment debtor in the amount remaining.

(b) Sections 701.820 and 701.830 apply to distribution of proceeds under this section.

Legislative Committee Comment—Senate

Comment. Subdivision (a) of Section 704.850 continues the priority of distribution of proceeds provided by subdivision (j) of former Section 690.31 and of former Civil Code Section 1255. This section is an exception to the general rules on distribution of proceeds provided by Section 701.810. Liens and encumbrances required to be satisfied under subdivision (a) (1) include not only preferred labor claims to be satisfied pursuant to Section 1206 and the amount of any state tax lien (as defined in Government Code Section 7162) but also any other liens and encumbrances.

Subdivision (b) makes clear that the general provisions governing the time for distributing proceeds (Section 701.820) and the resolution of conflicting claims to proceeds (Section 701.830) apply to the distribution of proceeds from the sale of a homestead.

Article 5. Declared Homesteads

§ 704.910. Definitions

704.910. As used in this article:

(a) “Declared homestead” means the dwelling described in a homestead declaration.

(b) “Declared homestead owner” includes both of the following:

(1) The owner of an interest in the declared homestead who is named as a declared homestead owner in a homestead declaration recorded pursuant to this article.

(2) The declarant named in a declaration of homestead recorded prior to July 1, 1983, pursuant to former Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code and the spouse of such declarant.

(c) “Dwelling” means any interest in real property (whether present or future, vested or contingent, legal or equitable) that is a “dwelling” as defined in Section 704.710, but does not include a leasehold estate with an

unexpired term of less than two years or the interest of the beneficiary of a trust.

(d) “Homestead declaration” includes both of the following:

(1) A homestead declaration recorded pursuant to this article.

(2) A declaration of homestead recorded prior to July 1, 1983, pursuant to former Title 5 (commencing with former Section 1237) of Part 4 of Division 2 of the Civil Code.

(e) “Spouse” means a “spouse” as defined in Section 704.710.

Legislative Committee Comment—Senate

Comment. Section 704.910 defines various terms used in this article in light of the purposes of the article.

A primary purpose of this article is to continue the rule under former law that a judgment lien does not attach to a declared homestead. [But see subdivision (c) of Section 704.950 which permits the attachment of the judgment lien to the surplus value of the homestead over liens and encumbrances and the homestead exemption.] See the Comment to Section 704.950. For this reason, the description in subdivision (c) of Section 704.910 of the interest in real property that may constitute a declared homestead is drawn from Section 697.340 (property to which judgment liens on real property attaches). This continues former law which restricted a declared homestead to a dwelling that was real property. See former Civil Code § 1237. By restricting the dwellings that may become declared homesteads to interests in real property, the definition of “dwelling” excludes a dwelling that is personal property. Thus, a boat or other waterborne vessel (although included within the definition set out in Section 704.710) is not a “dwelling” for the purposes of this article. Likewise, unless a mobilehome is so affixed to the land as to be treated as real property, the mobilehome (although included within the definition set out in Section 704.710) is not a “dwelling” for the purposes of this article. See Health and Safety Code § 18551.

The definitions in Section 704.910 are also designed to give the same effect to a declaration of homestead under former law as is given to a homestead declaration recorded pursuant to this article. “Homestead declaration” is defined in subdivision (d) to include a declaration of homestead recorded under former law.

“Declared homestead owner” is defined in subdivision (b) to include the declarant or the declarant’s spouse in the case of a declaration of homestead recorded under former law. However, the effect of a declaration of homestead recorded under former law is limited to the effect given the homestead declaration by this article. See Sections 704.950 (judgment lien does not attach to declared homestead [except to the extent provided in subdivisions (b) and (c) of Section 704.950]) and 704.960 (exemption for proceeds of voluntary sale of declared homestead; investment of proceeds in new dwelling and effect of selection of new dwelling as a declared homestead). Other effects of a declaration of homestead under former law are not continued. See Section 694.090. Accordingly, the restrictions imposed by former law on the conveyance or encumbrance of a homestead are not continued. See Section 704.940. A declaration of homestead recorded under former law can be abandoned using the procedure provided in Section 704.980, without regard to the restrictions on abandonment of the homestead under former law. Likewise, Section 704.990 (abandonment of declared homestead by operation of law) applies to a homestead created by recording a declaration of homestead under former law.

Under the revised declared homestead procedure provided by this article, a “declared homestead owner” as defined in subdivision (b) must not only be named as such in a homestead declaration but also must be the owner of an interest in the declared homestead. However, the declared homestead owner need not reside in the declared homestead if the spouse of the declared homestead owner resides in the declared homestead. See Sections 704.920 and 704.930 (a) (3). If a husband and wife are both owners of an interest in a homestead (as where the property is community property or where the spouses hold the property in joint tenancy or as tenants in common), they both may be named as declared homestead owners in the same homestead declaration. See Section 704.930 (a) (1). In addition, a married person who is not the owner of an interest in the dwelling may execute, acknowledge, and record a homestead declaration naming the other spouse who is an owner of an interest in the dwelling as the declared homestead owner (see subdivisions (a) (3) and (b) (2) of Section 704.930), but at least one of the spouses must reside in the dwelling as his or her principal dwelling (see Section 704.920 and subdivision (a) (3) of Section 740.930). Where unmarried persons hold interests in the same dwelling in which they both reside, they must record separate homestead declarations if each desires to have a declared homestead. Since former law did not provide for the naming of a “declared homestead owner” in a declaration of homestead, subdivision (b) gives the declarant under a declaration of homestead under former law and the spouse of such declarant the status of a “declared homestead owner” for the purposes of this article.

§ 704.920. Manner of selection of homestead

704.920. A dwelling in which an owner or spouse of an owner resides may be selected as a declared homestead pursuant to this article by recording a homestead declaration in the office of the county recorder of the county where the dwelling is located. From and after the time of recording, the dwelling is a declared homestead for the purposes of this article.

Legislative Committee Comment—Senate

Comment. Section 704.020 continues portions of former Civil Code Sections 1262, 1264, 1265, 1268, 1269, and 1303.

§ 704.930. Execution and contents of homestead declaration

704.930. (a) A homestead declaration recorded pursuant to this article shall contain all of the following:

(1) The name of the declared homestead owner. A husband and wife both may be named as declared homestead owners in the same homestead declaration if each owns an interest in the dwelling selected as the declared homestead.

(2) A description of the declared homestead.

(3) A statement that the declared homestead is the principal dwelling of the declared homestead owner or such person's spouse, and that the declared homestead owner or such person's spouse actually resides in the declared homestead on the date the homestead declaration is recorded.

(b) The homestead declaration shall be executed and acknowledged in the manner of an acknowledgment of a conveyance of real property by at least one of the following persons:

(1) The declared homestead owner.

(2) The spouse of the declared homestead owner.

(3) The guardian or conservator of the person or estate of either of the persons listed in paragraph (1) or (2). The guardian or conservator may execute, acknowledge, and record a homestead declaration without the need to obtain court authorization.

(4) A person acting under a power of attorney or otherwise authorized to act on behalf of a person listed in paragraph (1) or (2).

(c) The homestead declaration shall include a statement that the facts stated in the homestead declaration are known to be true as of the personal knowledge of the person executing and acknowledging the homestead declaration. If the homestead declaration is executed and acknowledged by a person listed in paragraph (3) or (4) of subdivision (b), it shall also contain a statement that the person has authority to so act on behalf of the declared homestead owner or the spouse of the declared homestead owner and the source of the person's authority.

Legislative Committee Comment—Senate

Comment. Section 704.930 continues portions of former Civil Code Sections 1262, 1263, 1266, 1267, 1300, and 1301. Section 704.930 also makes clear that a homestead declaration may be executed, acknowledged, and recorded by a guardian or conservator or other person authorized to act on behalf of the declared homestead owner or spouse of the declared homestead owner.

Section 704.930 applies only to a homestead declaration recorded pursuant to this article. The section does not affect a declaration of homestead recorded under former law.

§ 704.940. Right to convey or encumber not limited; evidentiary effect of homestead declaration

704.940. A homestead declaration does not restrict or limit any right to convey or encumber the declared homestead. A homestead declaration, when properly recorded, is prima facie evidence of the facts therein stated, and conclusive evidence thereof in favor of a purchaser or encumbrancer in good faith and for a valuable consideration.

Legislative Committee Comment—Senate

Comment. The first sentence of Section 704.940 makes clear that the recording of a homestead declaration does not restrict the right to convey or encumber the declared homestead. The provisions of former law (*e.g.*, former Civil Code §§ 1242, 1243, 1243.5) which gave a declaration of homestead that effect are not continued. See also Section 694.090. However, Section 704.930 has no effect on the other provisions of law that restrict the right to convey or encumber community property. See Civil Code §§ 5127, 5128. See also Civil Code § 5102. The second sentence of Section 704.940 is drawn from a portion of former Civil Code Section 1263.

§ 704.950. Attachment of judgment lien to homestead

704.950. (a) Except as provided in subdivisions (b) and (c), a judgment lien on real property created pursuant to Article 2 (commencing with Section 697.310) of Chapter 2 does not attach to a declared homestead if both of the following requirements are satisfied:

(1) A homestead declaration describing the declared homestead was recorded prior to the time the abstract or certified copy of the judgment was recorded to create the judgment lien.

(2) The homestead declaration names the judgment debtor or the spouse of the judgment debtor as a declared homestead owner.

(b) This section does not apply to a judgment lien created under Section 697.320 by recording a certified copy of a judgment for child or spousal support.

(c) A judgment lien attaches to a declared homestead in the amount of any surplus over the total of the following:

(1) All liens and encumbrances on the declared homestead at the time the abstract of judgment or certified copy of the judgment is recorded to create the judgment lien.

(2) The homestead exemption set forth in Section 704.730.

Legislative Committee Comment—Senate

Comment. Subdivision (a) of Section 704.950 continues former law. A judgment lien does not attach to property subject to a prior homestead declaration; likewise, such a judgment is not a lien on a surplus value therein over and above the amount of the homestead exemption, regardless of the value of the property. *Yager v. Yager*, 7 Cal.2d 213, 60 P.2d 422 (1936); *Boggs v. Dunn*, 160 Cal. 283, 116 P. 743 (1911); *Engelman v. Gordon*, 82 Cal. App.3d 174, 146 Cal. Rptr. 835 (1978). [This Comment was not revised to reflect the addition of subdivision (c) to Section 704.950 prior to the enactment of the section.] However, as under former law, a judgment creditor may reach the value of the equity in a declared homestead in excess of the homestead exemption by levy of execution on the property. See Section 704.970. See also former Civil Code §§ 1245-1255; *Swearingen v. Byrne*, 67 Cal. App.3d 380, 136 Cal. Rptr. 736 (1977). In the proceedings following levy of execution, the judgment creditor

may also raise the issues of whether the judgment debtor is entitled to a homestead exemption (as where neither the judgment debtor nor the spouse of the judgment debtor occupies the property as their principal dwelling) or the amount of the homestead exemption. See Sections 704.740-704.840, 704.970.

Subdivision (b) of Section 704.950 makes clear that a judgment lien on a judgment for child or spousal support may attach to a declared homestead.

§ 704.960. Proceeds exemption after voluntary sale; reinvestment of proceeds of voluntary or involuntary sale and effect of new declaration

704.960. (a) If a declared homestead is voluntarily sold, the proceeds of sale are exempt in the amount provided by Section 704.730 for a period of six months after the date of sale.

(b) If the proceeds of a declared homestead are invested in a new dwelling within six months after the date of a voluntary sale or within six months after proceeds of an execution sale or of insurance or other indemnification for damage or destruction are received, the new dwelling may be selected as a declared homestead by recording a homestead declaration within the applicable six-month period. In such case, the homestead declaration has the same effect as if it had been recorded at the time the prior homestead declaration was recorded.

Legislative Committee Comment—Senate

Comment. Subdivision (a) of Section 704.960 continues the substance of the last portion of former Civil Code Section 1265. As to the proceeds exemption where a dwelling is sold at an execution sale, see Section 704.720. See also Section 704.970. Subdivision (b) of Section 704.960 continues the substance of former Civil Code Section 1265a. See also *Houghton v. Lee*, 50 Cal. 101, 103 (1875) (proceeds from insurance on declared homestead exempt).

§ 704.970. Effect of article on rights after levy of execution

704.970. Whether or not a homestead declaration has been recorded:

(a) Nothing in this article affects the right of levy pursuant to a writ of execution.

(b) Any levy pursuant to a writ of execution on a dwelling (as defined in Section 704.710) and the sale pursuant thereto shall be made in compliance with Article 4 (commencing with Section 704.710) and the judgment debtor and the judgment creditor shall have all the rights and benefits provided by that article.

Legislative Committee Comment—Senate

Comment. Section 704.970 makes clear that the homestead declaration does not affect the right of a judgment creditor to levy on the declared homestead pursuant to a writ of execution. See the Comment to Section 704.950. Nor does the failure of a judgment debtor to record a homestead declaration affect the judgment debtor's rights under the homestead exemption when a dwelling is levied upon pursuant to a writ of execution. See Section 704.740. Section 704.970 continues the substance of former Civil Code Section 1259.2.

§ 704.980. Declaration of abandonment

704.980. (a) A declared homestead may be abandoned by a declaration of abandonment under this section, whether the homestead declaration was recorded pursuant to this article or pursuant to former Title 5 (commencing with former Section 1237) of Part 4 of Division 2 of the Civil Code.

(b) A declaration of abandonment shall be executed and acknowledged in the manner of an acknowledgment of a conveyance of real property. It shall be executed and acknowledged by a declared homestead owner or by a person authorized to act on behalf of a declared homestead owner. If it is executed and acknowledged by a person authorized to act on behalf of a declared homestead owner, the declaration shall contain a statement that the person has authority to act on behalf of the declared homestead owner and the source of the person's authority.

(c) The declaration of abandonment does not affect the declared homestead of any person other than the declared homestead owner named in the declaration of abandonment.

Legislative Committee Comment—Senate

Comment. Section 704.980 supersedes provisions of the Civil Code which restricted the right to record a declaration of abandonment of a declared homestead. See, *e.g.*, former Civil Code

§§ 1243, 1243.5, and 1244. Under Section 704.980, a declared homestead owner or a person authorized to act on behalf of the declared homestead owner may execute, acknowledge, and record a declaration of abandonment as to the declared homestead of that declared homestead owner. Such abandonment does not affect the rights of any other person. Accordingly, where married persons have their marriage dissolved and one continues to reside in the declared homestead, the other may abandon the declared homestead and establish a new declared homestead. In such case, the abandonment does not affect the right of the former spouse who continues to reside in the declared homestead to retain the dwelling as his or her declared homestead if that former spouse owns an interest in the dwelling.

§ 704.990. Abandonment of homestead by recording homestead declaration for different property

704.990. (a) A declared homestead is abandoned by operation of law as to a declared homestead owner if the declared homestead owner or a person authorized to act on behalf of the declared homestead owner executes, acknowledges, and records a new homestead declaration for the declared homestead owner on different property. An abandonment under this subdivision does not affect the declared homestead of any person other than the declared homestead owner named in the new homestead declaration.

(b) Notwithstanding subdivision (a), if a homestead declaration is recorded which includes property described in a previously recorded homestead declaration, to the extent that the prior homestead declaration is still valid, the new homestead declaration shall not be considered an abandonment of the prior declared homestead.

Legislative Committee Comment—Senate

Comment. Subdivision (a) of Section 704.990 is new and is designed to preclude a person from having two declared homesteads on different property. Subdivision (b) continues the substance of former Civil Code Section 1261.1.

CHAPTER 5. WAGE GARNISHMENT

Article 1. Short Title; Definitions

§ 706.010. Short title

706.010. This chapter shall be known and may be cited as the “Wage Garnishment Law.”

Comment. Section 706.010 substitutes the more descriptive term “Wage Garnishment Law” for the term “Employees’ Earnings Protection Law” used in former Section 723.010.

§ 706.011. Definitions

706.011. As used in this chapter:

(a) “Earnings” means compensation payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise.

(b) “Employee” means a public officer and any individual who performs services subject to the right of the employer to control both what shall be done and how it shall be done.

(c) “Employer” means a person for whom an individual performs services as an employee.

(d) “Judgment creditor,” as applied to the state, means the specific state agency seeking to collect a judgment or tax liability.

(e) “Judgment debtor” includes a person from whom the state is seeking to collect a tax liability under Article 4 (commencing with Section 706.070), whether or not a judgment has been obtained on such tax liability.

(f) “Person” includes an individual, a corporation, a partnership or other unincorporated association, and a public entity.

(g) “Wage assignment for support” means an order, made pursuant to Section 4701 or 4801.6 of the Civil Code or Section 3088 of the Probate Code, which requires an employer to withhold earnings for support.

Legislative Committee Comment—Senate

Comment. Section 706.011 continues former Section 723.011 and states definitions used in applying this chapter. Subdivision (g) is a new provision that has been added to permit use of the term “wage assignment for support” in various sections of this chapter. The

definition reflects the enactment of Civil Code Section 4801.6 in 1980 (wage assignment for spousal support) and Probate Code Section 3088 in 1981 (wage assignment for support of conservatee).

This chapter deals only with the garnishment or withholding of earnings for services rendered in an employer-employee relationship. See Section 706.020. Subdivisions (b) and (c) are based on the common law requirements for such relationship. It should be noted that an employee may be given considerable discretion and still be an employee as long as his employer has the legal right to control both method and result. However, no attempt is made here to incorporate specific case law arising out of situations involving problems and issues unrelated to the purposes and procedures relevant in applying this chapter. "Employee" includes both private and public employees. See subdivisions (b), (c) and (f). Nothing in this chapter determines whether and to what extent the earnings of a nondebtor spouse may be garnished to satisfy an obligation for which community property is liable. See Section 695.020 (liability of community property).

"Earnings" embraces all remuneration "whether denominated as wages, salary, commission, bonus, or otherwise." The infinite variety of forms which such compensation can take precludes a more precise statutory definition. See also Section 704.070 (exemption for paid earnings).

Unlike the definition of "earnings" used in Section 1672 (a) of Title III of the federal Consumer Credit Protection Act of 1968, the term used here does not include "periodic payments pursuant to a pension or retirement program." Exemptions applicable to such payments are provided by Sections 704.110 and 704.115. See also Sections 704.070, 704.113, 704.120, 704.140, and 704.150.

Article 2. General Provisions

§ 706.020. Withholding earnings; use of provisions of chapter

706.020. Except for a wage assignment for support, the earnings of an employee shall not be required to be withheld by an employer for payment of a debt by means of any judicial procedure other than pursuant to this chapter.

Comment. Section 706.020 makes clear that, with the exception of wage assignments for support (defined in subdivision (g) of Section 706.011), the Wage Garnishment Law is the exclusive judicial method of compelling an employer to withhold earnings. The section continues former Section 723.020. Attachment of earnings before judgment is abolished by Section 487.020(c). For provisions relating to voluntary wage assignments, see Labor Code Section 300. This chapter has no

effect on judgment collection procedures that do not involve the withholding of an employee's earnings. However, where an employee's earnings are sought to be garnished, the creditor must comply with the provisions of this chapter. This rule applies to public entities as well as private persons. This chapter, for example, imposes limitations on the state's ability to garnish wages for tax delinquencies pursuant to its warrant and notice procedures. See Article 4 (commencing with Section 706.070).

The Wage Garnishment Law has no effect on matters that are preempted by federal law, such as federal bankruptcy proceedings and federal tax collection procedures. *E.g.*, I.R.C. § 6334(c). Nor does this chapter apply to deductions which an employer is authorized by statute to make for such items as insurance premiums and payments to health, welfare, or pension plans. See, *e.g.*, Gov't Code §§ 1156-1158, Labor Code §§ 224, 300. Finally, this chapter does not affect the procedures for the examination of a debtor of the judgment debtor provided in Article 2 (commencing with Section 708.110) of Chapter 6. See also Comment to Section 706.154.

§ 706.021. Levy of execution; service of earnings withholding order

706.021. Notwithstanding any other provision of this title, a levy of execution upon the earnings of an employee shall be made by service of an earnings withholding order upon the employer in accordance with this chapter.

Comment. Section 706.021 continues former Section 723.021 except that a reference to "this title" is substituted for the reference to former Section 688 in the introductory clause. Section 706.021 makes clear that a levy of execution on earnings is made as provided in this chapter rather than under Chapter 3 (commencing with Section 699.010).

§ 706.022. Employer's duty to withhold; immunity from liability

706.022. (a) As used in this section, "withholding period" means the period which commences on the 10th day after service of an earnings withholding order upon the employer and which continues until the earliest of the following dates:

- (1) The 100th day after the order was served.

(2) The date the employer has withheld the full amount specified in the order.

(3) The date of termination specified in a court order served on the employer.

(4) The date of termination specified in a notice of termination served on the employer by the levying officer.

(b) Except as otherwise provided by statute, an employer shall withhold the amounts required by an earnings withholding order from all earnings of the employee payable for any pay period of such employee which ends during the withholding period.

(c) An employer is not liable for any amounts withheld and paid over to the levying officer pursuant to an earnings withholding order prior to service upon the employer pursuant to paragraph (3) or (4) of subdivision (a).

Legislative Committee Comment—Senate

Comment. Section 706.022 continues former Section 723.022 and states the basic rules governing the employer's duty to withhold pursuant to an earnings withholding order.

Subdivision (b) requires the employer to withhold from all earnings of an employee payable for any pay period of such employee which *ends* during the "withholding period." The "withholding period" is described in subdivision (a). It should be noted that *only* earnings for a pay period ending during the withholding period are subject to levy. Earnings for prior periods, even though still in the possession of the employer, are not subject to the order. An employer may not, however, defer or accelerate any payment of earnings to an employee with the intent to defeat or diminish the satisfaction of a judgment pursuant to this chapter. See Section 706.153.

Under subdivision (a), the withholding period generally commences 10 calendar days (not working or business days) after service of an earnings withholding order is completed. See Section 706.101 (when service completed). For example, if an order is served on Friday, the withholding period would commence on the second following Monday. See Code Civ. Proc. § 12. The 10-day delay affords the employer time to process the order within his organization, *i.e.*, deliver the order to the employer's bookkeeper, make bookkeeping adjustments, and so on. However, the 10-day delay does not affect the date the withholding period terminates under subdivision (a) (1).

The introductory clause to subdivision (b) recognizes certain exceptions to the general rule stated in subdivision (b). An employer is not generally required to withhold pursuant to two orders at the same time; thus, a subsequent order will not be given effect. See Section 706.023 (priority of orders) and the Comment thereto.

The withholding period does not end until the first of the events described in paragraphs (1) through (4) of subdivision (a) occurs; thus, the employer has a *continuing* duty to withhold.

Paragraph (1) provides a general expiration date 100 days after the date of service; thus, the employer will usually be required to withhold for 90 days.

Paragraph (2) requires the employer to stop withholding when he has withheld the full amount specified in the order.

Paragraph (3) reflects the fact that the court may order the termination of the earnings withholding order. See Section 706.105(g). Of course, in some situations, the court will only modify the prior order, and the employer then must comply with the order as modified for the remainder of the withholding period.

Paragraph (4) requires the employer to stop withholding when he is served with a notice of termination. See Section 706.101 (manner of service). A notice of termination is served where the levying officer is notified of the satisfaction of the judgment or where the judgment debtor has claimed an exemption for the entire amount of earnings but the judgment creditor has failed within the time allowed to file with the levying officer a notice of opposition to claim of exemption and a notice of the hearing on the exemption. See Sections 706.027 (satisfaction of judgment) and 706.105(f) (grounds for termination of withholding order by levying officer). The judgment creditor has an affirmative duty to inform the levying officer of the satisfaction of the judgment. See Section 706.027. Service of an order for the collection of state taxes suspends the duty of an employer to withhold pursuant to a prior order (other than an order for support). See Section 706.077 (tax orders). However, this is only a suspension. After the tax order is satisfied, if the withholding period for the prior order has not ended, the employer must again withhold pursuant to the prior order. Similarly, the duty to withhold is not terminated by the layoff, discharge, or suspension of an employee and, if the employee is rehired or returns to work during the withholding period, the employer must resume withholding pursuant to the order. Finally, the termination of certain types of orders—orders for the collection of state taxes and support orders—are governed by separate rules. See Sections 706.030 (support orders), 706.078 (tax orders).

Sometimes an order will be terminated without the employer's prior knowledge. Subdivision (c) makes clear that an employer will not be subject to liability for having withheld and paid over amounts pursuant to an order prior to service of a written notice of termination of the order. In such a case, the employee must look to the judgment creditor for the recovery of amounts previously paid to the judgment creditor. See Section 706.154 (employer entitled to rely on documents actually served). See also Section 706.105(i) (recovery from levying officer or judgment creditor of amounts received after order terminated).

An earnings withholding order may also be affected by federal bankruptcy proceedings. See the Comment to Section 706.020.

§ 706.023. Priority of earnings withholding order

706.023. Except as otherwise provided in this chapter:

(a) An employer shall comply with the first earnings withholding order served upon the employer.

(b) If the employer is served with two or more earnings withholding orders on the same day, the employer shall comply with the order issued pursuant to the judgment first entered. If two or more orders served on the same day are based on judgments entered upon the same day, the employer shall comply with whichever one of such orders the employer selects.

(c) If an earnings withholding order is served while an employer is required to comply with another earnings withholding order with respect to the earnings of the same employee, the subsequent order is ineffective and the employer shall not withhold earnings pursuant to the subsequent order.

Legislative Committee Comment—Senate

Comment. Section 706.023 continues former Section 723.023 and establishes the general rules governing priority of earnings withholding orders. Generally speaking, the first order served is given priority. Occasionally, two or more earnings withholding orders will be served on the same day. In this situation, the employer must comply with the earnings withholding order which was issued pursuant to the judgment first entered. The date of entry of judgment will be indicated on the face of the order. See Section 706.125. In rare instances, earnings withholding orders served the same day will also be based on judgments entered the same day. In this situation, the employer has complete discretion to choose the order with which he will comply. He must, of course, comply with one of these orders. For exceptions to these basic priority rules, see Sections 706.030 (support orders) and 706.077 (state taxes) and the Comments thereto. Unless the subsequent earnings withholding order is for state taxes or for support, an earnings withholding order is ineffective if the employer receives the order while he is required to comply with another earnings withholding order. In such a case, the employer does *not* hold such an order and give it effect when the prior order expires but returns it. See Section 706.104. However, the levying officer may later serve the same earnings withholding order if the time for levy on property under the writ has not expired. See Sections 699.530(b) and 706.102.

It should be noted that, in case of a withholding order for taxes, the operation of a prior earnings withholding order may be suspended, but the duty to withhold is not terminated nor does the 100-day period provided by Section 706.022(a) (1) cease to run on the prior order. See Sections 706.022(b) (duty to withhold) and 706.077 (tax order suspends operation of prior order). See also the Comment to Section 706.022. In such a case, as well as in cases where the

subsequent earnings withholding order is not given effect, the employer is required to advise the levying officer who has served the order that is suspended or not given effect of the reason for the employer's action. See Sections 706.077 and 706.104.

An employer is generally entitled to rely upon what is served upon him. See Section 706.154 and the Comment thereto.

§ 706.025. **Payments to levying officer by employer**

706.025. (a) Except as provided in subdivision (b), the amount required to be withheld pursuant to an earnings withholding order shall be paid monthly to the levying officer not later than the 15th day of each month. The initial monthly payment shall include all amounts required to be withheld from the earnings of the employee during the preceding calendar month up to the close of the employee's pay period ending closest to the last day of that month, and thereafter each monthly payment shall include amounts withheld from the employee's earnings for services rendered in the interim up to the close of the employee's pay period ending closest to the last day of the preceding calendar month.

(b) The employer may elect to pay the amounts withheld to the levying officer more frequently than monthly. If the employer so elects, payment of the amount withheld from the employee's earnings for each pay period shall be made not later than 10 days after the close of the pay period.

Comment. Section 706.025 specifies when the amounts withheld pursuant to an earnings withholding order must be paid over to the levying officer. As to payment to the employee if an exemption claim is allowed, see Section 706.105(i). Regardless whether payment is required, the employer is required to send an employer's return to the levying officer. See Sections 706.104 and 706.126. Section 706.025 continues former Section 723.025.

§ 706.026. **Receipt and account by levying officer; payments to entitled person**

706.026. The levying officer shall receive and account for all amounts received pursuant to Section 706.025 and shall pay the amounts so received over to the person entitled thereto at least once every 30 days.

Comment. Section 706.026 continues subdivision (a) of former Section 723.026. The remainder of former Section 723.026 (which in effect extended the time for return of the writ of execution) has not been continued because this portion is no longer necessary in view of Section 699.560 which extends generally the time for return of writs of execution.

§ 706.027. Satisfaction of judgment prior to termination of order; notices

706.027. If the judgment pursuant to which the earnings withholding order is issued is satisfied before the order otherwise terminates pursuant to Section 706.022, the judgment creditor shall promptly notify the levying officer who shall promptly terminate the order by serving a notice of termination on the employer.

Comment. Section 706.027 continues former Section 723.027 and requires the judgment creditor to give notice of satisfaction of the judgment to the levying officer if the earnings withholding order has not yet terminated. See Section 706.022 (withholding period). In some cases, the employer will be aware of the satisfaction by virtue of the employer's having withheld the amount necessary to satisfy the judgment. See Section 706.022(a)(2). In this case, Section 706.027 does not apply. However, the judgment may be satisfied by additional payments from the debtor or through other debt collection procedures instituted by the judgment creditor. If this is the case, Section 706.027 applies, and the judgment creditor has the duty to notify the levying officer promptly of the satisfaction so that the levying officer may serve a notice of termination on the employer. Service of the notice of termination is to be made on the person, and at the address, indicated in the employer's return. See Sections 706.101(c) and 706.126(b)(6). As to the general duty of a creditor to furnish a debtor a satisfaction of judgment, see Chapter 1 (commencing with Section 724.010) of Division 5. Failure to perform the duty imposed by this section may make the judgment creditor liable in an action for abuse of process. See *White Lighting Co. v. Wolfson*, 68 Cal.2d 336, 347-51, 438 P.2d 345, 351-54, 66 Cal. Rptr. 697, 703-06 (1968).

§ 706.028. Subsequent earnings withholding order for costs and interest

706.028. Subject to Section 706.107, after the amount stated as owing in the earnings withholding order is paid,

the judgment creditor may apply for issuance of another earnings withholding order covering costs and interest that may have accrued since application for the prior order.

Comment. Section 706.028 continues former Section 723.028 and makes clear that a judgment creditor must apply for another earnings withholding order to recover costs and interest that accrue following the application for a prior order. To illustrate: A creditor obtains a judgment which his debtor does not pay. The creditor applies for and secures an earnings withholding order directed to the debtor's employer. The application and order require payment of only those amounts owing at the time of the application for this order (including the levying officer's statutory fee for service of the order). See Sections 706.121 (application for issuance of earnings withholding order) and 706.125 (content of earnings withholding order). After the application for this order, further costs may, and interest on the judgment will, accrue. If the creditor wishes to recover these amounts by wage garnishment, he must apply for another earnings withholding order, following the same procedure as before. This later application and order are subject to the same general requirements as any other withholding order. Of course, the earnings withholding order for costs and interest may only be issued if a writ of execution is outstanding pursuant to which a levy may be made. See Section 706.102. The recovery of costs is limited by Sections 685.040-685.090. The new order is not entitled to any priority over the orders of other creditors, and the creditor is required to comply with the waiting period (prescribed by Section 706.107) before serving the new order.

Service of an earnings withholding order for costs and interest, like service of a second earnings withholding order to collect the principal amount due on the judgment, is a "garnishment for the payment of one judgment" under Labor Code Section 2929(b) which forbids the discharge of an employee for wage garnishment on one judgment.

§ 706.029. Lien created by service of earnings withholding order

706.029. Service of an earnings withholding order creates a lien upon the earnings of the judgment debtor that are required to be withheld pursuant to the order and upon all property of the employer subject to the

enforcement of a money judgment in the amount required to be withheld pursuant to such order. The lien continues for a period of one year from the date the earnings of the judgment debtor become payable unless the amount required to be withheld pursuant to the order is paid as required by law.

Legislative Committee Comment—Assembly

Comment. Section 706.029 continues the substance of former Section 723.029 and makes clear that the lien covers all property of the employer subject to the enforcement of a money judgment. The lien may give the levying creditor priority over competing claims by third parties (*e.g.*, in bankruptcy) where the priority questions are not already regulated by other provisions of this chapter. See Section 706.023 and the Comment thereto.

The rule of Section 706.029 that the lien continues for one year from the date the earnings become payable prevails over the general rule governing the duration of a lien created by levy under a writ of execution. See Section 697.710. Although the lien is limited to one year, it will not expire if, before the end of the one-year period, the levying creditor brings suit against the employer for the payment of the sums the creditor claims should have been paid under the wage garnishment. See *Boyle v. Hawkins*, 71 Cal.2d 229, 455 P.2d 97, 78 Cal. Rptr. 161 (1969).

§ 706.030. Withholding order for support

706.030. (a) A “withholding order for support” is an earnings withholding order issued on a writ of execution to collect delinquent amounts payable under a judgment for the support of a child, or spouse or former spouse, of the judgment debtor. A withholding order for support shall be denoted as such on its face.

(b) Notwithstanding any other provision of this chapter:

(1) An employer shall continue to withhold pursuant to a withholding order for support until the earliest of the dates specified in paragraph (2), (3), or (4) of subdivision (a) of Section 706.022, except that a withholding order for support shall automatically terminate one year after the employment of the employee by the employer terminates.

(2) A withholding order for support has priority over any other earnings withholding order. An employer upon

whom a withholding order for support is served shall withhold and pay over earnings of the employee pursuant to such order notwithstanding the requirements of another earnings withholding order.

(3) Subject to paragraph (2) and to Article 3 (commencing with Section 706.050), an employer shall withhold earnings pursuant to both a withholding order for support and another earnings withholding order simultaneously.

Comment. Section 706.030 continues former Section 723.030 and provides special rules for an earnings withholding order to enforce a judgment for delinquent support payments for a child or spouse or former spouse of the judgment debtor. An earnings withholding order for support is given a different effect than other withholding orders: It is effective until the employer has withheld the full amount specified in the order or he is served with a notice of termination, in which case the date of termination will be specified in the notice. See subdivision (b)(1). Thus, the withholding order for support does not terminate 100 days after service (it may, of course, be modified). The withholding order for support is subject to special exemption rules (see Section 706.052). Even when in effect, it does not necessarily preclude withholding on either a prior or subsequent earnings withholding order. If not earlier terminated, the withholding order for support automatically terminates one year after the employment of the employee terminates. Thus, for example, if the employee returns to work for the same employer within one year from the date his employment terminated, the employer must withhold pursuant to the withholding order for support. On the other hand, if the employee does not return to work until more than one year from the date his employment terminated, the order expires at the end of the year, and nothing is withheld pursuant to the order when the employee returns to work.

The earnings withholding order for support is given priority over any other earnings withholding order. *But see* Section 706.031 (wage assignment for support given priority). However, a prior earnings withholding order remains in effect, and a judgment creditor may still obtain an earnings withholding order even where there is already in effect a prior earnings withholding order for support. Thus, where there are two earnings withholding orders in effect—one for support and one for another obligation—the amount withheld for support is

deducted from the employee's earnings first. The amount, if any, that may be withheld pursuant to the other earnings withholding order is determined by subtracting the amount withheld pursuant to the withholding order for support from the amount that otherwise could be withheld pursuant to the other earnings withholding order. See Sections 706.077, 706.050, and 706.051 and the Comments thereto.

§ 706.031. Wage assignment for support

706.031. (a) Nothing in this chapter affects a wage assignment for support.

(b) A wage assignment for support shall be given priority over any earnings withholding order. An employer upon whom a wage assignment for support is served shall withhold and pay over the earnings of the employee pursuant to the wage assignment for support notwithstanding the requirements of any earnings withholding order. When an employer is required to cease withholding earnings pursuant to an earnings withholding order, the employer shall notify the levying officer who served the earnings withholding order that a supervening wage assignment for support is in effect.

(c) Subject to subdivisions (b), (d), and (e), an employer shall withhold earnings of an employee pursuant to both a wage assignment for support and an earnings withholding order.

(d) The employer shall withhold pursuant to an earnings withholding order only to the extent that the sum of the amount withheld pursuant to any wage assignment for support and the amount withheld pursuant to the earnings withholding order does not exceed the amount that may be withheld under Article 3 (commencing with Section 706.050).

(e) The employer shall withhold pursuant to an earnings withholding order for taxes only to the extent that the sum of the amount withheld pursuant to any wage assignment for support and the amount withheld pursuant to the earnings withholding order for taxes does not exceed the amount that may be withheld under Article 4 (commencing with Section 706.070).

Comment. Section 706.031 continues former Section 723.031 and states the effect of a wage assignment for support (defined in subdivision (g) of Section 706.011) on an earnings withholding order.

Subdivision (a) makes clear that nothing in this chapter affects the wage assignment for support, and subdivision (b) makes clear that the wage assignment has priority over any earnings withholding order, including a withholding order for support under Section 706.030. Under subdivision (b), the employer is required to notify the levying officer who earlier served an earnings withholding order if that order is completely superseded by the wage assignment. It should be noted that "levying officer" includes the state agency where a withholding order for taxes is superseded. See Section 706.073.

Subdivisions (b) and (d) of Section 706.031 make clear that, where any wage assignment for support is in effect, the amount withheld from the debtor's earnings pursuant to any such wage assignment is deducted from the amount that otherwise would be withheld under Section 706.050 on an earnings withholding order to enforce an ordinary money judgment or that otherwise would be withheld where a portion of the debtor's earnings have been determined to be exempt under Section 706.051. Suppose, for example, that a wage assignment for support is in effect which requires that \$40 per week be withheld. Assume that Section 706.050 limits the amount that may be withheld to \$56. To determine the maximum amount that may be withheld pursuant to the earnings withholding order (absent any exemption allowed under Section 706.051), the \$40 withheld pursuant to the wage assignment for support is subtracted from the \$56, leaving \$16 as the maximum amount that may be withheld pursuant to the earnings withholding order. For a special rule applicable when the earnings withholding order is on a judgment for delinquent amounts payable for child or spousal support, see Sections 706.030 and 706.052. The rule stated in subdivision (d) of Section 706.031 is required to avoid conflict with the federal Consumer Credit Protection Act. That act requires that the amount withheld pursuant to any wage assignment for support be included in determining whether any amount may be withheld pursuant to an earnings withholding order on an ordinary judgment. See subdivision (c) of Section 302 of the act, 15 U.S.C. § 1672(c) (1970) ("garnishment" means "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt") and [1969-1973 Transfer Binder] Lab. L. Rep. (CCH) para. 30,813.

Under subdivision (e), the amount that could be withheld pursuant to a withholding order for taxes would be computed in the same manner as for an ordinary earnings withholding order pursuant to Section 706.050 unless the withholding order for taxes is obtained under Section 706.076.

Article 3. Restrictions on Earnings Withholding

§ 706.050. Amount of earnings exempt

706.050. Except as otherwise provided in this chapter, the amount of earnings of a judgment debtor exempt from the levy of an earnings withholding order shall be that amount that may not be withheld from the judgment debtor's earnings under federal law in Section 1673(a) of Title 15 of the United States Code.

Legislative Committee Comment—Assembly

Comment. Section 706.050 continues the substance of former Section 723.050. The introductory clause is added to reflect the fact that a different amount may in some cases be withheld. This addition is not a substantive change. Section 706.050 provides the standard exemption applicable to all earnings withholding orders other than earnings withholding orders on writs issued for the collection of delinquent amounts payable on a judgment for child or spousal support (Sections 706.030 and 706.052) or certain withholding orders for taxes (Section 706.076). See also Sections 706.031 (wage assignments for support), 706.051 (exemption obtained by special hardship showing), 706.074(b) (agency issued withholding order for taxes in lesser amount), 706.075(c) (exemption obtained by special hardship showing to agency which issued withholding order for taxes), 706.105(f) (modification or termination of earnings withholding order where exemption claims are unopposed).

Where a wage assignment for support (defined in subdivision (g) of Section 706.011) is in effect, the amount withheld from the debtor's earnings pursuant to such wage assignment is deducted from the amount that otherwise would be withheld pursuant to Section 706.050 on an earnings withholding order on an ordinary money judgment. See Section 706.031 and Comment thereto. The amount that may be withheld pursuant to an administratively issued earnings withholding order for taxes when any wage assignment for support is in effect is computed in the same manner. See Section 706.031 and the Comment thereto.

The amount of earnings that are paid to the employee whose earnings are garnished remains exempt as provided in Section 704.070.

§ 706.051. Earnings necessary for support of judgment debtor or his family

706.051. (a) For the purposes of this section, “family of the judgment debtor” includes the spouse or former spouse of the judgment debtor.

(b) Except as provided in subdivision (c), the portion of the judgment debtor’s earnings which the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor’s family supported in whole or in part by the judgment debtor is exempt from levy under this chapter.

(c) The exemption provided in subdivision (b) is not available if any of the following exceptions applies:

(1) The debt was incurred for the common necessities of life furnished to the judgment debtor or the family of the judgment debtor.

(2) The debt was incurred for personal services rendered by an employee or former employee of the judgment debtor.

(3) The order is a withholding order for support under Section 706.030.

(4) The order is one governed by Article 4 (commencing with Section 706.070) (state tax order).

Legislative Committee Comment—Assembly

Comment. Section 706.051 continues former Section 723.051. Subdivision (a) of Section 706.051 contains a new definition that is needed to simplify the drafting of the remainder of the section.

Subdivision (b) continues without substantive change the provision of former Section 723.051 that stated the hardship exemption. Exceptions to the hardship exemption—cases where the exemption is not allowed even though the judgment debtor can show the necessity for exempting additional earnings—are set out in subdivision (c).

Paragraph (1) of subdivision (c) continues the exception for “common necessities of life” provided by former Section 723.051.

Paragraphs (2)-(4) of subdivision (c) continue the substance of portions of former Section 723.051. For a special provision applicable where the earnings withholding order is for the collection of delinquent support payments, see Section 706.052. See also Sections 706.075(c) (administrative hearing for possible relief from hardship in connection with a withholding order for taxes), 706.076(e) (amount of court issued withholding order for taxes).

§ 706.052. Earnings withholding order for support

706.052. (a) Except as provided in subdivision (b), one-half of the disposable earnings (as defined by Section 1672 of Title 15 of the United States Code) of the judgment debtor, plus any amount withheld from the judgment debtor's earnings pursuant to any wage assignment for support, is exempt from levy under this chapter where the earnings withholding order is a withholding order for support under Section 706.030.

(b) Except as provided in subdivision (c), upon motion of any interested party, the court shall make an equitable division of the judgment debtor's earnings that takes into account the needs of all the persons the judgment debtor is required to support and shall effectuate such division by an order determining the amount to be withheld from the judgment debtor's earnings pursuant to the withholding order for support.

(c) An order made under subdivision (b) may not authorize the withholding of an amount in excess of the amount that may be withheld for support under federal law under Section 1673 of Title 15 of the United States Code.

Comment. Section 706.052 continues former Section 723.052 except that subdivision (c) is added to reflect that the court's authority under subdivision (b) is limited by the maximum amounts that may be withheld under federal law. See 15 U.S.C. § 1673(b)(2) (Supp. 1979).

Subdivision (a) of Section 706.052 prescribes the exemption applicable to a wage garnishment for the collection of delinquent child or spousal support payments except in cases where the court has made an equitable division pursuant to subdivision (b). The judgment debtor's earnings that are subject to the 50 percent exemption under subdivision (a) are "disposable

earnings” as defined by the federal Consumer Credit Protection Act, 15 U.S.C. § 1672 (1976). Unlike federal law, however, subdivision (a) protects the same amount of earnings regardless of whether the judgment debtor is supporting a present and a former spouse or is more than 12 weeks delinquent. Federal law permits garnishment of 50 percent of the employee’s earnings if the employee is supporting a spouse or dependent other than the person who caused the garnishment and 60 percent if the employee is not supporting such additional persons; these percentages are increased to 55 percent and 65 percent, respectively, if the support payments are more than 12 weeks delinquent. See 15 U.S.C. § 1673(b) (2) (Supp. 1979).

Subdivision (a) also makes clear that, in applying the 50 percent exemption, the amount withheld from the earnings of the judgment debtor pursuant to any wage assignment for support (defined in subdivision (g) of Section 706.011) is included in computing the 50 percent of the judgment debtor’s earnings that may be withheld. For example, if 30 percent of the judgment debtor’s earnings are withheld pursuant to a wage assignment for support, an additional 20 percent may be withheld pursuant to the earnings withholding order for the collection of delinquent amounts payable for child or spousal support.

Subdivision (b) makes the 50 percent standard provided by subdivision (a) subject to the power of the court to make an order that more or less of the judgment debtor’s earnings be withheld where the earnings withholding order is issued to collect delinquent child or spousal support payments. Subdivision (c) makes clear that the court may not order the withholding of an amount in excess of that permitted by federal law. This maximum amount varies depending upon whether the judgment debtor is supporting more than one person or is more than 12 weeks delinquent. The authority of the court to make an equitable division of the judgment debtor’s earnings between, for example, the debtor and a former spouse, or between a former spouse and a present family, is based on decisions under a former statute. See, *e.g.*, *Rankins v. Rankins*, 52 Cal. App.2d 231, 126 P.2d 125 (1942).

Under this section, an employer who receives an earnings withholding order for support will know that 50 percent of disposable earnings is to be withheld unless the employer is served with a court order requiring a greater or lesser amount to be withheld.

For rules relating to the priority to be given a withholding order for support, see Section 706.030.

Article 4. Earnings Withholding Order for Taxes

§ 706.070. State and state tax liability defined

706.070. As used in this article:

(a) “State” means the State of California and includes any officer, department, board, or agency thereof.

(b) “State tax liability” means an amount for which the state has a state tax lien as defined in Section 7162 of the Government Code excluding a state tax lien created pursuant to the Fish and Game Code.

Comment. Section 706.070 provides definitions for terms used in this article.

Subdivision (a) continues subdivision (a) of former Section 723.070. “State” means the state or any agency thereof. Where the term “state” is used in this article, it refers to the particular state agency that administers the particular tax law under which recovery of the delinquent tax is sought. See Section 706.011 (d).

Subdivision (b) supersedes subdivision (b) of former Section 723.070 and substitutes a general reference to the amount for which the state has a state tax lien for the listing of the sections of various tax laws in former Section 723.070(b). Subdivision (b) continues former law by permitting an earnings withholding order for taxes in the case of sales and use taxes (Rev. & Tax. Code § 6757), vehicle fuel license taxes (Rev. & Tax. Code § 7872), use fuel taxes (Rev. & Tax. Code § 8996), gift taxes (Rev. & Tax. Code § 16063), personal income taxes (Rev. & Tax. Code § 18881), bank and corporation taxes (Rev. & Tax. Code § 26161), cigarette taxes (Rev. & Tax. Code § 30322), alcoholic beverage taxes (Rev. & Tax. Code § 32363), and unemployment compensation contributions (Unemp. Ins. Code § 1703). Subdivision (b) adds new authority for an earnings withholding order for taxes in the case of the timber yield tax (Rev. & Tax. Code § 38532), oil and gas conservation charges (Pub. Res. Code § 3423) and geothermal resources charges (Pub. Res. Code § 3772). The former provision permitting an earnings withholding order for taxes in the case of private car taxes under Section 11451 of the Revenue and Taxation Code is not continued.

§ 706.071. Collection of state tax liability; limitations

706.071. This chapter does not limit the state's right to collect a state tax liability except that (a) no levy upon earnings of an employee held by an employer is effective unless such levy is made in accordance with the provisions of this chapter and (b) other methods of collection may not be used to require an employer to withhold earnings of an employee in payment of a state tax liability.

Comment. Section 706.071 continues the substance of former Section 723.071. The substitution of "other methods of collection" for "the methods of collection referred to in subdivision (b) of Section 723.070" is not a substantive change; this change merely conforms to the change made by Section 706.070 in the language found in former Section 723.070.

Section 706.071 makes clear that the levy procedure for withholding *earnings* of an employee for the collection of state tax liability provided in the Wage Garnishment Law is exclusive. The authorization, for example, to direct orders to third persons who owe the taxpayer money found in Section 18817 (personal income tax) and Section 26132 (bank and corporation taxes) of the Revenue and Taxation Code is limited by Section 706.071. This article deals, however, only with levy on earnings to collect certain state taxes. The collection of federal taxes is accomplished pursuant to federal law and cannot be limited by state law. See I.R.C. § 6334. As to other taxes not within the scope of this article, the tax obligation must be reduced to judgment, and the taxing authority may then obtain an earnings withholding order like any other creditor; such order is treated the same as any other earnings withholding order, and this article does not apply.

§ 706.072. Withholding order for taxes; issuance; conditions

706.072. (a) A "withholding order for taxes" is an earnings withholding order issued pursuant to this article to collect a state tax liability and shall be denoted as a withholding order for taxes on its face.

(b) A withholding order for taxes may only be issued under one of the following circumstances:

(1) The existence of the state tax liability appears on the face of the taxpayer's return, including a case where such tax liability is disclosed from the taxpayer's return

after errors in mathematical computations in the return have been corrected.

(2) The state tax liability has been assessed or determined as provided by statute and the taxpayer had notice of the proposed assessment or determination and had available an opportunity to have the proposed assessment or determination reviewed by appropriate administrative procedures. If the taxpayer makes a timely request for review of the assessment or determination, the state shall not issue a withholding order for taxes until the administrative review procedure is completed. If the taxpayer is given notice of the proposed assessment or determination but does not make a timely request for review, the state may issue a withholding order for taxes.

(c) In any case where a state tax liability has been assessed or determined prior to July 1, 1983, and the state determines that the requirement of subdivision (b) may not have been satisfied, the state may send a "Notice of Proposed Issuance of Withholding Order for Taxes" to the taxpayer at the taxpayer's last known address by first-class mail, postage prepaid. The notice shall advise the taxpayer that the taxpayer may have the assessment or determination reviewed by appropriate administrative procedures and state how such a review may be obtained. If the taxpayer is sent such a notice and requests such a review within 30 days from the date the notice was mailed to the taxpayer, the state shall provide appropriate administrative procedures for review of the assessment or determination and shall not issue the withholding order for taxes until the administrative review procedure is completed. If the taxpayer is sent such a notice and does not request such a review within 30 days from the date the notice was mailed to the taxpayer, the state may issue the withholding order for taxes.

(d) A withholding order for taxes may be issued whether or not the state tax liability has been reduced to judgment.

Legislative Committee Comment—Senate

Comment. Section 706.072 continues former Section 723.072. The date in subdivision (c) has been changed to give the state agency an opportunity to provide for review. This will be useful in cases covered by this chapter but not under former law. See the Comment to Section 706.070.

Section 706.072 provides that no withholding order for taxes may be issued unless the state tax liability either appears on the face of the taxpayer's tax return or has been determined in an administrative proceeding in which the taxpayer had notice and an opportunity for administrative review. See *Greene v. Franchise Tax Bd.*, 27 Cal. App.3d 38, 103 Cal. Rptr. 483 (1972). However, no review of the taxpayer's tax liability is permitted in court proceedings under this chapter. See Section 706.082. Under subdivision (b) (2), the time for making a request for review of an assessment or determination depends on the appropriate procedures applicable to a particular agency.

Subdivision (d) recognizes that few state tax liabilities are reduced to judgment.

§ 706.073. Application of chapter to withholding order for taxes

706.073. Except as otherwise provided in this article, the provisions of this chapter govern the procedures and proceedings concerning a withholding order for taxes. For the purposes of this article, a reference in this chapter to a "levying officer" shall be deemed to mean the specific state agency seeking to collect a state tax liability under this article.

Comment. Section 706.073 continues former Section 723.073 and makes clear that the provisions of this chapter governing earnings withholding orders are applicable to withholding orders for taxes except to the extent that this article contains special provisions applicable to such orders.

§ 706.074. Issuance of withholding order for taxes by state; amount to be withheld

706.074. (a) The state may itself issue a withholding order for taxes under this section to collect a state tax liability. The order shall specify the total amount required to be withheld pursuant to the order (unpaid tax liability including any penalties, accrued interest, and costs).

(b) Unless a lesser amount is specified in the order, the amount to be withheld by the employer each pay period

pursuant to an order issued under this section is the amount required to be withheld under Section 1673(a) of Title 15 of the United States Code, and is not subject to the exception provided in Section 1673(b) of Title 15 of the United States Code.

Comment. Section 706.074 continues the substance of former Section 723.074. The reference to the relevant provision of federal law has been substituted for the reference to former Section 723.050. This makes clear that an order issued under this section is limited to the amount that can be withheld on a garnishment by an ordinary creditor. A court-issued order can require the withholding of a greater amount. See Section 706.076.

Section 706.074 specifies the procedure to be followed when the state taxing agency itself issues the withholding order for taxes. In such case, no application to a court for the order is required. Under an order issued pursuant to Section 706.074, the employer may be required to withhold the same amount as if the earnings withholding order were issued at the behest of a judgment creditor. This amount must be withheld by the employer unless the order itself specifies a lesser amount or the amount to be withheld is reduced pursuant to subdivision (c) of Section 706.075. As to the priority of a withholding order for support, see Sections 706.030 and 706.077 and Comments thereto. As to the effect of a wage assignment for support (defined in subdivision (g) of Section 706.011), see subdivision (e) of Section 706.031 and the Comment thereto.

§ 706.075 Service on employer of order and notice; delivery to employee; administrative hearing to reconsider amount required to be withheld; liability of employer

706.075. (a) This section applies to any withholding order for taxes issued under this article.

(b) Together with the withholding order for taxes, the state shall serve upon the employer an additional copy of the order and a notice informing the taxpayer of the effect of the order and of his right to hearings and remedies provided in this chapter. Within 10 days from the date of service, the employer shall deliver to the taxpayer a copy of the order and the notice, except that immediate delivery shall be made where a jeopardy

withholding order for taxes has been served. If the taxpayer is no longer employed by the employer and the employer does not owe the taxpayer any earnings, the employer is not required to make such delivery.

(c) The state shall provide for an administrative hearing to reconsider or modify the amount to be withheld pursuant to the withholding order for taxes, and the taxpayer may request such a hearing at any time after service of the order. If the taxpayer requests a hearing, the hearing shall be provided, and the matter shall be determined, within 15 days after the request is received by the state. The determination of the amount to be withheld is subject to the standard provided in subdivision (b) of Section 706.051. Judicial review of the determination made pursuant to this subdivision by the state may be had only if a petition for a writ of mandate pursuant to Section 1094.5 is filed within 90 days from the date that written notice of the state's determination was delivered or mailed to the taxpayer.

(d) The employer is not subject to any civil liability for failure to comply with subdivision (b). Nothing in this subdivision limits the power of a court to hold the employer in contempt of court for failure to comply with subdivision (b).

Legislative Committee Comment—Senate

Comment. Section 706.075 continues former Section 723.075 with the addition of the last sentence of subdivision (c) which is new. Section 706.075 requires service of a copy of the order and a notice informing the employee of the effect of the order and the employee's right to hearings and other remedies. See also Section 706.080 (manner of service). These papers are served on the employer who is required to deliver them to the employee.

The state is required by subdivision (c) to provide for an administrative hearing for the determination of the employee's application for modification of the amount to be withheld under the withholding order for taxes. The state is to apply the standard of Section 706.051 (the "portion of the judgment debtor's earnings which the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor is exempt") to the determination of the application for modification, and such determination is subject to review by way of administrative mandamus. See Section 1094.5; *County of Tuolumne v. State Bd. of Equalization*, 206 Cal. App.2d 352, 373-74, 24 Cal. Rptr. 113, 126-27 (1962).

Subdivision (d) is the same in substance as the last two sentences of subdivision (a) of Section 706.104. See the Comment to that section for a discussion of the comparable provision.

§ 706.076. Order of court for amount in excess of order issued by state; temporary earnings holding order

706.076. (a) A withholding order for taxes may be issued pursuant to this section requiring the employer of the taxpayer to withhold an amount in excess of the amount that may be required to be withheld pursuant to an order issued under Section 706.074.

(b) The state may, at any time, apply to a court of record in the county where the taxpayer was last known to reside for the issuance of a withholding order for taxes under this section to collect a state tax liability.

(c) The application for the order shall include a statement under oath that the state has served upon the taxpayer both of the following:

(1) A copy of the application.

(2) A notice informing the taxpayer of the purpose of the application and the right of the taxpayer to appear at the court hearing on the application.

(d) Upon the filing of the application, the court shall immediately set the matter for hearing and the court clerk shall send a notice of the time and place of the hearing by first-class mail, postage prepaid, to the state and the taxpayer. The notice shall be deposited in the mail at least 10 days before the day set for the hearing.

(e) After hearing, the court shall issue a withholding order for taxes which shall require the taxpayer's employer to withhold and pay over all earnings of the taxpayer other than that amount which the taxpayer proves is exempt under subdivision (b) of Section 706.051, but in no event shall the amount to be withheld be less than that permitted to be withheld under Section 706.050.

(f) The state may issue a temporary earnings holding order, which shall be denoted as such on its face, in any case where the state intends to apply for a withholding order for taxes under this section and has determined that the collection of the state tax liability will be

jeopardized in whole or in part if the temporary earnings holding order is not issued. The temporary earnings holding order shall be directed to the taxpayer's employer and shall require the employer to retain in the employer's possession or under the employer's control all or such portion of the earnings of the taxpayer then or thereafter due as is specified in the order. Together with the temporary earnings holding order, the state shall serve upon the employer an additional copy of the order and a notice informing the taxpayer of the effect of the order and of the right to the remedies provided in this chapter. Upon receipt of the order, the employer shall deliver to the taxpayer a copy of the order and notice. If the taxpayer is no longer employed by the employer and the employer does not owe the taxpayer any earnings, the employer is not required to make such delivery. The temporary earnings holding order expires 15 days from the date it is served on the employer unless it is extended by the court on ex parte application for good cause shown. If a temporary earnings holding order is served on an employer, the state may not thereafter, for a period of six months, serve on the same employer another temporary earnings holding order for the same employee unless the court for good cause shown otherwise orders. Sections 706.153 and 706.154 apply to temporary earnings holding orders issued under this section.

Comment. Section 706.076 continues former Section 723.076. Section 706.076 provides a procedure whereby the taxing agency can obtain an order, after court hearing, that requires the employer to withhold all of the employee's earnings in excess of the amount necessary for the support of the taxpayer or his family. An order may be obtained under Section 706.076 that requires the withholding of more than the amount that the state taxing agency could require the employer to withhold pursuant to an order issued by the agency itself under Section 706.074. This grant of authority is not intended as a directive that such authority be used generally. This extreme remedy could be harsh in its application and should be used sparingly.

Provision is made in subdivision (f) of Section 706.076 for a temporary order directing the employer to hold any earnings of the employee then or thereafter due. Such orders should be used only in rare and unusual cases. The temporary order prevents the

employer from paying to the employee all or a specified portion of the employee's earnings for a limited period in order to permit the court to act on the state's application for an earnings withholding order for taxes.

§ 706.077. Priority

706.077. (a) Subject to subdivision (b), an employer upon whom a withholding order for taxes is served shall withhold and pay over earnings of the employee pursuant to such order and shall cease to withhold earnings pursuant to any prior earnings withholding order except that a withholding order for support shall be given priority as provided in Section 706.030. When an employer is required to cease withholding earnings pursuant to an earlier earnings withholding order, the employer shall notify the levying officer who served the earlier earnings withholding order that a supervening withholding order for taxes is in effect.

(b) An employer shall not withhold earnings of an employee pursuant to a withholding order for taxes if a prior withholding order for taxes is in effect, and, in such case, the subsequent withholding order for taxes is ineffective.

Comment. Section 706.077 continues former Section 723.077 and deals with the priority a tax withholding order is to be given with respect to other earnings withholding orders. A withholding order for taxes takes priority over any prior earnings withholding order except one for support or another withholding order for taxes. As indicated in the Comment to Section 706.030, a withholding order for support always takes priority over any other earnings withholding order. Thus, where a withholding order for support is in effect and a subsequent tax order is received, the employer will continue to withhold pursuant to the withholding order for support, and the amount withheld pursuant to the tax order will be reduced by the amount withheld pursuant to the withholding order for support. Similarly, where a tax order is in effect and a withholding order for support is served, the withholding order for support again takes priority. See the Comments to Sections 706.030 and 706.050. However, where the prior earnings withholding order is for the collection of a debt other than for taxes or delinquent support, the tax order displaces the prior earnings withholding order, and the employer must withhold only pursuant to the tax order until

the tax debt is completely paid. If the earnings withholding order for taxes is satisfied during the withholding period of the prior earnings withholding order (Section 706.022), the employer must then again withhold pursuant to the prior earnings withholding order. Where there is a prior tax order in effect, the second tax order is ineffective; the employer may not withhold pursuant to the second order and must promptly notify the agency which issued or obtained the second order of the reason for his action. See Section 706.104(b).

As to the effect of a wage assignment for support (defined in subdivision (g) of Section 706.011), see Section 706.031(e). As indicated in the Comment to Section 706.031, a wage assignment for support takes priority over any earnings withholding order. Thus, where a wage assignment for support is in effect and a subsequent tax order is received, the employer will continue to withhold pursuant to the wage assignment, and the amount withheld pursuant to the tax order will be reduced by the amount withheld pursuant to the wage assignment for support. Similarly, where a tax order is in effect and a wage assignment for support is served, the wage assignment takes priority. See the Comments to Sections 706.031 and 706.050.

§ 706.078. Pay periods subject to order; jeopardy withholding order for taxes; duration of withholding

706.078. (a) Except as provided in subdivision (b), the employer shall not withhold pursuant to a withholding order for taxes from earnings of the employee payable for any pay period of such employee that ends prior to the 10th day after service of the order.

(b) A "jeopardy withholding order for taxes," which shall be denoted as such on its face, is a withholding order for taxes that requires that the employer withhold pursuant to the order from earnings due to the employee at the time of service of the order on the employer and from earnings thereafter due. A jeopardy withholding order for taxes may be issued only where the state has determined that the collection of a state tax liability will be jeopardized in whole or in part by delaying the time when withholding from earnings commences.

(c) An employer shall continue to withhold pursuant to a withholding order for taxes until the amount specified in the order has been paid in full or the order

is withdrawn, except that the order automatically terminates one year after the employment of the employee by the employer terminates. The state shall promptly serve on the employer a notice terminating the withholding order for taxes if the state tax liability for which the withholding order for taxes was issued is satisfied before the employer has withheld the full amount specified in the order, and the employer shall discontinue withholding in compliance with such notice.

Comment. Section 706.078 continues former Section 723.078. Subdivision (a) requires the employer to withhold commencing at the same time as with any other order. See Section 706.022. Subdivision (b) provides for a jeopardy withholding order that requires immediate withholding. Such an order should be used only in rare and unusual cases. Subdivision (c) requires the employer to withhold earnings pursuant to a withholding order for taxes until the amount specified in the order has been paid in full and provides for a notice if the tax liability is satisfied before the full amount specified in the order has been withheld. The notice required by Section 706.078 is in lieu of the notice provided by Section 706.027. If not earlier terminated by the court, the order automatically terminates one year after the employment of the employee by the employer terminates. See the discussion of a comparable provision in the Comment to Section 706.030.

§ 706.080. Service of order or other notice or document
706.080. Service of a withholding order for taxes or of any other notice or document required under this chapter in connection with a withholding order for taxes may be made by the state by first-class mail, postage prepaid, or by any authorized state employee. Service of a withholding order for taxes is complete when it is received by the employer or a person described in paragraph (1) or (2) of subdivision (a) of Section 706.101. Service of, or the providing of, any other notice or document required to be served or provided under this chapter in connection with a withholding order for taxes is complete when the notice or document is deposited in the mail addressed to the last known address of the person on whom it is served or to whom it is to be provided.

Comment. Section 706.080 continues the substance of former Section 723.080 and provides special provisions for service of notices, documents, and orders under this article. This special service provision is in lieu of the one prescribed by Section 706.101.

§ 706.081. Forms; prescription by state

706.081. Except for the forms referred to in Section 706.076, the state shall prescribe the form of any order, notice, or other document required by this chapter in connection with a withholding order for taxes notwithstanding Sections 706.100 and 706.120, and any form so prescribed is deemed to comply with this chapter.

Comment. Section 706.081 continues former Section 723.081. The section requires that forms used in connection with this article be prescribed by the state taxing agency administering the particular tax law except that the Judicial Council prescribes the forms used in connection with court issued orders under Section 706.076. See Section 706.120.

§ 706.082. Review of tax liability; prohibition

706.082. No review of the taxpayer's tax liability shall be permitted in any court proceedings under this chapter.

Comment. Section 706.082 continues former Section 723.082 and makes clear that the court, in a proceeding under this chapter, may not review the taxpayer's tax liability.

§ 706.084. Warrant, notice of levy or notice or order to withhold served on employer deemed withholding order for taxes; requirements

706.084. Where a warrant, notice of levy, or notice or order to withhold is served on the employer to enforce a state tax liability of a person who is an employee of that employer, it shall be deemed to be a withholding order for taxes as to any earnings that are subject to the provisions of this chapter if both of the following requirements are satisfied:

(a) The form provides notice on its face that it is to be treated as a withholding order for taxes as to any earnings that are subject to the provisions of this chapter.

(b) The form provides all the information provided in a withholding order for taxes.

Comment. Section 706.084 continues the substance of former Section 723.084. The section has been revised to reflect the revised definition of “state tax liability” in Section 706.070.

Section 706.084 deals with the situation where it is not clear whether an employer-employee relationship exists. The warrant, notice of levy, or notice or order to withhold may be issued on the assumption the taxpayer is an independent contractor. However, so that the taxpayer cannot avoid the withholding by claiming that he is an employee and that his earnings may be withheld only pursuant to an earnings withholding order, Section 706.084 provides that the warrant, notice, or order may require that it be treated as an earnings withholding order if the taxpayer is an employee. The contents of the forms (except for a court issued withholding order for taxes) are prescribed by the state. See Section 706.081. The form for the court issued withholding order for taxes is prescribed by the Judicial Council. See Section 706.120.

Article 5. Procedure for Earnings Withholding Orders and Exemption Claims

§ 706.100. Rules of Judicial Council

706.100. Notwithstanding any other provision of law, the Judicial Council may provide by rule for the practice and procedure in proceedings under this chapter except for the state’s administrative hearings provided by Article 4 (commencing with Section 706.070).

Comment. Section 706.100 continues former Section 723.100. Article 5 outlines generally the procedure for issuance and review of an earnings withholding order; however, Section 706.100 authorizes the Judicial Council to provide by rule for the practice and procedure in proceedings under this chapter. As to the broad authority of the Judicial Council under a comparable provision, see *In re Marriage of Lusk*, 86 Cal. App.3d 228, 150 Cal. Rptr. 63 (1978) (Family Law Act rules). The state tax agency prescribes the rules of procedure for administrative hearings under Article 4 (withholding orders for taxes). The Judicial Council also prescribes the forms to be used under this chapter. See Section 706.120. *But see* Section 706.081 (forms used in

connection with withholding orders for taxes—other than the form of a court issued order—are prescribed by state).

§ 706.101. Manner of service of earnings withholding order and of other notices and documents

706.101. (a) An earnings withholding order shall be served by the levying officer upon the employer by delivery of the order to any of the following:

(1) The managing agent or person in charge, at the time of service, of the branch or office where the employee works or the office from which the employee is paid. In the case of a state employee, the office from which the employee is paid does not include the Controller's office unless the employee works directly for the Controller's office.

(2) Any person to whom a copy of the summons and of the complaint may be delivered to make service on the employer under Article 4 (commencing with Section 416.10) of Chapter 4 of Title 5.

(b) Service of an earnings withholding order shall be made by personal delivery as provided in Section 415.10 or 415.20 or by delivery by registered or certified mail, postage prepaid, with return receipt requested. When service is made by mail, service is complete at the time the return receipt is executed by or on behalf of the recipient. If the levying officer attempts service by mail under this subdivision and does not receive a return receipt within 15 days from the date of deposit in the mail of the earnings withholding order, the levying officer shall make service as provided in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5.

(c) Except as provided in subdivision (b), service of any notice or document under this chapter may be made by first-class mail, postage prepaid. If service is made on the employer after the employer's return has been received by the levying officer, the service shall be made by first-class mail, postage prepaid, on the person designated in the employer's return to receive notices and at the address indicated in the employer's return, whether or not such address is within the county. Nothing in this subdivision precludes service by personal delivery

(1) on the employer before the employer's return has been received by the levying officer or (2) on the person designated in the employer's return after its receipt.

(d) Notwithstanding subdivision (b), if the judgment creditor so requests, the levying officer shall make service of the earnings withholding order by personal delivery as provided in Section 415.10 or 415.20. If the judgment creditor requests that service be made under this subdivision, the fee provided in Section 26750 of the Government Code shall be increased by one dollar and fifty cents (\$1.50).

(e) An earnings withholding order also may be served by a registered process server. When an earnings withholding order is served by a registered process server pursuant to this subdivision, the levying officer shall perform all other duties required by the provisions of this chapter, except for the actual service of the order, as if the levying officer had served the order. When an earnings withholding order is served by a registered process server, the court, in allowing costs for service pursuant to Section 1032.8, shall not allow a sum in excess of one dollar and fifty cents (\$1.50).

Legislative Committee Comment—Assembly

Comment. Section 706.101 continues the substance of former Section 723.101 and specifies the manner of service under this chapter. The provision in subdivision (a) (1) concerning service in the case of a state employee is new. Although personal delivery is authorized, it is anticipated that the convenience and economy of service by mail will result in the general use of this method. Subdivision (b) requires personal delivery by the levying officer where mail service is apparently ineffective because a return receipt has not been received by the levying officer within 15 days after the order is mailed. Where service is made by mail, the employer must indicate on the employer's return the date service was completed. See Section 706.126(b) (1). As to service of withholding orders for taxes, see Section 706.080. Subdivision (c) makes clear that, after the levying officer has received the employer's return, service of any notice or document under this chapter is to be made on the person, and at the address, indicated in the employer's return. See Sections 706.101(c) and 706.126(b) (6). See also, for example, the Comment to Section

706.027. As to the service of an earnings withholding order for taxes, see Section 706.080.

The portion of former Section 723.101 that authorized service by a person authorized by the levying officer is continued and generalized in Section 684.140. That section continues to apply to wage garnishments.

§ 706.102. Application for order by judgment creditor;
issuance

706.102. (a) If a writ of execution has been issued to the county where the judgment debtor's employer is to be served and the time specified in subdivision (b) of Section 699.530 for levy on property under the writ has not expired, a judgment creditor may apply for the issuance of an earnings withholding order by filing an application with a levying officer in such county who shall promptly issue an earnings withholding order.

(b) This section does not apply where the earnings withholding order is a withholding order for taxes.

Legislative Committee Comment—Assembly

Comment. Section 706.102 continues former Section 723.102. Subdivision (a) requires a judgment creditor to apply for an earnings withholding order to the levying officer in the county where the order is to be served. The form prescribed by the Judicial Council must be used for the application. See Section 706.120. See also Section 706.121 (contents of application). As a prerequisite to applying for the earnings withholding order, the judgment creditor must have obtained the issuance of a writ of execution to the county where the order is to be served. See also Section 706.101 (place where service may be made). An earnings withholding order shall be promptly issued on the ex parte application of a judgment creditor. The debtor may claim an exemption as provided in Section 706.105, have such order modified or terminated, and even recover from the creditor amounts withheld and paid over pursuant to such order; but this does not affect the initial issuance of the order. The allowance of an exemption claim which results in the termination of withholding will also preclude the judgment creditor from applying for a new order for a specified time. See Section 706.105(h). The earnings withholding order will be effective only if served within 180 days of the issuance of the writ. See Sections 699.530(b), 706.103(c).

For special provisions regarding the issuance of a withholding order for taxes, see Article 4 (commencing with Section 706.070).

§ 706.103. Service on employer; documents and instructions; limitations

706.103. (a) The levying officer shall serve upon the designated employer all of the following:

(1) The original and one copy of the earnings withholding order.

(2) The form for the employer's return.

(3) The notice to employee of earnings withholding order.

(b) At the time the levying officer makes service pursuant to subdivision (a), the levying officer shall provide the employer with a copy of the employer's instructions referred to in Section 706.127. The Judicial Council may adopt rules prescribing the circumstances when compliance with this subdivision is not required.

(c) No earnings withholding order shall be served upon the employer after the time specified in subdivision (b) of Section 699.530.

Legislative Committee Comment—Assembly

Comment. Section 706.103 continues former Section 723.103 and prescribes what must be served upon the employer by the levying officer and when such service must be accomplished to be effective. The earnings withholding order must be served within 180 days of the issuance of the writ. See Section 699.530(b).

Section 706.103 requires that the employer be supplied with a copy of the earnings withholding order and with a notice advising the employee of the effect of the earnings withholding order and rights with respect to the order. The employer is required to deliver these papers to the employee within 10 days of service. See Section 706.104. The person to be served and the manner of service of the earnings withholding order and related documents is specified in Section 706.101.

§ 706.104. Duties of employer on service of order

706.104. Any employer who is served with an earnings withholding order shall:

(a) Deliver to the judgment debtor a copy of the earnings withholding order and the notice to employee

of earnings withholding within 10 days from the date of service. If the judgment debtor is no longer employed by the employer and the employer does not owe the employee any earnings, the employer is not required to make such delivery. The employer is not subject to any civil liability for failure to comply with this subdivision. Nothing in this subdivision limits the power of a court to hold the employer in contempt of court for failure to comply with this subdivision.

(b) Complete the employer's return on the form provided by the levying officer and mail it by first-class mail, postage prepaid, to the levying officer within 15 days from the date of service. If the earnings withholding order is ineffective, the employer shall state in the employer's return that the order will not be complied with for this reason and shall return the order to the levying officer with the employer's return.

Comment. Section 706.104 continues former Section 723.104 and imposes certain duties on an employer who is served with an earnings withholding order. The section applies to all earnings withholding orders, including those for support and taxes. See Sections 706.030(a) (support), 706.072(a) (taxes).

Subdivision (a) requires the employer to deliver to the employee a copy of the order and a notice advising the employee of his rights. See also Section 706.075 (withholding order for taxes). There is a special provision, however, concerning the time for such delivery when the order is a jeopardy withholding order for taxes. See Sections 706.073, 706.075(b). See also Section 706.076(f) (notice of temporary earnings holding order).

The last two sentences of subdivision (a) make clear that an employer is not liable for civil damages for failure to give the employee the notice concerning the employee's rights. Section 706.104 does not preclude the Labor Commissioner from taking action under the Labor Code if the employer consistently fails to give employees the notice required under subdivision (a). Moreover, although the employer is not civilly liable, the employer may be subject to punishment for contempt. This would be appropriate where the employer fails to give the employee notice out of malice or willful neglect but would not be appropriate where the employer merely inadvertently fails to give the notice.

Subdivision (b) requires the employer to fill out and mail an employer's return to the levying officer who served the earnings withholding order. In the case of a withholding order for taxes, the return is made to the state agency seeking to collect the tax. See Section 706.073. Under subdivision (b), if the earnings withholding order is ineffective (see Comment to Section 706.023), the employer must state in the return that the order will not be complied with for this reason and also return the order. The form of the return is prescribed by the Judicial Council. See Section 706.120. See also Sections 706.126 (contents of return), 706.081 (form of return for withholding order for taxes is prescribed by state).

§ 706.105. Exemption claim by judgment debtor

706.105. (a) A judgment debtor may claim an exemption under Section 706.051 under either of the following circumstances:

(1) No prior hearing has been held with respect to the earnings withholding order.

(2) There has been a material change in circumstances since the time of the last prior hearing on the earnings withholding order.

(b) A claim of exemption shall be made by filing with the levying officer an original and one copy of (1) the judgment debtor's claim of exemption and (2) the judgment debtor's financial statement.

(c) Upon filing of the claim of exemption, the levying officer shall promptly send to the judgment creditor, at the address stated in the application for the earnings withholding order, by first-class mail, postage prepaid, all of the following:

(1) A copy of the claim of exemption.

(2) A copy of the financial statement.

(3) A notice of claim of exemption. The notice shall state that the claim of exemption has been filed and that the earnings withholding order will be terminated, or modified to reflect the amount of earnings claimed to be exempt in the claim of exemption, unless a notice of opposition to the claim of exemption is filed with the levying officer by the judgment creditor within 10 days after the date of the mailing of the notice of claim of exemption.

(d) A judgment creditor who desires to contest a claim of exemption shall, within 10 days after the date of the mailing of the notice of claim of exemption, file with the levying officer a notice of opposition to the claim of exemption.

(e) If a notice of opposition to the claim of exemption is filed with the levying officer within the 10-day period, the judgment creditor is entitled to a hearing on the claim of exemption. If the judgment creditor desires a hearing on the claim of exemption, the judgment creditor shall file a notice of motion for an order determining the claim of exemption with the court within 10 days after the date the levying officer mailed the notice of claim of exemption. If the notice of motion is so filed, the hearing on the motion shall be held not later than 20 days from the date the notice of motion was filed unless continued by the court for good cause. Not less than 10 days prior to the hearing, the judgment creditor shall give written notice of the hearing to the levying officer and shall serve a notice of the hearing and a copy of the notice of opposition to the claim of exemption by first-class mail on the judgment debtor and, if the claim of exemption so requested, on the attorney for the judgment debtor. Service is deemed made when the notice of the hearing and a copy of the notice of opposition to the claim of exemption are deposited in the mail, postage prepaid, addressed to the judgment debtor at the address stated in the claim of exemption and, if service on the attorney for the judgment debtor was requested in the claim of exemption, to the attorney at the address stated in the claim of exemption. The judgment creditor shall file proof of such service with the court. After receiving the notice of the hearing and before the date set for the hearing, the levying officer shall file the claim of exemption and the notice of opposition to the claim of exemption with the court.

(f) If the levying officer does not receive a notice of opposition to the claim of exemption within the 10-day period after the date of mailing of the notice of claim of exemption and a notice of the hearing not later than 10 days after the filing of the notice of opposition to the

claim of exemption, the levying officer shall serve on the employer one of the following:

(1) A notice that the earnings withholding order has been terminated if all of the judgment debtor's earnings were claimed to be exempt.

(2) A modified earnings withholding order which reflects the amount of earnings claimed to be exempt in the claim of exemption if only a portion of the judgment debtor's earnings was claimed to be exempt.

(g) If, after hearing, the court orders that the earnings withholding order be modified or terminated, the clerk shall promptly transmit a certified copy of the order to the levying officer who shall promptly serve on the employer of the judgment debtor (1) a copy of the modified earnings withholding order or (2) a notice that the earnings withholding order has been terminated. The court may order that the earnings withholding order be terminated as of a date which precedes the date of hearing. If the court determines that any amount withheld pursuant to the earnings withholding order shall be paid to the judgment debtor, the court shall make an order directing the person who holds such amount to pay it promptly to the judgment debtor.

(h) If the earnings withholding order is terminated by the court, unless the court otherwise orders or unless there is a material change of circumstances since the time of the last prior hearing on the earnings withholding order, the judgment creditor may not apply for another earnings withholding order directed to the same employer with respect to the same judgment debtor for a period of 100 days following the date of service of the earnings withholding order or 60 days after the date of the termination of the order, whichever is later.

(i) If an employer has withheld and paid over amounts pursuant to an earnings withholding order after the date of termination of such order but prior to the receipt of notice of its termination, the judgment debtor may recover such amounts only from the levying officer if the levying officer still holds such amounts or, if such amounts have been paid over to the judgment creditor, from the judgment creditor. If the employer has withheld

amounts pursuant to an earnings withholding order after termination of the order but has not paid over such amounts to the levying officer, the employer shall promptly pay such amounts to the judgment debtor.

(j) An appeal lies from any court order under this section denying a claim of exemption or modifying or terminating an earnings withholding order. Such appeal shall be taken in the manner provided for appeals in the court in which the proceeding is had. An appeal by the judgment creditor from an order modifying or terminating the earnings withholding order does not stay the order from which the appeal is taken. Notwithstanding the appeal, until such time as the order modifying or terminating the earnings withholding order is set aside or modified, the order allowing the claim of exemption in whole or in part shall be given the same effect as if the appeal had not been taken.

(k) This section does not apply to a withholding order for support or a withholding order for taxes.

Legislative Committee Comment—Assembly

Comment. Section 706.105 continues former Section 723.105 and outlines generally the procedure for the hearing of a judgment debtor's claim for the exemption under Section 706.051. The general provisions governing the procedures for claiming exemptions from execution are not applicable.

A judgment debtor is not limited as to the time within which a claim of exemption must be made. However, unless there has been a material change in the debtor's income or needs, an exemption may be claimed only once during the period the order is in effect. See subdivision (a). A similar limitation applies to a judgment creditor; if a withholding order is terminated by the court, the judgment creditor may not apply for the issuance of an earnings withholding order directed to the same employer for the same debtor for 100 days following the date of service of a prior terminated order or 60 days after the date of termination, whichever is later, unless the court orders otherwise or there is a material change in circumstances. See subdivision (h).

A claim of exemption is made by the debtor by filing an original and one copy of the claim of exemption and a financial statement. Subdivision (b). The form of these documents is prescribed by the Judicial Council. See Section 706.120. See also Sections 706.123 and 706.124 (contents of documents), 706.129

(levying officers to supply forms free of charge). Upon receipt of these documents, the levying officer is required to send the copies of the application and financial statement to the creditor, together with a notice of the claim of exemption which advises the creditor of the effect of the claim. See subdivision (c).

The judgment creditor who contests the claim of exemption must file a notice of opposition with the levying officer within 10 days after the levying officer mails notice of claim of exemption. See subdivisions (d), (e). Unless (1) the notice of opposition is filed within the 10-day period and (2) the levying officer is given notice of the hearing on the claim of exemption not later than 10 days after the filing of the notice of opposition, the levying officer serves on the employer a notice terminating the order or, if the claim of exemption lists an amount the judgment debtor believes should be withheld pursuant to the order (see Section 706.123), the levying officer serves on the employer a modified order in the amount indicated in the claim of exemption. Subdivision (f). Service of the notice of termination or modified order is to be made on the person, and at the address, indicated in the employer's return. See Sections 706.101(c) and 706.126(b)(6).

The 10-day period provided by subdivision (e) for the judgment creditor to file the documents there specified commences to run from the date of "mailing" of the notice of claim of exemption. This specific provision takes precedence over the general provisions of Section 684.120 (extra time to act after mail "service"). And the 10-day period for service of the notice of hearing is not subject to Section 684.120 (increase in period of notice of hearing where notice served by mail).

The form of the notice of opposition is prescribed by the Judicial Council. See Section 706.120. See also Section 706.128 (contents of notice).

If the notice of opposition to the claim of exemption and the notice of motion for an order determining the claim of exemption are timely filed, the hearing is held within 20 days from the filing of the notice of motion unless continued by the court for good cause. The judgment creditor must also serve a copy of the notice of opposition and a notice of hearing on the judgment debtor and file proof of service. See also Section 706.123 (judgment debtor states present mailing address in claim of exemption). If the claim of exemption requested that the attorney for the judgment debtor also be served copies of such notices, the judgment creditor must also serve copies of the notices on such attorney and file proof of service.

After hearing, the court may order that the earnings withholding order be modified or even terminated. The date fixed for termination of the order may precede the date of the hearing. See subdivision (g). The court may order that amounts withheld in excess of the amount determined to be proper be paid to the judgment debtor. See subdivision (g). Where the date of termination is made retroactive, an employer may have already withheld and paid over pursuant to the earnings withholding order prior to receipt of notice of termination. Subdivision (c) of Section 706.022 makes clear that the employer is not liable to the debtor for such amounts, and subdivision (i) of Section 706.105 authorizes the debtor to recover such amounts from the levying officer or, if paid to the creditor, from the creditor. Where amounts have been withheld but not yet paid over to the levying officer, the employer is required to pay those amounts to the employee-judgment debtor. See subdivision (i).

Subdivision (j) continues the rule that an appeal may be taken from the court's order allowing or denying the claim of exemption in whole or in part. See Section 703.600. Under subdivision (j) of Section 706.105, until such time as the order modifying or terminating the earnings withholding order is set aside or modified, the order allowing the claim of exemption in whole or in part is given the same effect as if the appeal had not been taken.

Subdivision (k) makes clear that this section does not apply to exemption claims made where a withholding order for taxes has been served pursuant to Article 4 (commencing with Section 706.070). See also Section 706.075. Nor does this section apply to a withholding order for support; the exemption in the case of such an order is determined under Section 706.052 which specifies the procedure for claiming the exemption.

§ 706.106. Findings in court proceedings

706.106. No findings are required in court proceedings under this chapter.

Comment. Section 706.106 continues former Section 723.106 and is comparable to a provision found in subdivision (d) of Section 703.580 (claims of exemption).

§ 706.107. Service of another order by same judgment creditor after expiration of prior order; interval

706.107. If an employer withholds earnings pursuant to an earnings withholding order, the judgment creditor who obtained the order may not cause another earnings withholding order to be served on the same employer requiring the employer to withhold earnings of the same employee during the 10 days following the expiration of the prior earnings withholding order.

Comment. Section 706.107 continues former Section 723.107. Section 706.107 precludes a creditor who has obtained an earnings withholding order which has gone into effect from causing another order to be served during the 10-day period following the expiration of his prior order. The purpose of this limitation is to give other judgment creditors a 10-day period during which their earnings withholding orders can be served while the original creditor is precluded from competing with them. The original creditor may apply for the second earnings withholding order either before or after his prior order expires. But service of the second order on the same employer while the original order is in effect will be ineffective under Section 706.023, and service during the 10-day period following expiration of the original order is prohibited by Section 706.107. Even though the 10-day moratorium period is violated, the employer may act pursuant to what has been served upon him. See Section 706.154. If the original creditor serves the order after the expiration of the 10-day period, the original creditor is treated like any other creditor.

If an earnings withholding order is terminated because an exemption claim is allowed, the creditor cannot apply for a new order for a specified period. See Section 706.105(h).

It should be noted that each agency of the state is considered a separate entity for the purposes of this chapter. See Section 706.011(d). Hence, even though one agency has been making collection, a second agency may serve an earnings withholding order within the 10-day period provided in this section.

Article 6. Forms; Employer's Instructions

§ 706.120. Prescribing by Judicial Council

706.120. Except as provided in Section 706.081, the Judicial Council shall prescribe the form of the

applications, notices, claims of exemption, orders, and other documents required by this chapter as provided in Section 681.030, and only such forms may be used to implement this chapter.

Comment. Section 706.120 continues the substance of former Section 723.120. The last two sentences of former Section 723.120 have been omitted as unnecessary in view of the inclusion of the substance of these sentences in the general provisions of Section 681.030.

Section 706.120 requires the Judicial Council to prescribe the forms necessary for the purposes of this chapter. Various sections prescribe information to be contained in the forms; but the Judicial Council has complete authority to adopt and revise the forms as necessary and may require additional information in the forms or may omit information from the forms that it determines is unnecessary. See also Section 706.081 (forms in connection with withholding order for taxes).

§ 706.121. Application for issuance of earnings withholding order

706.121. The "application for issuance of earnings withholding order" shall be executed under oath and shall include all of the following:

(a) The name, the last known address, and, if known, the social security number of the judgment debtor.

(b) The name and address of the judgment creditor.

(c) The court where the judgment was entered and the date the judgment was entered.

(d) The date of issuance of a writ of execution to the county where the earnings withholding order is sought.

(e) The total amount to be withheld pursuant to the order (which shall not exceed the amount required to satisfy the writ of execution on the date of the issuance of the order plus the levying officer's statutory fee for service of the order).

(f) The name and address of the employer to whom the order will be directed.

(g) The name and address of the person to whom the withheld money is to be paid by the levying officer.

Comment. Section 706.121 continues former Section 723.121 but a reference has been added to the amount of the fee of the

levying officer for the service of the earnings withholding order. See the Comment to Section 706.125.

The form for the application for an earnings withholding order is prescribed by the Judicial Council. See Section 706.120.

§ 706.122. Notice to employee of earnings withholding order

706.122. The “notice to employee of earnings withholding order” shall contain a statement that informs the employee in simple terms of the nature of a wage garnishment, the right to an exemption, the procedure for claiming an exemption, and any other information the Judicial Council determines would be useful to the employee and appropriate for inclusion in the notice, including all of the following:

(a) The named employer has been ordered to withhold from the earnings of the judgment debtor the amounts required to be withheld under Section 706.050, or such other amounts as are specified in the earnings withholding order, and to pay these amounts over to the levying officer for transmittal to the person specified in the order in payment of the judgment described in the order.

(b) The manner of computing the amounts required to be withheld pursuant to Section 706.050.

(c) The judgment debtor may be able to keep more or all of the judgment debtor’s earnings if the judgment debtor proves that the additional earnings are necessary for the support of the judgment debtor or the judgment debtor’s family supported in whole or in part by the judgment debtor.

(d) If the judgment debtor wishes a court hearing to prove that amounts should not be withheld from the judgment debtor’s earnings because they are necessary for the support of the judgment debtor or the judgment debtor’s family supported in whole or in part by the judgment debtor, the judgment debtor shall file with the levying officer an original and one copy of the “judgment debtor’s claim of exemption” and an original and one copy of the “judgment debtor’s financial statement.” The notice shall also advise the judgment debtor that the

claim of exemption form and the financial statement form may be obtained without charge at the office of the levying officer.

Legislative Committee Comment—Assembly

Comment. Section 706.122 continues former Section 723.122 (a)-(d). Subdivision (e) of former Section 723.122 is not continued because it is unnecessary in light of the deletion of former subdivision (c) of Labor Code Section 300. See the Comment to Labor Code § 300. The form for the notice to the employee is prescribed by the Judicial Council (see Section 706.120) or, in the case of a notice of a withholding order for taxes, by the state (see Section 706.081). For the notice to the employee in the case of a withholding order for taxes, see Section 706.075. See also Section 706.076(f) (temporary earnings holding order). Under Section 706.122, the Judicial Council may, for example, provide a statement that informs the employee where to seek legal advice.

§ 706.123. Judgment debtor's claim of exemption

706.123. The "judgment debtor's claim of exemption" shall be executed under oath. The claim of exemption shall indicate how much the judgment debtor believes should be withheld from the judgment debtor's earnings each pay period by the employer pursuant to the earnings withholding order and shall state the judgment debtor's present mailing address.

Comment. Section 706.123 continues former Section 723.123. The form for the claim of exemption is prescribed by the Judicial Council. See Section 706.120. Levying officers must provide copies of the forms without charge. See Section 706.129. The "present mailing address" may or may not be the judgment debtor's residence address.

§ 706.124. Judgment debtor's financial statement

706.124. The "judgment debtor's financial statement" shall be executed as provided in Section 703.530 and contain all of the information required by that section and the following additional information:

(a) Whether any earnings withholding orders are in effect with respect to the earnings of the judgment debtor or the spouse or dependents of the judgment debtor.

(b) Whether any wage assignments for support are in effect with respect to the earnings of the judgment debtor or the spouse or dependents of the judgment debtor.

Legislative Committee Comment—Assembly

Comment. Section 706.124 supersedes former Section 723.124. Section 706.124 adopts the general financial statement requirements of Section 703.530 with additional required information. The form for the financial statement is prescribed by the Judicial Council. See Section 706.120. Levying officers must provide copies of the forms without charge. See Section 706.129.

§ 706.125. Earnings withholding order

706.125. The “earnings withholding order” shall include all of the following:

(a) The name, address, and, if known, the social security number of the judgment debtor.

(b) The name and address of the employer to whom the order is directed.

(c) The court where the judgment was entered, the date the judgment was entered, and the name of the judgment creditor.

(d) The date of issuance of the writ of execution to the county where the earnings withholding order is sought.

(e) The total amount that may be withheld pursuant to the order (which may not exceed the amount required to satisfy the writ of execution on the date of issuance of the order plus the levying officer’s statutory fee for service of the order).

(f) A description of the withholding period and an order to the employer to withhold from the earnings of the judgment debtor for each pay period the amount required to be withheld under Section 706.050 or the amount specified in the order, as the case may be, for the pay periods ending during such withholding period.

(g) An order to the employer to pay over to the levying officer at a specified address the amount required to be withheld and paid over pursuant to the order in the manner and within the times provided by law.

(h) An order that the employer fill out the “employer’s return” and return it by first-class mail,

postage prepaid, to the levying officer at a specified address within 15 days after service of the earnings withholding order.

(i) An order that the employer deliver to the judgment debtor a copy of the earnings withholding order and the "notice to employee of earnings withholding order" within 10 days after service of the earnings withholding order; but, if the judgment debtor is no longer employed by the employer and the employer does not owe the employee any earnings, the employer is not required to make such delivery.

(j) The name and address of the levying officer.

Comment. Section 706.125 specifies the information to be included in the earnings withholding order. The form of the order is prescribed by the Judicial Council. See Section 706.120. Special forms are prescribed for earnings withholding orders for taxes. See Section 706.081.

Section 706.125 continues former Section 723.125 but adds a reference to the levying officer's fee for service of the earnings withholding order (see Gov't Code § 26750). This reference is added to make clear that the amount to be withheld by the employer includes the amount of the fee for service of the earnings withholding order.

§ 706.126. Employer's return

706.126. (a) The "employer's return" shall be executed under oath. The form for the return provided to the employer shall state all of the following information:

(1) The name and address of the levying officer to whom the form is to be returned.

(2) A direction that the form be mailed to the levying officer by first-class mail, postage prepaid, no later than 15 days after the date of service of the earnings withholding order.

(3) The name, the address, and, if known, the social security number of the judgment debtor.

(b) In addition, the employer's return form shall require the employer to supply all of the following information:

(1) The date the earnings withholding order was served on the employer.

(2) Whether the judgment debtor is employed by the employer or whether the employer otherwise owes earnings to the employee.

(3) If the judgment debtor is employed by the employer or the employer otherwise owes earnings to the employee, the amount of the employee's earnings for the last pay period and the length of this pay period.

(4) Whether the employer was required on the date of service to comply with an earlier earnings withholding order and, if so, the name of the judgment creditor who secured the earlier order, the levying officer who served such order, the date it was issued, the date it was served, the expiration date of such order, and which of the earnings withholding orders the employer is required to comply with under the applicable statutory rules concerning the priority of such orders.

(5) Whether the employer was required on the date of service to comply with a wage assignment for support and, if so, the court which issued such assignment order and the date it was issued and any other information the Judicial Council determines is needed to identify the order.

(6) The name and address of the person to whom notices to the employer are to be sent.

Comment. Section 706.126 continues former Section 723.126 and specifies the information to be included in the employer's return. The form for the return is prescribed by the Judicial Council (see Section 706.120) or, in the case of a return in connection with a withholding order for taxes, by the state (see Section 706.081).

§ 706.127. Employer's instructions; preparation, publication, and distribution

706.127. (a) The Judicial Council shall prepare "employer's instructions" for employers and revise or supplement these instructions to reflect changes in the law or rules regulating the withholding of earnings.

(b) Except to the extent that they are included in the forms required to be provided by the employer to the levying officer, the Judicial Council shall publish and provide to the levying officers copies of the employer's instructions.

Comment. Section 706.127 continues former Section 723.127 and requires the preparation of employer's instructions that provide the employer with the information he needs to comply with the law. The levying officer provides the employer with a copy of the employer's instructions with the earnings withholding order. See Section 706.103.

§ 706.128. Judgment creditor's notice of opposition to the claim of exemption

706.128. The "judgment creditor's notice of opposition to the claim of exemption" shall be executed under oath and shall include all of the following:

(a) The name, last known address, and, if known, the social security number of the judgment debtor.

(b) The name and address of the judgment creditor.

(c) The date of mailing of the notice of claim of exemption.

(d) The amount of the judgment debtor's claim of exemption which the judgment creditor claims is not exempt.

(e) The factual and legal grounds for the judgment creditor's opposition to the claim of exemption.

Comment. Section 706.128 continues former Section 723.128 and specifies the information to be included in the judgment creditor's notice of opposition to the claim of exemption. The form is prescribed by the Judicial Council. See Section 706.120.

§ 706.129. Forms for judgment debtors; availability for distribution

706.129. The levying officer shall have copies of the forms for the "judgment debtor's claim of exemption" and "judgment debtor's financial statement" available at the levying officer's office for distribution without charge to a person who desires to make a claim of exemption under Section 706.051.

Comment. Section 706.129 continues former Section 723.129 and implements the last sentence of subdivision (d) of Section 706.122. The forms are prescribed by the Judicial Council. See Section 706.120.

Article 7. Administration and Enforcement

§ 706.151. Exemption of state from earnings garnishment provisions of Consumer Credit Protection Act of 1968

706.151. The Judicial Council may perform all acts required by the Administrator of the Wage and Hour Division of the United States Department of Labor as conditions to exemption of this state from the earnings garnishment provisions of the Consumer Credit Protection Act of 1968 (15 U.S.C. Secs. 1671-1677), including, but not limited to:

(a) Representing and acting on behalf of the state in relation to the Administrator of the Wage and Hour Division and the administrator's representatives with regard to any matter relating to, or arising out of, the application, interpretation, and enforcement of the laws of this state regulating withholding of earnings.

(b) Submitting to the Administrator of the Wage and Hour Division in duplicate and on a current basis, a certified copy of every statute of this state affecting earnings withholding, and a certified copy of any decision in any case involving any of those statutes, made by the Supreme Court of this state.

(c) Submitting to the Administrator of the Wage and Hour Division any information relating to the enforcement of earnings withholding laws of this state which the administrator may request.

Comment. Section 706.151 continues former Section 723.151 and authorizes the Judicial Council to do whatever is required by the federal administrator to obtain and maintain a state exemption from the earnings garnishment provisions of the Consumer Credit Protection Act. Subdivisions (a), (b), and (c) are based on the language of 29 Code of Federal Regulations Section 870.55(a), requiring the state representative to act as liaison with the federal administrator.

§ 706.152. Failure to pay withheld earnings by employer with intent to defraud; misdemeanor

706.152. If an employer withholds earnings pursuant to this chapter and, with the intent to defraud either the judgment creditor or the judgment debtor, fails to pay

such withheld earnings over to the levying officer, the employer is guilty of a misdemeanor.

Comment. Section 706.152 continues former Section 723.152.

§ 706.153. Deferment or acceleration of payment of earnings to alter rights of judgment creditor; civil liability

706.153. (a) No employer shall defer or accelerate any payment of earnings to an employee with the intent to defeat or diminish the judgment creditor's rights under an earnings withholding order issued pursuant to the procedures provided by this chapter.

(b) If an employer violates this section, the judgment creditor may bring a civil action against the employer to recover the amount that would have been withheld and paid over pursuant to this chapter had the employer not violated this section. The remedy provided by this subdivision is not exclusive.

Comment. Section 706.153 continues former Section 723.153 and makes clear that an employer may neither defer nor accelerate payment of earnings to an employee in an attempt to avoid compliance with an earnings withholding order and specifies the measure of damages in case of violation.

§ 706.154. Failure to withhold or pay over; civil action by judgment creditor; immunity from liability for compliance; exception

706.154. (a) If an employer fails to withhold or to pay over the amount the employer is required to withhold and pay over pursuant to this chapter, the judgment creditor may bring a civil action against the employer to recover such amount. The remedy provided by this subdivision is not exclusive.

(b) Notwithstanding subdivision (a), an employer who complies with any written order or written notice which purports to be given or served in accordance with the provisions of this chapter is not subject to any civil or criminal liability for such compliance unless the employer has actively participated in a fraud.

Comment. Section 706.154 continues former Section 723.154. The section authorizes suit by a creditor against an employer both where the employer fails to withhold properly and where he fails to pay over amounts withheld. This remedy is independent of the procedure for examination of a debtor of the judgment debtor under Section 708.120.

Subdivision (b) makes clear that an employer is protected from liability where he complies with an order or written notice which appears proper on its face. Occasionally, through mistake, inadvertence, or even deliberate misconduct, an employer may be sent an order or notice which appears valid but which has been improperly obtained or served. For example, a creditor may fail to observe the 10-day moratorium on service of a second earnings withholding order. See Section 706.107 and Comment thereto. The employer is not required in such circumstances to go beyond the document itself and is not subject to liability where he complies with its directions and is not actively participating in a fraud. The remedy of the injured party in such a case is to proceed against the person who falsified the document or who improperly obtained the document or caused it prematurely to be served.

This section also makes clear that, where an employer is complying with a prior order, he is not liable for failing to comply with a subsequent valid order—even though the prior order is in fact invalid—unless he is actively participating in a fraud.

CHAPTER 6. MISCELLANEOUS CREDITORS' REMEDIES

Article 1. Written Interrogatories to Judgment Debtor

§ 708.010. Application of article

708.010. (a) Except as provided in this section and in subdivision (b) of Section 708.020, the procedure in this article may be used at any time a money judgment is enforceable.

(b) If enforcement of the judgment is stayed on appeal by the giving of a sufficient undertaking under Chapter 2 (commencing with Section 916) of Title 13, all proceedings under this article are stayed. In any other case where the enforcement of the judgment is stayed, all proceedings under this article are stayed unless the court otherwise expressly orders.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 708.010 is consistent with former Section 714.5 which provided that interrogatories may be served “any time after execution . . . may properly be issued.” See also Section 683.010 *et seq.* (period for enforcement of judgment).

Subdivision (b) makes clear that when a statute or court order provides for a stay of the enforcement of a money judgment, the stay applies to the use of written interrogatories under this article. However, subdivision (b) also makes clear that the court may permit proceedings under this article despite a stay unless the stay is based on the giving of an undertaking.

§ 708.020. Written interrogatories to judgment debtor

708.020. (a) The judgment creditor may propound written interrogatories to the judgment debtor in the manner provided in Section 2030 requesting information to aid in enforcement of the money judgment. The judgment debtor shall answer the interrogatories in the manner and within the time provided by Section 2030.

(b) The judgment creditor may not serve interrogatories pursuant to this section within 120 days after the judgment debtor has responded to interrogatories previously served pursuant to this section or within 120 days after the judgment debtor has been examined pursuant to Article 2 (commencing with Section 708.110), and the judgment debtor is not required to respond to any interrogatories so served.

(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. Subdivision (a) of Section 708.020 is the same in substance as the first sentence of former Section 714.5, except that the limitation of former Section 714.5 that interrogatories could be propounded only to a judgment debtor represented by counsel is not continued. This change is consistent with Section 2030 (interrogatories in civil actions generally). The provision that the interrogatories request information to aid in enforcement of the judgment is new, and is consistent with Section 2016 (examination regarding matter relevant to subject matter of the action). The provision of former Section 714.5 that written interrogatories to the judgment debtor are cumulative

and in addition to the examination procedure is omitted as unnecessary. Sections 708.010 and 708.020 make clear that written interrogatories may be used at any time the money judgment is enforceable if there has been no stay and the judgment debtor has not responded to interrogatories or been examined within the preceding 120 days.

Subdivision (b) is the same in substance as the last sentence of former Section 714.5.

Subdivision (c) continues the substance of the third sentence of former Section 714.5. Under subdivision (c), if the judgment debtor fails to answer interrogatories without substantial justification, sanctions may include an award of attorney's fees. Section 2034(a). If the court orders the judgment debtor to answer and the judgment debtor refuses to do so, the refusal is punishable as a contempt. Section 2034(b); *MacDonald v. Superior Court*, 75 Cal. App.3d 692, 696, 141 Cal. Rptr. 667 (1977). The court is also authorized to make such protective orders for the benefit of the judgment debtor as justice may require. See Section 2030(c).

Article 2. Examination Proceedings

§ 708.110. Examination of judgment debtor

708.110. (a) The judgment creditor may apply to the proper court for an order requiring the judgment debtor to appear before the court, or before a referee appointed by the court, at a time and place specified in the order, to furnish information to aid in enforcement of the money judgment.

(b) If the judgment creditor has not caused the judgment debtor to be examined under this section during the preceding 120 days, the court shall make the order upon ex parte application of the judgment creditor.

(c) If the judgment creditor has caused the judgment debtor to be examined under this section during the preceding 120 days, the court shall make the order if the judgment creditor by affidavit or otherwise shows good cause for the order. The application shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, it may be made ex parte.

(d) The judgment creditor shall personally serve a copy of the order on the judgment debtor not less than

10 days before the date set for the examination. Service of the order creates a lien on the personal property of the judgment debtor.

(e) The order shall contain the following statement in 14-point boldface type if printed or in capital letters if typed: "NOTICE TO JUDGMENT DEBTOR. If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court and the court may make an order requiring you to pay the reasonable attorney's fees incurred by the judgment creditor in this proceeding."

Comment. Subdivision (a) of Section 708.110 supersedes the first sentences of former Sections 714 and 715. The former language requiring the judgment debtor to answer concerning his property has been revised to require the judgment debtor to furnish information to aid in enforcement of the judgment. This might include, for example, information concerning future employment prospects. The proper court for an examination under this section is prescribed in Section 708.160. The judgment debtor may not be ordered to appear when the judgment is no longer enforceable. See Section 683.020.

Under subdivision (b), the judgment creditor may obtain an order of examination if the judgment creditor has not caused the judgment debtor to be examined within the preceding 120 days. Subdivision (b) permits the judgment creditor to obtain an order of examination even though the judgment debtor may have been required to respond to written interrogatories under Section 708.020 within the 120-day period. The provision in subdivision (b) that the order of examination is made upon *ex parte* application codifies case law. See *Lewis v. Neblett*, 188 Cal. App.2d 290, 297, 10 Cal. Rptr. 441 (1961).

The good cause requirement of subdivision (c) for examination more frequently than every 120 days supersedes the requirement of former Section 715 that the judgment debtor have property that the judgment debtor "unjustly refuses" to apply toward the satisfaction of the judgment.

The first sentence of subdivision (d) is new. The second sentence of subdivision (d) codifies the rule in *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242, 245 (1909). No duration is specified for the lien. However, it may not be enforced beyond the time for enforcement of the judgment. See Sections 683.010-683.220. See also Sections 697.020 (relation back of liens), 697.920 (effect of liens).

Subdivision (e) continues the substance of the third paragraph of former Section 714 and adds the requirement that the notice advise the judgment debtor that failure to appear may result in attorney's fees being imposed. See Section 708.170.

§ 708.120. Examination of third person

708.120. (a) Upon ex parte application by a judgment creditor who has a money judgment and proof by the judgment creditor by affidavit or otherwise to the satisfaction of the proper court that a third person has possession or control of property in which the judgment debtor has an interest or is indebted to the judgment debtor in an amount exceeding two hundred fifty dollars (\$250), the court shall make an order directing the third person to appear before the court, or before a referee appointed by the court, at a time and place specified in the order, to answer concerning such property or debt. The affidavit in support of the judgment creditor's application may be based on the affiant's information and belief.

(b) Not less than 10 days prior to the date set for the examination, a copy of the order shall be:

(1) Served personally on the third person.

(2) Served personally or by mail on the judgment debtor.

(c) If the property in the third person's possession or control in which the judgment debtor has an interest or the debt owed by the third person to the judgment debtor is described in the affidavit or application for an order under subdivision (a) in a manner reasonably adequate to permit it to be identified, service of the order on the third person creates a lien on the judgment debtor's interest in the property or on the debt for a period of one year from the date of the order unless extended or sooner terminated by the court.

(d) The judgment debtor may claim that all or any portion of the property or debt is exempt from enforcement of a money judgment by application to the court on noticed motion, filed with the court and personally served on the judgment creditor not later than three days before the date set for the examination. The

judgment debtor shall execute an affidavit in support of the application that includes all of the matters set forth in subdivision (b) of Section 703.520. If a claim of exemption is made pursuant to this section, a notice of opposition to the claim of exemption is not required. The court shall determine any claim of exemption made pursuant to this section. Failure of the judgment debtor to make a claim of exemption does not preclude the judgment debtor from later claiming the exemption unless the property or debt is described in the order in a manner reasonably adequate to permit it to be identified and the judgment debtor receives notice of the examination proceeding at least 10 days before the date set for the examination.

(e) An order made pursuant to subdivision (a) shall contain the following statements in 14-point boldface type if printed or in capital letters if typed:

(1) **“NOTICE TO PERSON SERVED.** If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court and the court may make an order requiring you to pay the reasonable attorney’s fees incurred by the judgment creditor in this proceeding.”

(2) **“NOTICE TO JUDGMENT DEBTOR.** The person in whose favor the judgment was entered in this action claims that the person to be examined pursuant to this order has possession or control of property which is yours or owes you a debt. This property or debt is as follows: (Description of property or debt).

If you claim that all or any portion of this property or debt is exempt from enforcement of the money judgment, you must file your exemption claim in writing with the court and personally serve a copy on the judgment creditor not later than three days before the date set for the examination. You must appear at the time and place set for this examination to establish your claim of exemption or your exemption may be waived.”

(f) An order made pursuant to subdivision (a) is not effective unless, at the time it is served on the third person, the person serving the order tenders to the third person fees for the mileage necessary to be traveled from

the third person's residence to the place of examination. The fees shall be in the same amount generally provided for witnesses when legally required to attend civil proceedings in the court where the examination proceeding is to be conducted.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 708.120 supersedes the first sentence of the first paragraph of former Section 717. It 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 indebtedness required before an examination order may issue has been raised from an amount exceeding \$50 to an amount exceeding \$250 to compensate for the change in the value of the dollar since this procedure was originally enacted in 1851 (1851 Cal. Stats. ch. 5, § 241). 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 is not continued. The third person may not be ordered to appear when the judgment is no longer enforceable. See Section 683.020. The provision for an affidavit based on information and belief codifies *Tucker v. Fontes*, 70 Cal. App.2d 768, 771, 161 P.2d 697, 699 (1945). The proper court for an examination under this section is prescribed in Section 708.160. As to the powers of a referee, see Section 708.140.

Subdivision (b) is new. Prior law did not prescribe the time within which the debtor of the judgment debtor was to be served and did not provide for any notice to the judgment debtor. The requirement that the judgment debtor be given notice changes the rule announced in *High v. Bank of Commerce*, 95 Cal. 386, 30 P. 556 (1892). See also Section 684.120 (extension of time where notice by mail).

Subdivision (c) is comparable to subdivision (d) of Section 708.110 and the second sentence of subdivision (a) of Section 708.205. If the property or debt is described in the judgment creditor's application for an order for examination of a third person and the court ultimately orders the property or debt applied to the satisfaction of the judgment, the priority of the lien under Section 708.205 will date from the service of the order on the third person pursuant to subdivision (c). See also Section 697.920 (effect of lien).

Subdivision (d) is drawn from comparable provisions in the Attachment Law. See Sections 482.100 and 484.070. It makes explicit a principle that was implicit in a provision of former

Section 719 for the application of property “not exempt from execution” toward the satisfaction of the judgment. This necessarily involves a determination of the existence of exemptions prefatory to issuing an order applying the property toward satisfaction of the judgment. See Section 703.010 (exemptions apply to all procedures for enforcement of money judgments).

The court may also determine in the examination proceedings that the property sought to be reached may properly be applied to the satisfaction of the judgment through an order in examination proceedings. *Cf.* *Pacific Bank v. Robinson*, 57 Cal. 520, 524 (1881) (supplementary proceedings appropriate to reach patent rights).

For the extent of the duty of a third person to protect the exemption rights of the debtor, see *Bowie v. Union Bank*, 11 Cal. App.3d 807, 815-16, 90 Cal. Rptr. 103 (1970); *Agnew v. Cronin*, 148 Cal. App.2d 117, 126-29, 306 P.2d 527, 533-34 (1957); *Hing v. Lee*, 37 Cal. App. 313, 316-18, 174 P. 356, 358-59 (1918). If the judgment debtor fails to claim the exemption at the hearing when required to do so under subdivision (d), the exemption is waived, subject to the authority of the court to relieve the judgment debtor from the failure pursuant to Section 473. See Section 703.030 and the Comment thereto (manner of claiming exemptions).

Paragraph (1) of subdivision (e) continues the substance of the third paragraph of former Section 717. and adds the requirement that the notice advise the third person that failure to appear may result in attorney’s fees being imposed. See Section 708.170. Paragraph (2) is new and is necessitated by the requirement in subdivision (d) that when the property in the hands of the third person or the debt is described in the application for an order of examination, a judgment debtor with at least 10 days’ notice of the examination proceeding shall claim any exemption at the hearing. See also Section 703.030 (waiver by failure to claim exemption).

Subdivision (f) continues the second sentence of former Section 717.1, except that the former provision for mileage fees of fifteen cents per mile has been revised to incorporate the mileage fees for witnesses in civil proceedings in the court where the examination proceeding is pending. See Gov’t Code § 68093. Mileage fees are recoverable costs under Section 685.040.

Where a corporation is indebted to or holds property of a judgment debtor, the manner of appearance of the corporation is prescribed in Section 708.150. Where the debtor of the

judgment debtor is a public entity, the judgment creditor must follow the procedures set forth in Article 8 (commencing with Section 708.710).

§ 708.130. Witnesses; privilege of spouse of judgment debtor

708.130. (a) Witnesses may be required to appear and testify before the court or referee in an examination proceeding under this article in the same manner as upon the trial of an issue.

(b) The privilege prescribed by Article 4 (commencing with Section 970) of Chapter 4 of Division 8 of the Evidence Code does not apply in an examination proceeding under this article.

Comment. Subdivision (a) of Section 708.130 continues former Section 718. Subdivision (b) is new and changes the rule set forth in the second sentence of former Section 717 (marital privilege applicable in proceedings to examine debtor of judgment debtor in the absence of a waiver).

§ 708.140. Powers and qualifications of referee

708.140. (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 708.205, may make a protective order authorized by Section 708.200, and may issue a warrant authorized by Section 708.170, and has the same power 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 do the following:

(1) Punish for contempt for disobeying an order of the referee.

(2) Make an award of attorney's fees pursuant to Section 708.170.

(3) Determine a contested claim of exemption or determine a third-party claim under Section 708.180.

(b) Only a member of the State Bar of California is eligible for appointment as a referee pursuant to this article.

(c) Nothing in subdivision (a) limits the power of a court to appoint a temporary judge pursuant to Section 21 of Article VI of the California Constitution.

Comment. Subdivision (a) of Section 708.140 continues the authority of a referee appointed by the court provided in former Sections 714-715, 717-721, and 723. The authority to modify and vacate orders is 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 paragraph (1) of subdivision (a) continues the substance of former Section 721. Paragraph (2) of subdivision (a) is new. Paragraph (3) is drawn from Section 482.060 (subordinate judicial duties in attachment).

Subdivision (b) supersedes the portion of former Section 723 that required a referee to have been a member of the State Bar for at least five years. Former Section 723 was applicable to a referee appointed by a superior court in a county or city and county having a population of one million or more.

Subdivision (c) is drawn from Section 482.060 (attachment).

§ 708.150. Appearance at examination by representatives of organizations

708.150. (a) If a corporation, partnership, association, trust, or other organization is served with an order to appear for an examination, it shall designate to appear and be examined one or more officers, directors, managing agents, or other persons who are familiar with its property and debts.

(b) If the order to appear for an examination requires the appearance of a specified individual, the specified individual shall appear for the examination and may be accompanied by one or more officers, directors, managing agents, or other persons familiar with the property and debts of the corporation, partnership, association, trust, or other organization.

(c) If the order to appear for the examination does not require the appearance of a specified individual, the order shall advise the corporation, partnership, association, trust, or other organization of its duty to make a designation under subdivision (a).

Comment. Subdivision (a) of Section 708.150 is derived from Section 2019(a)(6). Former Section 717 provided for the appearance of a “corporation, or any officer or member thereof.” Subdivision (b) permits the order to specify that a designated person appear for the examination. Subdivision (c) is comparable to the third sentence of Section 2019(a)(6).

If an organization described in subdivision (a) is served with an order to appear for an examination and no specified individual is required to appear by the order, the organization itself may nonetheless be held in contempt of court for its failure to appear. See Section 1209 (disobedience of lawful order is a contempt); 14 Cal. Jur.3d *Contempt* § 30 (1974) (corporations and other organizations may be held in contempt). If a specified individual is designated to appear in the order under subdivision (b), the designated individual is subject to the contempt sanction. See also Section 708.170 (reasonable attorneys’ fees may be awarded for failure to appear).

§ 708.160. Proper court for examination; examination outside county where judgment entered

708.160. (a) Except as otherwise provided in this section, the proper court for examination of a person under this article is the court in which the money judgment is entered.

(b) A person sought to be examined may not 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 place of examination is less than 150 miles.

(c) If a person sought to be examined does not reside or have a place of business in the county where the judgment is entered, a court of similar jurisdiction in the county where the person resides or has a place of business is a proper court for examination of the person. If there is no court of similar jurisdiction in the county, a court of higher jurisdiction is a proper court.

(d) If the judgment creditor seeks an examination of a person before a court other than the court in which the judgment is entered, the judgment creditor shall do all of the following:

(1) File with the court from which the order is sought an abstract of judgment in the form prescribed by Section 674.

(2) Present to the court an affidavit in support of the application for the order stating the place of residence or place of business of the person sought to be examined.

(3) Make any necessary affidavit or showing for the examination as required by Section 708.110 or 708.120.

(4) At the time of filing the abstract of judgment, pay a filing fee of twelve dollars (\$12). No law library fee shall be charged.

Comment. Subdivision (a) of Section 708.160 is new and makes clear what was implicit under former law. Subdivision (b) continues the substance of the first sentence of former Section 717.1. Subdivisions (c) and (d) continue the substance of former Section 722. Paragraph (2) of subdivision (d) sets forth the required contents of the affidavit in greater detail than did former Section 722. Paragraph (4) of subdivision (d) continues the filing fee under former Section 722.

§ 708.170. Failure to appear for examination; penalty for unjustified arrest

708.170. (a) If an order requiring a person to appear for an examination was served by a sheriff, marshal, constable, a person specially appointed by the court in the order, or a registered process server, and the person fails to appear:

(1) The court may, pursuant to a warrant, have the person brought before the court to answer for the failure to appear and may punish the person for contempt.

(2) If the person's failure to appear is without good cause, the judgment creditor shall be awarded reasonable attorney's fees incurred in the examination proceeding. Attorney's fees awarded against the judgment debtor shall be added to and become part of the principal amount of the judgment.

(b) 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) (1) of Section 708.170 continues the substance of the second paragraph of former Section 714 and the second paragraph of former Section 717. Subdivision (a) (2) is new and does not limit any right to attorney's fees the parties may have under a contract or statute.

Subdivision (b) continues the substance of the last paragraphs of former Sections 714 and 717, respectively. The authority provided by former Section 715 for arresting the judgment debtor 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, consistent with the repeal of the civil arrest provisions. See 1973 Cal. Stats. ch. 20. Section 708.170 does not limit the contempt power of the court under Sections 1209-1222.

§ 708.180. Determination of third person's adverse claim

708.180. (a) Subject to subdivision (b), if a third person examined pursuant to Section 708.120 claims an interest in the property adverse to the judgment debtor or denies the debt, the court may, if the judgment creditor so requests, determine the interests in the property or the existence of the debt. Such a determination is conclusive as to the parties to the proceeding and the third person, but an appeal may be taken from the determination in the manner provided for appeals from the court in which the proceeding takes place. The court may grant a continuance for a reasonable time for discovery proceedings, the production of evidence, or other preparation for the hearing.

(b) The court may not make the determination provided in subdivision (a) if the third person's claim is made in good faith and any of the following conditions is satisfied:

(1) The court would not be a proper court for the trial of an independent civil action (including a creditor's suit) for the determination of the interests in the property or the existence of the debt, and the third person objects to the determination of the matter under subdivision (a).

(2) At the time an order for examination pursuant to Section 708.120 is served on the third person a civil action

(including a creditor's suit) is pending with respect to the interests in the property or the existence of the debt.

(3) The court determines that the interests in the property or the existence of the debt should be determined in a creditor's suit.

(c) Upon application of the judgment creditor made *ex parte*, the court may make an order forbidding transfer of the property to the judgment debtor or payment of the debt to the judgment debtor until the interests in the property or the existence of the debt is determined pursuant to subdivision (a) or until a creditor's suit may be commenced and an order obtained pursuant to Section 708.240. An undertaking may be required in the discretion of the court. The court may modify or vacate the order at any time with or without a hearing on such terms as are just.

(d) Upon application of the judgment creditor upon noticed motion, the court may, if it determines that the judgment debtor probably owns an interest in the property or that the debt probably is owed to the judgment debtor, make an order forbidding the transfer or other disposition of the property to any person or forbidding payment of the debt until the interests in the property or the existence of the debt is determined pursuant to subdivision (a) or until a creditor's suit may be commenced and an order obtained pursuant to Section 708.240. The court shall require the judgment creditor to furnish an undertaking as provided in Section 529. The court may modify or vacate the order at any time after notice and hearing on such terms as are just.

Legislative Committee Comment—Assembly

Comment. Subdivisions (a) and (b) of Section 708.180 are drawn from provisions in the Probate Code relating to the determination of certain claims in the course of estate administration or in guardianship or conservatorship proceedings. See Prob. Code §§ 851.5-853, 2520-2528. Under former Section 719, the court lacked the power to determine the interests in property in the hands of a third person or whether the third person was indebted to the judgment debtor when the third person claimed an interest in the property adverse to the judgment debtor or denied the debt. The provision of subdivision

(b) requiring the third person's claim to be in good faith codifies the rule of *Thomas v. Thomas*, 192 Cal. App.2d 771, 776, 13 Cal. Rptr. 872 (1961). As to the effect of the failure to determine the interests in the property or the existence of the debt under Section 708.180, see Section 708.205(b).

Subdivisions (c) and (d) are analogous to Section 708.240 (order forbidding transfer of property or payment of debt in a creditor's suit).

§ 708.190. Intervention

708.190. The court may permit a person claiming an interest in the property or debt sought to be applied in an examination proceeding to intervene in the proceeding and may determine the person's rights in the property or debt pursuant to Section 708.180.

Comment. Section 708.190 is new. In a proper case, this section permits the early resolution of a third-party claim to property that is the subject of an examination proceeding. For the procedure applicable to third-party claims after levy, see Division 4 (commencing with Section 720.010).

§ 708.200. Protective orders

708.200. In any proceeding under this article, the court may, on motion of the person to be examined or on its own motion, make such protective orders as justice may require.

Comment. Section 708.200 is new and is comparable to the court's authority under Section 708.020 (which incorporates Section 2030) to make a protective order with respect to written interrogatories to the judgment debtor. Under Section 708.200, the court is authorized to make the order on its own motion as well as on motion of the person to be examined.

§ 708.205. Order applying property to satisfaction of judgment

708.205. (a) Except as provided in subdivision (b), at the conclusion of a proceeding pursuant to this article, the court may order the judgment debtor's interest in the property in the possession or under the control of the judgment debtor or the third person or a debt owed by the third person to the judgment debtor to be applied

toward the satisfaction of the money judgment if the property is not exempt from enforcement of a money judgment. Such an order creates a lien on the property or debt.

(b) If a third person examined pursuant to Section 708.120 claims an interest in the property adverse to the judgment debtor or denies the debt and the court does not determine the matter as provided in subdivision (a) of Section 708.180, the court may not order the property or debt to be applied toward the satisfaction of the money judgment but may make an order pursuant to subdivision (c) or (d) of Section 708.180 forbidding transfer or payment to the extent authorized by that section.

Comment. Subdivision (a) of Section 708.205 continues the broad authority provided by former Section 719 for the court to order any nonexempt property or debt to be applied toward the satisfaction of the judgment. See also the last portion of the first sentence of former Section 715. Under subdivision (a), the person examined—whether the judgment debtor or a third person—may be ordered to deliver property or funds to the levying officer. See *Lewis v. Neblett*, 188 Cal. App.2d 290, 295, 10 Cal. Rptr. 441, 444 (1961) (funds in hands of administrator of estate). The person examined may also be ordered to pay the judgment creditor directly. See *Hustead v. Superior Court*, 2 Cal. App.3d 780, 783-87, 83 Cal. Rptr. 26, 27-30 (1969) (sublessee of judgment debtor ordered to pay rent to judgment creditor, order held invalid on other grounds). A receiver may be appointed with the powers ordered by the court, and the judgment debtor may be ordered to make any necessary assignments or deliveries to the receiver for the purpose of sale or collection. See *Habenicht v. Lissak*, 78 Cal. 351, 357-58, 20 P. 874, 877 (1889) (seat on stock exchange); *Pacific Bank v. Robinson*, 57 Cal. 520, 524 (1881) (patent rights); *Hathaway v. Brady*, 26 Cal. 581, 593-94 (1864) (note); *Tucker v. Fontes*, 70 Cal. App.2d 768, 771-72, 161 P.2d 697, 701 (1945) (business assets). The court may order execution to be issued to collect the amount due. See *William Deering & Co. v. Richardson-Kimball Co.*, 109 Cal. 73, 41 P. 801 (1895) (funds in bank). If property is to be sold pursuant to the court's order under subdivision (a), it will be sold either by a levying officer (in which case there must be a valid writ of execution outstanding) or by a receiver appointed by the court. Orders made in examination proceedings are enforceable by contempt. See Section 1209.

Subdivision (b) supersedes the portion of former Section 719 that precluded a court order applying property in every case where the third person claimed an adverse interest in the property or denied the debt. Under subdivision (b), this rule applies only if the interest of the third person has not been determined pursuant to Section 708.180. The judgment creditor may then proceed by way of a creditor's suit pursuant to Article 3 (commencing with Section 708.210) or an independent civil action.

Article 3. Creditor's Suit

Comment. Article 3 (commencing with Section 708.210) authorizes the judgment creditor to bring suit against third persons indebted to or in possession of property of the judgment debtor. It is anticipated, however, that 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 of a garnishee (see Section 701.010 *et seq.*), where the court does not determine disputed ownership of the property or the existence of the debt under Section 708.180, or where for some other reason the judgment creditor believes that the third person will not cooperate. 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 Division 4 (commencing with Section 720.010).

§ 708.210. Creditor's suit

708.210. If a third person has possession or control of property in which the judgment debtor has an interest or is indebted to the judgment debtor, the judgment creditor may bring an action against the third person to have the interest or debt applied to the satisfaction of the money judgment.

Comment. Section 708.210 supersedes the first portion of the first sentence of former Section 720. An action may be brought under this article without the necessity of first levying under a writ of execution, examining the third person, or resorting to any other procedure for the satisfaction of the judgment. The rule under former law—requiring the exhaustion of remedies at law before the equitable remedy of the creditor's suit could be employed—is not continued. For the former rule, see *Farmers & Merchants Bank v. Bank of Italy*, 216 Cal. 452, 455-58, 14 P.2d 527,

528-29 (1932) (resort to supplementary proceedings required); *Bond v. Bulgheroni*, 215 Cal. 7, 10-11, 8 P.2d 130, 132 (1932) (resort to supplementary proceedings not required if inadequate or futile).

§ 708.220. Joinder of judgment debtor

708.220. The judgment debtor shall be joined in an action brought pursuant to this article but is not an indispensable party. The residence of the judgment debtor may not be considered in the determination of proper venue unless otherwise provided by contract between the judgment debtor and the third person.

Comment. Section 708.220 is new. If the judgment debtor cannot be joined, the creditor's suit should proceed, the judgment debtor not being an indispensable party. See Section 389(b). The second sentence makes clear the rules of venue in a creditor's suit. Under this sentence, the venue in a creditor's suit is the same as it would be had the judgment debtor brought the action against the third person. See also *Holstein v. Superior Court*, 275 Cal. App.2d 708, 710, 80 Cal. Rptr. 301, 302 (1969).

§ 708.230. Time for bringing creditor's suit

708.230. (a) Except as provided in subdivision (b), an action shall be commenced pursuant to this article before the expiration of the later of the following times:

(1) The time when the judgment debtor may bring an action against the third person concerning the property or debt.

(2) One year after creation of a lien on the property or debt pursuant to this title if the lien is created at the time when the judgment debtor may bring an action against the third person concerning the property or debt.

(b) An action may not be commenced pursuant to this article after the period for enforcement of the money judgment has expired.

(c) Notwithstanding Section 683.020, if an action is commenced pursuant to this article within the time permitted in this section, the action may be prosecuted to judgment.

Comment. Section 708.230 is new and provides a statute of limitations for bringing a 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, 538, 545, 197 P. 799, 801 (1921). Under Section 708.230, the statute of limitations is no longer tied to the return of the writ unsatisfied or the failure of examination proceedings because the judgment creditor is not required to exhaust these remedies before resorting to a creditor's suit. See Section 708.210 and the Comment thereto. For a transitional provision, see Section 694.060.

The extension of time provided by paragraph (2) of subdivision (a) may be effectuated by the creation of an enforcement lien on the property, as for example, an execution lien (see Section 697.710), a judgment lien on personal property (see Sections 697.510-697.670), or a lien created by service of an order of examination on the third person (see Section 708.120).

A creditor's suit commenced within the period prescribed by this section may be pursued to judgment after the money judgment is no longer enforceable against the original judgment debtor notwithstanding Section 683.020. The judgment in the creditor's suit may then be enforced as provided in Section 708.280, and the 10-year period of enforceability (subject to renewal) provided by Section 683.020 applies to the judgment in the creditor's suit.

§ 708.240. Order forbidding transfer of property or payment of debt

708.240. The judgment creditor may apply to the court in which an action under this article is pending for either or both of the following:

(a) An order restraining the third person from transferring to the judgment debtor the property in which the judgment debtor is claimed to have an interest or from paying to the judgment debtor the alleged debt. The order shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, the order may be made on ex parte application. The order shall remain in effect until judgment is entered in the action or until such earlier time as the court may provide in the order. An undertaking may be required in the discretion of the court. The court may modify or vacate the order

at any time with or without a hearing on such terms as are just.

(b) A temporary restraining order or a preliminary injunction or both, restraining the third person from transferring to any person or otherwise disposing of the property in which the judgment debtor is claimed to have an interest, pursuant to Chapter 3 (commencing with Section 525) of Title 7, and the court may make, dissolve, and modify such orders as provided therein.

Comment. Section 708.240 supersedes a portion of former Section 720. See also Section 708.180(c)-(d) (order in examination proceedings forbidding transfer or payment). Although an order may be made under subdivision (a) without notice and of long duration, its effect is narrowly limited to orders forbidding transfer or payment to the judgment debtor. By incorporating Chapter 3 (commencing with Section 525) of Title 7 (injunctions), subdivision (b) provides the third person with procedural safeguards which were not present in former Section 720.

§ 708.250. Lien of creditor's suit

708.250. Service of summons on the third person creates a lien on the interest of the judgment debtor in the property or on the debt owed to the judgment debtor that is the subject of an action under this article.

Comment. Section 708.250 codifies case law. See *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 28-30, 87 P.2d 830, 844 (1939); *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242, 245 (1909); *cf. Seymour v. McAvoy*, 121 Cal. 438, 441, 53 P. 946, 947 (1898) (filing bill in equity creates equitable lien).

§ 708.260. Judgment debtor's claim of exemption

708.260. (a) In an action brought pursuant to this article, the judgment debtor may claim that all or any portion of the property or debt is exempt from enforcement of a money judgment. The claim shall be made by application to the court on noticed motion, filed with the court and served on the judgment creditor not later than 30 days before the date set for trial. Service shall be made personally or by mail. The judgment debtor shall execute an affidavit in support of the application

that includes all of the matters set forth in subdivision (b) of Section 703.520. No notice of opposition to the claim of exemption is required. If the judgment debtor has not been named as a party to the action, the judgment debtor may obtain an order under Section 389 that the judgment debtor be made a party. Except as provided in subdivision (b), failure of the judgment debtor to make a claim of exemption is a waiver of the exemption.

(b). Failure of the judgment debtor to make a claim of exemption in an action brought pursuant to this article is not a waiver of the exemption if both of the following conditions are satisfied:

(1) The judgment debtor has not been served with process in the action that contains a description of the property or debt reasonably adequate to permit it to be identified.

(2) The judgment debtor does not have actual notice of the pendency of the action and the identity of the property or the nature of the debt in issue.

Legislative Committee Comment—Assembly

Comment. Section 708.260 is new and is comparable to subdivision (d) of Section 708.120 (exemption claim in proceeding for examination of third person). See also Section 708.280 (court determination of exemption claim). The 30-day period of notice of motion is extended if served by mail. See Section 684.120.

§ 708.270. No right to jury trial

708.270. There is no right to a jury trial in an action under this article.

Comment. Section 708.270 is new and codifies what appears to be California law. *Cf. Misrach v. Liederman*, 14 Cal. App.2d Supp. 757, 58 P.2d 746 (1936). See generally 21 Am. Jur.2d *Creditors' Bills* § 9, at 10 (1965); 21 C.J.S. *Creditors' Suits* § 73, at 1125 (1940).

§ 708.280. Judgment in creditor's suit

708.280. (a) The court shall determine any exemption claim made in the action. If the judgment debtor establishes to the satisfaction of the court that the property or debt is exempt from enforcement of a money

judgment, the court shall so adjudge and may not make the orders referred to in subdivisions (b), (c), and (d).

(b) If the judgment creditor establishes that the third person has property in which the judgment debtor has an interest or is indebted to the judgment debtor, the court shall render judgment accordingly. The property or debt may be applied to the satisfaction of the judgment creditor's judgment against the judgment debtor as ordered by the court.

(c) If the court determines that the third person has property in which the judgment debtor has an interest, the court may order the third person not to transfer the property until it can be levied upon or otherwise applied to the satisfaction of the judgment.

(d) If the court determines that the third person has transferred property that was subject to a lien in favor of the judgment creditor or, contrary to court order of which the third person has notice, has paid the debt to the judgment debtor or has transferred the property, the court shall render judgment against the third person in an amount equal to the lesser of the following:

(1) The value of the judgment debtor's interest in the property or the amount of the debt.

(2) The amount of the judgment creditor's judgment against the judgment debtor remaining unsatisfied.

Comment. Section 708.280 is new. Subdivision (a) recognizes that only nonexempt property may be applied to the satisfaction of the judgment. See Section 703.010 (exemptions apply to all procedures for enforcement of money judgments). At the conclusion of a creditor's suit, the property may be applied toward the satisfaction of the judgment in a manner appropriate to the particular type of property. See the Comment to Section 708.205. Ordinarily, the property or debt that has been determined in the creditor's suit to belong to or to be owing to the judgment debtor will be levied upon under a writ of execution. If the judgment creditor does not have a valid writ of execution, the judgment creditor may apply for an order under subdivision (c) preventing the third person from transferring the property until it can be applied to the satisfaction of the judgment. If the property cannot be levied upon, some other manner of enforcement will be necessary.

§ 708.290. Costs

708.290. Costs incurred by or taxed against the judgment creditor in an action under this article may not be recovered from the judgment debtor as a cost of enforcing the judgment.

Legislative Committee Comment—Assembly

Comment. Section 708.290 is new. It makes clear that the cost of litigation under this article required through no fault of the judgment debtor may not ultimately be imposed on the judgment debtor.

Article 4. Charging Orders**§ 708.310. Enforcement by charging order**

708.310. If a money judgment is rendered against a partner but not against the partnership, the judgment debtor's interest in the partnership may be applied toward the satisfaction of the judgment by an order charging the judgment debtor's interest pursuant to Section 15028 or 15573 of the Corporations Code.

Legislative Committee Comment—Assembly

Comment. Section 708.310 incorporates the charging order provisions of Corporations Code Sections 15028 and 15573. The charging order is the usual manner for applying the interest of a partner in the partnership to the satisfaction of a judgment against a judgment debtor who is a partner. See Section 699.720(a) (property not subject to execution); *Evans v. Galardi*, 16 Cal.3d 300, 310, 546 P.2d 313, 128 Cal. Rptr. 25 (1976); *Baum v. Baum*, 51 Cal.2d 610, 335 P.2d 481 (1959). Enforcement pursuant to this section is subject to the general rules concerning the time within which judgments may be enforced. See Chapter 3 (commencing with Section 683.010) of Division 1.

§ 708.320. Lien of charging order

708.320. (a) Service of a notice of motion for a charging order on the judgment debtor and on the other partners or the partnership creates a lien on the judgment debtor's interest in the partnership.

(b) If a charging order is issued, the lien created pursuant to subdivision (a) continues under the terms of the order. If issuance of the charging order is denied, the lien is extinguished.

Comment. Section 708.320 is new. Former statutory law did not explicitly provide for a lien of a charging order. The lien of a charging order was recognized in case law, but the time of its creation and its effect were unclear. See *Taylor v. S & M Lamp Co.*, 190 Cal. App.2d 700, 707-12, 12 Cal. Rptr. 323, 329-31 (1961). Section 708.320 establishes the time of creation of the lien by reference to service of notice of motion for the charging order. *Cf. Ribero v. Callaway*, 87 Cal. App.2d 135, 138, 196 P.2d 109 (1948) (charging orders issued on noticed motion). This provision is analogous to the creation of a lien in an examination proceeding under Article 2 (commencing with Section 708.110) by service of the order of examination. See also Section 416.40 (service on partnership).

Article 5. Lien in Pending Action or Proceeding

§ 708.410. Judgment creditor's lien in pending action or proceeding

708.410. (a) A judgment creditor who has a money judgment against a judgment debtor who is a party to a pending action or special proceeding may obtain a lien under this article, to the extent required to satisfy the judgment creditor's money judgment, on both of the following:

(1) Any cause of action of such judgment debtor for money or property that is the subject of the action or proceeding.

(2) The rights of such judgment debtor to money or property under any judgment subsequently procured in the action or proceeding.

(b) To obtain a lien under this article, the judgment creditor shall file a notice of lien and an abstract or certified copy of the judgment creditor's money judgment in the pending action or special proceeding.

(c) At the time of the filing under subdivision (b) or promptly thereafter, the judgment creditor shall serve on all parties who, prior thereto, have made an appearance in the action or special proceeding a copy of the notice of lien and a statement of the date when the notice of lien was filed in the action or special proceeding. Service shall be made personally or by mail. Failure to serve all parties as required by this subdivision does not affect the lien

created by the filing under subdivision (b), but the rights of a party are not affected by the lien until the party has notice of the lien.

(d) For the purpose of this article, an action or special proceeding is pending until the time for appeal from the judgment has expired or, if an appeal is filed, until the appeal has been finally determined.

Legislative Committee Comment—Assembly

Comment. Sections 708.410-708.480 supersede former Section 688.1. A lien under this article reaches the judgment debtor's right to money under the judgment in the pending action or proceeding as permitted by former law. See *Abatti v. Eldridge*, 103 Cal. App.3d 484, 163 Cal. Rptr. 82 (1980). The lien also reaches any right of the judgment debtor to property under the judgment.

The purpose of this lien is to establish and preserve the judgment creditor's priority until the judgment is final and nonappealable. See subdivision (d) (action pending until judgment is final). Upon motion of any party to the action including the judgment creditor who has obtained a lien, the money or property to which the judgment debtor is entitled upon judgment in the action may be applied to the satisfaction of the judgment creditor's judgment as ordered by the court. See Section 708.470. If no motion is made by a party, the judgment creditor may seek to reach the judgment subject to the lien by some other enforcement procedure if no settlement is agreed upon. See Section 708.480 and the Comment thereto. The lien is ineffective after the time for enforcement of the judgment creditor's money judgment has expired. See Section 683.020. The duration of the lien may be extended as provided in Section 683.190.

If property that is the subject of a pending action or proceeding is real property, growing crops, timber to be cut, minerals or the like (including oil and gas) or accounts receivable resulting from the sale thereof at the wellhead or minehead, tangible personal property in the possession of the judgment debtor or a levying officer, or the interest of an heir, devisee, or legatee in personal property in the estate of a decedent, the judgment creditor may levy on the property under a writ of execution. See Section 700.180. This remedy can be used as an alternative to the lien or in addition to the lien.

Subdivision (b) of Section 708.410 provides for the creation of the lien by filing in the pending action or proceeding a notice of

lien and an abstract or certified copy of the judgment creditor's money judgment. The requirement of a prior court hearing authorizing the creation of the lien under former Section 688.1 is not continued. Although former Section 688.1 required a hearing on noticed motion before the court could order that a lien be created, the section provided no standard for denial of such an order. It was held under former law to be an abuse of discretion for the court to refuse to order the lien on the ground that it would impede settlement negotiations. *Atiya v. DiBartolo*, 63 Cal. App.3d 121, 133 Cal. Rptr. 611 (1976). Section 708.410 avoids the need for a court hearing before a lien can be created. Although a dictum in the *Atiya* case stated that a substantial showing that other assets were available might justify denial of the lien, Section 708.410 leaves to the judgment creditor the choice of which assets to pursue in satisfaction of the judgment. This is consistent with the judgment creditor's freedom to select assets of the debtor when levy of execution is the method of collection used. If the judgment debtor wishes to avoid the lien under this article, he or she may do so by voluntarily applying other available assets, if any, to the satisfaction of the judgment.

Former Section 688.1 required that all parties to the action or proceeding be given notice of the application for the lien. Under Section 708.410, the lien is created by the filing in the action or proceeding. Notice to all parties who have appeared in the action or proceeding is required by subdivision (c) of Section 708.410, but this subdivision makes clear that failure to give notice to one or more of the parties does not affect the validity of the lien. Subdivision (c) also makes clear that the rights of a party who makes a settlement, dismissal, compromise, or satisfaction without notice of the existence of the lien are not affected. This principle of protecting obligors without notice is comparable to other provisions. See, e.g., Civil Code §§ 954.5, 955.1; Com. Code § 9318.

§ 708.420. Contents of notice of lien

708.420. The notice of lien under Section 708.410 shall contain all of the following:

(a) A statement that a lien has been created under this article and the title of the court and the cause and number of the pending action or proceeding in which the notice of lien is filed.

(b) The name and last known address of the judgment debtor.

(c) The name and address of the judgment creditor.

(d) The title of the court where the judgment creditor's money judgment is entered and the cause and number of the action, the date of entry of the judgment, and the date of any subsequent renewals, and where entered in the records of the court.

(e) The amount required to satisfy the judgment creditor's money judgment at the time the notice of lien is filed in the action or proceeding.

(f) A statement that the lien attaches to any cause of action of the judgment debtor that is the subject of the action or proceeding and to the judgment debtor's rights to money or property under any judgment subsequently procured in the action or proceeding.

(g) A statement that no compromise, dismissal, settlement, or satisfaction of the pending action or proceeding or any of the judgment debtor's rights to money or property under any judgment procured therein may be entered into by or on behalf of the judgment debtor, and that the judgment debtor may not enforce the judgment debtor's rights to money or property under any judgment procured in the action or proceeding by a writ or otherwise, unless one of the following requirements is satisfied:

(1) The prior approval by order of the court in which the action or proceeding is pending has been obtained.

(2) The written consent of the judgment creditor has been obtained or the judgment creditor has released the lien.

(3) The money judgment of the judgment creditor has been satisfied.

(h) A statement that the judgment debtor may claim an exemption for all or any portion of the money or property within 30 days after the judgment debtor has notice of the creation of the lien and a statement that, if the exemption is not claimed within the time allowed, the exemption is waived.

Comment. Section 708.420 is new and is designed to advise the parties to the pending action or proceeding of the relevant facts and of the consequences of the filing of a notice of lien under this article.

§ 708.430. Intervention; judgment creditor deemed a party for certain purposes

708.430. (a) The court in which the action or special proceeding is pending may permit a judgment creditor who has obtained a lien under this article to intervene in the action or proceeding pursuant to Section 387.

(b) For the purposes of Sections 708.450 and 708.470, a judgment creditor shall be deemed to be a party to the action or special proceeding even though the judgment creditor has not become a party to the action or proceeding under subdivision (a).

Comment. Subdivision (a) of Section 708.430 continues the substance of a portion of the first sentence of former Section 688.1(a). Subdivision (b) permits a judgment creditor who has not intervened to oppose a claim of exemption pursuant to Section 708.450 or to seek an order applying the property to the satisfaction of the judgment creditor's judgment pursuant to Section 708.470.

§ 708.440. Enforcement, compromise, dismissal, settlement, satisfaction

708.440. (a) Except as provided in subdivision (c) of Section 708.410, unless the judgment creditor's money judgment is first satisfied or the lien is released, the judgment recovered in the action or special proceeding in favor of the judgment debtor may not be enforced by a writ or otherwise, and no compromise, dismissal, settlement, or satisfaction of the pending action or special proceeding or the judgment procured therein may be entered into by or on behalf of the judgment debtor, without the written consent of the judgment creditor or authorization by order of the court obtained under subdivision (b).

(b) Upon application by the judgment debtor, the court in which the action or special proceeding is pending or the judgment procured therein is entered may, in its discretion, after a hearing, make an order described in subdivision (a) that may include such terms and conditions as the court deems necessary. The application for an order under this subdivision shall be

made on noticed motion. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail.

Comment. Section 708.440 supersedes a portion of the second sentence of former Section 688.1. The provision permitting compromise, dismissal, settlement, or satisfaction pursuant to court order despite the opposition of the judgment creditor is new and has been added to prevent, for example, the judgment creditor from forcing the judgment debtor to proceed with the action when the court concludes that it is in the best interests of the parties to settle. See also *Abatti v. Eldridge*, 112 Cal. App.3d 411, 169 Cal. Rptr. 330 (1980) (power of court to approve settlement that does not fully satisfy lien). The introductory clause of subdivision (a) recognizes that, notwithstanding this section, the rights of a party who settles without notice of the lien are unaffected by the lien. See Section 708.410(c).

§ 708.450. Judgment debtor's claim of exemption

708.450. (a) If a lien is created under this article, the judgment debtor may claim that all or any portion of the money or property that the judgment debtor may recover in the action or special proceeding is exempt from enforcement of a money judgment. The claim shall be made by application on noticed motion to the court in which the action or special proceeding is pending, filed and served on the judgment creditor not later than 30 days after the judgment debtor has notice of the creation of the lien. Service shall be made personally or by mail. The judgment debtor shall execute an affidavit in support of the application that includes all the matters set forth in subdivision (b) of Section 703.520. No notice of opposition to the claim of exemption is required. The failure of the judgment debtor to make a claim of exemption under this section constitutes a waiver of the exemption.

(b) Unless continued for good cause shown, the court shall determine the exemption claim at any time prior to the entry of judgment in the action or special proceeding and may consolidate the exemption hearing with the hearing on a motion pursuant to Section 708.470.

(c) If the judgment debtor establishes to the satisfaction of the court that the right of the judgment debtor to money or property under the judgment in the action or special proceeding is all or partially exempt from enforcement of a money judgment, the court shall order the termination of the lien created under this article on the exempt portion of the money or property.

Comment. Section 708.450 provides the procedure for the making and determination of any exemption claimed for the judgment debtor's prospective recovery that is subject to a lien created under this article. This procedure is drawn from Sections 708.260 and 708.280 (creditor's suit). The judgment creditor is deemed to be a party for the purposes of this section. See Section 708.430(b).

§ 708.460. Endorsement of lien on judgment and abstract

708.460. (a) If a lien is created pursuant to this article, the court clerk shall endorse upon the judgment recovered in the action or special proceeding a statement of the existence of the lien and the time it was created.

(b) Any abstract issued upon the judgment shall include a statement of the lien in favor of the judgment creditor.

Comment. Section 708.460 supersedes the third sentence of former Section 688.1. Section 708.460 is consistent with the last two sentences of subdivision (b) of Section 700.190 (execution lien on final money judgment).

§ 708.470. Orders in action or special proceeding to enforce lien

708.470. (a) If the judgment debtor is entitled to money or property under the judgment in the action or special proceeding and a lien created under this article exists, upon application of any party to the action or special proceeding, the court may order that the judgment debtor's rights to money or property under the judgment be applied to the satisfaction of the lien created under this article as ordered by the court. Application for an order under this section shall be on noticed motion. The notice of motion shall be served on all other parties. Service shall be made personally or by mail.

(b) If the judgment determines that the judgment debtor has an interest in property, the court may order the party having custody or control of the property not to transfer the property until it can be levied upon or otherwise applied to the satisfaction of the lien created under this article.

(c) If the court determines that a party (other than the judgment debtor) having notice of the lien created under this article has transferred property that was subject to the lien or has paid an amount to the judgment debtor that was subject to the lien, the court shall render judgment against the party in an amount equal to the lesser of the following:

(1) The value of the judgment debtor's interest in the property or the amount paid the judgment debtor.

(2) The amount of the judgment creditor's lien created under this article.

Comment. Section 708.470 is drawn from subdivisions (b)-(d) of Section 708.280 (creditor's suit). The judgment creditor is deemed to be a party for the purposes of this section. See Section 708.430(b).

§ 708.480. Enforcement of lien after final judgment

708.480. A lien created under this article may be enforced by any applicable procedure:

(a) After the judgment subject to the lien is entered and the time for appeal from the judgment has expired.

(b) If an appeal is filed from the judgment subject to the lien, after the appeal is finally determined.

Legislative Committee Comment—Assembly

Comment. Section 708.480 makes available a variety of remedies for the enforcement of a lien created under this article, such as levy on the judgment under a writ of execution (see Section 700.190 relating to levy on final money judgment) and sale or collection pursuant to such levy (see Sections 701.510 and 701.520), appointment of a receiver to collect the judgment (see Section 708.620), application for an assignment order (see Section 708.510), and collection from a public entity owing money to the judgment debtor (see Sections 708.710-708.795). If, for example, the judgment creditor obtains a writ of execution and levies on a money judgment obtained by the judgment

debtor in the action or proceeding, the execution lien on the judgment obtained by the levy of execution relates back to the lien created under this article. See Section 697.020. In certain cases the property that is the subject of the pending action or proceeding may be levied upon prior to the final judgment in the action or proceeding. See Section 700.180.

Under former law, it appeared that where the judgment debtor of the judgment debtor did not voluntarily pay the judgment creditor to discharge the lien and the judgment debtor took no steps to enforce the judgment, the judgment creditor had to bring an action to foreclose the lien in order to reach the amount represented by the judgment. See *Roseburg Loggers, Inc. v. U.S. Plywood-Champion Papers, Inc.*, 14 Cal.3d 742, 748, 537 P.2d 399, 403, 122 Cal. Rptr. 567, 571 (1975) (dictum). Section 708.480 expands the remedies available to the judgment creditor and provides remedies that will be more effective than an equitable action to foreclose a lien.

Article 6. Assignment Order

§ 708.510. Order to assign right to payment

708.510. (a) Except as otherwise provided by law, upon application of the judgment creditor on noticed motion, the court may order the judgment debtor to assign to the judgment creditor or to a receiver appointed pursuant to Article 7 (commencing with Section 708.610) all or part of a right to payment due or to become due, whether or not the right is conditioned on future developments, including but not limited to the following types of payments:

(1) Wages due from the federal government that are not subject to withholding under an earnings withholding order.

(2) Rents.

(3) Commissions.

(4) Royalties.

(5) Payments due from a patent or copyright.

(6) Insurance policy loan value.

(b) The notice of the motion shall be served on the judgment debtor. Service shall be made personally or by mail.

(c) Subject to subdivisions (d), (e), and (f), in determining whether to order an assignment or the amount of an assignment pursuant to subdivision (a), the court may take into consideration all relevant factors, including the following:

(1) The reasonable requirements of a judgment debtor who is a natural person and of persons supported in whole or in part by the judgment debtor.

(2) Payments the judgment debtor is required to make or that are deducted in satisfaction of other judgments and wage assignments.

(3) The amount remaining due on the money judgment.

(4) The amount being or to be received in satisfaction of the right to payment that may be assigned.

(d) A right to payment may be assigned pursuant to this article only to the extent necessary to satisfy the money judgment.

(e) When earnings or periodic payments pursuant to a pension or retirement plan are assigned pursuant to subdivision (a), the amount of the earnings or the periodic payments assigned shall not exceed the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

(f) Where a specific amount of the payment or payments to be assigned is exempt by another statutory provision, the amount of the payment or payments to be assigned pursuant to subdivision (a) shall not exceed the amount by which the payment or payments exceed the exempt amount.

Legislative Committee Comment—Assembly

Comment. Section 708.510 provides a new procedure for reaching certain forms of property that cannot be reached by levy under a writ of execution, such as the nonexempt loan value of an unmaturing life insurance, endowment, or annuity policy. See Sections 699.720(a)(6), 704.100. It also provides an optional procedure for reaching assignable forms of property that are subject to levy, such as accounts receivable, general intangibles, judgments, and instruments. This section does not make any property assignable that is not already assignable. This remedy may be used alone or in conjunction with other remedies

provided in this title for reaching rights to payment, such as execution, orders in examination proceedings, creditors' suits, and receivership. The use of this remedy is subject to limitations on the time for enforcement of judgments. See Sections 683.010-683.220.

The introductory clause of subdivision (a) recognizes that certain rights to future payments, such as pension benefits, are protected by law from assignment. See, *e.g.*, 5 U.S.C. § 8346 (1976) (federal government employees' retirement benefits); 45 U.S.C. § 231m (1976) (railroad employees' annuities).

Paragraph (1) of subdivision (a) provides a new means to reach federal employees' wages. Such wages generally may not be garnished but may be reached in examination proceedings by an order to the judgment 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 42 U.S.C. § 659 (Supp. III 1979), the wages of federal employees may be garnished for the enforcement of child support and alimony payments as if the United States were a private person.

Paragraph (2) permits issuance of an order for the assignment of the right to payment of rent. Under former law, it was held that future rental installments could not be reached by garnishment. See *Hustead v. Superior Court*, 2 Cal. App.3d 780, 785-87, 83 Cal. Rptr. 26 (1969).

The assignment of a right to charge commissions or royalties pursuant to paragraphs (3) and (4) may be a more appropriate manner for reaching such uncertain amounts than through levy and sale as permitted in *Meacham v. Meacham*, 262 Cal. App.2d 248, 252, 68 Cal. Rptr. 746 (1968).

The nonexempt loan value (see Section 704.100) of an unmaturing life insurance, endowment, or annuity policy may not be reached by a levy of execution (see Section 699.720), but may be reached by an assignment order under paragraph (ö).

Subdivision (c) is based on the standard for fixing the amount of payments under the New York installment payment order procedure. See N.Y. Civ. Proc. Law & R. § 5226 (McKinney 1978).

Subdivision (d) recognizes that the amount collected by the judgment creditor pursuant to this article may not exceed the amount necessary to satisfy the judgment. See also Sections 685.020 (accrual of interest), 685.030 (cessation of interest), 685.040 (right to costs).

Subdivisions (e) and (f) recognize limitations on the assignment order procedure imposed by exemption laws. See Section 703.010.

§ 708.520. Restraining assignment or other disposition

708.520. (a) When an application is made pursuant to Section 708.510 or thereafter, the judgment creditor may apply to the court for an order restraining the judgment debtor from assigning or otherwise disposing of the right to payment that is sought to be assigned. The application shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, it may be made *ex parte*.

(b) The court may issue an order pursuant to this section upon a showing of need for the order. The court, in its discretion, may require the judgment creditor to provide an undertaking.

(c) The court may modify or vacate the order at any time with or without a hearing on such terms as are just.

(d) The order shall be personally served upon the judgment debtor and 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 708.520 affords injunctive relief in an appropriate case, pending determination of the judgment creditor's application for an assignment order.

§ 708.530. Effect and priority of assignment

708.530. The effect and priority of an assignment ordered pursuant to this article is governed by Section 955.1 of the Civil Code. For the purpose of priority, an assignee of a right to payment pursuant to this article shall be deemed to be a bona fide assignee for value under the terms of Section 955.1 of the Civil Code.

Comment. Section 708.530 incorporates the rule generally applicable to assignments of general intangibles and other rights to payment. Under Civil Code Section 955.1 and this section, the judgment creditor who has obtained an assignment under this article will have priority over another assignee of the same right for value and without notice only if the judgment creditor first gives notice to the obligor. See also Section 708.540.

§ 708.540. Rights of person obligated

708.540. The rights of an obligor are not affected by an order assigning the right to payment until notice of the order is received by the obligor. For the purpose of this section, “obligor” means the person who is obligated to make payments to the judgment debtor or who may become obligated to make payments to the judgment debtor depending upon future developments.

Comment. Section 708.540 makes clear that the person obligated to make payments to the judgment debtor or who will become obligated is not affected by the assignment order until notice of the order is received. This section is analogous to provisions governing the effect of an execution levy. See, *e.g.*, Sections 701.020 (liability of third person under levy), 701.050 (duty of account debtor). See also Civil Code § 955.1 (rights of certain obligors upon assignment); Com. Code § 9318 (rights of account debtor).

§ 708.550. Exemption procedure

708.550. (a) The judgment debtor may claim that all or a portion of the right to payment is exempt from enforcement of a money judgment by application to the court on noticed motion filed not later than three days before the date set for the hearing on the judgment creditor’s application for an assignment order. The judgment debtor shall execute an affidavit in support of the application that includes all of the matters set forth in subdivision (b) of Section 703.520. Failure of the judgment debtor to make a claim of exemption is a waiver of the exemption.

(b) The notice of the motion shall be personally served on the judgment creditor not later than three days before the date set for the hearing.

(c) The court shall determine any claim of exemption made pursuant to this section at the hearing on issuance of the assignment order.

Comment. Section 708.550 provides a motion procedure for claiming exemptions in a proceeding under this article. Exemptions not claimed as provided in this section are waived. See Section 703.030.

§ 708.560. Modification or setting aside assignment order

708.560. (a) Either the judgment creditor or the judgment debtor may apply to the court on noticed motion for an order to modify or set aside the assignment order. The notice of motion shall be served on the other party. Service shall be made personally or by mail.

(b) The court shall make an order modifying or setting aside the assignment order upon a showing that there has been a material change in circumstances since the time of the previous hearing on the assignment order. The court may order a reassignment of the right to payments as necessary. The order shall state whether and to what extent it applies to payments already made.

Comment. Section 708.560 gives the court broad discretion to modify or set aside an assignment order depending upon the circumstances of the case.

Article 7. Receiver to Enforce Judgment**§ 708.610. Application of general provisions**

708.610. 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 article.

Comment. Section 708.610 makes clear that the general receiver provisions continue to apply to receivers for enforcement of judgments. The appointment of a receiver is subject to the general rules concerning the time within which judgments may be enforced. See Chapter 3 (commencing with Section 683.010) of Division 1.

§ 708.620. Appointment of receiver

708.620. 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 a reasonable method to obtain the fair and orderly satisfaction of the judgment.

Legislative Committee Comment—Assembly

Comment. Section 708.620 supersedes portions of Section 564 that authorized the appointment of a receiver to enforce a judgment. It 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 property in satisfaction of the judgment as was formerly required by subdivision 4 of Section 564. See *Olsan v. Comora*, 73 Cal. App.3d 642, 647-49, 140 Cal. Rptr. 835 (1977).

Under Section 708.620, a receiver may be appointed where a writ of execution would not reach certain property and other remedies appear inadequate. A receiver may also be appointed in examination proceedings under Article 2 (commencing with Section 708.110) where the requisite showing is made under this section. *Cf. Tucker v. Fontes*, 70 Cal. App.2d 768, 771-72, 161 P.2d 697, 699 (1945); *Medical Finance Ass'n v. Short*, 36 Cal. App.2d Supp. 745, 747, 92 P.2d 961, 962 (1939) (appointment of receiver in supplementary proceedings under former law). A receiver may be appointed to enforce a charging order against a partnership under Corporations Code Section 15028. See Section 708.310 (charging orders). As to the appointment of a receiver where necessary to preserve the value of property, see Section 699.070.

A receiver may also be appointed to enforce a judgment for the possession or sale of property. See Section 712.060. See also Section 708.920 (receiver for enforcement against franchise granted by public entity).

§ 708.630. Receiver to transfer alcoholic beverage license

708.630. (a) The judgment debtor's interest in an alcoholic beverage license may be applied to the satisfaction of a money judgment only as provided in this section.

(b) The court may appoint a receiver for the purpose of transferring the judgment debtor's interest in an alcoholic beverage license that is transferable under Article 5 (commencing with Section 24070) of Chapter 6 of Division 9 of the Business and Professions Code, unless the judgment debtor shows in the proceeding to appoint a receiver that the amount of delinquent taxes described in Section 24049 of the Business and Professions Code and claims of creditors with priority over the judgment

creditor pursuant to Section 24074 of the Business and Professions Code exceed the probable sale price of the license.

(c) The receiver may exercise the powers of the licensee as necessary and in exercising such powers shall comply with the applicable provisions of Division 9 (commencing with Section 23000) of the Business and Professions Code and applicable regulations of the Department of Alcoholic Beverage Control. An application shall be filed to transfer the license to the receiver and a temporary retail permit shall be obtained during the pendency of the transfer.

Legislative Committee Comment—Assembly

Comment. Section 708.630 supersedes a portion of former Section 688(f). After the amendment of former Section 688 in 1959 (1959 Cal. Stats. ch. 2140, § 1), alcoholic beverage licenses were not reachable by any state enforcement process. See 37 Ops. Cal. Att’y Gen. 4 (1961). Alcoholic beverage licenses are not subject to levy under a writ of execution. See Section 699.720(a). 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).

In order to prevent a situation where the judgment creditor forces the sale of the judgment debtor’s license but does not receive any proceeds to be applied toward satisfaction of the judgment, subdivision (b) precludes transfer if the judgment debtor shows that it is unlikely that the sale of the license would yield any excess over the amount required to satisfy delinquent taxes under Business and Professions Code Section 24049 and claims of creditors with priority over the judgment creditor under Business and Professions Code Section 24074. The scheme of priorities set out in Section 24074 is “mandatory and exclusive.” *Grover Escrow Corp. v. Gole*, 71 Cal.2d 61, 65, 453 P.2d 461, 463, 77 Cal. Rptr. 21, 23 (1969). See also Bus. & Prof. Code § 24076.

Subdivision (c) enables the receiver to exercise the powers of the licensee as 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 its procedures and the regulations of the Department of Alcoholic Beverage Control.

Article 8. Collection of Judgment Where Judgment Debtor Is Creditor of Public Entity

§ 708.710. Definitions

708.710. As used in this article:

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

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

(c) "State" means the State of California.

(d) "State agency" means a state office, officer, department, division, bureau, board, commission or agency claims against which are paid by warrants drawn by the Controller.

Comment. Section 708.710 defines several terms used in this article but makes no substantive change in former law. See former Section 710. Subdivision (d) is drawn from Section 900.6 of the Government Code and reflects the fact that Section 708.740 applies only to state agencies which present claims to the State Controller. As to claims which are not presented to the State Controller, Section 708.750 applies.

§ 708.720. Exclusive procedures

708.720. (a) If a public entity owes money to the judgment debtor, the obligation of the public entity may be applied to the satisfaction of the money judgment against the judgment debtor only in the manner provided by (1) this article, (2) Chapter 5 (commencing with Section 706.010) (wage garnishment), or (3) Article 5 (commencing with Section 708.410) (lien in pending action or proceeding).

(b) The earnings of a public officer or employee shall not be withheld pursuant to this article. Except as expressly provided by law, the earnings of a public officer or employee may be withheld for the payment of a money judgment only pursuant to Chapter 5 (commencing with Section 706.010).

(c) If the obligation of a public entity to pay money to the judgment debtor is the subject of a pending action or special proceeding, the procedure in this article does not apply. The payment of the obligation that is the subject of the pending action or special proceeding may be applied to the satisfaction of the money judgment against the judgment debtor only in the manner provided in Article 5 (commencing with Section 708.410).

Comment. Section 708.720 makes clear the procedures available to apply the obligation of a public entity to pay money to the judgment debtor to the satisfaction of a money judgment against the judgment debtor. The section continues the substance of former Section 710(h) (wage garnishment) and makes clear that a lien may be obtained in a pending action or proceeding to which the public entity is a party.

§ 708.730. Filing and notice generally

708.730. (a) If money is owing and unpaid to the judgment debtor by a public entity, the judgment creditor may file, in the manner provided in this article, an abstract of the money judgment or a certified copy of the money judgment, together with an affidavit that states that the judgment creditor desires the relief provided by this article and states the exact amount then required to satisfy the judgment. The judgment creditor may state in the affidavit any fact tending to establish the identity of the judgment debtor.

(b) Promptly after filing the abstract or certified copy of the judgment and the affidavit with the public entity, the judgment creditor shall serve notice of the filing on the judgment debtor. Service shall be made personally or by mail.

Comment. Subdivision (a) of Section 708.730 continues the substance of the introductory paragraph of subdivision (a) and the first sentence of subdivision (e) of former Section 710.

Money is "owing and unpaid" under these provisions when there is an existing and unsatisfied legal liability on the part of the public entity. *McDaniel v. City & County of San Francisco*, 259 Cal. App.2d 356, 361, 66 Cal. Rptr. 384, 387 (1968); *Department of Water & Power v. Inyo Chem. Co.*, 16 Cal.2d 744, 751-53, 108 P.2d 410 (1940).

Subdivision (b) is new. Former Section 710 did not provide for a notice of filing. See *McDaniel v. City & County of San Francisco*, 259 Cal. App.2d 356, 363, 66 Cal. Rptr. 384 (1968). This notice serves the same purpose as a notice of levy under a writ of execution. See Section 699.540.

The procedure provided by this article also applies in cases where money is owed to the judgment debtor by reason of an award in an eminent domain proceeding. Former Section 710(d) provided a distinct but similar procedure for reaching such awards. Under this title, the judgment creditor may seek to apply such property toward the satisfaction of a money judgment through the procedures normally applicable, depending upon the status of the money at the time when it is sought to be reached. Hence, if an eminent domain proceeding has been commenced, the judgment creditor may obtain a lien in the pending eminent domain proceeding pursuant to Article 5 (commencing with Section 708.410). If the judgment in the eminent domain proceeding is final and the public entity has not paid the award to the judgment debtor, the judgment creditor may file an abstract or certified copy of the judgment and an affidavit with the public entity pursuant to this article. If the public entity has deposited the amount of the award with the court where the eminent domain proceeding was held and the judgment creditor has not obtained a lien under Article 5, the judgment creditor may use some other appropriate procedure, such as garnishment or motion. See, *e.g.*, *Kimball v. Richardson-Kimball Co.*, 111 Cal. 386, 394, 43 P. 1111 (1896) (levy of attachment); *Phoenix v. Kovacevich*, 246 Cal. App.2d 774, 778-79, 55 Cal. Rptr. 135 (1966) (permission to levy by court order); *Credit Bureau of San Diego, Inc. v. Getty*, 61 Cal. App.2d Supp. 823, 826-29, 142 P.2d 105 (1943) (affidavit procedure of former Section 710 not effective where court deposited money with county); *Colver v. W.B. Scarborough Co.*, 73 Cal. App. 455, 457-59, 238 P. 1110 (1925) (levy of execution).

§ 708.740. Collection where judgment debtor is creditor of state agency

708.740. (a) If money is owing and unpaid to the judgment debtor by a state agency, the judgment creditor shall file the abstract or certified copy of the judgment and the affidavit with the state agency owing the money to the judgment debtor prior to the time the state agency presents the claim of the judgment debtor to the Controller.

(b) When presenting the claim of the judgment debtor to the Controller, the state agency shall do all of the following:

(1) Note the fact of the filing of the abstract or certified copy of the judgment and the affidavit.

(2) State the amount required to satisfy the judgment as shown by the affidavit.

(3) State any amounts advanced to the judgment debtor by the state, or owed by the judgment debtor to the state, for expenses or for any other purpose.

(c) To discharge the claim of the judgment debtor, the Controller shall (1) deposit with the court, by a warrant or check payable to the court, the amount due the judgment debtor (after deducting an amount sufficient to reimburse the state for any amounts advanced to the judgment debtor or owed by the judgment debtor to the state) required to satisfy the money judgment as shown by the affidavit in full or to the greatest extent and (2) pay the balance thereof, if any, to the judgment debtor.

Comment. Section 708.740 continues the substance of paragraph 1 of subdivision (a) of former Section 710.

§ 708.750. Collection where judgment debtor is creditor of public entity other than state agency

708.750. If money is owing and unpaid to the judgment debtor by a public entity other than a state agency, the judgment creditor shall file the abstract or certified copy of the judgment and the affidavit with the auditor of the public entity or, if there is no auditor, with the official whose duty corresponds to that of auditor. To discharge the claim of the judgment debtor, the auditor or other official shall (1) deposit with the court by a warrant or check payable to the court, the amount due the judgment debtor (after deducting an amount sufficient to reimburse the public entity for any amounts advanced to the judgment debtor or owed by the judgment debtor to the public entity) required to satisfy the money judgment as shown by the affidavit in full or to the greatest extent and (2) pay the balance thereof, if any, to the judgment debtor.

Comment. Section 708.750 continues the substance of paragraph 2 of subdivision (a) of former Section 710. The reference to deductions for advances to, or amounts owed by, the judgment debtor did not appear in the former law applicable to local public entities, but has been included in Section 708.750 to make it parallel to Section 708.740, applicable to the state agencies.

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

708.760. (a) If the judgment debtor named in the abstract or certified copy of the judgment filed pursuant to this article is a contractor upon a public work, the cost of which is to be paid out of public moneys voted, appropriated, or otherwise set apart for such purpose, only so much of the contract price shall be deemed owing and unpaid within the meaning of Section 708.740 or 708.750 as may remain payable under the terms of the contractor's contract, upon the completion thereof, after deducting sums due and to become due to persons described in Section 3181 of the Civil Code. In ascertaining the sums due or to become due to such persons, only claims which 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 shall be considered.

(b) The Controller, auditor, or other public disbursing officer whose duty it is to make payments under the provisions of the contract may not deposit an amount with the court pursuant to this article until the contract is completed, but may deposit an amount with the court to satisfy the claim of the judgment debtor before the payments specified in subdivision (a) are made so long as a sufficient amount is retained for the satisfaction of the claims of persons described in Section 3181 of the Civil Code.

Comment. Subdivision (a) of Section 708.760 continues the substance of the first and second sentences of former Section 710a. Subdivision (b) supersedes the last sentence of former

Section 710a. Subdivision (b) is intended to permit payment to the judgment creditor without the necessity of awaiting the resolution of disputes concerning payment to other contractors.

§ 708.770. Notice of deposit with court; exemption claim

708.770. (a) Promptly after deposit with the court by the public entity, the court clerk shall cause a notice of deposit to be served on the judgment debtor. Service shall be made personally or by mail.

(b) Within 10 days after service of the notice of deposit pursuant to subdivision (a), the judgment debtor who claims an exemption shall do both of the following:

(1) File with the court a claim of exemption and a notice of motion for an order determining the claim of exemption. The claim of exemption shall include all of the matters set forth in subdivision (b) of Section 703.520.

(2) Serve on the judgment creditor a copy of the notice of motion, a copy of the claim of exemption, and a notice of hearing on the motion. Service shall be made personally or by mail.

(c) The hearing on the motion shall be held not later than 30 days from the date the notice of motion was filed with the court unless continued by the court for good cause.

(d) Within 10 days after the judgment creditor is served under subdivision (b), the judgment creditor who opposes the motion shall do both of the following:

(1) File with the court a notice of opposition to the claim of exemption. The notice of opposition to the claim of exemption shall be executed under oath and shall include all of the matters set forth in Section 703.560.

(2) Serve on the judgment debtor a copy of the notice of opposition to the claim of exemption. Service shall be made personally or by mail.

(e) Subdivisions (a) to (d), inclusive, of Section 703.580 and Sections 703.590 and 703.600 apply to a claim of exemption made pursuant to this section.

(f) The failure of the judgment debtor to make a claim of exemption under this section constitutes a waiver of the exemption.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 708.770 requires service on the judgment debtor of a notice of a deposit made pursuant to Section 708.740 or 708.750. This notice enables the judgment debtor to make a claim of exemption before the money is paid over to the judgment creditor.

Subdivisions (b)-(f) provide a procedure for determining exemption claims under this article.

The limitation on the time for claiming an exemption provided by subdivision (b) is the same as the period applicable to exemption claims under a writ of execution. See Section 703.520.

§ 708.775. Distribution of money

708.775. After the expiration of the period allowed for claiming an exemption under Section 708.770 if no exemption has been claimed, or after the determination of the claim of exemption if an exemption is claimed within the period allowed for claiming the exemption under Section 708.770, the court shall pay the nonexempt portion of the money deposited to which the judgment creditor is entitled to the judgment creditor and the balance thereof, if any, to the judgment debtor, unless some other disposition is required by law.

Comment. Section 708.775 supersedes subdivision (c) of former Section 710. Section 708.775 recognizes that the judgment debtor may not be entitled to the excess, such as, for example, where a second judgment creditor has a lien subordinate to that of the first judgment creditor. See Section 701.810 (distribution of proceeds).

§ 708.780. Lien

708.780. Filing of the abstract or certified copy of the judgment and the affidavit pursuant to this article creates a lien on the money owing and unpaid to the judgment debtor by the public entity in an amount equal to that which may properly be applied to the satisfaction of the money judgment under this article.

Comment. Section 708.780 provides for the creation of a lien as of the time of filing with the public entity by the judgment creditor under Section 708.740 or 708.750. This principle is consistent with decisions under former law which equated filing

with levy and determined priority as of the time of filing. See *Department of Water & Power v. Inyo Chem. Co.*, 16 Cal.2d 744, 751-53, 108 P.2d 410 (1940); *Ott Hardware Co. v. Davis*, 165 Cal. 795, 800, 134 P. 973 (1913).

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

708.785. (a) The judgment creditor upon filing the abstract or certified copy of the judgment and the affidavit shall pay a fee of six dollars (\$6) to the public entity with which it is filed.

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

Comment. Subdivision (a) of Section 708.785 continues the substance of subdivision (b) of former Section 710. Subdivision (b) continues the substance of subdivision (g) of former Section 710.

§ 708.790. Liability of public officer

708.790. 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 certified copy of the judgment 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 708.790 continues the substance of the last two sentences of subdivision (e) of former Section 710. See also Section 708.730 (judgment creditor may state additional information in affidavit to establish identity of judgment debtor).

§ 708.795. Limitations on procedure of this article

708.795. Nothing in this article authorizes the filing against an overpayment of tax, penalty, or interest, or interest allowable with respect to an overpayment, under Part 10 (commencing with Section 17001) or Part 11

(commencing with Section 23001) of Division 2 of the Revenue and Taxation Code or under Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.

Legislative Committee Comment—Senate

Comment. Section 708.795 continues the substance of subdivision (f) of former Section 710. Section 708.795 does not affect the right of offset provided by Section 12419.5 of the Government Code.

Article 9. Enforcement Against Franchise

§ 708.910. Franchise defined

708.910. As used in this article, “franchise” means a franchise granted by a public entity and all the rights and privileges thereof, other than the franchise of being a corporation.

Comment. Section 708.910 makes clear that this article applies only to franchises from public entities. Private franchises are governed by the general rules relating to application of property to satisfaction of a money judgment.

§ 708.920. Court order for enforcement

708.920. (a) The court may, in its discretion, order a franchise applied to the satisfaction of a money judgment upon application by the judgment creditor made on noticed motion. The notice of motion shall be served on the judgment debtor and the public entity that granted the franchise. Service shall be made personally or by mail. In exercising its discretion, the court shall determine whether application of the franchise to the satisfaction of the judgment is proper taking into account all the circumstances of the case, including but not limited to the nature of the franchise, whether the franchise is by its terms transferable, and the likelihood that application of the franchise to the satisfaction of the judgment will yield a substantial amount.

(b) If the court orders application of the franchise to the satisfaction of the judgment, application shall be by such means as appears proper to the court, including but not limited to sale of the franchise, assignment of the franchise or proceeds of the franchise, or appointment of

a receiver. The court may include in its order, or make additional orders containing, provisions to effectuate the application of the franchise to the satisfaction of the judgment, including but not limited to provisions relating to the place of sale of the franchise, possession of the property of the judgment debtor necessary for the exercise of the franchise, receipt of proceeds of the franchise, recovery of penalties imposed by law and recoverable for injury to the franchise or for damages or other cause, and the judgment debtor's powers, duties, and liability for penalties and forfeitures.

Comment. Subdivision (a) of Section 708.920 supersedes former Section 724a. A franchise is no longer subject to levy and sale under execution but may only be applied to the satisfaction of a judgment pursuant to court order made in the court's discretion. See Section 699.720 and Comment thereto (property not subject to execution) and Section 695.010 (property subject to enforcement of money judgment). Subdivision (b) supersedes former Sections 724b-724e. See also Cal. Const. art. XX, § 4 (liability of franchise or property held thereunder).

§ 708.930. Limitations on enforcement

708.930. Notwithstanding any other provision of this article, an order for application of a franchise to the satisfaction of a money judgment is subject to all applicable laws governing sale, transfer, or other actions concerning the franchise, including but not limited to any necessary approvals by the Public Utilities Commission or local public entities and compliance with statutory or administrative regulations.

Comment. Section 708.930 incorporates limitations on sale and other actions affecting franchises. See, e.g., *City of South Pasadena v. Pasadena Land and Water Co.*, 152 Cal. 579, 93 P. 490 (1908) (franchise not transferable unless transferee continues exercise of franchise).

Article 10. Other Enforcement Procedures

§ 709.010. Trusts

709.010. (a) As used in this section, "trust" has the meaning provided in Section 1138 of the Probate Code but includes a trust subject to court supervision under Article 1 (commencing with Section 1120) of Chapter 19 of Division 3 of the Probate Code.

(b) The judgment debtor's interest as a beneficiary of a trust is subject to enforcement of a money judgment only upon petition under this section by the judgment creditor to the court prescribed in Chapter 19 (commencing with Section 1120) of Division 3 of the Probate Code (administration of trusts). The judgment debtor's interest in the trust may be applied to the satisfaction of the money judgment by such means as the court, in its discretion, determines are proper, including but not limited to imposition of a lien on or sale of the judgment debtor's interest, collection of trust income, and liquidation and transfer of trust assets by the trustee.

(c) Nothing in this section affects the law relating to enforcement of a money judgment against the judgment debtor's interest in a spendthrift trust, but surplus amounts from a spendthrift trust liable pursuant to Section 859 of the Civil Code are subject to enforcement of a money judgment under this section.

Comment. Subdivision (a) of Section 709.010 incorporates provisions that make clear that this section applies only to written, voluntary, express trusts (testamentary or inter vivos) and not to such trusts as Totten trusts, investment trusts, and deeds of trust.

Subdivision (b) provides for the application of the judgment debtor's beneficial interest in a trust to the satisfaction of a money judgment. Section 699.720(a)(8) (property not subject to execution) reverses the case law rule that the judgment debtor's beneficial interest in a trust is subject to execution. See, *e.g.*, *Houghton v. Pacific Southwest Trust & Sav. Bank*, 111 Cal. App. 509, 295 P. 1079 (1931). Enforcement processes may not reach specific trust assets or the judgment debtor's interest in the trust (see, *e.g.*, *Poindexter v. Los Angeles Stone Co.*, 60 Cal. App. 686, 214 P. 241 (1923) (judgment lien)) except pursuant to court order applying the interest or assets to satisfaction of the judgment.

Subdivision (c) makes clear that this section does not affect the validity of a spendthrift provision in a trust instrument but permits the surplus income from a spendthrift trust to be reached under Section 709.010 to the extent that such income is liable for payment of a judgment under the law otherwise applicable. The remedy provided by Section 709.010 replaces the remedy of a creditor's suit which was used under former law. See *Canfield v. Security-First Nat'l Bank*, 13 Cal. 2d 1, 34, 87 P.2d 830 (1939). See also Civil Code § 859; *Estate of Lawrence*, 267 Cal. App.2d 77, 82-83, 72 Cal. Rptr. 851 (1968).

§ 709.020. Contingent interests

709.020. The judgment creditor may apply to the court on noticed motion for an order applying to the satisfaction of a money judgment a contingent remainder, executory interest, or other interest of the judgment debtor in property that is not vested in the judgment debtor. The interest of the judgment debtor may be applied to the satisfaction of the money judgment by such means as the court, in its discretion, determines are proper to protect the interests of both the judgment debtor and judgment creditor, including but not limited to the imposition of a lien on or the sale of the judgment debtor's interest.

Comment. Section 709.020 reverses the rule of such cases as *Anglo California Nat'l Bank v. Kidd*, 58 Cal. App.2d 651, 137 P.2d 460 (1943), which held that contingent interests are not subject to satisfaction of a money judgment. Section 699.720(a)(9) continues the rule that such interests are not subject to execution. Section 709.020 is intended to permit the court, in an examination proceeding or creditor's suit or otherwise, to fashion a suitable remedy through its equitable powers in order to prevent a sacrifice sale of the judgment debtor's interest while preserving the rights of the judgment creditor.

§ 709.030. Guardianship or conservatorship estates

709.030. Property in a guardianship or conservatorship estate is not subject to enforcement of a money judgment by a procedure provided in this division, but the judgment creditor may apply to the court in which the guardianship or conservatorship

proceeding is pending under Division 4 (commencing with Section 1400) of the Probate Code for an order requiring payment of the judgment.

Comment. Section 709.030 codifies the rule of *McCracken v. Lott*, 3 Cal.2d 164, 44 P.2d 355 (1935). If the guardian or conservator fails, neglects, or refuses to pay the judgment, the judgment creditor may apply to the court having jurisdiction of the guardianship or conservatorship proceeding pursuant to Probate Code Section 2404.

DIVISION 3. ENFORCEMENT OF NONMONEY JUDGMENTS

CHAPTER 1. GENERAL PROVISIONS

§ 712.010. Issuance of writ of possession or sale

712.010. After entry of a judgment for possession or sale of property, a writ of possession or sale shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the judgment is to be enforced. A separate writ shall be issued for each county where the judgment is to be enforced. Writs may be issued successively until the judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 180 days after the issuance of a prior writ for that county unless the prior writ is first returned.

Comment. Section 712.010 is a general provision applicable to the issuance of writs of possession or sale that may be used to enforce judgments for possession or sale under this division. The section is analogous to subdivision (a) of Section 699.510 relating to writs of execution. See also the Comment to Section 699.510. It is based in part on former Sections 681, 684, and 687. Section 712.010 authorizes issuance of writs to more than one county; it will be a rare case, however, in which a writ of sale or possession of real property is needed in a county other than that where the judgment is entered. See, *e.g.*, Sections 392 (venue for actions concerning real property), 701.570(a) (execution sale of parcel of real property located in more than one county), 726(d) (place of sale of mortgaged premises). The last sentence providing for successive writs, is made necessary by the provisions of Section

712.050 concerning the return of the writ. In certain unlawful detainer cases, a writ of possession of real property may not be issued until the expiration of five days after entry of the judgment. See Section 1174(c).

§ 712.020. Contents of writ

712.020. A writ of possession or sale issued pursuant to this division shall require the levying officer to whom it is directed to enforce the judgment and shall include the following information:

- (a) The date of issuance of the writ.
- (b) The title of the court where the judgment for possession or sale is entered and the cause and number of the action.
- (c) The name and address of the creditor and the name and last known address of the judgment debtor.
- (d) The date the judgment was entered, and the date of any subsequent renewals, and where entered in the records of the court.
- (e) If the judgment for possession or sale includes a money judgment, the amount required to satisfy the money judgment on the date the writ is issued and the amount of interest accruing daily on the principal amount of the judgment from the date the writ is issued.
- (f) Whether any person has requested notice of sale under the judgment and, if so, the name and address of such person.
- (g) Any other information required to be included in the particular writ.

Comment. Section 712.020 prescribes the essential elements of a writ of possession or sale issued to enforce a judgment under this division. This section is analogous to Section 699.520 (contents of writ of execution). Additional information is required depending upon the type of writ. See Sections 714.010, 715.010, 716.010. A statutory form of the writ is provided in Section 693.010. The Judicial Council has authority to supersede the statutory form. See Section 681.030(b).

§ 712.030. Delivery and execution of writ

712.030. (a) Upon delivery of the writ of possession or sale to the levying officer to whom the writ is directed, together with the written instructions of the judgment

creditor, the levying officer shall execute the writ in the manner prescribed by law.

(b) The levying officer may not levy upon or otherwise seize property under the writ after the expiration of 180 days from the date the writ was issued.

Comment. Section 712.030 is analogous to Section 699.530 (delivery and execution of writ of execution). See also the Comment to Section 699.530.

§ 712.040. Collection of money amounts

712.040. (a) A writ of possession or sale may be enforced as a writ of execution to satisfy any money judgment included in the judgment for possession or sale. If amounts due under the judgment are not satisfied pursuant to the writ of possession or sale, the judgment creditor may use a writ of execution to satisfy any money judgment included in the judgment after the writ of possession or sale has been returned or 180 days after its issuance, whichever is earlier. If the judgment creditor does not desire issuance of a writ of possession or sale (because possession has been voluntarily surrendered, the secured obligation has been voluntarily satisfied, or other reason), a writ of execution may be issued to satisfy any money judgment included in the judgment.

(b) Whether or not a writ of possession or sale has been issued, enforced, or returned, the judgment creditor may use any available remedies provided by Chapter 5 (commencing with Section 706.010) or Chapter 6 (commencing with Section 708.010) of Division 2 to satisfy any money judgment included in the judgment.

(c) Notwithstanding subdivisions (a) and (b), if so ordered in a judgment for sale, a money judgment included in the judgment may only be enforced as ordered by the court.

Legislative Committee Comment—Senate

Comment. Section 712.040 is derived from a portion of subdivision 4 of former Section 682 (satisfaction of costs, damages, rents, or profits under judgment for possession of real or personal property). Subdivision (a) promotes procedural efficiency by permitting a writ of possession or sale to be enforced by a levying officer as if it were a writ of execution issued to enforce a money

judgment. Subdivision (a) also makes clear that the money judgment portion of the judgment for sale or possession is enforceable directly by a writ of execution after the writ of possession or sale is no longer leviable as a writ of execution or in a case where no writ of possession or sale is needed or desired.

Subdivision (b) makes clear that the judgment creditor is not restricted to the remedy under subdivision (a) but is free to use any other appropriate remedy provided for enforcement of a money judgment. See Sections 706.010–706.154 (wage garnishment), 708.010–709.030 (miscellaneous creditors' remedies).

The judgment debtor may be entitled to claim exemptions for property sought to be applied to the satisfaction of a money judgment pursuant to a writ of possession or sale. See Sections 703.010–704.850 (exemptions).

Subdivision (c) recognizes that a judgment for sale may provide restrictions on the collection of money amounts awarded in the judgment. See also Section 716.020 (execution of writ of sale). Costs and attorney's fees may be ordered to be satisfied out of the proceeds from the sale of the property, if it is security for such amounts. See, e.g., Section 727; *Clemens v. Luce*, 101 Cal. 432, 436, 35 P. 1032 (1894).

§ 712.050. Return of writ

712.050. The return of a writ of possession or sale is governed by Section 699.560 (return of writ of execution).

Comment. Section 712.050 is new; prior statutory law did not provide for the return of a writ of possession or sale. See former Section 683. This section differs from the rule applied in *Magnaud v. Traeger*, 66 Cal. App. 526, 530-31, 226 P. 990 (1924), where it was held that a writ of possession of real property remained in force insofar as it directed the levying officer to levy on property to satisfy the part of the judgment awarding damages.

§ 712.060. Receiver

712.060. The court may appoint a receiver pursuant to Article 7 (commencing with Section 708.610) of Chapter 6 of Division 2 to enforce a judgment for possession or sale of property.

Comment. Section 712.060 makes clear that a receiver may be appointed to enforce a judgment for possession or sale of property under this division. Under former law, receivers were not expressly authorized to enforce such judgments. See the former provision of Section 726 for appointment of elisor or commissioner to sell property at conclusion of foreclosure action. See also *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). The appointment of a receiver is subject to the general rules concerning the time within which a judgment may be enforced. See Sections 683.010-683.220.

§ 712.070. Enforcement against public entity

712.070. Except as provided in Section 695.050, a judgment against a public entity is enforceable under this division.

Comment. Section 712.070 makes clear that nonmoney judgments against public entities are governed by this title even though money judgments are not. See Section 695.050 and Comment thereto.

CHAPTER 2. JUDGMENT FOR POSSESSION OF PERSONAL PROPERTY

§ 714.010. Writ of possession of personal property

714.010. (a) A judgment for possession of personal property may be enforced by a writ of possession of personal property issued pursuant to Section 712.010.

(b) In addition to the information required by Section 712.020, the writ of possession of personal property shall contain the following:

(1) A description of the property to be delivered to the judgment creditor in satisfaction of the judgment.

(2) The value of the property if specified in the judgment or a supplemental order.

Comment. Section 714.010 supersedes portions of subdivision 4 of former Section 682 and of former Section 684. Under this chapter, a judgment for possession of personal property is enforced by a writ of possession rather than a writ of execution. A statutory form for the writ of possession is provided in Section 693.010. The Judicial Council has authority to supersede the statutory form. See Section 681.030(b).

§ 714.020. Execution of writ of possession of personal property

714.020. (a) To execute the writ of possession of personal property, the levying officer shall search for the property specified in the writ and, if the property is in the possession of the judgment debtor or an agent of the judgment debtor, take custody of the property in the same manner as a levy under a writ of execution on such property in the possession of the judgment debtor. Custody of personal property used as a dwelling shall be taken as provided by Section 700.080. Custody of property in a private place shall be taken as provided by Section 699.030. If the levying officer obtains possession of the property specified in the writ of possession, the levying officer shall deliver the property to the judgment creditor in satisfaction of the judgment.

(b) If the property specified in the writ of possession cannot be taken into custody, the levying officer shall make a demand upon the judgment debtor for the property if the judgment debtor can be located. If custody of the property is not then obtained, the levying officer shall so state in the return. Thereafter the judgment for the possession of the property may be enforced in the same manner as a money judgment for the value of the property as specified in the judgment or a supplemental order.

(c) The writ of possession of personal property may, under the circumstances described in subdivision (b), be treated as a writ of execution.

Comment. Section 714.020 supersedes a portion of subdivision 4 of former Section 682 and former Section 684.1 (incorporating the manner of enforcing prejudgment writs of possession pursuant to Section 514.010). By incorporating the manner of levy under a writ of execution, subdivision (a) continues the general substance of prior law. See, *e.g.*, Sections 699.030 (property in private place), 700.030 (property in judgment debtor's possession), 700.070 (property of going business), 700.080 (personal property dwelling).

Under subdivision (b), the value of the property is substituted only where the property cannot be delivered. See Section 667; *Drinkhouse v. Van Ness*, 202 Cal. 359, 374, 260 P. 869 (1927). The

value of the property is generally alleged and determined in the action. See Sections 627, 667; 3 B. Witkin, *California Procedure Pleading* § 555, at 2197, § 563, at 2202-03 (2d ed. 1971). The judgment creditor is not obligated to accept merely the value of the property if the property itself is available. *Griffith v. Reddick*, 41 Cal. App. 458, 461-62, 182 P. 984 (1919).

§ 714.030. Turnover order

714.030. (a) After entry of a judgment for possession of personal property, and whether or not a writ of possession of personal property has been issued, the judgment creditor may apply to the court for an order directing the judgment debtor to transfer possession of the property or documentary evidence of title to the property or both to the judgment creditor. The application shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, the application may be made *ex parte*.

(b) The court may issue an order pursuant to this section upon a showing of need for the order.

(c) The order shall be personally served on the judgment debtor and 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 714.030 is based on comparable provisions applicable before judgment (Section 512.070) and to money judgments (Section 699.040). Section 714.030 makes clear that the court has power to issue a turnover order directing the judgment debtor to transfer possession of the specified property directly to the judgment creditor. The order may be used in lieu of or in addition to a writ of possession.

CHAPTER 3. JUDGMENT FOR POSSESSION OF REAL PROPERTY

§ 715.010. Writ of possession of real property

715.010. (a) A judgment for possession of real property may be enforced by a writ of possession of real property issued pursuant to Section 712.010.

(b) In addition to the information required by Section 712.020, the writ of possession of real property shall contain the following:

(1) A description of the real property, possession of which is to be delivered to the judgment creditor in satisfaction of the judgment.

(2) A statement that if the real property is not vacated within five days from the date of service of a copy of the writ on the occupant or, if the copy of the writ is posted, within five days from the date a copy of the writ is served on the judgment debtor, the levying officer will remove the occupants from the real property and place the judgment creditor in possession.

(3) A statement that any 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 other 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.

(c) The writ of possession of real property shall be accompanied by a notice stating the address and telephone number of the levying officer's office and containing the following statement: "If you claim a right to possession of the property accruing prior to the commencement of the unlawful detainer action, or claim to have been in possession of the property on the date of the filing of the unlawful detainer action and are not named in the attached writ, contact the office of the levying officer set forth in this notice."

Comment. Section 715.010 supersedes a portion of subdivision 4 of former Section 682, a portion of former Section 684, and portions of Section 1174 (unlawful detainer). Under this chapter, a judgment for possession of real property is enforced by a writ of possession rather than a writ of execution or a writ of restitution. A statutory form for the writ of possession is provided in Section 693.010. The Judicial Council has authority to supersede the statutory form. See Section 681.030(b). Subdivision (b) (3) continues a provision formerly found in Section 1174(d).

§ 715.020. Execution of writ of possession of real property

715.020. To execute the writ of possession of real property:

(a) The levying officer shall serve a copy of the writ of possession on one occupant of the property. Service on the occupant shall be made by leaving the copy of the writ with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found upon the property when service is attempted who is either an employee or agent of the occupant or a member of the occupant's household.

(b) If unable to serve an occupant described in subdivision (a) at the time service is attempted, the levying officer shall execute the writ of possession by posting a copy of the writ in a conspicuous place on the property and serving a copy of the writ of possession on the judgment debtor. Service shall be made personally or by mail. If the judgment debtor's address is not known, the copy of the writ may be served by mailing it to the address of the property.

(c) If the judgment debtor, members of the judgment debtor's household, and any other occupants holding under the judgment debtor do not vacate the property within five days from the date of service on an occupant pursuant to subdivision (a) or on the judgment debtor pursuant to subdivision (b), the levying officer shall remove the occupants from the property and place the judgment creditor in possession. The provisions of Section 684.120 extending time do not apply to the five-day period specified in this subdivision.

(d) Notwithstanding subdivision (c), unless the person is named in the writ, the levying officer may not remove any person from the property who claims a right to possession of the property accruing prior to the commencement of the unlawful detainer action or who claims to have been in possession of the property on the date of the filing of the unlawful detainer action.

Comment. Section 715.020 continues and generalizes provisions formerly contained in Section 1174(d) (unlawful detainer).

§ 715.030. Disposition of personal property

715.030. The disposition of personal property remaining on the real property after the judgment creditor is placed in possession thereof pursuant to the writ of possession is governed by subdivisions (e) to (m), inclusive, of Section 1174. For this purpose, references in Section 1174 and in provisions incorporated by reference in 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 or other occupant.

Comment. Section 715.030 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 cases where personal property remains on the premises after possession is delivered to a judgment creditor pursuant to a writ of possession of real property.

§ 715.040. Service and posting by registered process server

715.040. (a) A registered process server may execute the writ of possession of real property as provided in subdivisions (a) and (b) of Section 715.020 if a proper writ of possession is delivered to the sheriff, marshal, or constable and that officer does not execute the writ as provided in subdivisions (a) and (b) of Section 715.020 within three days (Saturday, Sunday, and legal holidays excluded) from the day the writ is delivered to that officer.

(b) Within five days after executing the writ under this section, all of the following shall be filed with the levying officer:

- (1) The writ of possession of real property.
- (2) An affidavit of the registered process server stating the manner in which the writ was executed.
- (3) Proof of service of the writ.
- (4) Instructions in writing, as required by the provisions of Section 687.010.

(c) Upon receipt of the fee provided by Section 26733 of the Government Code, the levying officer shall perform all other duties under the writ and shall return the writ to the court.

(d) The fee for services of a registered process server under this section may, in the court's discretion, be allowed as a recoverable cost upon a motion pursuant to Section 685.080. If allowed, the amount of the fee to be allowed is governed by Section 1032.8.

Legislative Committee Comment—Assembly

Comment. Section 715.040 is a new provision permitting registered process servers to serve or post writs of possession of real property. Registered process servers do not, of course, have the authority to remove occupants pursuant to Section 715.020(c). Section 715.040 is consistent with Section 699.080 (authority of registered process server under writ of execution).

CHAPTER 4. JUDGMENT FOR SALE OF PROPERTY

§ 716.010. Writ of sale

716.010. (a) A judgment for sale of real or personal property may be enforced by a writ of sale issued pursuant to Section 712.010.

(b) In addition to the information required by Section 712.020, the writ of sale shall contain a description of the property to be sold in satisfaction of the judgment for sale.

(c) The writ of sale delivered to the levying officer shall be accompanied by a certified copy of the judgment for sale.

Comment. Section 716.010 supersedes a portion of former Section 684. Under this chapter, judgments for the sale of real or personal property are no longer enforced without resort to a writ of sale. The judgment is not enforced through an order of sale or a writ of enforcement as was formerly the practice. See, *e.g.*, *Laubisch v. Roberdo*, 43 Cal.2d 702, 713, 277 P.2d 9 (1954); *Knapp v. Rose*, 32 Cal.2d 530, 534, 197 P.2d 7 (1948). A statutory form for the writ of sale is provided in Section 693.010. The Judicial Council has authority to supersede the statutory form. See Section 681.030(b). A levy is required in every case whereas under former law no levy was required since the property was directed to be sold by the judgment—a practice arising from distinctions between the manner of enforcing common law judgments and equitable decrees. See *Southern Cal. Lumber Co. v. Ocean Beach Hotel Co.*, 94 Cal. 217, 222-24, 29 P. 627 (1892).

Subdivision (c) requires delivery of a certified copy of the judgment to enable the levying officer to follow the terms of the judgment. See, *e.g.*, Section 716.020(c) (application of proceeds in conformity with judgment). The judgment may also 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 were all situated therein. See Sections 701.570(a), 726(d).

§ 716.020. Execution of writ of sale

716.020. To execute the writ of sale, the levying officer shall:

(a) Levy upon the property described in the writ of sale in the manner prescribed by Article 4 (commencing with Section 700.010) of Chapter 3 of Division 2 for levy under a writ of execution.

(b) Except as otherwise ordered by the court, give notice of sale and sell the property described in the writ of sale in the manner prescribed by Article 6 (commencing with Section 701.510) of Chapter 3 of Division 2 for giving notice and selling under a writ of execution.

(c) Apply the proceeds of the sale of the property in conformity with the judgment for sale.

Legislative Committee Comment—Assembly

Comment. Section 716.020 continues the substance of former law regarding enforcement of a judgment for the sale of real or personal property. See former Section 684, former portion of Section 726; *Johnson v. Tyrrell*, 77 Cal. App. 179, 182-83, 246 P. 140 (1926) (foreclosure sale of real property made in same manner as execution sale); *Podrat v. Oberndorff*, 207 Cal. 457, 459-60, 278 P. 1035 (1929) (foreclosure sale of personal property under chattel mortgage made in same manner as execution sale); *Marshal's Manual of Procedure* §§ 452.1, 452.2 (rev. 1965); *Cal. State Sheriffs' Ass'n, Civil Procedural Manual* 6.28 (1978). Section 716.020 changes the former practice under which the judgment debtor was requested to bring personal property to the sale and, if he or she refused, the judgment creditor had to bring a claim and delivery action. See *Ely v. Williams*, 6 Cal. App. 455, 457-58, 92 P. 393 (1907). For special procedures applicable where property is sold subject to the right of redemption, see Sections 726(e) and 729.010-729.090.

§ 716.030. Turnover order

716.030. (a) If a writ of sale is issued, the judgment creditor may apply to the court *ex parte*, or on noticed motion if the court so directs or a court rule so requires, for an order directing the judgment debtor to transfer to the levying officer:

(1) Possession of the property to be sold if the prescribed method of levy is by taking the property into custody.

(2) Possession of any documentary evidence of title to property to be sold. An order pursuant to this paragraph may be served when the property is levied upon or thereafter.

(b) The court may issue an order pursuant to this section upon a showing of need for the order.

(c) The order shall be personally served on the judgment debtor and 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 716.030 is comparable to Section 699.040 (turnover order in aid of execution) and Section 714.030 (turnover order in aid of writ of possession of personal property).

CHAPTER 5. OTHER JUDGMENTS**§ 717.010. Enforcement of other judgments**

717.010. A judgment not otherwise enforceable pursuant to this title may be enforced by personally serving a certified copy of the judgment on the person required to obey it and invoking the power of the court to punish for contempt.

Comment. Section 717.010 continues the substance of a portion of former Section 684.

DIVISION 4. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

CHAPTER 1. DEFINITIONS

§ 720.010. Application of definitions

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

Comment. This chapter provides special definitions of “creditor” and “debtor” which are necessary because this division also governs third-party claims to property levied upon under writs of attachment and prejudgment writs of possession. See, *e.g.*, Section 720.110 (chapter extends to attachment and prejudgment writ of possession).

§ 720.020. Creditor

720.020. “Creditor” means the judgment creditor or, in the case of a levy under a writ of attachment or prejudgment writ of possession of personal property, the plaintiff.

Comment. See the Comment to Section 720.010. See also Section 680.240 (“judgment creditor” defined).

§ 720.030. Debtor

720.030. “Debtor” means the judgment debtor or, in the case of a levy under a writ of attachment or prejudgment writ of possession of personal property, the defendant.

Comment. See the Comment to Section 720.010. See also Section 680.250 (“judgment debtor” defined).

CHAPTER 2. THIRD-PARTY CLAIMS OF OWNERSHIP AND POSSESSION

§ 720.110. Application of chapter

720.110. A third person claiming ownership or the right to possession of property may make a third-party claim under this chapter in any of the following cases if the interest claimed is superior to the creditor’s lien on the property:

(a) Where real property has been levied upon under a writ of attachment or a writ of execution.

(b) Where personal property has been levied upon under a writ of attachment, a writ of execution, a prejudgment or postjudgment writ of possession, or a writ of sale.

Comment. Section 720.110 supersedes a portion of the first paragraph of former Section 689 which permitted claims of title and the right to possession of personal property only.

Subdivision (a) of Section 720.110 makes the summary third-party claims procedure available to a person claiming a superior ownership or possessory right in real property that is subjected to attachment or execution to satisfy a money obligation. Under former law, a quiet title action was the usual remedy where real property was wrongfully sold on execution. See *First Nat'l Bank v. Kinslow*, 8 Cal.2d 339, 345, 65 P.2d 796, 799 (1937). Nothing in this division precludes the use of a quiet title action; Section 720.110 merely makes available the additional remedy of the summary third-party claims procedure. See also Section 720.150 (third-party's interest not affected by failure to make third-party claim).

Subdivision (b) sets forth the cases in which the procedure of this chapter is available to assert superior claims of ownership or right to possession where personal property has been levied upon. Former Section 689 applied to cases where the property was levied upon under execution and also was incorporated for prejudgment remedies. See Section 488.090 (attachment) and Section 514.050 (claim and delivery). The former procedure was also available to determine third-party claims to property seized to satisfy a judgment foreclosing a chattel mortgage. See *Lawler v. Solus*, 101 Cal. App.2d 816, 226 P.2d 348 (1951). Subdivision (b) makes clear that this procedure applies in prejudgment remedy cases and also where property is levied upon under a postjudgment writ of possession. As to a third-party claim of a security interest or lien on the property levied upon, see Chapter 3 (commencing with Section 720.210). See also Section 688.030 (third-party claims where tax liability enforced). For a transitional provision applicable to claims filed prior to the operative date of this chapter, see Section 694.070.

§ 720.120. Time and manner of making third-party claim

720.120. A person making a third-party claim under this chapter shall file the claim with the levying officer, together with two copies of the claim, after levy on the property but before the levying officer does any of the following:

- (a) Sells the property.
- (b) Delivers possession of the property to the creditor.
- (c) Pays proceeds of collection to the creditor.

Comment. Section 720.120 supersedes a portion of the first paragraph of former Section 689. See the Comment to Section 720.110. Two copies of the claim are required to be filed so that one may be served on the debtor and one on the creditor. See Section 720.140. The former statute, unlike Section 720.120, did not specify the time within which a third-party claim could be filed, but in *National Bank of New Zealand v. Finn*, 81 Cal. App. 317, 337, 253 P. 757, 766 (1927), involving attachment of a check, it was stated that the claim must be made before the property was sold or otherwise applied to the satisfaction of the plaintiff's demand.

§ 720.130. Contents of claim

720.130. (a) The third-party claim shall be executed under oath and shall contain all of the following:

(1) The name of the third person and an address in this state where service by mail may be made on the third person.

(2) A description of the property in which an interest is claimed.

(3) A description of the interest claimed, including a statement of the facts upon which the claim is based.

(4) An estimate of the market value of the interest claimed.

(b) A copy of any writing upon which the claim is based shall be attached to the third-party claim. At a hearing on the third-party claim, the court in its discretion may exclude from evidence any writing a copy of which was not attached to the third-party claim.

Comment. Section 720.130 supersedes a portion of the first paragraph of former Section 689.

§ 720.140. Service on creditor and debtor of notice and copy of claim

720.140. (a) Not later than five days after the third-party claim is filed with the levying officer, the levying officer shall serve the following personally or by mail on the creditor:

(1) A copy of the third-party claim.

(2) A statement whether the third person has filed an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(3) If the third person has filed an undertaking to release the property, a notice that the property will be released unless, within the time allowed as specified in the notice, the creditor objects to the undertaking.

(4) If the third person has not filed an undertaking to release the property, a notice that the property will be released unless, within the time allowed as specified in the notice, the creditor files with the levying officer an undertaking that satisfies the requirements of Section 720.160.

(b) The time allowed the creditor for objecting to the third person's undertaking to release the property or for filing an undertaking is 10 days after service under subdivision (a).

(c) Within the time allowed for service on the creditor under subdivision (a), the levying officer shall serve a copy of the papers specified in subdivision (a) on the debtor. Service shall be made personally or by mail.

(d) The levying officer may serve the copy of the third-party claim and the statement and notice pursuant to this section notwithstanding any defect, informality, or insufficiency of the claim.

Comment. Subdivision (a) of Section 720.140 supersedes a portion of the first paragraph of former Section 689. Paragraphs (3) and (4) recognize that it is unnecessary for the creditor to file an undertaking to preserve the lien on the property if the third person has filed an undertaking to release it. Subdivision (b) allows the creditor at least 10 days within which to respond to the claim, whereas the first paragraph of former Section 689 allowed five days. Subdivision (c) is new. Subdivision (d) continues the substance of the first sentence of the sixth paragraph of former Section 689.

§ 720.150. Effect of filing or not filing third-party claim

720.150. (a) Except as otherwise provided by statute, if a third-party claim is timely filed, the levying officer may not do any of the following with respect to the property in which an interest is claimed:

- (1) Sell the property.
- (2) Deliver possession of the property to the creditor.
- (3) Pay proceeds of collection to the creditor.

(b) The interest of the third person in the property levied upon is not affected by the third person's failure to file a third-party claim under this chapter.

Legislative Committee Comment—Assembly

Comment. Section 720.150 is new. Subdivision (a) makes clear that enforcement procedures against an item of property claimed by a third person must cease except as otherwise provided. See, *e.g.*, Sections 699.070 (disposition of perishable property), 720.160 (effect of filing undertaking), 720.430 (satisfaction from released property after hearing). Subdivision (b) makes clear that a third person does not waive a superior interest in the property levied upon by failure to make a third-party claim pursuant to this chapter. This principle is a corollary of the general rule that a judgment or levy reaches only the interest of the debtor in the property. See Sections 695.010-695.070 (property subject to enforcement of money judgment), 699.710-699.720 (property subject to execution).

§ 720.160. Effect, amount, and contents of creditor's undertaking

720.160. (a) If the creditor files with the levying officer an undertaking that satisfies the requirements of this section within the time allowed under subdivision

(b) of Section 720.140:

(1) The levying officer shall execute the writ in the manner provided by law unless the third person files an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(2) After sale, payment, or delivery of the property pursuant to the writ, the property is free of all claims of the third person for which the creditor has given the undertaking.

(b) Subject to Section 720.770, unless the creditor elects to file an undertaking in a larger amount, the amount of the undertaking filed by the creditor under this section shall be in the amount of:

(1) If the action is pending or the judgment was entered in the superior court, seven thousand five hundred dollars (\$7,500), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(2) If the action is pending or the judgment was entered in a municipal or justice court, two thousand five hundred dollars (\$2,500), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(c) An undertaking given by the creditor under this chapter shall:

(1) Be made in favor of the third person.

(2) Indemnify the third person against any loss, liability, damages, costs, and attorney's fees, incurred by reason of the enforcement proceedings.

(3) Be conditioned on a final judgment that the third person owns or has the right of possession of the property.

(d) If the creditor is a public entity exempt from giving an undertaking, the public entity shall, in lieu of filing the undertaking, file with the levying officer a notice stating that the public entity opposes the claim of the third person. When so filed, the notice is deemed to satisfy the requirement of this section that an undertaking be filed.

Comment. Subdivision (a) of Section 720.160 supersedes the seventh paragraph of former Section 689. Subdivisions (b) and (c) supersede portions of the first and second paragraphs of former Section 689. The option of giving an undertaking in a flat amount pursuant to subdivision (b) is new. The amounts are the same as the amounts set for an initial undertaking in attachment. See Section 489.220(a). The third person (1) may apply to the court for an order requiring an undertaking in a greater amount pursuant to Sections 720.760-720.770 or (2) may obtain the release of the property by giving an undertaking pursuant to Chapter 6 (commencing with Section 720.610) in the same amount as the

creditor's undertaking. Whether or not the creditor has filed an undertaking, the debtor may in some circumstances forestall a sale or other proceeding under the writ by obtaining a stay pursuant to Section 720.380.

Subdivision (d) is new and is drawn from existing practice developed as a result of Section 1058 which provides that public entities are generally exempt from giving statutory undertakings. See California State Sheriffs' Ass'n, Civil Procedural Manual 13.02 (rev. 1980).

§ 720.170. Release for creditor's failure to file undertaking

720.170. (a) In a case where the third person has not filed with the levying officer an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610), if the creditor does not within the time allowed under subdivision (b) of Section 720.140 file with the levying officer an undertaking (or file a notice if the creditor is a public entity) that satisfies the requirements of Section 720.160, the levying officer shall release the property unless it is to be held under another lien or unless otherwise ordered by the court.

(b) Except as otherwise provided in this section, release is governed by Section 699.060.

(c) If personal property that has been taken into custody is to be released to the debtor pursuant to Section 699.060 and the debtor has not claimed the property within 10 days after notice was served pursuant to Section 699.060, the levying officer shall release the property to the third person making the claim.

(d) A hearing may be had on the third-party claim pursuant to Chapter 4 (commencing with Section 720.310) notwithstanding the release of the property pursuant to this section.

Comment. Subdivision (a) of Section 720.170 supersedes a portion of the first paragraph of former Section 689. The introductory clause recognizes that this section applies only where the third person has not filed an undertaking to release the property. The time allowed the creditor for filing an undertaking depends on the manner of service of the third-party claim pursuant to Section 720.140. See Section 684.120 (service by mail).

Subdivision (b) makes clear that the general rules governing release of property apply except as provided in this section. Accordingly, if a third person to whom property is to be released pursuant to subdivision (b) or subdivision (c) does not claim property in the levying officer's custody, the property generally will be sold and the proceeds deposited with the county in the name of the third person. See Section 699.060(b).

Subdivision (c) supersedes former Section 689.5. If the property to be released was levied upon in the possession of the debtor, the property will be released to the debtor as provided by the general rules governing release. See Section 699.060 (tangible personal property released to person from whom it was taken). However, if the debtor does not claim the property, the third person who claimed it under this chapter is entitled to its possession as provided in subdivision (c). This is an exception to the general release provision that, if the debtor does not claim the property, it is to be sold and the proceeds deposited in the name of the debtor. See Section 699.060(b).

Subdivision (d) makes clear that the third-party claim may be determined under the appropriate procedure even though the property has been released because the creditor has not filed an undertaking. See Sections 720.310-720.430. If the creditor prevails at the hearing, the released property may again be levied upon as provided in Section 720.430.

CHAPTER 3. THIRD-PARTY CLAIM OF SECURITY INTEREST OR LIEN

§ 720.210. Application of chapter

720.210. (a) Where personal property has been levied upon under a writ of attachment, a writ of execution, a prejudgment or postjudgment writ of possession, or a writ of sale, a third person claiming a security interest in or lien on the personal property may make a third-party claim under this chapter if the security interest or lien claimed is superior to the creditor's lien on the property.

(b) A secured party claiming a security interest in fixtures may make a third-party claim pursuant to this chapter if the security interest claimed is superior to the creditor's lien on the property. For this purpose, references in this division to "personal property" shall be deemed references to fixtures.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 720.210 supersedes a portion of former Section 689b(2). See the Comment to Section 720.110. This chapter permits a secured party or other lienholder to make a third-party claim concerning personal property (and fixtures to the extent provided by subdivision (b)), whereas former Section 689b governed only claims by conditional sellers and chattel mortgagees. See Division 9 (commencing with Section 9101) of the Commercial Code (secured transactions). For a transitional provision applicable to claims filed prior to the operative date of this chapter, see Section 694.070.

§ 720.220. Time and manner of making third-party claim

720.220. A person making a third-party claim under this chapter shall file the claim with the levying officer, together with two copies of the claim, after levy on the personal property but before the levying officer does any of the following:

- (a) Sells the property.
- (b) Delivers possession of the property to the creditor.
- (c) Pays proceeds of collection to the creditor.

Comment. Section 720.220 supersedes the first sentence of former Section 689b(2). See the Comment to Section 720.210. Two copies of the claim are required to be filed so that one may be served on the debtor and one on the creditor. See Section 720.240. As to the specification in Section 720.220 of the time within which the third-party claim must be filed, see the Comment to Section 720.120.

§ 720.230. Contents of claim

720.230. (a) The third-party claim shall be executed under oath and shall contain all of the following:

- (1) The name of the secured party or lienholder and an address in this state where service by mail may be made on the secured party or lienholder.
- (2) A description of the personal property in which a security interest or lien is claimed.
- (3) A detailed description of the security interest or lien claimed, including a statement of the facts upon which it is based.

(4) A statement of the total amount of sums due or to accrue under the security interest or lien and the applicable rate of interest on amounts due.

(b) In the case of a security interest, a copy of the security agreement and any financing statement shall be attached to the third-party claim. In the case of a lien, a copy of any writing upon which the claim is based shall be attached to the third-party claim. At a hearing on the third-party claim, the court in its discretion may exclude from evidence any writing a copy of which was not attached to the third-party claim.

Comment. Section 720.230 supersedes a portion of former Section 689b(2).

§ 720.240. Service on creditor and debtor of notice and copy of claim

720.240. (a) Not later than five days after the third-party claim is filed with the levying officer, the levying officer shall serve the following personally or by mail on the creditor:

(1) A copy of the third-party claim.

(2) A statement whether the third person has filed an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(3) If the third person has filed an undertaking to release the property, a notice that the property will be released unless, within the time allowed as specified in the notice, the creditor objects to the undertaking.

(4) If the third person has not filed an undertaking to release the property, a notice that the property will be released unless, within the time allowed as specified in the notice, the creditor does one of the following:

(A) Files with the levying officer an undertaking that satisfies the requirements of Section 720.260 and a statement under Section 720.280.

(B) Deposits with the levying officer the amount claimed plus interest at the applicable rate to the estimated date of tender to the secured party or lienholder.

(b) The time allowed the creditor for objecting to the third person's undertaking to release the property or for

filing an undertaking and statement or making a deposit pursuant to subdivision (a) is 10 days after service under subdivision (a).

(c) Within the time allowed for service on the creditor under subdivision (a), the levying officer shall serve a copy of the papers specified in subdivision (a) on the debtor. Service shall be made personally or by mail.

(d) The levying officer may serve the copy of the third-party claim and the statement and notice pursuant to this section notwithstanding any defect, informality, or insufficiency of the claim.

Comment. Subdivision (a) of Section 720.240 supersedes subdivision (3) and a portion of the first paragraph of subdivision (9) of former Section 689b. Paragraphs (3) and (4) recognize that it is unnecessary for the creditor to file an undertaking to preserve the lien on the property or to pay off the secured party or lienholder if the property is to be released on a third person's undertaking. The creditor may make a deposit pursuant to Section 1054a in lieu of an undertaking, but such a deposit has the effect of an undertaking given under this chapter rather than a deposit made to satisfy the claim of the secured party or lienholder.

Subdivision (b) allows the creditor at least 10 days within which to respond to the claim, whereas former Section 689b(4) allowed five days after receipt. Subdivision (c) is new. Subdivision (d) continues the substance of the second sentence of former Section 689b(2).

§ 720.250. Effect of filing or not filing third-party claim

720.250. (a) Except as otherwise provided by statute, if a third-party claim is timely filed, the levying officer may not do any of the following with respect to the personal property in which the security interest or lien is claimed:

- (1) Sell the property.
- (2) Deliver possession of the property to the creditor.
- (3) Pay proceeds of collection to the creditor.

(b) The interest of a secured party or lienholder in the property levied upon is not affected by the failure of the secured party or lienholder to file a third-party claim under this chapter.

Comment. Section 720.250 is new. See the Comment to Section 720.150. See also Section 720.260 (effect of undertaking or deposit). Subdivision (b) makes clear that a secured party or lienholder does not waive a superior interest in the property levied upon by failure to make a third-party claim pursuant to this chapter. See the Comment to Section 720.150.

§ 720.260. Effect of undertaking and statement or deposit; amount and contents of undertaking; notice by public entity in lieu of undertaking

720.260. (a) If the creditor within the time allowed under subdivision (b) of Section 720.240 either files with the levying officer an undertaking that satisfies the requirements of this section and a statement that satisfies the requirements of Section 720.280 or makes a deposit with the levying officer of the amount claimed under Section 720.230:

(1) The levying officer shall execute the writ in the manner provided by law unless, in a case where the creditor has filed an undertaking, the secured party or lienholder files an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(2) After sale, payment, or delivery of the property pursuant to the writ, the property is free of all claims or liens of the secured party or lienholder for which the creditor has given the undertaking or made the deposit.

(b) Subject to Section 720.770, unless the creditor elects to file an undertaking in a larger amount, the amount of the undertaking filed by the creditor under this section shall be in the amount of:

(1) If the action is pending or the judgment was entered in the superior court, seven thousand five hundred dollars (\$7,500), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(2) If the action is pending or the judgment was entered in a municipal or justice court, two thousand five hundred dollars (\$2,500), or twice the amount of the execution lien as of the date of levy or other enforcement

lien as of the date it was created, whichever is the lesser amount.

(c) An undertaking given by the creditor under this chapter shall:

(1) Be made in favor of the secured party or lienholder.

(2) Indemnify the secured party or lienholder against any loss, liability, damages, costs, and attorney's fees, incurred by reason of the enforcement proceedings.

(3) Be conditioned on a final judgment that the security interest or lien of the third person is entitled to priority over the creditor's lien.

(d) If the creditor is a public entity exempt from giving an undertaking, the public entity shall, in lieu of filing the undertaking, file with the levying officer a notice stating that the public entity opposes the claim of the third person. When so filed, the notice is deemed to satisfy the requirement of this section that an undertaking be filed.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 720.260 supersedes parts of subdivisions (8) and (9) of former Section 689b. Under paragraph (2) of subdivision (a), the property may be sold free of all interests for which an undertaking is given or deposit is made. However, whether or not the creditor has filed an undertaking or made a deposit, the secured party or lienholder may prevent a sale in an appropriate case by obtaining a stay pursuant to Section 720.380.

Subdivisions (b) and (c) supersede portions of the first and second paragraphs of subdivision (9) of former Section 689b. The option of giving an undertaking in a flat amount pursuant to subdivision (b) is new. The amounts are the same as the amounts set for an initial undertaking in attachment. See Section 489.220(a). The secured party or lienholder (1) may apply to the court for an order requiring an undertaking in a greater amount pursuant to Sections 720.760-720.770 or (2) may obtain the release of the property by giving an undertaking pursuant to Chapter 6 (commencing with Section 720.610) in the same amount as the creditor's undertaking.

Subdivision (d) is new and is drawn from existing practice developed as a result of Section 1058 which provides that public entities are generally exempt from giving statutory

undertakings. See California State Sheriffs' Ass'n, Civil Procedural Manual 13.02 (rev. ed. 1980).

§ 720.270. Release for creditor's failure to make deposit or file undertaking and statement or file notice

720.270. (a) In a case where the third person has not filed with the levying officer an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610), if the creditor does not within the time allowed under subdivision (b) of Section 720.240 file with the levying officer an undertaking (or file a notice if the creditor is a public entity) that satisfies the requirements of Section 720.260 and a statement under Section 720.280, or deposit with the levying officer the amount claimed under Section 720.230, the levying officer shall release the personal property unless it is to be held under another lien or unless otherwise ordered by the court.

(b) Except as otherwise provided in this section, release is governed by Section 699.060.

(c) If property that has been taken into custody is to be released to the debtor pursuant to Section 699.060 and the debtor has not claimed the property within 10 days after notice was served pursuant to Section 699.060, the levying officer shall release the property to the secured party or lienholder making the claim.

(d) A hearing may be had on the third-party claim pursuant to Chapter 4 (commencing with Section 720.310) notwithstanding the release of the property pursuant to this section.

Comment. Subdivision (a) of Section 720.270 supersedes subdivision (4) and a portion of the first paragraph of subdivision (9) of former Section 689b. The introductory clause recognizes that this section applies only where the third person has not filed an undertaking to release the property. The time allowed the creditor for filing an undertaking and statement or making a deposit depends on the manner of service of the third-party claim pursuant to Section 720.240. See Section 684.120 (service by mail). Subdivision (b) makes clear that the general rules governing release of property apply except as provided in this section. See the Comment to Section 720.170(b). Subdivision (c) supersedes former Section 689.5. See the Comment to Section

720.170(c). Subdivision (d) makes clear that the claim of the secured party or lienholder may be determined under the appropriate procedure even though the property has been released because the creditor has not filed an undertaking and statement or made a deposit. See Sections 720.310-720.430. If the creditor prevails at the hearing, the released property may again be levied upon as provided in Section 720.430.

§ 720.280. Statement concerning security interest

720.280. At the time the creditor files an undertaking with the levying officer in response to a third-party claim by a secured party, the creditor shall do all of the following:

(a) File with the levying officer a statement executed under oath that the security interest is invalid, that the security interest is not entitled to priority over the creditor's lien, or that the amount demanded in the claim exceeds the amount to which the secured party is entitled, for the reasons specified therein.

(b) Serve a copy of the statement on the secured party. Service shall be made personally or by mail.

(c) Serve a copy of the statement on the debtor. Service shall be made personally or by mail.

Comment. Section 720.280 supersedes a portion of the first paragraph of subdivision (9) of former Section 689b. This section permits the creditor to resist the claim of the secured party on the grounds that the security interest is not entitled to priority or is excessive, whereas former law required a statement that the chattel mortgage or conditional sale was void or invalid. See Section 720.210 (application of article); Com. Code § 9301 (priority of lien creditor over unperfected security interest).

§ 720.290. Payment to secured party or lienholder

720.290. (a) If the levying officer receives a sufficient deposit from the creditor, the levying officer shall promptly tender or pay the deposit to the secured party or lienholder who made the third-party claim except that, if the deposit is made by personal check, the levying officer is allowed a reasonable time for the check to clear.

(b) If the tender is accepted, the interest of the secured party or lienholder in the property for which deposit is made passes to the creditor making the deposit

and, on distribution of any proceeds under Section 701.810, the creditor who makes the deposit shall be entitled to the proceeds to the extent of the deposit in the priority of the interest for which the deposit is made.

(c) If the tender is refused, the amount of the deposit shall be deposited with the county treasurer payable to the order of the secured party or lienholder.

Comment. Section 720.290 continues the substance of subdivisions (5)-(7) of former Section 689b, except that the officer is required to tender or pay promptly rather than within five days.

CHAPTER 4. HEARING ON THIRD-PARTY CLAIM

§ 720.310. Application for hearing

720.310. (a) Not later than 15 days after the third-party claim is filed with the levying officer pursuant to Section 720.120 or 720.220, either the creditor or the third person may petition the court for a hearing to determine the validity of the third-party claim and the proper disposition of the property that is the subject of the claim.

(b) The hearing may be held whether or not an undertaking has been filed but not if a deposit has been made pursuant to Section 720.260.

(c) The hearing shall be held within 20 days after the filing of the petition unless continued by the court for good cause shown.

Comment. Subdivisions (a) and (b) of Section 720.310 continue the substance of the first two sentences of the eighth paragraph of former Section 689 and the first sentence of subdivision (10) of former Section 689(b). Subdivision (c) 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.

§ 720.320. Notice of hearing

720.320. (a) Not less than 10 days prior to the hearing, the petitioner shall do both of the following:

(1) Serve notice of the time and place of the hearing on the creditor or the third person (whichever person is

not the petitioner) and on the debtor. Service shall be made personally or by mail.

(2) File a copy of the notice of hearing with the levying officer.

(b) The notice of the hearing shall include a statement that the purpose of the hearing is to determine the validity of the third-party claim and the proper disposition of the property that is the subject of the third-party claim.

Comment. Section 720.320 supersedes the fourth sentence of the eighth paragraph of Section 689 and the second sentence of subdivision (10) of former Section 689b. This section also requires notice to be given to the debtor to avoid the misapplication of funds that could occur under former law. See *Rubin v. Barasch*, 275 Cal. App.2d 835, 80 Cal. Rptr. 337 (1969).

§ 720.330. Papers filed by levying officer

720.330. Promptly after receipt of the notice of the hearing on the third-party claim, the levying officer shall file the following papers with the court:

(a) The third-party claim that was filed with the levying officer pursuant to Section 720.120 or 720.220.

(b) Any statement filed by the creditor with the levying officer pursuant to Section 720.280 in opposition to the third-party claim of a secured party.

(c) Any undertaking of the creditor filed with the levying officer pursuant to Section 720.160 or Section 720.260.

(d) Any undertaking to release filed by a third person pursuant to Chapter 6 (commencing with section 720.610).

(e) Any notice filed by a public entity pursuant to Section 720.160 or 720.260.

Comment. Section 720.330 supersedes a portion of the eleventh sentence of the eighth paragraph of former Section 689. Former law did not require the levying officer to file the creditor's statement or undertaking with the court. See former Sections 689, 689b. An undertaking in the possession of the levying officer that is not filed with the court pursuant to this section should be filed pursuant to Section 720.800.

§ 720.340. Filing and service of statement in opposition to claim of secured party

720.340. If the creditor has not filed a statement with the levying officer pursuant to Section 720.280 in opposition to a third-party claim by a secured party:

(a) In a case where the creditor petitions for a hearing on the third-party claim, the creditor shall file the statement with the court at the time the petition is filed and shall serve a copy thereof on the secured party with notice of the hearing served pursuant to Section 720.320.

(b) In a case where the secured party has petitioned for a hearing on the third-party claim, the creditor shall file the statement with the court and serve a copy of the statement on the secured party not later than five days before the date set for the hearing. Service shall be made personally or by mail.

Comment. Section 720.340 is new.

§ 720.350. Pleadings

720.350. (a) Subject to the power of the court to permit an amendment in the interest of justice:

(1) The third-party claim constitutes the pleading of the third person.

(2) In the case of a third-party claim by a secured party, the creditor's statement constitutes the pleading of the creditor.

(b) A third-party claim of ownership, right to possession, or a lien, shall be deemed controverted by the creditor.

Comment. Subdivision (a) (1) of Section 720.350 continues the substance of a portion of the eleventh sentence of the eighth paragraph of former Section 689. Unlike subdivision (a) (2), former Section 689b did not prescribe the effect of the creditor's statement in opposition to the claim of a secured party. Subdivision (b) continues the substance of a portion of the eleventh sentence of the eighth paragraph of former Section 689; but subdivision (b) is limited to third-party claims of ownership, right to possession, or a lien, whereas the former provision applied to all claims under former Section 689 or 689b.

§ 720.360. Burden of proof

720.360. At a hearing on a third-party claim, the third person has the burden of proof.

Legislative Committee Comment—Assembly

Comment. of Section 720.360 continues the substance of the tenth sentence of the eighth paragraph of former Section 689.

§ 720.370. Dismissal

720.370. If the petition for a hearing was made by the third person, neither the petition nor the proceedings pursuant thereto may be dismissed without the consent of the creditor. If the petition for a hearing was made by the creditor, neither the petition nor the proceedings pursuant thereto may be dismissed without the consent of the third person.

Legislative Committee Comment—Assembly

Comment. The first sentence of Section 720.370 continues the substance of the sixth sentence of the eighth paragraph of former Section 689. The second sentence is new.

§ 720.380. Stay of sale or enjoining transfer during pendency of proceedings

720.380. (a) Notwithstanding any other provision of this title, the court may make an order staying the sale of the property under a writ or enjoining any transfer or other disposition of the property levied upon under a writ until proceedings for the determination of the rights of a third person can be commenced and prosecuted to termination and may require such undertaking as it considers necessary as a condition for making the order.

(b) After the filing of a third-party claim, notwithstanding Sections 720.160 and 720.260, the creditor, the debtor, or the third person may apply to the court for an order staying the sale of the property under a writ or enjoining any transfer or other disposition of the property until proceedings under this article can be commenced and prosecuted to termination. The application shall be made on noticed motion if the court so directs or a court rule otherwise so requires. Otherwise, the application may be made ex parte.

(c) An order made pursuant to this section may be modified or vacated by the court at any time prior to the termination of the proceedings upon such terms as are just.

Comment. Subdivisions (a) and (b) of Section 720.380 supersede the eighth sentence of the eighth paragraph of former Section 689. Subdivision (c) continues the substance of the ninth sentence of the eighth paragraph of former Section 689. See Section 699.070 (disposition of perishable property).

§ 720.390. Determination of claim; disposition of property

720.390. At the conclusion of the hearing, the court shall give judgment determining the validity of the third-party claim and may order the disposition of the property or its proceeds in accordance with the respective interests of the parties. Subject to Section 720.420, the judgment is conclusive between the parties to the proceeding.

Comment. Section 720.390 continues the substance of a portion 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. See also Section 699.070 (disposition of perishable property).

§ 720.400. Findings

720.400. No findings are required in proceedings under this chapter.

Comment. Section 720.400 continues the substance of the thirteenth sentence of the eighth paragraph of former Section 689.

§ 720.410. No right to jury trial

720.410. There is no right to a jury trial in a proceeding pursuant to this chapter.

Comment. Section 720.410 codifies the holding in *Misrach v. Liederman*, 14 Cal. App.2d Supp. 757, 58 P.2d 746 (1936).

§ 720.420. Appeal

720.420. An appeal may be taken from a judgment given pursuant to Section 720.390 in the manner provided

for appeals from the court in which the proceeding takes place.

Comment. Section 720.420 continues the substance of the seventeenth sentence of the eighth paragraph of former Section 689.

§ 720.430. Satisfaction from released property

720.430. If property has been released pursuant to Section 720.170, 720.270, or 720.660, it may be levied upon or otherwise sought to be applied to the satisfaction of the judgment only if it is determined in the hearing on the third-party claim that the debtor has an interest in the property that may be levied upon or otherwise applied to the satisfaction of the judgment.

Comment. Section 720.430 supersedes the sixteenth sentence of the eighth paragraph of former Section 689 and the second paragraph of subdivision (10) of former Section 689b. Former law referred only to relevy upon property that had been released, but Section 720.430 recognizes that other enforcement procedures may also be employed. See, *e.g.*, Chapter 6 (commencing with Section 708.010) (miscellaneous creditor's remedies) of Division 2.

**CHAPTER 5. CREDITOR'S DEMAND FOR
THIRD-PARTY CLAIM BY SECURED
PARTY OR LIENHOLDER**

§ 720.510. Creditor's right to demand third-party claim

720.510. A creditor may make a demand as provided in this chapter that a secured party or lienholder file a third-party claim to personal property that has been levied upon under a writ of attachment or a writ of execution.

Comment. Section 720.510 supersedes a portion of former Section 689b(8). As to demands served prior to the operative date of this chapter, see Section 694.070.

§ 720.520. Demand for claim; filing and service

720.520. (a) The creditor's demand for a third-party claim by the secured party or lienholder, together with a copy of the demand, shall be filed with the levying

officer after levy on the personal property but before the levying officer sells the property or pays proceeds of collection to the creditor.

(b) Promptly after the demand and a copy thereof are filed, the levying officer shall personally serve the demand on the secured party or lienholder. Service of the demand on the secured party or lienholder shall be attested by the certificate of the levying officer and the certificate shall be filed in the action promptly after service.

(c) The demand shall be served by the levying officer who levied on the property or by any other levying officer whose office is closer to the place of service. If service is made by another levying officer, such levying officer's costs shall be paid out of the costs prepaid to the levying officer who levied on the property.

Comment. Section 720.520 supersedes a portion of former Section 689b(8).

§ 720.530. Contents of demand for claim

720.530. The demand for a third-party claim served on a secured party or lienholder shall contain all of the following:

(a) The name and address of the secured party or lienholder.

(b) The name and address of the creditor.

(c) A detailed description of the personal property levied upon and the date of levy.

(d) A statement that if the secured party or lienholder does not file a third-party claim pursuant to Chapter 3 (commencing with Section 720.210) within 30 days after service of the demand, the secured party or lienholder shall be deemed to have waived any priority the security interest or lien may have over the creditor's lien on the property levied upon unless the property levied upon is released from the creditor's lien.

(e) A statement that if any priority of the security interest or lien is waived, the secured party or lienholder may have a right to share in any excess proceeds of an execution sale of the property as provided in Section 701.810.

Comment. Section 720.530 is new. See Section 720.550 and the Comment thereto.

§ 720.540. Prohibition of release, sale, or other disposition

720.540. Except as otherwise provided by statute, the levying officer may not release, sell, or otherwise dispose of the personal property described in the demand before the expiration of 30 days after service of the demand on the secured party or lienholder.

Comment. Section 720.540 is new. The introductory clause recognizes that the property may be sold or released in certain circumstances before the expiration of the 30-day period, such as where the property is perishable (see Section 699.070) or where the property is released pursuant to the claim of the secured party upon whom the demand was served or of some other third person (see Sections 720.170 and 720.270).

§ 720.550. Effect of failure to make third-party claim

720.550. (a) If the secured party or lienholder does not file a third-party claim with the levying officer pursuant to Chapter 3 (commencing with Section 720.210) within 30 days after service of the demand, the secured party or lienholder shall be deemed to have waived any priority the security interest or lien may have over the creditor's lien on the personal property levied upon and the property may be applied toward the satisfaction of the judgment free of the security interest or lien.

(b) If the secured party or lienholder is deemed to have waived any priority over the creditor's lien pursuant to subdivision (a) and the creditor's lien on the personal property is released, the security interest or lien is restored to its former position of priority.

Comment. Section 720.550 supersedes a portion of the first sentence of subdivision (8) of former Section 689b. Under Section 720.550, a secured party or lienholder who fails to make a third-party claim within the time allowed waives only the superiority of the security interest or lien over the creditor's lien, whereas under former law it appeared that the secured party forfeited all rights in the property or its proceeds. Under Section 720.550, the secured party or lienholder who fails to make a claim

within the time allowed retains the right to share in excess proceeds as a junior lienholder pursuant to Section 701.810; but, if there are no excess proceeds, the security interest or lien is lost. See Section 701.630 (extinction of inferior liens upon sale). If the property described in a demand for a claim under this article is released rather than sold, such as in a case where the judgment is satisfied by voluntary payment or resort to other property, the creditor's lien is extinguished and the security interest or lien of a third person served with a demand for a claim would in effect be restored to its former position of priority.

CHAPTER 6. THIRD-PARTY UNDERTAKING TO RELEASE PROPERTY

§ 720.610. Application of chapter

720.610. A third person may give an undertaking to release property pursuant to this chapter in the following cases:

(a) Where the third person claims ownership or the right to possession of real property that has been levied upon under a writ of attachment or a writ of execution.

(b) Where the third person claims ownership or the right to possession of personal property that has been levied upon under a writ of attachment, a writ of execution, or a writ of sale.

(c) Where the third person claims a security interest in or a lien on personal property that has been levied upon under a writ of attachment, a writ of execution, or a writ of sale.

Comment. Section 720.610 supersedes former Section 710b which applied only to personal property levied upon to satisfy a money judgment in a case where the third person "claimed" the property. Compare former Section 689 (paragraph seven of which referred to release under former Section 710b) with former Section 689b (which contained no reference to former Section 710b).

§ 720.620. Filing of undertaking to release property

720.620. The third person shall file the undertaking to release property with the levying officer, together with two copies of the undertaking:

(a) At the time the third person files a third-party claim pursuant to Chapter 2 (commencing with Section 720.110) or Chapter 3 (commencing with Section 720.210).

(b) If the third person has previously filed a third-party claim to the property, at any time before the levying officer does any of the following:

- (1) Sells the property.
- (2) Delivers possession of the property to the creditor.
- (3) Pays proceeds of collection to the creditor.

Legislative Committee Comment—Assembly

Comment. Section 720.620 supersedes a portion of former Sections 710b and 711. This section permits the filing of an undertaking to release property at any time that a third person could make a third-party claim as to property that can be released pursuant to Section 720.610 and also requires that the third person file a third-party claim. Former law did not prescribe the time for filing an undertaking to release property, nor did it require the third person to file a third-party claim. Section 720.620 requires the undertaking to be filed with the levying officer, whereas former Section 711 provided for filing with the court. Undertakings filed with the levying officer under this chapter are eventually filed with the court. See Sections 720.330, 720.800.

§ 720.630. Contents of undertaking

720.630. (a) The undertaking to release property shall contain a description of the property to be released and shall describe the interest of the third person.

(b) The undertaking shall be made in favor of the creditor and shall provide that, if the debtor is finally adjudged to have an interest in the property levied upon, the third person shall pay to the creditor the lesser of the following:

(1) The amount required to satisfy the judgment against the debtor of the creditor who had the lien on the property.

(2) A sum equal to the market value of the debtor's interest in the property levied upon.

(c) Except as provided in subdivision (d) and unless the third person elects to file an undertaking in a larger

amount, the amount of the undertaking shall be the lesser of the following amounts:

(1) Twice the market value of the property sought to be released.

(2) Twice the amount of the creditor's lien on the property sought to be released.

(d) If the creditor has given an undertaking in response to the third person's claim regarding the property pursuant to Section 720.160 or 720.260, the third person's undertaking shall be in the amount of the creditor's undertaking.

Comment. Section 720.630 supersedes portions of former Section 710c. Subdivision (b) recognizes that the creditor is not entitled to a greater satisfaction from the third person's undertaking than from the debtor. Subdivision (c) continues the substance of a portion of former Section 710c, subject to the exception provided in subdivision (d). Subdivision (d) enables the third person to obtain the release of the property only by giving an undertaking in the amount of the creditor's undertaking filed in response to the third-party's claim.

§ 720.640. Service of undertaking to release property

720.640. (a) If the undertaking to release property is filed with the levying officer at the time the third-party claim is filed, the levying officer shall serve a copy of the undertaking on the creditor and on the debtor with the notice of the filing of the third-party claim served pursuant to Section 720.140 or 720.240.

(b) If the undertaking to release property is filed with the levying officer after the third-party claim is filed, not later than five days after the undertaking is filed, the levying officer shall serve a copy of the undertaking on the creditor and on the debtor with a notice that the property will be released unless, within the time allowed as specified in the notice, the creditor objects to the undertaking. Service shall be made personally or by mail.

Comment. Section 720.640 is new. Under former Section 711, the third person was required to serve a copy of the undertaking on the creditor.

§ 720.650. Effective date of undertaking

720.650. The third person's undertaking becomes effective when the property described therein is released pursuant to this chapter.

Comment. Section 720.650 supersedes former Section 713½ which provided that the undertaking was effective 10 days after service on the creditor or, if an objection to the undertaking was made, when a new undertaking was given. Under Section 720.650, the undertaking is effective when it achieves its purpose—the release of the property it describes—by which time the period for making an objection will have expired. See Section 720.760.

§ 720.660. Release of property pursuant to undertaking

720.660. The levying officer shall release the property described in the third person's undertaking in the manner provided by Section 720.170 promptly after the expiration of the time allowed under subdivision (b) of Section 720.760 for objecting to the undertaking, unless the creditor has objected to the undertaking, and filed with the levying officer a copy of the notice of motion as required by subdivision (b) of Section 720.760, prior to the expiration of that time.

Comment. Section 720.660 supersedes a portion of the seventh paragraph of former Section 689 and a portion of former Section 713½.

CHAPTER 7. UNDERTAKINGS**§ 720.710. Application of chapter**

720.710. The provisions of this chapter apply to undertakings given pursuant to this division.

Comment. Section 720.710 makes clear that the provisions of this chapter govern only undertakings given in connection with third-party claims and related procedures. Former Sections 689 and 689b (third-party claims) incorporated certain procedural provisions applicable to attachment, whereas former Sections 711½ through 713½ (undertaking to release) contained detailed provisions relating to undertakings.

§ 720.720. Definitions

720.720. As used in this chapter:

(a) “Beneficiary” means the person to be benefited by an undertaking.

(b) “Principal” means the person who files an undertaking.

Comment. Section 720.720 is the same as Section 489.020 (attachment).

§ 720.730. Number of sureties

720.730. An undertaking shall be executed by two or more personal sureties or by one corporate surety possessing a certificate of authority from the Insurance Commissioner authorizing it to write surety insurance defined in Section 105 of the Insurance Code.

Comment. Section 720.730 continues the requirement of two or more personal sureties found in several provisions of former law. See the first paragraph of former Section 689, former Section 710c; see also former Section 689b(9). Section 720.730 also makes clear that a corporate surety may be used in lieu of personal sureties. See Section 1056.

§ 720.740. Estimate of value of property

720.740. If the amount of an undertaking depends upon the value of property or an interest therein, the undertaking shall include the principal’s estimate of the market value of the property or interest.

Comment. Section 720.740 is the same in substance as Section 489.050 (attachment). See Section 720.630(c) (amount of undertaking to release property).

§ 720.750. Undertaking effective upon filing

720.750. Except as otherwise provided by statute, an undertaking is effective upon filing.

Comment. Section 720.750 is derived from a portion of Section 489.060 (undertakings in attachment). The introductory clause recognizes that an undertaking to release property is effective when the property is released. See Section 720.650.

§ 720.760. Beneficiary's objection to undertaking

720.760. (a) The beneficiary may object to an undertaking on either or both of the following grounds:

- (1) The sureties are insufficient.
- (2) The amount of the undertaking is insufficient.

(b) The objection to an undertaking shall be made by noticed motion within 10 days after service of a copy of the undertaking on the beneficiary. If no objection is made within such time, the beneficiary is deemed to have waived any objections. The notice of motion shall specify the precise ground for the objection and a copy of the notice of motion shall be served on the principal and a copy shall be filed with the levying officer. Service shall be made personally or by mail.

(c) If the objection is made on the ground that the market value of the property on which the amount of the undertaking depends exceeds the value estimated in the undertaking, the notice of motion shall state the beneficiary's estimate of the market value of the property.

Comment. Section 720.760 continues the substance of Sections 489.070 and 489.080 (attachment) which were incorporated by former Sections 689 and 689b, and supersedes a portion of former Section 711½. The time for objecting to an undertaking has been changed from five days after notice of receipt of the undertaking (see the third paragraph of former Section 689) to 10 days after service.

§ 720.770. Hearing on objection

720.770. (a) Unless the parties otherwise agree, the hearing on an objection shall be held not less than 10 nor more than 15 days after service of the notice of motion.

(b) The hearing shall be conducted in such manner as the court determines is proper. At the hearing, witnesses may be required to attend, and evidence may be procured and introduced, in the same manner as in the trial of a civil case. The court may appoint one or more disinterested persons to appraise property for the purpose of ascertaining its value.

(c) If the court determines that the undertaking is insufficient, the court shall specify in what respect it is

insufficient and shall order that an undertaking with sufficient sureties and in a sufficient amount be filed within five days. If the order is not complied with, all rights obtained by filing the original undertaking immediately cease.

(d) If the court determines that an undertaking is insufficient, the undertaking remains in effect until an undertaking with sufficient sureties and in a sufficient amount is filed in its place.

(e) If the court determines that an undertaking is sufficient, no future objection to the undertaking may be made except upon a showing of changed circumstances.

(f) If the beneficiary objects to an undertaking on the ground that the amount is insufficient to indemnify the beneficiary, the court shall order the amount of the undertaking increased or decreased to the amount it determines to be the probable recovery of the beneficiary if the beneficiary ultimately prevails in proceedings to enforce the liability on the undertaking. The court may order the amount of the undertaking decreased below the amount prescribed by Section 720.160 or 720.260.

Comment. Section 720.770 is drawn from Section 489.090 (attachment) which was incorporated by former Sections 689 and 689b, and supersedes portions of former Sections 712 and 712½ (undertaking to release property). Subdivision (f) is derived from Section 489.220 (b) (undertakings in attachment). The amount of the undertaking may not be decreased on the principal's initiative but only in a situation where the beneficiary has objected to the amount of the undertaking and the court finds that it is more than adequate.

§ 720.780. Acceptance of beneficiary's estimate of value

720.780. If an objection to an undertaking is made on the ground that the market value of property on which the amount of the undertaking depends exceeds the value estimated in the undertaking, the principal may accept the beneficiary's estimate of the market value of the property and immediately file an increased undertaking based on the estimate. In such case, no hearing may be held on the objection, and the

beneficiary is bound by the estimate of the market value of the property in any hearing on the sufficiency of the undertaking.

Comment. Section 720.780 continues the substance of Section 489.100 (attachment) which was incorporated by former Sections 689 and 689b, and supersedes portions of former Sections 711½ and 712½ (undertaking to release property).

§ 720.790. Liability of surety

720.790. (a) Notwithstanding Section 2845 of the Civil Code, a judgment of liability on an undertaking shall be in favor of the beneficiary and against the sureties and may be enforced by the beneficiary directly against the sureties. The liability of a surety is limited to the amount of the undertaking. Nothing in this section affects any right of subrogation of a surety against the principal.

(b) The beneficiary may enforce the liability of sureties on the undertaking by a motion in the court pursuant to Section 1058a without the necessity of an independent action.

Comment. Subdivision (a) of Section 720.790 is the same as Section 489.110 (attachment). See Section 1058a and the Comment to Section 489.110. Subdivision (b) makes clear that a judgment creditor or third person who is a beneficiary of an undertaking given pursuant to this chapter may enforce the liability of sureties by motion in the court having jurisdiction of the enforcement proceedings.

§ 720.800. Levying officer to file undertaking with court

720.800. If an undertaking has been filed with a levying officer pursuant to this division, and the undertaking remains in the levying officer's possession when the writ is to be returned, the levying officer shall file the undertaking with the court at the time the writ is returned.

Legislative Committee Comment—Assembly

Comment. Section 720.800 is new. Former law did not provide for the disposition of the undertaking. In cases where an undertaking is given and a hearing is held, the levying officer will file the undertaking with the court prior to the hearing. See Section 720.330.

DIVISION 5. SATISFACTION OF JUDGMENT**CHAPTER 1. SATISFACTION OF JUDGMENT****§ 724.010. Satisfaction of money judgment**

724.010. (a) A money judgment may be satisfied by payment of the full amount required to satisfy the judgment or by acceptance by the judgment creditor of a lesser sum in full satisfaction of the judgment.

(b) Where a money judgment is satisfied by levy, the obligation of the judgment creditor to give or file an acknowledgment of satisfaction arises only when the judgment creditor has received the full amount required to satisfy the judgment from the levying officer.

(c) Where a money judgment is satisfied by payment to the judgment creditor by check or other form of noncash payment that is to be honored upon presentation by the judgment creditor for payment, the obligation of the judgment creditor to give or file an acknowledgment of satisfaction of judgment arises only when the check or other form of noncash payment has actually been honored upon presentation for payment.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 724.010 is drawn from language that was contained in subdivision (a) of former Section 675. See also *Yost-Linn Lumber & Finance Co. v. Bennet*, 116 Cal. App. 155, 2 P.2d 488 (1931) (part payment in full satisfaction); *Schwartz v. California Claim Service*, 52 Cal. App.2d 47, 125 P.2d 883 (1942) (part payment). Subdivision (a) of Section 724.010 is not an exclusive statement of the methods for satisfying a money judgment. See, *e.g.*, Section 431.70 and *Murchison v. Murchison*, 219 Cal. App.2d 600, 33 Cal. Rptr. 285 (1963) (use of judgment as offset); *George S. Nolte Consulting Civil Engineers, Inc. v. Magliocco*, 93 Cal. App.3d 190, 155 Cal. Rptr. 348 (1979) (entry of satisfaction ordered where trial court determined that \$4,000 contingent liability could be disregarded since contingency would not occur); *Yanchor v. Kagan*, 22 Cal. App.3d 544, 99 Cal. Rptr. 367 (1971) (covenant not to enforce judgment); Penal Code § 1205 (criminal fine satisfied by serving term).

Subdivisions (b) and (c) provide special rules governing when the obligation to file an acknowledgment of satisfaction arises.

§ 724.020. Entry of satisfaction of money judgment

724.020. The court clerk shall enter satisfaction of a money judgment in the register of actions when the following occur:

(a) A writ is returned satisfied for the full amount of a lump-sum judgment.

(b) An acknowledgment of satisfaction of judgment is filed with the court.

(c) The court orders entry of satisfaction of judgment.

Comment. Section 724.020 continues the substance of portions of subdivision (a) of former Section 675.

§ 724.030. Judgment creditor to file acknowledgment of satisfaction of judgment

724.030. When a money judgment is satisfied, the judgment creditor immediately shall file with the court an acknowledgment of satisfaction of judgment. This section does not apply where the judgment is satisfied in full pursuant to a writ.

Legislative Committee Comment—Assembly

Comment. Section 724.030 continues what appears to have been required under the second sentence of former Section 675(a). The requirement that the filing be made “immediately” upon the satisfaction of the judgment is drawn from Section 117.9 (small claims court). Section 724.030 does not apply where the judgment is satisfied pursuant to a writ because in that case the court clerk is required to enter satisfaction. See Section 724.020. For an additional requirement when an abstract of the judgment has been recorded to create a lien on real property, see Section 724.040. See also Section 697.640 (extinguishing of judgment lien on personal property). As to the duty to file an acknowledgment of satisfaction of a small claims court judgment, see Section 117.9.

§ 724.040. Judgment creditor’s duty where abstract of judgment recorded

724.040. If an abstract of a money judgment has been recorded with the recorder of any county and the judgment is satisfied, the judgment creditor shall immediately do both of the following:

(a) File an acknowledgment of satisfaction of judgment with the court.

(b) Serve an acknowledgment of satisfaction of judgment on the judgment debtor. Service shall be made personally or by mail.

Legislative Committee Comment—Assembly

Comment. Section 724.040 generally continues what appears to have been required under subdivision (b) of former Section 675. However, the former requirement that the acknowledgment be filed and served within 30 days after the judgment is paid in full has been replaced by the requirement that such filing and service be made immediately upon satisfaction of the judgment. The former 30-day period apparently was provided because the failure without just cause to file and serve within the time allowed resulted in liability for damages and forfeiture of \$100. See former Section 675(b). Under this chapter, the sanction is imposed only for failure to file or serve after a demand by the judgment debtor. See Section 724.050. This change makes Section 724.040 consistent with Section 724.030 and conforms to the procedure provided in Section 117.9 (small claims court). Section 724.040 applies whether the judgment is satisfied pursuant to a writ or by other means.

Section 724.040 requires service of an acknowledgment of satisfaction of judgment on the judgment debtor for two reasons: (1) To give the judgment debtor a list of the county or counties where the abstract of the judgment has been recorded and (2) to give notice to the judgment debtor that the acknowledgment of satisfaction of judgment or a certificate of satisfaction of judgment (see Section 724.100) must be recorded in each such county in order to release the judgment lien. See Sections 697.400 (release of judgment lien on real property) and 724.060 (execution of and information required to be included in acknowledgment of satisfaction of judgment).

§ 724.050. Demand for filing or delivery of acknowledgment of satisfaction of judgment

724.050. (a) If a money judgment has been satisfied, the judgment debtor, the owner of real or personal property subject to a judgment lien created under the judgment, or a person having a security interest in or a lien on personal property subject to a judgment lien created under the judgment may serve personally or by mail on the judgment creditor a demand in writing that the judgment creditor do one or both of the following:

(1) File an acknowledgment of satisfaction of judgment with the court.

(2) Execute, acknowledge, and deliver an acknowledgment of satisfaction of judgment to the person who made the demand.

(b) The demand shall include the following statement: "Important warning. If this judgment has been satisfied, the law requires that you comply with this demand not later than 15 days after you receive it. If a court proceeding is necessary to compel you to comply with this demand, you will be required to pay my reasonable attorney's fees in the proceeding if the court determines that the judgment has been satisfied and that you failed to comply with the demand. In addition, if the court determines that you failed without just cause to comply with this demand within the 15 days allowed, you will be liable for all damages I sustain by reason of such failure and will also forfeit one hundred dollars to me."

(c) If the judgment has been satisfied, the judgment creditor shall comply with the demand not later than 15 days after actual receipt of the demand.

(d) If the judgment creditor does not comply with the demand within the time allowed, the person making the demand may apply to the court on noticed motion for an order requiring the judgment creditor to comply with the demand. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. If the court determines that the judgment has been satisfied and that the judgment creditor has not complied with the demand, the court shall either (1) order the judgment creditor to comply with the demand or (2) order the court clerk to enter satisfaction of the judgment.

(e) If the judgment has been satisfied and the judgment creditor fails without just cause to comply with the demand within the time allowed, the judgment creditor is liable to the person who made the demand for all damages sustained by reason of such failure and shall also forfeit one hundred dollars (\$100) to such person. Liability under this subdivision may be determined in the proceedings on the motion pursuant to subdivision (d) or in an action.

Legislative Committee Comment—Assembly

Comment. Section 724.050 provides a means whereby the judgment creditor can be compelled to file an acknowledgment of satisfaction of judgment in any case where a money judgment has been satisfied, whether pursuant to a writ, by payment, offset, or other means. The other provisions of this chapter which require the filing of an acknowledgment of satisfaction of judgment are limited in scope. See Sections 724.030 (judgment creditor to file an acknowledgment of satisfaction of judgment if judgment satisfied other than pursuant to a writ), 724.040 (judgment creditor to file an acknowledgment of satisfaction of judgment if abstract of judgment recorded). Subdivision (e) provides a sanction if the judgment creditor fails without just cause to file within the time allowed after actual receipt of the demand.

Section 724.050 also provides a method whereby a judgment debtor may obtain an acknowledgment of satisfaction of judgment, whether or not one is required to be served on the judgment debtor under Section 724.040. In addition, this section provides a method whereby the owner of real or personal property subject to a judgment lien or a person having a security interest in or other lien on personal property subject to a satisfied judgment lien may obtain an acknowledgment of satisfaction of judgment. See Sections 697.400 (release of judgment lien on real property), 697.640 (release of judgment lien on personal property).

Subdivisions (a) and (c) of Section 724.050 are drawn from the first portion of subdivision (c) of former Section 675. Subdivision (b) is new. Subdivision (d) of Section 724.050 supersedes the last portion of the second sentence of subdivision (a) of former Section 675. Subdivision (e) is drawn from the last sentence of subdivision (b) and subdivision (c) of former Section 675.

Section 724.050 continues the substance of subdivision (c) of former Section 675 (demand for *delivery* of acknowledgment to person making demand) and also provides for a demand for the *filing* of an acknowledgment of satisfaction. Section 724.050 also supersedes the last sentence of subdivision (b) of former Section 675 which imposed a sanction even though the judgment debtor had not made a demand. A sanction is imposed under subdivision (e) of Section 724.050 only if a demand is made and the judgment creditor fails without just cause to comply with the demand within the 15-day period allowed. This change adopts the procedure provided in Section 117.9 (small claims court). The

requirement that a demand be made protects against imposition of the sanction where, for example, the failure to file or deliver the acknowledgment is the result of an oversight on the part of the judgment creditor. But see Section 724.090 (other remedies preserved).

§ 724.060. Contents and manner of execution of acknowledgment of satisfaction of judgment

724.060. (a) An acknowledgment of satisfaction of judgment shall contain the following information:

(1) The title of the court.
(2) The cause and number of the action.
(3) The names and addresses of the judgment creditor, the judgment debtor, and the assignee of record if any. If an abstract of the judgment has been recorded in any county, the judgment debtor's name shall appear on the acknowledgment of satisfaction of judgment as it appears on the abstract of judgment.

(4) The date of entry of judgment and of any renewals of the judgment and where entered in the records of the court.

(5) A statement either that the judgment is satisfied in full or that the judgment creditor has accepted payment or performance other than that specified in the judgment in full satisfaction of the judgment.

(6) A statement whether an abstract of the judgment has been recorded in any county and, if so, a statement of each county where the abstract has been recorded and the book and page of the county records where the abstract has been recorded, and a notice that the acknowledgment of satisfaction of judgment (or a court clerk's certificate of satisfaction of judgment) will have to be recorded with the county recorder of each county where the abstract of judgment has been recorded in order to release the judgment lien on real property in that county.

(7) A statement whether a notice of judgment lien has been filed in the office of the Secretary of State and, if such a notice has been filed, a statement of the file number of such notice, and a notice that the acknowledgment of satisfaction of judgment (or a

termination statement or a court clerk's certificate of satisfaction of judgment) will have to be filed in that office to terminate the judgment lien on personal property.

(b) The acknowledgment of satisfaction of judgment shall be made in the manner of an acknowledgment of a conveyance of real property.

(c) The acknowledgment of satisfaction of judgment shall be executed and acknowledged by one of the following:

(1) The judgment creditor.

(2) The assignee of record.

(3) The attorney for the judgment creditor or assignee of record unless a revocation of the attorney's authority is filed.

Comment. Section 724.060 supersedes portions of subdivisions (a) and (b) of former Section 675. The required contents of the acknowledgment of satisfaction of judgment are drawn from the official form approved by the Judicial Council. See Form for Acknowledgment of Full Satisfaction of Judgment (Form Approved by the Judicial Council of California, effective July 1, 1975). The reference to a notice of judgment lien on personal property filed in the office of the Secretary of State is new and will alert the judgment debtor as to the need to take action to terminate the judgment lien on personal property. See Section 697.640. As to the effect of an acknowledgment of satisfaction executed by the attorney, see *Wherry v. Rambo*, 97 Cal. App.2d 569, 218 P.2d 142 (1950).

§ 724.070. Liability for requiring additional performance or payment

724.070. (a) If a judgment creditor intentionally conditions delivery of an acknowledgment of satisfaction of judgment upon the performance of any act or the payment of an amount in excess of that to which the judgment creditor is entitled under the judgment, the judgment creditor is liable to the judgment debtor for all damages sustained by reason of such action or two hundred fifty dollars (\$250), whichever is the greater amount.

(b) Subdivision (a) does not apply if the judgment creditor has agreed to deliver an acknowledgment of satisfaction of judgment to the judgment debtor prior to full satisfaction of the judgment in consideration for the judgment debtor's agreement either to furnish security or to execute a promissory note, or both, the principal amount of which does not exceed the amount to which the judgment creditor is entitled under the judgment.

Comment. Section 724.070 continues the substance of subdivision (d) of former Section 675.

§ 724.080. Attorney's fees

724.080. In an action or proceeding maintained pursuant to this chapter, the court shall award reasonable attorney's fees to the prevailing party.

Comment. Section 724.080 continues the substance of a portion of subdivision (f) of former Section 675.

§ 724.090. Other remedies preserved

724.090. The damages recoverable pursuant to this chapter are not in derogation of any other damages or penalties to which an aggrieved person may be entitled by law.

Comment. Section 724.090 continues the substance of former Section 675(g).

§ 724.100. Certificate of satisfaction of judgment

724.100. (a) If satisfaction of a judgment has been entered in the register of actions, the court clerk shall issue a certificate of satisfaction of judgment upon application therefor and payment of a fee of three dollars (\$3).

(b) The certificate of satisfaction of judgment shall contain the following information:

- (1) The title of the court.
- (2) The cause and number of the action.
- (3) The names of the judgment creditor and the judgment debtor.
- (4) The date of entry of judgment and of any renewals of the judgment and where entered in the records of the court.

(5) The date of entry of satisfaction of judgment and where it was entered in the register of actions.

Comment. Section 724.100 is new. The certificate of satisfaction of judgment serves the same function as an acknowledgment of satisfaction of judgment and can be used, for example, where an acknowledgment of satisfaction of judgment cannot be easily obtained.

CHAPTER 2. ACKNOWLEDGMENT OF PARTIAL SATISFACTION OF JUDGMENT

§ 724.110. Demand for delivery of acknowledgment of partial satisfaction of judgment

724.110. (a) The judgment debtor or the owner of real or personal property subject to a judgment lien created under a money judgment may serve on the judgment creditor a demand in writing that the judgment creditor execute, acknowledge, and deliver an acknowledgment of partial satisfaction of judgment to the person who made the demand. Service shall be made personally or by mail. If the judgment has been partially satisfied, the judgment creditor shall comply with the demand not later than 15 days after actual receipt of the demand.

(b) If the judgment creditor does not comply with the demand within the time allowed, the judgment debtor or the owner of the real or personal property subject to a judgment lien created under the judgment may apply to the court on noticed motion for an order requiring the judgment creditor to comply with the demand. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. If the court determines that the judgment has been partially satisfied and that the judgment creditor has not complied with the demand, the court shall make an order determining the amount of the partial satisfaction and may make an order requiring the judgment creditor to comply with the demand.

Comment. Section 724.110 is a new provision that provides a procedure whereby the judgment debtor or owner of property subject to a judgment lien may obtain an acknowledgment of

partial satisfaction of judgment or a court determination of the amount of partial satisfaction if the judgment creditor does not comply with a demand for an acknowledgment of partial satisfaction. Former statutory law did not provide for a similar procedure, but such a procedure was apparently allowed. See *Campbell v. Southern Pacific Co.*, 22 Cal.3d 51, 583 P.2d 121, 148 Cal. Rptr. 596 (1978); *Kaplan v. Hacker*, 113 Cal. App.2d 571, 248 P.2d 464 (1952). See also *Dallman v. Dallman*, 179 Cal. App.2d 27, 3 Cal. Rptr. 383 (1960) (motion to compel plaintiff to acknowledge partial satisfaction of terms of interlocutory divorce decree). Unlike the procedure for compelling the judgment creditor to deliver an acknowledgment of full satisfaction of judgment, Section 724.110 does not provide a sanction for failure to comply with the demand (compare subdivision (e) of Section 724.050) or for attorney's fees to the prevailing party (compare Section 724.080).

§ 724.120. Contents and manner of execution of acknowledgment of partial satisfaction of judgment

724.120. An acknowledgment of partial satisfaction of judgment shall be made in the same manner and by the same person as an acknowledgment of satisfaction of judgment and shall contain the following information:

- (a) The title of the court.
- (b) The cause and number of the action.
- (c) The names and addresses of the judgment creditor, the judgment debtor, and the assignee of record if any. If an abstract of the judgment has been recorded in any county, the judgment debtor's name shall appear on the acknowledgment of partial satisfaction of judgment as it appears on the abstract of judgment.
- (d) The date of entry of judgment and of any renewals of the judgment and where entered in the records of the court.
- (e) A statement of the amount received by the judgment creditor in partial satisfaction of the judgment.
- (f) A statement whether an abstract of judgment has been recorded in any county and, if so, a statement of each county where the abstract has been recorded and the book and page of the county records where the abstract has been recorded.

(g) A statement whether a notice of judgment lien has been filed in the office of the Secretary of State and, if so, the file number of the notice.

Comment. Section 724.120 is adapted from Section 724.060 which prescribes the contents and manner of execution of an acknowledgment of full satisfaction of judgment.

CHAPTER 3. ACKNOWLEDGMENT OF SATISFACTION OF MATURED INSTALLMENTS UNDER INSTALLMENT JUDGMENT

§ 724.210. Definitions

724.210. As used in this chapter:

(a) "Installment judgment" means a money judgment under which a lien may be created on an interest in real property under Section 697.320.

(b) "Matured installments" means the sum of all of the following:

(1) All amounts and installments that have matured under an installment judgment on or before the date specified in the demand for an acknowledgment of satisfaction of matured installments under an installment judgment.

(2) The interest that has accrued on the installment judgment on the date specified in the demand.

(3) The costs that have been added to the installment judgment on or before the date specified in the demand pursuant to Chapter 5 (commencing with Section 685.010) of Division 1.

Comment. Section 724.210 is included to provide a convenient reference to the installment judgments that constitute a judgment lien on real property under Section 697.320 (judgment for periodic spousal or child support, judgment against health care provider requiring periodic payments, and workers' compensation award judgment payable in installments).

§ 724.220. Demand for delivery of acknowledgment of satisfaction of matured installments

724.220. (a) If real property is subject to a judgment lien created under an installment judgment, the

judgment debtor or the owner of real property subject to the judgment lien may serve on the judgment creditor a demand in writing that the judgment creditor execute, acknowledge, and deliver to the person who made the demand an acknowledgment of satisfaction of matured installments under an installment judgment. Service shall be made personally or by mail.

(b) The demand shall include the following statement: "Important warning. If the matured installments on this judgment have been satisfied as of date specified in this demand, the law requires that you comply with this demand not later than 15 days after you receive it. (The 'matured installments' are all amounts and installments that are due and payable on or before the date specified in this demand together with the accrued interest to that date and costs added to the judgment on or before that date.) If a court proceeding is necessary to compel you to comply with this demand, you will be required to pay my reasonable attorney's fees in the proceeding if the court determines that the matured installments have been satisfied and that you failed to comply with the demand. In addition, if the court determines that you failed without just cause to comply with this demand within the 15 days allowed, you will be liable for all damages I sustain by reason of such failure and will also forfeit one hundred dollars to me."

(c) If the matured installments have been satisfied as of the date specified in the demand, the judgment creditor shall comply with the demand not later than 15 days after actual receipt of the demand.

Comment. Section 724.220 is adapted from subdivisions (a)-(c) of Section 724.050. If real property is subject to a judgment lien, the acknowledgment of satisfaction of matured installments permits the judgment debtor or other owner to transfer the property free of the lien. See Section 697.400(b).

§ 724.230. Proceeding to compel compliance with demand

724.230. If the judgment creditor does not comply with the demand within the time allowed, the judgment debtor or the owner of the real property subject to a

judgment lien created under the installment judgment may apply to the court on noticed motion for an order requiring the judgment creditor to comply with the demand. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. If the court determines that the matured installments have been satisfied as of the date specified in the demand and that the judgment creditor has not complied with the demand, the court shall either (1) order the judgment creditor to comply with the demand or (2) make an order determining that the matured installments as of the date specified in the demand have been satisfied.

Comment. Section 724.230 is drawn from subdivision (d) of Section 724.050.

§ 724.240. Damages and penalty for failure to comply with demand

724.240. (a) If the matured installments under the installment judgment have been satisfied as of the date specified in the demand and the judgment creditor fails without just cause to comply with the demand within the time allowed, the judgment creditor is liable to the person who made the demand for all damages sustained by reason of such failure and shall also forfeit one hundred dollars (\$100) to such person. Liability under this subdivision may be determined in the proceedings on a motion pursuant to Section 724.230 or in an action.

(b) The damages recoverable pursuant to subdivision (a) are not in derogation of any other damages or penalties to which an aggrieved person may be entitled by law.

Comment. Section 724.240 is drawn from subdivision (e) of Section 724.050 and from Section 724.090.

§ 724.250. Contents and manner of execution of acknowledgment of satisfaction of matured installments

724.250. (a) An acknowledgment of satisfaction of matured installments under an installment judgment shall be made in the same manner and by the same

person as an acknowledgment of satisfaction of judgment and shall contain the following information:

(1) The title of the court.

(2) The cause and number of the action.

(3) The names and addresses of the judgment creditor, the judgment debtor, and the assignee of record if any. The judgment debtor's name shall appear on the acknowledgment of satisfaction of matured installments as it appears on the certified copy of the judgment that was recorded to create the judgment lien.

(4) The date of entry of the judgment and of any renewals of the judgment and where entered in the records of the court.

(5) A statement that the matured installments under the installment judgment had been satisfied as of a specified date.

(6) A statement whether a certified copy of the judgment has been recorded in any county and, if so, a statement of each county where the certified copy has been recorded and the book and page of the county records where the certified copy of the judgment has been recorded.

(b) If any amount of child or spousal support provided in a support order has been directed to be made to an officer designated by the court pursuant to Section 4702 of the Civil Code or any other provision of law and such directive is set forth in the certified copy of the judgment that was recorded to create the judgment lien on real property, or in a similarly recorded certified copy of an amended or supplemental order, the acknowledgment of satisfaction of matured installments under the installment judgment is not effective and does not affect the judgment lien unless the acknowledgment is executed by or approved in writing by such designated officer.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 724.250 is adapted from Section 724.120 which prescribes the contents and manner of execution of an acknowledgment of partial satisfaction of judgment. Subdivision (b) continues the substance of a portion

of subdivision (b) of former Section 674.5. Section 724.060 specifies the manner of execution and the persons who may execute.

§ 724.260. Attorney's fees

724.260. In an action or proceeding maintained pursuant to this chapter, the court shall award reasonable attorney's fees to the prevailing party.

Comment. Section 724.260 is drawn from Section 724.080.

OUTLINE OF THE ATTACHMENT LAW

TITLE 6.5. ATTACHMENT

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- § 481.010. Application of definitions
- § 481.020. Account debtor
- § 481.030. Account receivable
- § 481.040. Chattel paper
- § 481.055. Costs
- § 481.060. Complaint
- § 481.070. Defendant
- § 481.080. Deposit account
- § 481.090. Document of title
- § 481.100. Equipment
- § 481.110. Farm products
- § 481.113. Financial institution
- § 481.115. General intangibles
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- § 481.170. Person
- § 481.175. Personal Property
- § 481.180. Plaintiff
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- § 481.195. Property
- § 481.200. Public entity
- § 481.203. Real property
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- § 482.020. Injunctive relief not precluded
- § 482.030. Rules for practice and procedure; forms
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- § 482.060. Subordinate judicial duties performable by appointed officers
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- § 482.080. Turnover order in aid of attachment
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- § 482.100. Postlevy exemption claims based on change in circumstances
- § 482.110. Attachment may include amount for costs and attorney's fees
- § 482.120. Determination of order of levy; order restricting excessive attachment

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- § 483.010. Cases in which attachment authorized
- § 483.015. Amount to be secured by attachment
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**Article 1. Right to Attach Order; Issuance
of Writ of Attachment**

- § 484.010. Application for order and writ
- § 484.020. Execution and contents of application
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- § 484.040. Notice to defendant
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- § 484.060. Notice of opposition by defendant and supporting affidavit
- § 484.070. Claim of exemption; notice of opposition
- § 484.080. Readiness for hearing; continuance
- § 484.090. Hearing; order and findings
- § 484.100. Effect of determinations
- § 484.110. Effect of failure to oppose or rebut evidence

**Article 2. Noticed Hearing Procedure for
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- § 484.310. Application
- § 484.320. Contents of application
- § 484.330. Notice to defendant
- § 484.340. Contents of notice of application and hearing
- § 484.350. Claim of exemption
- § 484.360. Plaintiff's notice of opposition
- § 484.370. Hearing; issuance of writ

**Article 3. Ex Parte Procedure for
Obtaining Additional Writs**

- § 484.510. Application and supporting affidavit
- § 484.520. Ex parte hearing; issuance of writ
- § 484.530. Claim of exemption

**CHAPTER 5. EX PARTE HEARING PROCEDURE FOR
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Article 1. Great or Irreparable Injury Requirement

- § 485.010. Prerequisite of great or irreparable injury

**Article 2. Order Determining Right to
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- § 485.210. Application for order and writ; supporting affidavit
- § 485.220. Issuance of order and writ
- § 485.240. Setting aside right to attach order and quashing writ

Article 3. Procedure for Obtaining Additional Writs

- § 485.510. Application
- § 485.520. Contents of application
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Article 4. Claim of Exemption

- § 485.610. Claim of exemption

CHAPTER 6. TEMPORARY PROTECTIVE ORDER

- § 486.010. Application; supporting affidavit
- § 486.020. Issuance of order if required findings are made
- § 486.030. Issuance of temporary protective order in lieu of writ of attachment
- § 486.040. Contents of temporary protective order generally
- § 486.050. Effect on transfers in the ordinary course of business
- § 486.060. Authority of defendant to issue checks
- § 486.070. Persons bound by temporary protective order
- § 486.080. Service on defendant
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- § 486.100. Modification or vacation of order on defendant's application
- § 486.110. Lien of temporary protective order

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- § 487.010. Property subject to attachment
- § 487.020. Property exempt from attachment
- § 487.025. Right to attach declared homestead
- § 487.030. Claim of exemption for real property

**CHAPTER 8. LEVY PRODECURES; LIEN OF ATTACHMENT;
MANAGEMENT AND DISPOSITION OF ATTACHED PROPERTY****Article 1. General Provisions**

- § 488.010. Contents of writ of attachment
- § 488.020. Delivery and execution of writ
- § 488.030. Instructions to levying officer
- § 488.040. Instructions to include name and address of persons to be served
- § 488.050. Deposit of levying officer's costs
- § 488.060. Notice of attachment
- § 488.070. Attachment of property in private place
- § 488.080. Levy of attachment by registered process server
- § 488.090. Manner of custody
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- § 488.110. Third-party claims
- § 488.120. Effect of failure to give notice of attachment
- § 488.130. Return of writ
- § 488.140. Liability of levying officer

Article 2. Methods of Levy

- § 488.300. Incorporated terms
- § 488.305. Service of writ and notice of attachment on defendant
- § 488.315. Real property
- § 488.325. Growing corps, timber to be cut, minerals to be extracted
- § 488.335. Tangible personal property in possession of defendant
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- § 488.355. Personal property in custody of levying officer
- § 488.365. Bailed goods not covered by negotiable document of title
- § 488.375. Equipment of going business
- § 488.385. Vehicle, vessel, mobilehome, or commercial coach that is equipment of going business
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- § 488.405. Alternative method of attaching farm products or inventory of going business by filing with Secretary of State

- § 488.415. Personal property used as dwelling
- § 488.425. Vehicle, vessel, mobilehome, or commercial coach for which certificate of ownership issued
- § 488.435. Chattel paper
- § 488.440. Instruments
- § 488.445. Negotiable documents of title
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- § 488.455. Deposit accounts
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- § 488.465. Deposit accounts and safe deposit boxes not exclusively in name of defendant
- § 488.470. Accounts receivable and general intangibles
- § 488.475. Attachment of property that is subject of pending action or proceeding
- § 488.480. Final money judgments
- § 488.485. Interests in personal property of estate of decedent

Article 3. Lien of Attachment

- § 488.500. Attachment lien
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Article 4. Duties and Liabilities of Third Persons After Levy

- § 488.600. Duties and liabilities of third persons
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Article 5. Management and Disposition of Attached Property

- § 488.700. Sale or receiver for attached property
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- § 488.720. Release of property in excess of that needed to satisfy amount secured
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CHAPTER 9. UNDERTAKINGS

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- § 489.060. Filing and approval of undertaking
- § 489.130. Failure to increase undertaking

Article 2. Undertakings to Obtain Writ of Attachment or Protective Order

- § 489.210. Undertaking required
- § 489.220. Amount of undertaking
- § 489.230. Notice to defendant

Article 3. Undertaking to Obtain Release of Attachment or Protective Order

- § 489.310. Undertaking for release of attachment
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Article 4. Undertaking on Appeal

- § 489.410. Postjudgment continuance of attachment
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CHAPTER 10. LIABILITY FOR WRONGFUL ATTACHMENT

- § 490.010. Acts constituting wrongful attachment
- § 490.020. Liability for wrongful attachment
- § 490.040. Setoff of wrongful attachment recovery
- § 490.060. Common law remedies not limited

CHAPTER 11. ATTACHING PLAINTIFF'S MISCELLANEOUS REMEDIES**Article 1. Examination of Third Person**

- § 491.110. Examination of third person
- § 491.120. Witnesses
- § 491.130. Powers and qualifications of referee
- § 491.140. Appearance for examination by representatives of organizations
- § 491.150. Proper court for examination; examination outside county where judgment entered
- § 491.160. Failure to appear for examination; penalty for unjustified arrest
- § 491.170. Determination of third person's adverse claim
- § 491.180. Protective orders
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Article 2. Creditor's Suit

- § 491.310. Creditor's suit
- § 491.320. Joinder of defendant
- § 491.330. Time for bringing creditor's suit
- § 491.340. Order forbidding transfer of property or payment of debt
- § 491.350. No right to jury trial
- § 491.360. Judgment in creditor's suit
- § 491.370. Costs

Article 3. Lien in Pending Action or Proceeding

- § 491.410. Plaintiff's lien in pending action or proceeding
- § 491.420. Contents of notice of lien
- § 491.430. Intervention; plaintiff deemed a party for certain purposes
- § 491.440. Enforcement, compromise, dismissal, settlement, satisfaction
- § 491.450. Endorsement of lien on judgment and abstract
- § 491.460. Judgment and orders in action or special proceeding to enforce lien

CHAPTER 12. NONRESIDENT ATTACHMENT

- § 492.010. Attachment in action against nonresident
- § 492.020. Application for order and writ; supporting affidavit
- § 492.030. Issuance of order and writ
- § 492.040. Property subject to attachment
- § 492.050. Setting aside right to attach order and quashing writ
- § 492.060. Application for additional writ
- § 492.070. Contents of application
- § 492.090. Issuance of additional writ

CHAPTER 13. EFFECT OF BANKRUPTCY PROCEEDINGS AND GENERAL ASSIGNMENTS FOR THE BENEFIT OF CREDITORS

- § 493.010. "General assignment for the benefit of creditors" defined
- § 493.020. General assignment for the benefit of creditors not precluded
- § 493.030. Termination of lien of temporary protective order or attachment
- § 493.040. Release of attachment
- § 493.050. Reinstatement of lien
- § 493.060. Assignee subrogated to rights of plaintiff

TITLE 6.5. ATTACHMENT

Note. The Attachment Law, as revised by Chapter 1198 of the Statutes of 1982, is set out below. The revisions made by Chapter 1198 are operative July 1, 1983.

The official Comment or Comments follow the text of the section. Unless otherwise indicated, the Comment is taken from the Law Revision Commission recommendation that proposed the enactment or repeal of the particular section to which the Comment applies:

(1) 1974 Cal. Stats. ch. 1516, enacting *Recommendation Relating to Prejudgment Attachment*, 11 Cal. L. Revision Comm'n Reports 701 (1973).

(2) 1976 Cal. Stats. ch. 437, enacting *Recommendation Relating to Revision of Attachment Law*, 13 Cal. L. Revision Comm'n Reports 801 (1976).

(3) 1977 Cal. Stats. ch. 499, enacting *Recommendation Relating to the Attachment Law—Effect of Bankruptcy Proceedings, Effect of General Assignments for the Benefit of Creditors*, 14 Cal. L. Revision Comm'n Reports 61 (1978).

(4) 1978 Cal. Stats. ch. 151, enacting *Recommendation Relating to Court Commissioners Under the Attachment Law*, 14 Cal. L. Revision Comm'n Reports 93 (1978).

(5) 1978 Cal. Stats. ch. 273, enacting *Recommendation Relating to Technical Revisions in the Attachment Law—Unlawful Detainer Proceedings, Bond for Levy on Joint Deposit Account or Safe Deposit Box, Definition of "Chose in Action,"* 14 Cal. L. Revision Comm'n Reports 241 (1978).

(6) 1979 Cal. Stats. ch. 177, enacting *Recommendation Relating to Effect of New Bankruptcy Law on the Attachment Law*, 15 Cal. L. Revision Comm'n Reports 1043 (1980).

(7) 1982 Cal. Stats. ch. 1198, enacting *Recommendation Relating to Attachment*, 16 Cal. L. Revision Comm'n Reports 701 (1982).

Comments designated as "Legislative Committee Comment—Assembly" or "Legislative Committee Comment—Senate" are taken from a report of the Assembly Committee on Judiciary printed or noted in the Assembly Journal or from a report of the Senate Committee on Judiciary printed in the Senate Journal.

In some cases, there are two or more Comments to a particular section. One Comment applies to the section as it was originally enacted, and one or more additional Comments apply to later amendments of the section. Where there are more than one

Comment to a particular section, a designation indicates the version of the section to which a particular Comment applies.

In some cases, an earlier Comment is made obsolete or becomes inaccurate because of a subsequent amendment to the section. An earlier Comment is omitted if it is considered obsolete in view of the subsequent amendment (or repeal) of the section to which it applied. Editorial revisions have been made in other Comments to adjust the Comment to reflect later developments. Editorial additions (indicated by material in brackets) and omissions (indicated by ...) are shown where made.

CHAPTER 1. WORDS AND PHRASES DEFINED

§ 481.010. Application of definitions

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

Comment. Section 481.010 is a standard provision found in the definitional portion of recently enacted California codes. See, *e.g.*, EVID. CODE § 100; VEH. CODE § 100.

Additional definitions are found in the preliminary provisions of the Code of Civil Procedure. *E.g.*, Section 17 provides “the singular number includes the plural and the plural the singular.”

§ 481.020. Account debtor

481.020. “Account debtor” means “account debtor” as defined in Section 9105 of the Commercial Code.

1982 Amendment

Comment. Section 481.020 is amended to conform to Section 680.120 (Enforcement of Judgments Law).

§ 481.030. Account receivable

481.030. “Account receivable” means “account” as defined in Section 9106 of the Commercial Code.

1982 Amendment

Comment. Section 481.030 is amended to conform to Section 680.130 (Enforcement of Judgments Law).

§ 481.040. Chattel paper

481.040. “Chattel paper” means “chattel paper” as defined in Section 9105 of the Commercial Code.

1982 Amendment

Comment. Section 481.040 is amended to conform to Section 680.140 (Enforcement of Judgments Law).

§ 481.050 (repealed). Chose in action

Comment. Section 481.050 is repealed. The term “chose in action” is generally replaced by the term “general intangibles” in this title for consistency with Title 9 (commencing with Section 680.010) (Enforcement of Judgments Law). See Section 481.115 (“general intangibles” defined). See also Section 481.117 (“instrument” defined).

§ 481.055. Costs

481.055. “Costs” means costs and disbursements, including, but not limited to, statutory fees, charges, commissions, and expenses.

Comment. Section 481.055 is new and is the same as Section 680.150 (Enforcement of Judgments Law). See the Comment to Section 680.150.

§ 481.060. Complaint

481.060. “Complaint” includes a cross-complaint.

Comment. Section 481.060 continues former law. See, *e.g.*, *Allers v. Beverly Hills Laundry, Inc.*, 98 Cal. App. 580, 277 P. 337 (1929).

§ 481.070. Defendant

481.070. “Defendant” includes a cross-defendant.

Comment. See Comment to Section 481.060.

§ 481.080. Deposit account

481.080. “Deposit account” means “deposit account” as defined in Section 9105 of the Commercial Code.

1982 Amendment

Comment. Section 481.080 is amended to conform to Section 680.170 (Enforcement of Judgments Law).

§ 481.090. Document of title

481.090. “Document of title” means “document” as defined in Section 9105 of the Commercial Code. A document of title is negotiable if it is negotiable within the meaning of Section 7104 of the Commercial Code.

1982 Amendment

Comment. Section 481.090 is amended to conform to Section 680.180 (Enforcement of Judgments Law)

§ 481.100. Equipment

481.100. “Equipment” means tangible personal property in the possession of the defendant and used or bought for use primarily in the defendant’s trade, business, or profession if it is not included in the definitions of inventory or farm products.

Comment. Section 481.100 is based on the definition of “equipment” provided by Section 9109 of the Commercial Code. . . .

§ 481.110. Farm products

481.110. “Farm products” means crops or livestock or supplies used or produced in farming operations or products of crops or livestock in their unmanufactured states (such as ginned cotton, wool clip, maple syrup, milk, and eggs), while in the possession of a defendant engaged in raising, fattening, grazing, or other farming operations. If tangible personal property is a farm product, it is neither equipment nor inventory.

1974 Addition

Comment. Section 481.110 is based on the definition of “farm products” provided by Section 9109 of the Commercial Code. Equipment and inventory are defined by Sections 481.100 and 481.120, respectively. . . .

1982 Amendment

Comment. Section 481.110 is amended to delete honey from the list of farm products, consistent with the amendment of Section 9109 of the Commercial Code. See 1974 Cal. Stats. ch. 997, § 12.

§ 481.113. Financial institution

481.113. "Financial institution" means a state or national bank, state or federal savings and loan association or credit union, or like organization, and includes a corporation engaged in a safe deposit business.

Comment. Section 481.113 is new and is the same as Section 680.200 (Enforcement of Judgments Law).

§ 481.115. General intangibles

481.115. "General intangibles" means "general intangibles," as defined in Section 9106 of the Commercial Code, consisting of rights to payment.

Comment. Section 481.115 is the same as Section 680.210 (Enforcement of Judgments Law) and supersedes former Section 481.050 ("chase in action" defined). The limitation to debts arising out of the conduct of a trade, business, or profession found in former Section 481.050 is continued in Section 487.010(c) (2) (property subject to attachment).

§ 481.117. Instrument

481.117. "Instrument" means "instrument" as defined in Section 9105 of the Commercial Code, but does not include a security.

Comment. Section 481.117 is the same as Section 680.220 (Enforcement of Judgments Law) and supersedes a portion of former Section 481.050 ("chase in action" includes nonnegotiable instrument) and former Section 481.160 ("negotiable instrument" defined).

§ 481.120. Inventory

481.120. "Inventory" means tangible personal property in the possession of a defendant that (a) is held by the defendant for sale or lease or to be furnished under contracts of service or (b) is raw materials, work in process, or materials used or consumed in his trade, business, or profession. Inventory of a person is not to be classified as his equipment.

Comment. Section 481.120 is based on the definition of "inventory" provided by Section 9109 of the Commercial Code.

The phrase “or if he has leased or so furnished them” contained in Section 9109 has been omitted here to make clear that inventory under this title is limited to property in the possession of the defendant. . . .

§ 481.140. Levying officer

481.140. “Levying officer” means the sheriff, constable, or marshal who is directed to execute a writ or order issued under this title.

§ 481.150 (repealed). Motor vehicle

Comment. Section 481.150 is repealed because it is unnecessary.

§ 481.160 (repealed). Negotiable instrument

Comment. Section 481.160 is superseded by Section 481.117 (“instrument” defined).

§ 481.170. Person

481.170. “Person” includes a natural person, a corporation, a partnership or other unincorporated association, and a public entity.

1982 Amendment

Comment. Section 481.170 is amended to conform to Section 680.280 (Enforcement of Judgments Law).

§ 481.175. Personal property

481.175. “Personal property” includes both tangible and intangible personal property.

Comment. Section 481.175 is new and is the same as Section 680.290 (Enforcement of Judgments Law).

§ 481.180. Plaintiff

481.180. “Plaintiff” means a person who files a complaint or cross-complaint.

Comment. See Comment to Section 481.060

§ 481.190. Probable validity

481.190. A claim has “probable validity” where it is more likely than not that the plaintiff will obtain a judgment against the defendant on that claim.

Comment. The definition of “probable validity” in Section 481.190 requires that, at the hearing on the application for a writ, the plaintiff must at least establish a prima facie case. If the defendant makes an appearance, the court must then consider the relative merits of the positions of the respective parties and make a determination of the probable outcome of the litigation.

§ 481.195. Property

481.195. “Property” includes real and personal property and any interest therein.

Comment. Section 481.195 is new and is the same as Section 680.310 (Enforcement of Judgments Law).

§ 481.200. Public entity

481.200. “Public entity” includes the state, the Regents of the University of California, a county, a city, district, public authority, public agency, and any other political subdivision or public corporation in the state.

Comment. Section 481.200 adopts the language of the definition found in Section 811.2 of the Government Code.

§ 481.203. Real property

481.203. “Real property” includes any right in real property, including, but not limited to, a leasehold interest in real property.

Comment. Section 481.203 is new and is the same as Section 680.320 (Enforcement of Judgments Law).

§ 481.205. Registered process server

481.205. “Registered process server” means a person registered as a process server pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code.

Comment. Section 481.205 is new and is the same as Section 680.330 (Enforcement of Judgments Law).

§ 481.207. Secured party

481.207. “Secured party” means “secured party” as defined in Section 9105 of the Commercial Code.

Comment. Section 481.207 is new and is the same as Section 680.340 (Enforcement of Judgments Law).

§ 481.210. Security

481.210. “Security” means a “security” as defined by Section 8102 of the Commercial Code.

Note. Section 481.210 is the same as Section 680.345 (Enforcement of Judgments Law).

§ 481.220. Security agreement

481.220. “Security agreement” means a “security agreement” as defined by Section 9105 of the Commercial Code.

Note. Section 481.220 is the same as Section 680.350 (Enforcement of Judgments Law).

§ 481.223. Security interest

481.223. “Security interest” means “security interest” as defined in Section 1201 of the Commercial Code.

Comment. Section 481.223 is new and is the same as Section 680.360 (Enforcement of Judgments Law).

§ 481.225. Tangible personal property

481.225. “Tangible personal property” includes chattel paper, documents of title, instruments, securities, and money.

Comment. Section 481.225 is new and is the same as Section 680.370 (Enforcement of Judgments Law).

§ 481.230 (repealed). Vessel

Comment. Section 481.230 is repealed because it is unnecessary.

CHAPTER 2. GENERAL PROVISIONS**§ 482.010. Short title**

482.010. This title shall be known and may be cited as “The Attachment Law.”

§ 482.020. Injunctive relief not precluded

482.020. Nothing in this title precludes the granting of relief pursuant to Chapter 3 (commencing with Section 525) of Title 7.

Comment. Section 482.020 deals with certain problems of integration of this title with Chapter 3 of Title 7 of this part. The remedies provided by this title are not intended to be exclusive. In some circumstances, the relief provided, while theoretically available, may be impractical or ineffectual. In other cases, relief hereunder may be denied due to a close factual question of liability. In these situations, an injunction may provide a more satisfactory remedy and the ruling on an application for injunctive relief pursuant to the other provisions of this code should not be prejudiced by reason of the theoretical availability of a remedy at law.

§ 482.030. Rules for practice and procedure; forms

482.030. (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 applications, notices, orders, and other documents required by this title.

Comment. Section 482.030 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.

§ 482.040. General requirements for affidavits

482.040. The facts stated in each affidavit filed pursuant to this title shall be set forth with particularity. Except where matters are specifically permitted by this title to be shown by information and belief, each affidavit shall show affirmatively that the affiant, if sworn as a witness, can testify competently to the facts stated therein. As to matters shown by information and belief, the affidavit shall state the facts on which the affiant's belief is based, showing the nature of his information and the reliability of his informant. The affiant may be any person, whether or not a party to the action, who has knowledge of the facts. A verified complaint that satisfies the requirements of this section may be used in lieu of or in addition to an affidavit.

Legislative Committee Comment—1974 Addition

Comment. Section 482.040 provides standards for affidavits filed pursuant to this title. These standards are comparable to but not as restrictive as those provided for affidavits filed in support of or in opposition to a motion for summary judgment. Compare Section 437c. A verified complaint that satisfies the requirements of Section 482.040 may be used in lieu of or in addition to an affidavit. See also Section 2015.5 (use of declaration under penalty of perjury). It should be noted that under this title certain matters may be shown on the plaintiff's information and belief. See Sections 484.510(b), 485.210(d), 485.530(b), 486.010, 492.020(c), and 492.070.

§ 482.050. Secrecy prior to return of service; request; exception

482.050. (a) If the plaintiff so requests in writing at the time he files his complaint, the clerk of the court with whom the complaint is filed shall not make available to the public the records and documents in such action before either (1) 30 days after the filing of the complaint or (2) the filing pursuant to this title of the return of service of the notice of hearing and any temporary protective order, or of the writ of attachment if issued without notice, whichever event occurs first.

(b) Notwithstanding subdivision (a), the clerk of the court shall make the entire file in the action available for inspection at any time to any party named in the complaint or to his attorney.

(c) The request by plaintiff that the fact of filing of a complaint or application for relief not be made public may take the form of a notation to that effect, made by rubber stamp or other suitable means, at the top of the first page of the complaint filed with the clerk.

Comment. Section 482.050 is substantively the same as former Section 537.5.

§ 482.060. Subordinate judicial duties performable by appointed officers

482.060. (a) Except as otherwise provided in subdivision (b), the judicial duties to be performed under this title are subordinate judicial duties within the

meaning of Section 22 of Article VI of the California Constitution and may be performed by appointed officers such as court commissioners.

(b) The judicial duties to be performed in the determination of the following matters are not subordinate judicial duties:

- (1) A contested claim of exemption.
- (2) A contested motion for determination of the liability and damages for wrongful attachment.
- (3) A contested third-party claim.
- (4) A contested proceeding to enforce a third person's liability.

(c) Nothing in subdivision (b) limits the power of a court to appoint a temporary judge pursuant to Section 21 of Article VI of the California Constitution.

1978 Addition

Comment. Section 482.060 authorizes the use of court commissioners to perform judicial duties arising under this title, subject to the exceptions noted in subdivision (b).

Contested exemption claims, described in paragraph (1) of subdivision (b), may arise under Sections 482.100 (postlevy exemption claims based on changed circumstances), 484.070 (claim of exemption and notice of opposition in procedure for issuance of writ of attachment after a noticed hearing), 484.350-484.360 (claim of exemption and notice of opposition in procedure for issuance of additional writ after a noticed hearing), 484.530 (claim of exemption after levy of ex parte additional writ), 485.610 (claim of exemption after levy of ex parte writ or additional writ), or 492.040-492.050 (release of exempt property where nonresident defendant files general appearance). [A contested exemption claim may also arise under Section 487.030 (claim of exemption for real property).]

Motions for determination of liability and damages for wrongful attachment arise under [former] Sections 490.030 and 490.050 [superseded by Sections 996.440 and 996.460]. Third-party claims are made and determined in the manner provided by [former] Section 689 which [was] incorporated by [former] Section 488.090 [superseded by Section 488.110]. [See also Section 491.170.] Actions to enforce a garnishee's liability may be brought pursuant to [former] Section 488.550 [superseded by Sections 488.600, 488.610, 491.310-491.370, and 701.010-701.020].

Subdivision (c) recognizes that a qualified commissioner or other person may be appointed as a temporary judge, upon stipulation of the parties, to determine a matter pursuant to the authority of Section 21 of Article VI of the California Constitution.

1982 Amendment

Comment. Subdivision (b) (4) of Section 482.060 is revised to make clear its application to proceedings under Sections 488.600, 488.610, 491.170, and 491.310.

§ 482.070. Manner of service; persons to be served; proof of service

482.070. (a) Except as otherwise provided in this title, a writ, notice, order, or other paper required or permitted to be served under this title may be served personally or by mail.

(b) Except as otherwise provided in this section, service of a writ, notice, order, or other paper under this title is governed by Article 1 (commencing with Section 684.010) and Article 2 (commencing with Section 684.110) of Chapter 4 of Division 1 of Title 9, including the provisions of Section 684.120 extending time when service is made by mail.

(c) For the purpose of subdivision (b), in Article 1 (commencing with Section 684.010) and Article 2 (commencing with Section 684.110) of Chapter 4 of Division 1 of Title 9:

(1) References to the "judgment debtor" shall be deemed references to the defendant.

(2) References to the "judgment creditor" shall be deemed references to the plaintiff.

(3) References to a "writ" shall be deemed references to a writ of attachment.

(4) References to a "notice of levy" shall be deemed references to a notice of attachment.

(d) If the defendant has not appeared in the action and a writ, notice, order, or other paper is required to be personally served on the defendant under this title, service shall be made in the same manner as a summons is served under Chapter 4 (commencing with Section 413.10) of Title 5.

(e) Except for service of a subpoena or other process to require the attendance of the defendant or service of a paper to bring the defendant into contempt, if the defendant has an attorney of record in the action, service shall be made on the attorney rather than on the defendant.

(f) Proof of service under this title is governed by Article 3 (commencing with Section 684.210) of Chapter 4 of Division 1 of Title 9.

1982 Amendment

Comment. Section 482.070 is amended to incorporate generally the detailed provisions in the Enforcement of Judgments Law governing the manner of service, the persons to be served, and proof of service. See Sections 684.010-684.220.

§ 482.080. Turnover order in aid of attachment

482.080. (a) If a writ of attachment is issued, the court may also issue an order directing the defendant to transfer to the levying officer either or both of the following:

(1) Possession of the property to be attached if the property is sought to be attached by taking it into custody.

(2) Possession of documentary evidence of title to property of or a debt owed to the defendant that is sought to be attached. An order pursuant to this paragraph may be served when the property or debt is levied upon or thereafter.

(b) The order shall be personally served on the defendant and shall contain a notice to the defendant that failure to comply with the order may subject the defendant to arrest and punishment for contempt of court.

1974 Addition

Comment. Section 482.080 is new. It makes clear that the court has power to issue a "turnover" order directing the defendant to cooperate in transferring possession. Such order is not issued in lieu of a writ but rather in addition to or in aid of a writ. Compare Section 512.070 ("turnover" order under claim and delivery procedure).

1976 Amendment

Comment. Section 482.080 is amended to make clear that an order may be issued under subdivision (a) (1) only where the property is sought to be attached by taking it into custody. . . .

Subdivision (a) (2) is added to Section 482.080 to provide for issuance of a “turnover” order directing the defendant to transfer to the levying officer the muniments of title to property, or documentary evidence of a debt, which is attached. . . . Issuance of an order under subdivision (a) (2) is appropriate, for example, where a motor vehicle has been or is to be attached and the certificate of ownership is sought. . . . Possession of such muniments of title is useful to facilitate . . . sale (such as in the case of the certificate of ownership of a motor vehicle) and to prevent a transfer.

An order may be issued pursuant to this section when the writ of attachment is issued or thereafter.

Subdivision (b) of Section 482.080 is amended to delete the words “or arrest” from the last sentence. This amendment makes clear that the defendant is not subject to arrest independent of contempt proceedings. See Code Civ. Proc. § 501 (civil arrest abolished). A person may still be arrested in the course of contempt proceedings. See Code Civ. Proc. §§ 1212, 1214.

1982 Amendment

Comment. Section 482.080 is amended to make clear that personal service of the order is required. See also Sections 482.070 (manner of service) and 684.030 (service on defendant rather than defendant’s attorney required).

§ 482.090. Issuance of multiple and duplicate writs

482.090. (a) Several writs in the same form may be issued simultaneously or from time to time upon the same undertaking, whether or not any writ previously issued has been returned.

(b) After the return of the writ of attachment, or upon the filing by the plaintiff of an affidavit setting forth the loss of the writ of attachment, the clerk, upon demand of the plaintiff at any time before judgment, may issue an alias writ which shall be in the same form as the original without requirement of a new undertaking.

(c) The date of issuance of a writ of attachment shall be deemed to be the date the writ is first issued.

Comment. Subdivision (a) of Section 482.090 makes clear that the court has the power to issue multiple writs where necessary—*e.g.*, to levy upon property located in different counties. No time limit is prescribed as to when additional writs may be issued under this subdivision. Compare last paragraph of former Section 540. However, subdivision (c) makes clear that the date of issuance of a writ is the date the writ is *first* issued, and the expiration of the lien created by a levy of attachment is determined accordingly. Hence, subdivision (c), in combination with Section 488.510, provides a time limit of a little less than three years. Subdivision (a) deals only with writs *in the same form*. The procedure for obtaining additional writs in a new form is provided by Articles 2 and 3 of Chapter 4, Article 3 of Chapter 5, and Sections 492.060–492.090 of Chapter 12.

Subdivision (b) is substantively the same as former Section 559½.

§ 482.100. Postlevy exemption claims based on change in circumstances

482.100. (a) The defendant may claim an exemption provided in Section 487.020 for property levied upon pursuant to a writ issued under this title if the right to the exemption is the result of a change in circumstances occurring after (1) the denial of a claim of exemption for the property earlier in the action or (2) the expiration of the time for claiming the exemption earlier in the action.

(b) A claim of exemption under this section shall follow the procedure provided in Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 except that, subject to subdivision (a), the defendant may claim the exemption at any time. For this purpose, references in Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 to the “judgment debtor” shall be deemed references to the defendant, and references to the “judgment creditor” shall be deemed references to the plaintiff.

(c) The exemption provided by subdivision (b) of Section 487.020 may be claimed at the defendant’s option either pursuant to subdivision (b) of this section or by following the procedure provided in this subdivision. The claim shall be made by filing with the court and serving

on the plaintiff a notice of motion. Service on the plaintiff shall be made not less than three days prior to the date set for the hearing. The hearing shall be held not more than five days after the filing of the notice of motion unless, for good cause shown, the court orders otherwise. The notice of motion shall state the relief requested and shall be accompanied by an affidavit supporting any factual issues raised and points and authorities supporting any legal issues raised. At the hearing on the motion, the defendant has the burden of showing that the property is exempt pursuant to subdivision (b) of Section 487.020. Upon this showing and the showing required by subdivision (a), the court shall order the release of the property.

1976 Addition

Comment. Section 482.100 provides the procedure for making postlevy claims of exemption under this title where the right to the exemption is based upon a change in circumstances occurring after the exemption has previously been denied or the defendant has previously failed to make a timely claim. See generally Sections 484.070 and 484.350 (claiming exemptions at a noticed hearing on issuance of a writ) and Sections 484.530 and 485.610 (claiming exemptions within 30 days after notice of levy of an ex parte writ).

The requirement that the defendant show a change in circumstances giving rise to the exemption in any case where the exemption has previously been claimed but denied or where the exemption was required to be claimed within a specified time but the defendant failed to do so is applicable, for example, where the defendant failed to claim an exemption for property described in the plaintiff's application for a writ issuable after a noticed hearing (Section 484.070(a)), where the defendant made a claim of exemption as to property not described in the plaintiff's application for a writ issuable after a noticed hearing but failed to prove the exemption (Section 484.070(b)), or where the defendant failed to claim the exemption within the time for making a claim of exemption after levy of an ex parte writ of attachment or additional writ (Section 484.530 or 485.610). If the defendant fails to make a timely claim of exemption, the exemption is waived for purposes of both attachment and execution unless the defendant or judgment debtor shows a change of circumstances affecting his right to the exemption. See, *e.g.*, Section 484.070.

Subdivision (b) incorporates the procedure provided by [the Enforcement of Judgments Law] for claiming exemptions after levy of any writ issued under Chapter 4 or 5. . . .

The provisions for claiming exemptions after levy apply as well in the case of a nonresident defendant whose property has been levied upon pursuant to a writ issued under Chapter 12 except that the nonresident defendant must first have filed a general appearance. See Sections 492.040 and 492.050. Under Chapter 12, the initial determination of exemptions is made when the defendant makes a general appearance. See Sections 492.040 and 492.050. The procedures of Section 482.100 are applicable where the right to the exemption is the result of a change in circumstances occurring after that time.

A claim of exemption made pursuant to subdivision (b) may be made at any time after levy so long as the defendant can show, pursuant to subdivision (a), that the right to claim the exemption is the result of a change in circumstances occurring after the claim was previously denied or the time for previously making the claim had expired.

A more expeditious procedure is provided by subdivision (c) for claiming a hardship exemption. See Section 487.020(b) (exemption of property necessary for the support of an individual defendant or the defendant's family supported in whole or in part by the defendant). . . . Subdivision (b) of former Section 537.3 permitted the defendant to claim a hardship exemption at any time after levy upon five days' notice to the plaintiff. See Sections 484.530(b) and 485.610(b) (incorporating procedure of Section 482.100(c) but without the necessity of showing a change in circumstances). It should be noted that an exemption for necessities may also be claimed, at the defendant's option, pursuant to the procedures provided by subdivision (b) of this section. The defendant may elect to use the subdivision (b) procedure, for example, where there is no need for the more expeditious procedure provided by subdivision (c).

After levy, the defendant may claim an exemption only for property which has been levied upon. Contrast Section 484.070 which permits the defendant to claim an exemption for property which is not described in the plaintiff's application.

1982 Amendment

Comment. Section 482.100 is amended to substitute a reference to the provisions that replaced former Section 690.50 and to make other conforming revisions. See also Section 482.070 (manner of service).

§ 482.110. Attachment may include amount for costs and attorney's fees

482.110. (a) The plaintiff's application for a right to attach order and a writ of attachment pursuant to this title may include an estimate of the costs and allowable attorney's fees.

(b) In the discretion of the court, the amount to be secured by the attachment may include an estimated amount for costs and allowable attorney's fees.

Comment. Section 482.110 makes clear that, upon the plaintiff's application therefor, the "amount to be secured by the attachment" may include costs and attorney's fees, in the court's discretion. [See Sections 483.015, 483.020.] See also Sections 484.020, [484.050,] 484.090, 484.320, 484.370, 484.520, 485.220, 485.520, 485.540, [486.020, 486.060, 488.465, 488.720,] 489.310, 489.320, [491.420,] 492.030, 492.070, 492.090 [, 493.040]. This section does not provide any authority for the award of costs or attorney's fees not otherwise made recoverable by contract or statute.

§ 482.120. Determination of order of levy; order restricting excessive attachment

482.120. If the court determines at the hearing on issuance of a writ of attachment under this title that the value of the defendant's interest in the property described in the plaintiff's application clearly exceeds the amount necessary to satisfy the amount to be secured by the attachment, the court may direct the order of levy on the property described in the writ or restrict the amount of the property to be levied upon.

Comment. Section 482.120 provides a procedure whereby the court may protect against an excessive attachment before levy. After levy, the defendant may seek an order releasing an excessive attachment pursuant to [former] Section 488.555 [superseded by Section 488.720]. The provision in Section 482.120 for an order directing the order of levy continues the substance of a provision of former law. See the last sentence of former Section 538.4. The provision for an order restricting the amount of property to be levied upon recognizes the court's discretion to examine the plaintiff's application and to seek to avoid the attachment of an excessive amount of the defendant's property by ordering issuance of a writ describing a lesser amount of the defendant's property than is described in the plaintiff's application for the writ. This provision makes explicit the authority formerly implied by the last sentence of subdivision (b) of Section 484.090. Similar provisions formerly appeared in Sections 484.370, 484.520, 485.220(b), 485.540, 492.030(b), and

492.090. The enactment of this provision is not intended to require a more detailed description of property in the plaintiff's application than that which satisfies subdivision (e) of Section 484.020.

CHAPTER 3. ACTIONS IN WHICH ATTACHMENT AUTHORIZED

§ 483.010. Cases in which attachment authorized

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

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

(c) If the action is against a defendant who is a natural person, an attachment may be issued only on a claim which arises out of the conduct by the defendant of a trade, business, or profession. An attachment may not be issued on a claim against a defendant who is a natural person if the claim is based on the sale or lease of

property, a license to use property, the furnishing of services, or the loan of money where the property sold or leased, or licensed for use, the services furnished, or the money loaned was used by the defendant primarily for personal, family, or household purposes.

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

Legislative Committee Comment—1974 Addition

Comment. Section 483.010 is based upon subdivision (a) of former Section 537.1. Subdivision (a) of former Section 537.1 was designed to limit attachment to cases arising out of commercial transactions. (The title to the 1972 enactment provides that it is one “relating to attachment in commercial actions.”) Section 483.010 continues this purpose. Subdivision (a) limits the claims on which an attachment may be issued to those based upon a contract, express or implied, and asserted against a defendant engaged in a trade, business, or profession. Subdivision (c) further carries out this purpose by specifically prohibiting attachment where the goods, services, or money furnished was used primarily for personal, family, or household purposes. Compare Civil Code Section 1802.1 (retail sales). However, Section 483.010 is intended to encompass each of the situations described in paragraphs (1) through (4) of subdivision (a) of former Section 537.1. In this respect, it should be noted that the term “contract” used in subdivision (a) includes a lease of either real or personal property. See *Stanford Hotel Co. v. M. Schwind Co.*, 180 Cal. 348, 181 P. 780 (1919) (realty); *Walker v. Phillips*, 205 Cal. App.2d 26, 22 Cal. Rptr. 727 (1962) (personalty).

Claims may be aggregated, but the total amount claimed in the action must be not less than \$500. Generally an expeditious remedy will be available for lesser amounts under the small claims procedure. See Chapter 5A (commencing with Section 116) of Title 1 of Part 1 of this code. The claim must be for a “fixed or readily ascertainable” amount. This provision continues former law. *E.g.*, *Lewis v. Steifel*, 98 Cal. App.2d 648, 220 P.2d 769 (1950).

The introductory clause to Section 483.010 recognizes the authority to attach granted by other miscellaneous statutory provisions. See, *e.g.*, CIVIL CODE §§ 3065a and 3152; FIN. CODE § 3144; FOOD & AGRIC. CODE § 281; HARB. & NAV. CODE § 495.1;

HEALTH & SAF. CODE § 11501; LABOR CODE § 5600; and REV. & TAX. CODE §§ 6713, 7864, 8972, 11472, 12680, 18833, 26251, 30302, and 32352. See also Section 492.010 (nonresident attachment).

The attachment remedy is not available where the plaintiff's claim is secured. See subdivision (b). Moreover, the security cannot simply be waived. However, the last sentence of subdivision (b) does permit attachment where the security has become valueless [or has decreased in value to less than the amount then owing on the claim—see Comment to 1976 Amendment] without the act of the plaintiff or where a nonconsensual possessory lien is relinquished by a surrender of possession.

Legislative Committee Comment—1976 Amendment

Comment. Section 483.010 is amended to permit attachment in an action against a defendant that is not an individual without a showing that the defendant was engaged in a trade, business, or profession or that the goods, services, or money furnished were used primarily for the defendant's personal, family, or household purposes. Consequently, an attachment may be issued against a business corporation or a partnership or other unincorporated association on a contract claim or claims where the total amount claimed is \$500 or more, exclusive of costs, interest, and attorney's fees. In addition, unlike former Section 537.2, Section 483.010, as amended, permits attachment on such claims against corporations and partnerships and other unincorporated associations which are not organized for profit or engaged in an activity for profit. Under Section 483.010 as amended, the court is not faced with the potentially difficult and complex problem of determining whether a corporation, partnership, or association is engaged in a trade, business, or profession. However, subdivision (c) provides that, if the defendant is an individual, an attachment may be issued only if the contract claim "arises out of the conduct by the individual of a trade, business, or profession" and only if the goods, services, or money furnished were not used primarily for the defendant's personal, family, or household purposes. *Cf. Advance Transformer Co. v. Superior Court*, 44 Cal. App.3d 127, 142, 118 Cal. Rptr. 350, 360 (1974) (construing former Sections 537.1 and 537.2 as "limiting the attachment to situations in which the claim arises out of defendant's conduct of his business").

Subdivision (b) is amended to permit the issuance of an attachment on a secured claim where the security has decreased

in value to less than the amount owing on the claim. Prior to this amendment, an attachment would have been issuable on such claims only where the security had become valueless. See *Western Board of Adjusters, Inc. v. Covina Publishing, Inc.*, 9 Cal. App.3d 659, 88 Cal. Rptr. 293 (1970), and 2 B. Witkin, *California Procedure*, Provisional Remedies § 138, at 1561-1562 (2d ed. 1970), concerning the situation where security has without any act of the plaintiff become valueless as security.

1982 Amendment

Comment. Section 483.010 is amended to make technical revisions consistent with Section 481.170 as amended ("person" defined).

§ 483.015. Amount to be secured by attachment

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

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

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

(b) The amount described in subdivision (a) shall be reduced by all claims which would diminish the amount of the plaintiff's recovery.

Legislative Committee Comment—1982 Addition

Comment. Section 483.015 is a new provision that governs the amount for which an attachment may issue. This section supersedes former portions of subdivision (b) of Section 484.020 and subdivision (b) of Section 484.320.

§ 483.020. Attachment in unlawful detainer proceeding

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

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

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

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

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

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

(d) Notwithstanding subdivision (b) of Section 483.010, an attachment may be issued in an unlawful detainer proceeding where the plaintiff has received a payment or holds a deposit to secure the payment of rent or the performance of other obligations under the lease. If the payment or deposit secures only the payment of rent, the amount of the payment or deposit shall be subtracted in determining the amount to be secured by the attachment. If the payment or deposit secures the payment of rent and the performance of other obligations under the lease or secures only the performance of other obligations under the lease, the amount of the payment or deposit shall not be subtracted in determining the amount to be secured by the attachment.

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

1978 Addition

Comment. Section 483.020 makes clear that, upon the plaintiff's application therefor, the "amount to be secured by the

attachment” in an unlawful detainer proceeding may include, in the court’s discretion, an amount for the use and occupation of the premises by the defendant during the period from the time the complaint is filed until either the time of judgment or such earlier time as possession has been or is likely to be delivered to the plaintiff. One factor the court should consider in deciding whether to allow the additional amount is the likelihood that the unlawful detainer proceeding will be contested. There may be a considerable delay in bringing the unlawful detainer proceeding to trial if it is contested. In this case, there may be a greater need for attachment to include an additional amount to cover rent accruing after the complaint is filed. It should be noted that attachment is permitted only where the premises were leased for trade, business, or professional purposes. See Section 483.010.

The amount authorized under subdivision (c) of Section 483.020 is in addition to (1) the amount in which the attachment would otherwise issue (unpaid rent due and owing at the time of the filing of the complaint) and (2) the additional amount for costs and attorney’s fees that the court may authorize under Section 482.110.

Subdivision (d) makes clear that the amount of a deposit (such as a deposit described in Civil Code Section 1950.7) held by the plaintiff solely to secure the payment of rent is to be subtracted in determining the amount to be secured by the attachment. However, the amount of the deposit is not subtracted in determining the amount to be secured by the attachment where, for example, the deposit is to secure both the payment of rent and the repair and cleaning of the premises upon termination of the tenancy. Under former law, it was held that a deposit in connection with a lease of real property was not “security” such as to preclude an attachment under former Section 537(4), superseded by Section 483.010(b). See *Garfinkle v. Montgomery*, 113 Cal. App.2d 149, 155–57, 248 P.2d 52, 56–57 (1952).

Legislative Committee Comment—1982 Amendment

Comment. Section 483.020 is amended to make clear that the amounts specified in Section 483.015(b) are to be subtracted from the amount claimed by the plaintiff in an unlawful detainer case under this section.

CHAPTER 4. NOTICED HEARING PROCEDURE FOR OBTAINING WRIT OF ATTACHMENT

Comment. Chapters 4, 5, and 6 provide the general procedures for obtaining a temporary protective order, a right to attach order, and a writ of attachment. See also Chapter 12 (commencing with Section 492.010) (nonresident attachment). At the time the plaintiff files his complaint, or at any time thereafter, he may apply for a temporary protective order, a right to attach order, and a writ of attachment in the court where his action is brought. Sections 484.010, 485.210, and 486.010.

Noticed hearing procedure. In the absence of exceptional circumstances, the plaintiff must apply under a notice hearing procedure. See Section 485.010. Notice of the hearing on the application, a copy of the summons and complaint, and a copy of the plaintiff's application and affidavit must be served on the defendant at least 20 days before the hearing. Section 484.040. The defendant, if he wishes to oppose the issuance of the right to attach order, must file and serve on the plaintiff at least five days before the date of the hearing a notice of opposition. Section 484.060(a). If he also desires to make a claim of exemption from attachment, the defendant [may] include such claim with his notice of opposition. Section 484.060(b). If he does not wish to oppose the issuance of the right to attach order, the defendant may still claim an exemption from attachment by filing and serving on the plaintiff any such claim together with supporting affidavits at least five days before the hearing. Section 484.070 The defendant may claim exemptions as to [real property and as to personal] property not described in the plaintiff's application but, if he fails to prove that such property is exempt, he may not again claim an exemption as to such property unless he shows that there has been a change in circumstances. Section 484.070(b). As to [personal] property described in the plaintiff's application, the defendant must make his claim within the time provided, or the claim is barred, absent changed circumstances occurring after the hearing on the plaintiff's application. Section 484.070(a).

If the plaintiff wants to contest a claim of exemption, he must serve on the defendant a notice of opposition to such claim at least two days before the hearing. Section 484.070(f). If the plaintiff does not oppose a defendant's claim in this manner, then the property claimed to be exempt may not be attached and, if all the property sought to be attached is thus exempted, the hearing will not be held. *Id.*

If the defendant neither makes a claim of exemption nor serves a notice of opposition, he may not oppose the application for a right to attach order and a writ of attachment (Section 484.060(a)), but the court is still required to review the application to see if the plaintiff has made an adequate showing to entitle him to the order and writ. Section 484.090.

Temporary protective order procedure. When the plaintiff applies for a right to attach order, he may also apply for a temporary protective order. Section 486.010. An ex parte hearing is then held upon such application and, if the plaintiff shows that he would suffer great or irreparable injury (under the same requirements provided for an ex parte right to attach order), the court issues the order on such terms as are considered just. Sections 486.020, 486.040. The statute does, however, provide certain limitations applicable to any temporary protective order. Sections 486.050, 486.060. If the temporary protective order is granted, notice of that fact is served on the defendant along with the notice of the hearing on plaintiff's application for the order and writ. Section 486.080. The temporary protective order expires generally 40 days after its issuance, or when a levy of attachment on the affected property is made by the plaintiff, or when the defendant gives an undertaking to secure the payment of the plaintiff's judgment, whichever occurs first. Section 486.090. The defendant may apply for the vacation or modification of the temporary protective order, and the court may order its vacation or modification either ex parte or, in its discretion, after a noticed hearing. Section 486.100.

Ex parte procedure. When extraordinary circumstances are thought to exist, the plaintiff may seek an ex parte right to attach order and writ of attachment. However, the plaintiff must be able to show that he would suffer great or irreparable injury if the issuance of the order were delayed until notice and an opportunity for a hearing could be given the defendant. Section 485.010.

On application for an ex parte right to attach order and writ of attachment, the court may issue a temporary protective order in lieu of a writ and require the plaintiff to proceed for his order and writ pursuant to the noticed hearing procedure. Section 486.030. If he does this, the procedures described above requiring notice to the defendant and a hearing on the application apply. *Id.* The plaintiff is still required to show that extraordinary circumstances exist, but the protective order is

issued in lieu of the writ where the latter form of relief seems unnecessary or unreasonable. *Id.*

Where the right to attach order and writ are issued ex parte, the defendant may apply for an order to set aside the right to attach order and to quash the writ and, if any property has been levied upon, to release such property. Section 485.240. This application is served on the plaintiff and, at the noticed hearing, the court determines if the plaintiff is entitled to the right to attach order. *Id.* The defendant may also claim pursuant to [the procedure provided by the Enforcement of Judgments Law] an exemption as to any property attached under the ex parte procedure. Section [485.610]. Such claim may be joined with the application in opposition to the order.

For a diagram outlining these procedures, see *Recommendation Relating to Prejudgment Attachment*, 11 Cal. L. Revision Comm'n Reports 701, 905 (1973).

Article 1. Right to Attach Order; Issuance of Writ of Attachment

§ 484.010. Application for order and writ

484.010. Upon the filing of the complaint or at any time thereafter, the plaintiff may apply pursuant to this article for a right to attach order and a writ of attachment by filing an application for the order and writ with the court in which the action is brought.

Comment. Section 484.010 is similar in content and purpose to former Section 537. This chapter provides a noticed hearing procedure for the issuance of a writ of attachment which should be utilized in most situations. A procedure for the ex parte issuance of a writ of attachment prior to a noticed hearing on the probable validity of the plaintiff's claim is provided in Chapter 5 (commencing with Section 485.010) for use in exceptional circumstances. See also Chapter 12 (commencing with Section 492.010) (nonresident attachment); Chapter 6 (commencing with Section 486.010) (temporary protective order).

Attachment is, of course, a prejudgment remedy; after final judgment, the plaintiff may, if necessary, proceed by way of execution.

§ 484.020. Execution and contents of application

484.020. The application shall be executed under oath and shall include all of the following:

(a) A statement showing that the attachment is sought to secure the recovery on a claim upon which an attachment may be issued.

(b) A statement of the amount to be secured by the attachment.

(c) A statement that the attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.

(d) A statement that the applicant has no information or belief that the claim is discharged in a proceeding under Title 11 of the United States Code (Bankruptcy) or that the prosecution of the action is stayed in a proceeding under Title 11 of the United States Code (Bankruptcy).

(e) A description of the property to be attached under the writ of attachment and a statement that the plaintiff is informed and believes that such property is subject to attachment. Where the defendant is a corporation, a reference to "all corporate property which is subject to attachment pursuant to subdivision (a) of Code of Civil Procedure Section 487.010" satisfies the requirements of this subdivision. Where the defendant is a partnership or other unincorporated association, a reference to "all property of the partnership or other unincorporated association which is subject to attachment pursuant to subdivision (b) of Code of Civil Procedure Section 487.010" satisfies the requirements of this subdivision. Where the defendant is a natural person, the description of the property shall be reasonably adequate to permit the defendant to identify the specific property sought to be attached.

1974 Addition

Comment. Section 484.020, together with Section 484.030, is substantively similar to former Section 538. However, where the defendant is an individual, subdivision (e) of Section 484.020 requires the plaintiff to include in his application a description of the property sought to be attached which is reasonably adequate to permit the defendant to identify such property.

The writ issued pursuant to Section 484.090 is limited to the property described in the plaintiff's application. Thus, the defendant can determine whether he desires to make a claim of exemption as to that property. It is believed that, in many cases, the defendant will be willing to waive his claim and that this will result in a substantial saving in the time of court and counsel. It should be noted, however, that, if a right to attach order is issued under this article, the plaintiff may subsequently apply ex parte for additional writs pursuant to Article 3 (commencing with Section 484.510). To protect himself from such future levies, the defendant may claim as exempt any property not described in the plaintiff's application. See Section 484.070. A specific description is required only where the defendant is an individual. Corporations and partnerships generally have no exempt property. See Sections 487.010 and 487.020 and the Comments thereto. Hence, it is unnecessary to include a specific description for the purpose of either limiting the property sought to be attached or facilitating a claim of exemption.

1982 Amendment

Comment. Subdivision (b) of Section 484.020 is amended to reflect the addition of Section 483.015 which provides for the calculation of the amount to be secured by the attachment. Subdivision (d) is amended to provide references to the new Bankruptcy Code. The amendment of subdivision (e) conforms the subdivision to subdivision (b) of Section 487.010.

§ 484.030. Supporting affidavit

484.030. The application shall be supported by an affidavit showing that the plaintiff on the facts presented would be entitled to a judgment on the claim upon which the attachment is based.

Comment. Section 484.030 continues the requirement of former Section 538 that the plaintiff's application for the issuance of a writ of attachment be supported by appropriate affidavits. General requirements for these affidavits are provided in Section 482.040. Of course, several affidavits may be used which together provide evidence sufficient to entitle the plaintiff to a judgment in the action. See CODE CIV. PROC. § 17 (singular number includes the plural). Moreover, the application itself may contain the necessary supporting evidence and, since it is executed under oath, it may constitute a sufficient affidavit for the purposes of this section.

§ 484.040. Notice to defendant

484.040. No order or writ shall be issued under this article except after a hearing. At least 20 days prior to the hearing, the defendant shall be served with all of the following:

- (a) A copy of the summons and complaint.
- (b) A notice of application and hearing.
- (c) A copy of the application and of any affidavit in support of the application.

Comment. Section 484.040 is similar to former Section 538.2. As to the manner of service, see Section 482.070.

§ 484.050. Contents of notice of application and hearing

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

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

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

(c) The amount to be secured by the attachment is the amount of the defendant's indebtedness claimed by the plaintiff over and above all claims which would reduce the amount of the plaintiff's recovery.

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

(e) If the defendant desires to oppose the issuance of the order, the defendant shall file with the court and

serve on the plaintiff a notice of opposition and supporting affidavit as required by Section 484.060 not later than five days prior to the date set for hearing.

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

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

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

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

1974 Addition

Comment. Section 484.050 outlines the basic requirements for the "notice of application and hearing." See Section 482.030 (Judicial Council to prescribe forms). No comparable provision existed under former law.

1976 Amendment

Comment. Subdivision (c) of Section 484.050 [since redesignated as subdivision (d)] is amended to recognize the authority of the court under Section 482.120 to prevent an excessive attachment. Subdivisions (d) and (e) [since

redesignated as subdivisions (e) and (f)] of Section 484.050 are amended to conform to Sections 484.060 and 484.070. See Section 482.100 (procedure for claiming exemptions based upon a showing of changed circumstances). Exemptions not claimed as provided by Section 484.070 [for personal property described in the application] are waived for purposes of both attachment and execution except as provided by Section 482.100.

1982 Amendment

Comment. Section 484.050 is amended to add a new subdivision (c) to conform to subdivision (b) of Section 483.015. Subdivisions (f) and (g) are revised to conform to amended Section 484.070. The other changes are nonsubstantive.

§ 484.060. Notice of opposition by defendant and supporting affidavit

484.060. (a) If the defendant desires to oppose the issuance of the right to attach order sought by plaintiff, he shall file and serve upon the plaintiff no later than five days prior to the date set for the hearing a notice of opposition. The notice shall state the grounds on which the defendant opposes the issuance of the order and shall be accompanied by an affidavit supporting any factual issues raised and points and authorities supporting any legal issues raised. If the defendant fails to file a notice of opposition within the time prescribed, he shall not be permitted to oppose the issuance of the order.

(b) If a defendant filing a notice of opposition desires to make any claim of exemption as provided in Section 484.070, he may include such claim in the notice of opposition filed pursuant to this section.

Comment. Section 484.060 is new. No precisely comparable provision existed under former law. Former Section 538.4 did require each party to "serve upon the other at least 24 hours before the hearing any affidavits intended to be introduced at the hearing, unless the court at the hearing for good cause shown permits the introduction of affidavits not previously served." See also former Sections 556 and 557. However, Section 484.060 requires the defendant to file a notice of opposition, supporting affidavits, and points and authorities in every case where he seeks to oppose issuance of a writ. In turn, the plaintiff is required to file any counteraffidavits in opposition to a claim

of exemption not later than two days before the hearing date. See Section 484.070.

§ 484.070. Claim of exemption; notice of opposition

484.070. (a) If the defendant claims that the personal property described in the plaintiff's application, or a portion of such property, is exempt from attachment, the defendant shall claim the exemption as provided in this section. If the defendant fails to make the claim or makes the claim but fails to prove that the personal property is exempt, the defendant may not later claim the exemption except as provided in Section 482.100.

(b) If the defendant desires to claim at the hearing that real or personal property not described in the plaintiff's application or real property described in the plaintiff's application is exempt from attachment, in whole or in part, the defendant shall claim the exemption as provided in this section. Failure to make the claim does not preclude the defendant from later claiming the exemption. If the claim is made as provided in this section but the defendant fails to prove that the property is exempt from attachment, the defendant may not later claim that the property, or a portion thereof, is exempt except as provided in Section 482.100.

(c) The claim of exemption shall:

(1) Describe the property claimed to be exempt.

(2) Specify the statute section supporting the claim.

(d) The claim of exemption shall be accompanied by an affidavit supporting any factual issues raised by the claim and points and authorities supporting any legal issues raised.

(e) The claim of exemption, together with any supporting affidavit and points and authorities, shall be filed and served on the plaintiff not less than five days before the date set for the hearing.

(f) If the plaintiff desires to oppose the claim of exemption, the plaintiff shall file and serve on the defendant, not less than two days before the date set for the hearing, a notice of opposition to the claim of exemption, accompanied by an affidavit supporting any factual issues raised and points and authorities supporting

any legal issues raised. If the plaintiff does not file and serve a notice of opposition as provided in this subdivision, no writ of attachment shall be issued as to the property claimed to be exempt. If all of the property described in the plaintiff's application is claimed to be exempt and the plaintiff does not file and serve a notice of opposition as provided in this subdivision, no hearing shall be held and no right to attach order or writ of attachment shall be issued and any temporary protective order issued pursuant to Chapter 6 (commencing with Section 486.010) immediately expires.

(g) If the plaintiff files and serves a notice of opposition to the claim as provided in this section, the defendant has the burden of proving that the property is exempt from attachment.

1974 Addition

Comment. Section 484.070 provides a prelevy procedure for claiming an exemption from attachment. Compare [Sections 482.100, 484.530, 485.610, 487.030] (postlevy claim). [See also Section 488.720 (release of excess property).] See also former Section 537.3 (authorizing defendant's prelevy claim of exemption for property "necessary for support").

1976 Amendment

Comment. Subdivisions (a) and (b) of Section 484.070 are amended to reflect the enactment of Section 482.100 (procedure for claiming exemptions based upon a showing of changed circumstances). Exemptions [for personal property described in the plaintiff's application] not claimed as provided by this section are waived for purposes of both attachment and execution except as provided by Section 482.100. Subdivision (f) is amended to provide for automatic expiration of a temporary protective order upon the plaintiff's failure to oppose a claim of exemption as to all the defendant's property described in the plaintiff's application. This amendment eliminates any necessity in such cases for proceeding under Section 486.100 for early vacation of the order. See Section 486.090 and Comment thereto.

Legislative Committee Comment—1982 Amendment

Comment. Subdivision (a) of Section 484.070 is amended to make clear that the defendant is not required to claim an exemption for real property at the hearing on issuance of the right to attach order and writ of attachment. See Section 487.020 (exemptions from attachment). Consequently, if the defendant's real property dwelling is sought to be attached, a failure to claim an exemption for

it does not constitute a waiver of the exemption. However, subdivision (b) permits the defendant to claim an exemption in real property at the hearing on issuance of the right to attach order if the defendant so desires. If the plaintiff who has attached a dwelling recovers judgment in the action and levies on the dwelling under a writ of execution, the exemption may then be determined as provided in Section 704.710 *et seq.* in the Enforcement of Judgments Law. The other changes in Section 484.070 are technical. See Section 482.070 (manner of service).

§ 484.080. Readiness for hearing; continuance

484.080. (a) At the time set for the hearing, the plaintiff shall be ready to proceed. If the plaintiff is not ready, or if he has failed to comply with Section 484.040, the court may either deny the application for the order or, for good cause shown, grant the plaintiff a continuance for a reasonable period. If such a continuance is granted, the effective period of any protective order issued pursuant to Chapter 6 (commencing with Section 486.010) may be extended by the court for a period ending not more than 10 days after the new hearing date if the plaintiff shows a continuing need for such protective order.

(b) The court may, in its discretion and for good cause shown, grant the defendant a continuance for a reasonable period to enable him to oppose the issuance of the right to attach order. If such a continuance is granted, the court shall extend the effective period of any protective order issued pursuant to Chapter 6 (commencing with Section 486.010) for a period ending not more than 10 days after the new hearing date unless the defendant shows pursuant to Section 486.100 that the protective order should be modified or vacated.

Comment. Section 484.080 is new. No comparable provision existed under former law.

§ 484.090. Hearing; order and findings

484.090. (a) At the hearing, the court shall consider the showing made by the parties appearing and shall issue a right to attach order, which shall state the amount to be secured by the attachment determined by the court in accordance with Section 483.015 or 483.020, if it finds all of the following:

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

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

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

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

(c) If the court determines that property of the defendant is exempt from attachment, in whole or in part, the right to attach order shall describe the exempt property and prohibit attachment of the property.

(d) The court's determinations shall be made upon the basis of the pleadings and other papers in the record; but, upon good cause shown, the court may receive and consider at the hearing additional evidence, oral or documentary, and additional points and authorities, or it may continue the hearing for the production of the additional evidence or points and authorities.

Legislative Committee Comment—1974 Addition

Comment. Section 484.090 is similar in content and purpose to former Section 538.4. However, former Section 538.4 provided a preference for hearing which is not continued. Also, the explicit direction that a writ be issued automatically if the defendant fails to appear is eliminated. Instead, Section 484.060 requires the defendant to file a notice of opposition if he plans to oppose the issuance of a writ; if he does not so file, he may not oppose the application. The court must still review the application to determine whether or not the plaintiff has made a prima facie showing for the issuance of the writ. Whether or not the defendant appears in opposition, the plaintiff has the burden of proving (1) that his claim is one upon which an attachment may be issued and (2) the probable validity of such claim. See Section 481.190.

Former Section 538.4 authorized either party to submit oral evidence at the hearing. Section 484.090 contemplates that, in the usual case, the court's determinations will be made on the

basis of the pleadings, affidavits, and points and authorities filed prior to the hearing and that an additional evidentiary showing at the hearing will be allowed only upon good cause. This procedure should result in a conservation of judicial time without prejudicing the rights of the parties and should avoid converting the hearing on a preliminary matter into a full-dress trial of the merits of the action.

The time limits for filing the required affidavits are provided in Sections 484.060 and 484.070.

Section 484.090 does not continue the requirement of former Section 538.4 that the defendant make himself or an agent or officer available for examination regarding the plaintiff's claim.

Although no special finding is required, no right to attach order will be issued if the defendant shows that such order would violate the National Bankruptcy Act. See Section 484.020(d).

Subdivision (b) of Section 484.090 [formerly required] the writ to state the amount to be secured by the attachment and describe the property to be levied upon. [See 1976 Amendment Comment.] The writ does not require that levy be made in any particular order. Contrast the last sentence of former Section 538.4. . . .

As to multiple writs, alias writs, and additional writs, see Sections 482.090 and 484.310 and the Comments thereto.

1976 Amendment

Comment. The introductory sentence of subdivision (a) is amended to provide that the right to attach order state the amount to be secured by the attachment. The first sentence of subdivision (b) is amended to make clear that the court orders the clerk to issue the writ. The second sentence of subdivision (b) has been deleted, but its substance is continued in subdivision (a) of Section 488.010.

Legislative Committee Comment—1982 Amendment

Comment. The introductory clause of subdivision (a) of Section 484.090 is revised to reflect the addition of subdivision (b) to Section 483.015.

§ 484.100. Effect of determinations

484.100. The court's determinations under this chapter shall have no effect on the determination of any issues in the action other than issues relevant to proceedings under this chapter nor shall they affect the

rights of the plaintiff or defendant in any other action arising out of the same claim of the plaintiff or defendant. The court's determinations under this chapter shall not be given in evidence nor referred to at the trial of any such action.

1974 Addition

Comment. Section 484.100 makes clear that the determinations of the court under this chapter have no effect on the determination of the validity of the plaintiff's claim in the action he has brought against the defendant nor do they affect the defendant's right to oppose an attachment or to claim that property is exempt in another action brought on the same claim. However, if the court determines that the plaintiff is not entitled to an attachment because he has failed to establish the probable validity of his claim or that certain property of the defendant is exempt, such determinations are binding on the plaintiff in a subsequent action on the same claim unless the defendant is no longer entitled to the exemption because of changed circumstances. Section 484.100 does not, however, make inadmissible any affidavit filed under this chapter. The admissibility of such an affidavit is determined by rules of evidence otherwise applicable.

Legislative Committee Comment—1982 Amendment

Comment. Section 484.100 is amended to reflect that the defendant may seek to reduce the amount to be secured by the attachment on the ground that the defendant has a claim against the plaintiff. See Section 483.015(b).

§ 484.110. Effect of failure to oppose or rebut evidence

484.110. (a) Neither the failure of the defendant to oppose the issuance of a right to attach order under this chapter nor the defendant's failure to rebut any evidence produced by the plaintiff in connection with proceedings under this chapter shall constitute a waiver of any defense to the plaintiff's claim in the action or any other action or have any effect on the right of the defendant to produce or exclude evidence at the trial of any such action.

(b) Neither the failure of the plaintiff to oppose the issuance of an order reducing the amount to be secured by the attachment under this chapter nor the plaintiff's failure to rebut any evidence produced by the defendant

in connection with proceedings under this chapter shall constitute a waiver of any defense to the defendant's claim in the action or any other action or have any effect on the right of the plaintiff to produce or exclude evidence at the trial of any such action.

Legislative Committee Comment—1982 Amendment

Comment. Section 484.110 is amended to recognize that the defendant may seek to reduce the amount to be secured by the attachment on the ground that defendant has a claim against the defendant. See Section 483.015(b).

Article 2. Noticed Hearing Procedure for Obtaining Additional Writs

§ 484.310. Application

484.310. At any time after a right to attach order has been issued under Article 1 (commencing with Section 484.010) or after the court has found pursuant to Section 485.240 that the plaintiff is entitled to a right to attach order, the plaintiff may apply for a writ of attachment under this article by filing an application with the court in which the action is brought.

Comment. Article 2 (commencing with Section 484.310) provides a noticed hearing procedure for the issuance of a writ of attachment after the plaintiff has established at a noticed hearing that he is entitled to a right to attach order. The purpose of the noticed hearing here is to determine whether the defendant can establish that the [personal] property sought to be levied upon is exempt. If no claim of exemption is made, the writ is issued and any claim of exemption is barred [with respect to the personal property] subject to a change in circumstances occurring after the hearing. See Section 484.350. An alternative ex parte procedure for the issuance of a writ is provided by Article 3 (commencing with Section 484.510). Under the latter procedure, the defendant can establish that property is exempt after it is levied upon if he has not previously claimed . . . that the property was exempt. [See Section 484.530.]

Both Article 2 and Article 3 serve the purpose of providing a procedure for the issuance of additional writs in a new form where a right to attach order has already been issued. It should be noted that these procedures are necessary only where the defendant is an individual. In an action against a corporation or partnership, the writ issued pursuant to Section 484.090 will

generally refer to all corporate or all partnership property subject to attachment pursuant to Section 487.010. Hence, the only "additional" writs necessary will be in the same form. See Section 482.090.

§ 484.320. Contents of application

484.320. The application shall be executed under oath and shall include all of the following:

(a) A statement that the plaintiff has been issued a right to attach order under Article 1 (commencing with Section 484.010) or that the court has found pursuant to Section 485.240 that the plaintiff is entitled to a right to attach order.

(b) A statement of the amount to be secured by the attachment.

(c) A description of the property to be attached under the writ of attachment and a statement that the plaintiff is informed and believes that the property is subject to attachment. The description shall satisfy the requirements of Section 484.020.

(d) A statement that the applicant has no information or belief that the claim is discharged in a proceeding under Title 11 of the United States Code (Bankruptcy) or that the prosecution of the action is stayed in a proceeding under Title 11 of the United States Code (Bankruptcy).

1974 Addition

Comment. Section 484.320 is comparable to Section 484.020 except that a statement that the plaintiff has established that he is entitled to a right to attach order is substituted for certain prerequisites to that order.

1982 Amendment

Comment. Subdivision (b) of Section 484.320 is amended to reflect the addition of Section 483.015 which provides for the calculation of the amount to be secured by the attachment. Subdivision (d) is amended to provide references to the new Bankruptcy Code.

§ 484.330. Notice to defendant

484.330. No writ of attachment shall be issued under this article except after a hearing. At least 20 days prior to

the hearing, the defendant shall be served with both of the following:

- (a) A notice of application and hearing.
- (b) A copy of the application.

Comment. Section 484.330 is comparable to Section 484.040. Service of a copy of the summons and complaint is not required here because it will have already been accomplished.

§ 484.340. Contents of notice of application and hearing

484.340. The notice of application and hearing shall inform the defendant of all of the following:

(a) The plaintiff has applied for a writ of attachment to attach the property described in the application.

(b) A hearing will be held at a place and at a time, to be specified in the notice, to determine whether the plaintiff is entitled to the writ.

(c) A writ of attachment will be issued to attach the property described in the plaintiff's application unless the court determines that the property is exempt from attachment or that its value clearly exceeds the amount necessary to satisfy the amount to be secured by the attachment.

(d) If the defendant claims that the property described in the application, or a portion thereof, is exempt from attachment, the defendant may file with the court and serve on the plaintiff a claim of exemption with respect to the property as provided in Section 484.350 not later than five days prior to the date set for hearing. If the defendant fails to make such a claim with respect to personal property, the defendant may not later claim the exemption in the absence of a showing of a change in circumstances occurring after the expiration of the time for claiming exemptions.

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

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

1974 Addition

Comment. Section 484.340 is comparable to Section 484.050. Of course, the hearing here is concerned only with the defendant's right, if any, to an exemption and the notice is accordingly so limited.

1976 Amendment

Comment. Subdivision (c) of Section 484.340 is amended to recognize the authority of the court under Section 482.120 to prevent an excessive attachment. Subdivision (d) is amended to conform to the provisions of Section 484.350. See Section 482.100 (procedure for claiming exemptions based upon a showing of changed circumstances). Exemptions [for personal property] not claimed as provided by Section 484.350 are waived for purposes of both attachment and execution except as provided by Section 482.100.

1982 Amendment

Comment. Subdivision (d) of Section 484.340 is amended to conform to amended Section 484.350. See the Comment to Section 484.350.

§ 484.350. Claim of exemption

484.350. (a) If the defendant claims that the property described in the plaintiff's application, or a portion of such property, is exempt from attachment, the defendant may claim the exemption as provided in this section. If the defendant fails to make a claim with respect to personal property, or makes a claim with respect to real or personal property but fails to prove that the property is exempt, the defendant may not later claim the exemption except as provided in Section 482.100.

(b) The claim of exemption shall:

(1) Describe the property claimed to be exempt.

(2) Specify the statute section supporting the claim.

(c) The claim of exemption shall be accompanied by an affidavit supporting any factual issues raised by the claim and points and authorities supporting any legal issues raised.

(d) The claim of exemption, together with any supporting affidavit and points and authorities, shall be filed and served on the plaintiff not less than five days before the date set for the hearing.

1974 Addition

Comment. Section 484.350 is comparable to subdivisions (a), (c), (d), and (e) of Section 484.070.

1976 Amendment

Comment. Subdivision (a) of Section 484.350 is amended to reflect the enactment of Section 482.100 (procedure for claiming exemptions based upon a showing of changed circumstances). Exemptions [for personal property] not claimed as provided by this section are waived for purposes of both attachment and execution except as provided by Section 482.100.

1982 Amendment

Comment. Subdivision (a) of Section 484.350 is amended to make clear that the defendant does not waive an exemption for real property by failure to claim it at the hearing on issuance of the writ. See the Comment to Section 484.070. See also Section 482.070 (manner of service).

§ 484.360. Plaintiff's notice of opposition

484.360. (a) If the defendant files and serves a claim of exemption and the plaintiff desires to oppose the claim, he shall file and serve on the defendant, not less than two days before the date set for the hearing, a notice of opposition to the claim of exemption, accompanied by an affidavit supporting any factual issues raised and points and authorities supporting any legal issues raised.

(b) If the defendant files and serves a claim of exemption and supporting affidavit as provided in Section 484.350 and the plaintiff does not file and serve a notice of opposition as provided in this section, no writ of attachment shall be issued as to the property claimed to be exempt. If all of the property described in the plaintiff's application is claimed to be exempt and the plaintiff does not file and serve a notice of opposition as provided in this section, no hearing shall be held and no writ of attachment shall be issued.

(c) If the plaintiff files and serves a notice of opposition to the claim as provided in this section, the defendant has the burden of proving that the property is exempt from attachment.

Comment. Section 484.360 is comparable to subdivisions (f) and (g) of Section 484.070.

§ 484.370. Hearing; issuance of writ

484.370. The hearing shall be conducted in the manner prescribed in Section 484.090 and the court shall order a writ of attachment to be issued upon the filing of an undertaking as provided by Sections 489.210 and 489.220, if it finds both of the following:

(a) A right to attach order has been issued in the action pursuant to Article 1 (commencing with Section 484.010) or the court has found pursuant to Section 485.240 that the plaintiff is entitled to a right to attach order.

(b) The defendant has failed to prove that the property sought to be attached, or the portion thereof to be described in the writ, is exempt from attachment.

1974 Addition

Comment. Section 484.370 is comparable to Section 484.090.

1976 Amendment

Comment. The introductory sentence of Section 484.370 is amended to make clear that the court orders the clerk to issue the writ and to delete language concerning the content of the writ of attachment. The deleted language is continued in Section 488.010.

Article 3. Ex Parte Procedure for Obtaining Additional Writs

§ 484.510. Application and supporting affidavit

484.510. (a) At any time after a right to attach order has been issued under Article 1 (commencing with Section 484.010) or after the court has found pursuant to Section 485.240 that the plaintiff is entitled to a right to attach order, the plaintiff may apply for a writ of attachment under this article by filing an application which meets the requirements of Section 484.320 with the court in which the action is brought.

(b) The application shall be accompanied by an affidavit showing that the property sought to be attached is not exempt from attachment. Such affidavit may be based on the affiant's information and belief.

Comment. Article 3 (commencing with Section 484.510) provides an ex parte procedure for the issuance of a writ after

a right to attach order has been issued following a noticed hearing. See Comment to Section 484.310. In contrast, Chapter 5 (commencing with Section 485.010) provides a procedure for the ex parte issuance of *both* the right to attach order and a writ. Such relief is, however, available only in exceptional circumstances. See Section 485.010 and Comment thereto.

§ 484.520. Ex parte hearing; issuance of writ

484.520. The court shall examine the application and supporting affidavit and shall order a writ of attachment to be issued upon the filing of an undertaking as provided by Sections 489.210 and 489.220, if it finds both of the following:

(a) A right to attach order has been issued in the action pursuant to Article 1 (commencing with Section 484.010) or the court has found pursuant to Section 485.240 that the plaintiff is entitled to a right to attach order.

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

1974 Addition

Comment. Section 484.520 is comparable to Section 484.370 except here the determinations are made ex parte and the plaintiff must show that the property sought to be attached is not exempt from attachment. This determination may be subsequently challenged by the defendant. See Section 484.530. [But see Section 484.530(c).]

1976 Amendment

Comment. Section 484.520 is amended in the same manner as Section 484.370. See Comment to Section 484.370.

§ 484.530. Claim of exemption

484.530. (a) The defendant may claim an exemption as to real or personal property levied upon pursuant to a writ issued under this article by following the procedure set forth in Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9, except that the defendant shall claim the exemption as to personal property not later than 30 days after the levying officer serves the defendant with the notice of attachment describing such property. For this purpose, references in Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 to the "judgment debtor" shall

be deemed references to the defendant, and references to the “judgment creditor” shall be deemed references to the plaintiff.

(b) The defendant may claim the exemption provided by subdivision (b) of Section 487.020 within the time provided by subdivision (a) of this section either (1) by following the procedure set forth in Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 or (2) by following the procedure set forth in subdivision (c) of Section 482.100 except that the requirement of showing changed circumstances under subdivision (a) of Section 482.100 does not apply.

(c) Notwithstanding subdivisions (a) and (b), a claim of exemption shall be denied if the claim has been denied earlier in the action and there is no change in circumstances affecting the claim.

1974 Addition

Comment. . . . A notice of attachment (see Section [488.060]) will be served on the defendant at or about the time his property is levied upon. [See Section 488.305.] The notice will advise him of his right to make a claim of exemption where the writ has been issued ex parte.

1976 Amendment

Comment. Subdivision (a) of Section 484.530 is amended to provide that the defendant may claim an exemption for property that has been levied upon not later than 30 days after the levying officer serves the defendant with a notice of attachment describing the property. See [Sections 488.060] ([contents of] notice of attachment) [, 488.305 (service of notice of attachment)]. . . .

Subdivision (b) permits the defendant to claim an exemption of necessities by the expeditious procedure provided by subdivision (c) of Section 482.100 as an alternative to the procedure provided by [the Enforcement of Judgments Law] and incorporated by subdivision (a) of this section. However, as subdivision (b) provides, the defendant is not required to show that his right to claim the exemption is the result of a change of circumstances as is required when a claim is made under Section 482.100 after the time for claiming exemptions has passed.

Subdivision (c) applies where the defendant has made a claim of exemption pursuant to Section 484.070 for [personal] property not described in the plaintiff’s application [or for real property]

but failed to prove his right to the exemption. See also Section 482.100 (postlevy claims of exemption on grounds of changed circumstances).

Exemptions [for personal property] not claimed as provided by this section are waived for purposes both of attachment and of execution except as provided by Section 482.100.

Legislative Committee Comment—1982 Amendment

Comment. Subdivision (a) of Section 484.530 is amended to make clear that the defendant does not waive an exemption for real property by failure to claim it within the time prescribed. See Section 487.020 (exemptions from attachment). The other changes in Section 484.530 are technical.

CHAPTER 5. EX PARTE HEARING PROCEDURE FOR OBTAINING WRIT OF ATTACHMENT

Article 1. Great or Irreparable Injury Requirement

§ 485.010. Prerequisite of great or irreparable injury

485.010. (a) Except as otherwise provided by statute, no right to attach order or writ of attachment may be issued pursuant to this chapter unless it appears from facts shown by affidavit that great or irreparable injury would result to the plaintiff if issuance of the order were delayed until the matter could be heard on notice.

(b) The requirement of subdivision (a) is satisfied if any of the following are shown:

(1) Under the circumstances of the case, it may be inferred that there is a danger that the property sought to be attached would be concealed, substantially impaired in value, or otherwise made unavailable to levy if issuance of the order were delayed until the matter could be heard on notice.

(2) A bulk sales notice has been recorded and published pursuant to Division 6 (commencing with Section 6101) of the Commercial Code with respect to a bulk transfer by the defendant.

(3) An escrow has been opened pursuant to the provisions of Section 24074 of the Business and Professions Code with respect to the sale by the defendant of a liquor license.

(4) Any other circumstance showing that great or irreparable injury would result to the plaintiff if issuance of the order were delayed until the matter could be heard on notice.

(c) A writ issued solely on a showing under paragraph (2) of subdivision (b) shall be limited to the property covered by the bulk sales notice or the proceeds of the sale of such property. In addition to any other service required by this title, such writ shall be served by the levying officer on the transferee or auctioneer identified by

the bulk sales notice not more than five days after the levy of such writ. A writ issued solely on a showing under paragraph (3) of subdivision (b) shall be limited to the plaintiff's pro rata share of the proceeds of the sale in escrow.

Legislative Committee Comment—1974 Addition

Comment. Section 485.010 is based on former Section 538.5. Subdivision (a) of former Section 538.5 has been replaced by the substantively similar provisions of paragraphs (2) and (3) of subdivision (b) and subdivision (c) of Section 485.010. Paragraph (3) of subdivision (b) does not, however, modify the exclusive scheme of priorities provided by Section 24074 of the Business and Professions Code (see *Grover Escrow Corp. v. Gole*, 71 Cal.2d 61, 453 P.2d 461, 77 Cal. Rptr. 21 (1969)) but merely provides for levy in the circumstances contemplated in the last paragraph of Section 24074. Subdivisions (b) and (c) of former Section 538.5 have been replaced by paragraphs (1) and (4) of subdivision (b) of Section 485.010. These two paragraphs authorize ex parte relief on a showing of circumstances from which it may be inferred that there is a danger that property will be concealed, substantially impaired in value, or otherwise made unavailable to levy or a showing of *any* other circumstance that indicates that the plaintiff would suffer great or irreparable injury if issuance of the writ were delayed until the matter could be heard on notice.

The introductory clause to Section 485.010 recognizes the specific authorization to issue an ex parte attachment provided by other statutes. See, e.g., HARB. & NAV. CODE § 495.1; HEALTH & SAF. CODE § 11501; REV. & TAX. CODE §§ 6713, 7864, 8972, 11472, 12680, 18833, 26251, 30302, and 32352. See also Chapter 12 (commencing with Section 492.010) (nonresident attachment).

**Article 2. Order Determining Right to Attach;
Issuance of Writ of Attachment**

§ 485.210. Application for order and writ; supporting affidavit

485.210. (a) Upon the filing of the complaint or at any time thereafter, the plaintiff may apply pursuant to this article for a right to attach order and a writ of attachment by filing an application for the order and writ with the court in which the action is brought.

(b) The application shall satisfy the requirements of Section 484.020 and, in addition, shall include a statement showing that the requirement of Section 485.010 is satisfied.

(c) The application shall be supported by an affidavit showing all of the following:

(1) The plaintiff on the facts presented would be entitled to a judgment on the claim upon which the attachment is based.

(2) The plaintiff would suffer great or irreparable injury (within the meaning of Section 485.010) if issuance of the order were delayed until the matter could be heard on notice.

(3) The property sought to be attached is not exempt from attachment.

(d) An affidavit in support of the showing required by paragraph (3) of subdivision (c) may be based on the affiant's information and belief.

Comment. Section 485.210 provides the procedure for applying ex parte for the issuance of a writ of attachment prior to a noticed hearing on the probable validity of the plaintiff's claim. Compare Sections 484.010–484.030 and 484.510. Compare also the first paragraph of former Section 538.5.

§ 485.220. Issuance of order and writ

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

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

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

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

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

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

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

1974 Addition

Comment. Section 485.220 provides the procedure for the ex parte issuance of a writ of attachment prior to a noticed hearing on the probable validity of the plaintiff's claim. Compare Section 484.090.

The exception provided in subdivision (a) recognizes that the court may, in its discretion, issue a temporary protective order in lieu of a writ of attachment even where the requirements of this section are satisfied. See Section 486.030 and Comment thereto.

1976 Amendment

Comment. Section 485.220 is amended in the same manner as Section 484.090. See Comment to Section 484.090.

§ 485.230 (repealed). Defendant's right to claim exemption

Comment. Section 485.230 is superseded by Section 485.610.

§ 485.240. Setting aside right to attach order and quashing writ

485.240. (a) Any defendant whose property has been attached pursuant to a writ issued under this chapter may apply for an order that the right to attach order be set aside, the writ of attachment quashed, and any property levied upon pursuant to the writ be released. Such application shall be made by filing with the court and serving on the plaintiff a notice of motion.

(b) The notice of motion shall state the grounds on which the motion is based and shall be accompanied by an affidavit supporting any factual issues raised and points and authorities supporting any legal issues raised. It shall not be grounds to set aside an order that the plaintiff would not have suffered great or irreparable injury (within the meaning of Section 485.010) if issuance of the

order had been delayed until the matter could have been heard on notice.

(c) At the hearing on the motion, the court shall determine whether the plaintiff is entitled to the right to attach order. If the court finds that the plaintiff is not entitled to the right to attach order, it shall order the right to attach order set aside, the writ of attachment quashed, and any property levied on pursuant to the writ released. If the court finds that the plaintiff is entitled to the right to attach order, thereafter the plaintiff may apply for additional writs pursuant to Article 2 (commencing with Section 484.310) or Article 3 (commencing with Section 484.510) of Chapter 4.

(d) The court's determinations shall be made upon the basis of the pleadings and other papers in the record; but, upon good cause shown, the court may receive and consider at the hearing additional evidence, oral or documentary, and additional points and authorities, or it may continue the hearing for the production of such additional evidence or points and authorities.

(e) The hearing provided for in this section shall take precedence over all other civil matters on the calendar of that day except older matters of the same character.

Legislative Committee Comment—1974 Addition

Comment. Section 485.240 is similar in content and purpose to the last two sentences of former Section 538.5. Former Section 556 also provided a procedure for setting aside a writ that had been improperly or irregularly issued although former Section 558 specifically authorized amendments to be made to prevent discharge. The latter provision is unnecessary and is not continued by statute; the court has the inherent power to permit a plaintiff to amend his application or supplement his showing in support of the attachment at or prior to the hearing.

Although in the situation provided for here, the defendant is the moving party, the plaintiff nevertheless continues to have the burden of proving (1) that his claim is one upon which an attachment may be issued and (2) the probable validity of such claim. Compare Section 484.090.

Article 3. Procedure for Obtaining Additional Writs**§ 485.510. Application**

485.510. At any time after a right to attach order and writ of attachment have been issued under Article 2 (commencing with Section 485.210), the plaintiff may apply for an additional writ of attachment under this article by filing an application with the court in which the action is brought.

Comment. Sections 485.510 through 485.530 are comparable to Section 484.510 only here the plaintiff must show that exceptional circumstances continue his need for the ex parte issuance of a writ. Nothing, of course, precludes the plaintiff from applying for a new order and writ pursuant to Article 1 of Chapter 4. Moreover, where there has been a hearing pursuant to Section 485.240 and the plaintiff's right to attach has been upheld, the plaintiff may apply for an additional writ pursuant to the procedures provided in Article 2 (commencing with Section 484.310) and Article 3 (commencing with Section 484.510) of Chapter 4. See Section 485.240(c).

§ 485.520. Contents of application

485.520. The application shall be executed under oath and shall include all of the following:

(a) A statement that the plaintiff has been issued a right to attach order and writ of attachment pursuant to Article 2 (commencing with Section 485.210) in the action.

(b) A statement of the amount to be secured by the attachment under the right to attach order.

(c) A description of the property to be attached under the writ of attachment and a statement that the plaintiff is informed and believes that the property is not exempt from attachment. The description shall satisfy the requirements of Section 484.020.

(d) A statement showing that the requirement of Section 485.010 has been satisfied.

1974 Addition

Comment. See Comment to Section 485.510.

1982 Amendment

Comment. Section 485.520 is amended to reflect the addition of Section 483.015 which provides for the calculation of the amount to be secured by the attachment.

§ 485.530. Supporting affidavit

485.530. (a) The application shall be supported by an affidavit showing both of the following:

(1) The plaintiff would suffer great or irreparable injury (within the meaning of Section 485.010) if the issuance of the writ of attachment were delayed until the matter could be heard on notice.

(2) The property sought to be attached is not exempt from attachment.

(b) The affidavit in support of the showing required by paragraph (2) of subdivision (a) may be based on the affiant's information and belief.

1974 Addition

Comment. See Comment to Section 485.510.

1976 Amendment

Comment. The amendment of Section 485.530 is a clarifying, nonsubstantive change. Under this article, the plaintiff applies for a writ of attachment, not a right to attach order.

§ 485.540. Issuance of writ

485.540. The court shall examine the application and supporting affidavit and shall order a writ of attachment to be issued upon the filing of an undertaking as provided by Sections 489.210 and 489.220, if it finds all of the following:

(a) A right to attach order has been issued in the action pursuant to Article 2 (commencing with Section 485.210).

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

(c) The plaintiff will suffer great or irreparable injury (within the meaning of Section 485.010) if issuance of the writ of attachment is delayed until the matter can be heard on notice.

1974 Addition

Comment. Section 485.540 is comparable to Section 484.520 except here the court must make a finding that great or irreparable injury would result to the plaintiff if issuance of the order were delayed until the matter could be heard on notice. See Comment to Section 485.510.

1976 Amendment

Comment. The introductory clause of Section 485.540 is amended in the same manner as Section 484.370. See Comment to Section 484.370. The amendment of subdivision (c) reflects the fact that the plaintiff is applying for a writ of attachment; a right to attach order must already have been issued as subdivision (a) provides.

Article 4. Claim of Exemption**§ 485.610. Claim of exemption**

485.610. (a) The defendant may claim an exemption as to real or personal property levied upon pursuant to a writ of attachment issued under this chapter by following the procedure set forth in Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9, except that the defendant shall claim the exemption as to personal property not later than 30 days after the levying officer serves the defendant with the notice of attachment describing such property. For this purpose, references in Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 to the "judgment debtor" shall be deemed references to the defendant, and references to the "judgment creditor" shall be deemed references to the plaintiff.

(b) The defendant may claim the exemption provided by subdivision (b) of Section 487.020 within the time provided by subdivision (a) of this section either (1) by following the procedure set forth in Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 or (2) by following the procedure set forth in subdivision (c) of Section 482.100 except that the requirement of showing changed circumstances under subdivision (a) of Section 482.100 does not apply.

1976 Addition

Comment. Section 485.610 provides a procedure for claiming exemptions for property levied upon under a writ of attachment issued pursuant to Article 2 (commencing with Section 485.210) or Article 3 (commencing with Section 485.510). Section 485.610 supersedes former Section 485.230. The defendant may claim an exemption only for property which has been levied upon. Exemptions [for personal property] not claimed as provided by

this section are waived for purposes of both attachment and execution except as provided by Section 482.100 (postlevy claims of exemption on grounds of changed circumstances).

Subdivision (a) incorporates the procedure provided by [the Enforcement of Judgments Law] for claiming exemptions but provides special time limits.

Subdivision (b) permits the defendant to claim an exemption of necessities by the expeditious procedure provided by subdivision (c) of Section 482.100 as an alternative to the procedure provided by [the Enforcement of Judgments Law] and incorporated by subdivision (a) of this section. However, as subdivision (b) provides, the defendant is not required to show that his right to claim the exemption is the result of a change of circumstances as is required when a claim is made under Section 482.100 after the time for claiming exemptions has passed.

1982 Amendment

Comment. Subdivision (a) of Section 485.610 is amended to make clear that the defendant does not waive an exemption for real property by failure to claim it within the time prescribed. The other changes in Section 485.610 are technical.

CHAPTER 6. TEMPORARY PROTECTIVE ORDER

§ 486.010. Application; supporting affidavit

486.010. (a) At the time of applying for a right to attach order under Chapter 4 (commencing with Section 484.010), the plaintiff may apply pursuant to this chapter for a temporary protective order by filing an application for the order with the court in which the action is brought.

(b) The application shall state what relief is requested and shall be supported by an affidavit, which may be based on information and belief, showing that the plaintiff would suffer great or irreparable injury (within the meaning of Section 485.010) if the temporary protective order were not issued.

Comment. Section 486.010 replaces former Section 538.1. In contrast to former Section 538.1 which provided for the issuance of a temporary restraining order as a matter of right in every case, Section 486.010 requires the plaintiff to apply for relief and show that such relief is required to avoid great or irreparable injury to him.

The application required by this section will accompany that required by Section 484.020, thus permitting the court to make the determinations required by Section 486.020.

Sections 486.010 and 486.020 provide for the situation where the plaintiff specifically applies for a temporary protective order. A temporary protective order may also be issued on the court's own motion in lieu of the ex parte issuance of a writ of attachment pursuant to Section 486.030.

§ 486.020. Issuance of order if required findings are made

486.020. The court shall examine the application, supporting affidavit, and other papers on record and shall issue a temporary protective order, which shall state the amount sought to be secured by the attachment under the application for the right to attach order, upon the filing of an undertaking as provided by Sections 489.210 and 489.220, if it finds all of the following:

(a) The claim upon which the application for attachment is based is one upon which an attachment may be issued.

(b) The plaintiff has established the probable validity of the claim upon which the application for the attachment is based.

(c) The order is not sought for a purpose other than the recovery upon the claim upon which the application for the attachment is based.

(d) The plaintiff will suffer great or irreparable injury (within the meaning of Section 485.010) if the temporary protective order is not issued.

1974 Addition

Comment. Section 486.020 provides for an ex parte determination of the right to a temporary protective order. See generally Comment to Section 486.010.

1982 Amendment

Comment. Section 486.020 is amended to add the requirement that the temporary protective order state the amount sought to be secured by the attachment under the application for the right to attach order. This addition implements subdivision (c) (1) of Section 486.060 and subdivision (b) of Section 489.320.

§ 486.030. Issuance of temporary protective order in lieu of writ of attachment

486.030. (a) In any case where the plaintiff has applied for a right to attach order and writ of attachment under Chapter 5 (commencing with Section 485.010), the court may in its discretion deny the application for the order and writ and issue instead a temporary protective order under this chapter if it determines that the requirements of Section 485.220 are satisfied but that the issuance of the temporary protective order instead of the right to attach order and writ would be in the interest of justice and equity to the parties, taking into account the effect on the defendant of issuing a writ of attachment *ex parte*, the effect on the plaintiff of issuing the temporary protective order instead of the writ, and other factors that bear on equity and justice under the circumstances of the particular case.

(b) If the court issues a temporary protective order under this section, the plaintiff's application for a right to attach order and writ shall be treated as an application for a right to attach order and writ under Article 1 (commencing with Section 484.010) of Chapter 4 and the plaintiff shall comply with the requirements of service provided in Section 484.040.

Comment. Section 486.030 is new. No similar provision existed under former law. See Comment to Section 486.010. Where a temporary protective order is issued in lieu of a right to attach order and writ, the plaintiff's application for the order and writ is treated as an application under Article 1 of Chapter 4. The plaintiff must serve the application, notice of application, and other papers required by Section 484.040 and the procedures provided thereafter are then followed.

§ 486.040. Contents of temporary protective order generally

486.040. The temporary protective order issued under this chapter shall contain such provisions as the court determines would be in the interest of justice and equity to the parties, taking into account the effects on both the defendant and the plaintiff under the circumstances of the particular case.

Comment. Section 486.040 is new; no similar provision existed under former law. This section directs the court to consider what provisions in the temporary protective order would be fair and equitable for both parties. Included in such provisions may be a specific expiration date. See Section 486.090(a). [See also Section 489.230 (form for temporary protective order to contain notice advising defendant that undertaking has been filed and of right to object to undertaking).]

§ 486.050. Effect on transfers in the ordinary course of business

486.050. (a) Except as otherwise provided in Section 486.040, the temporary protective order may prohibit any transfer by the defendant of any of the defendant's property in this state subject to the levy of the writ of attachment. The temporary protective order shall describe the property in a manner adequate to permit the defendant to identify the property subject to the temporary protective order.

(b) Notwithstanding subdivision (a), if the property is farm products held for sale or is inventory, the temporary protective order may not prohibit the defendant from transferring the property in the ordinary course of business, but the temporary protective order may impose appropriate restrictions on the disposition of the proceeds from such transfer.

1974 Addition

Comment. Section 486.050 is based on a comparable provision in former Section 538.3. Exceptions similar to those provided by Section 486.060 were also provided by Section 538.3. Section 538.3 also provided:

Without limiting the generality of the phrase "not in the ordinary course of business", the payment by the defendant of an antecedent debt shall not be considered in the ordinary course of business within the meaning of this section.

This clause has been eliminated. The court should be able to frame an effective order under the guidelines provided in Sections 486.050 and 486.060. Such order may, in appropriate circumstances, prohibit the payment of antecedent debts.

Section 486.050 merely authorizes the issuance of an order prohibiting transfers where appropriate (see Section 486.040); former Section 538.3 seemed to always require the issuance of an order prohibiting transfers.

1976 Amendment

Comment. Subdivision (a) of Section 486.050 is amended to prescribe the manner of describing property that is subject to the temporary protective order. The description in a temporary protective order restraining the transfer of property of an individual defendant or a portion of the property of a corporation or a partnership should be sufficiently specific to permit accurate identification.

The temporary protective order should restrain the transfer only of an amount of the defendant's property that is reasonably necessary to protect the plaintiff's interest until a writ of attachment can be issued. Where an excessive amount of property is subject to the temporary protective order, the plaintiff may be liable for abuse of process. *Cf. White Lighting Co. v. Wolfson*, 68 Cal.2d 336, 438 P.2d 345, 66 Cal. Rptr. 697 (1968).

The amendments to the introductory portion of subdivision (a) and to subdivision (b) are technical and make no substantive change.

§ 486.060. Authority of defendant to issue checks

486.060. (a) Notwithstanding any terms of the temporary protective order, the defendant may issue any number of checks against any of the defendant's accounts in a financial institution in this state to the extent permitted by this section.

(b) The defendant may issue any number of checks in any amount for the following purposes:

(1) Payment of any payroll expense (including fringe benefits and taxes and premiums for workers' compensation and unemployment insurance) falling due in the ordinary course of business prior to the levy of a writ of attachment.

(2) Payment for goods thereafter delivered to the defendant C.O.D. for use in the defendant's trade, business, or profession.

(3) Payment of taxes if payment is necessary to avoid penalties which will accrue if there is any further delay in payment.

(4) Payment of reasonable legal fees and reasonable costs and expenses required for the representation of the defendant in the action.

(c) In addition to the checks permitted to be issued by subdivision (b), the defendant may issue any number of checks for any purpose so long as the total amount of the checks does not exceed the greater of the following:

(1) The amount by which the total amount on deposit exceeds the sum of the amount sought to be secured by the attachment and the amounts permitted to be paid pursuant to subdivision (b).

(2) One thousand dollars (\$1,000).

1974 Addition

Comment. Section 486.060 is based on comparable provisions in former Section 538.3. See the Comment to Section 486.050.

1976 Amendment

Comment. Section 486.060, as enacted, and its predecessor, former Section 538.3, failed to state clearly the rules permitting a defendant who is subject to a temporary protective order to write checks. Section 486.060, as amended, makes clear that, if funds are available, the defendant may write checks, regardless of the plaintiff's claim, for a total of \$1,000 for any purpose and for any amount for the purposes listed in subdivision (b). Section 486.060 does not *require* the defendant to write checks for the purposes described in subdivision (b) nor does it establish a preference of one of these purposes over any other. Subdivision (c)(1) provides that the defendant may write checks for purposes, other than those described in subdivision (b), in excess of \$1,000 only if the defendant reserves sufficient funds to cover checks permitted to be written by subdivision (b) and to pay the plaintiff's claim. Subdivision (c)(1) is intended to prevent a temporary protective order issued on a small claim from tying up large accounts. The defendant may always write checks in the total amount of \$1,000 as provided in subdivision (c)(2) even though the amount remaining on deposit is insufficient to secure the plaintiff's claim.

In the following examples illustrating the application of Section 486.060, assume that the defendant has deposit accounts totaling \$10,000 in this state and the plaintiff has a \$5,000 claim:

(1) If expenses under subdivision (b) total \$2,000, the defendant may write checks to pay them and then write additional checks totaling \$3,000 under subdivision (c), reserving \$5,000 to cover the plaintiff's claim.

(2) If, in the first example, the defendant had decided for some reason to defer payment of the \$2,000 payable under

subdivision (b), he could still write an additional check for not more than \$3,000 since subdivision (c) allows checks to be written in amounts in addition to the total of amounts *permitted* to be paid under subdivision (b) and the amount of the plaintiff's claim.

(3) If expenses under subdivision (b) total \$8,000, the defendant may write checks for any purpose in an aggregate amount of not more than \$1,000 under subdivision (c). If the defendant has deferred paying the \$8,000 under subdivision (b), he may write checks under subdivision (c) totaling not more than \$1,000 since the total amount on deposit (\$10,000) is less than the sum of the plaintiff's claim (\$5,000) and expenses under subdivision (b) (\$8,000). Checks may be written under subdivision (c) for the same amount where the defendant has already paid the \$8,000 under subdivision (b); he may then write checks totaling not more than \$1,000 since the total amount remaining on deposit (\$2,000) is less than the amount of the plaintiff's claim (\$5,000).

(4) If the defendant has no expenses under subdivision (b), he may write checks totaling \$5,000 for any purpose under subdivision (c).

(5) In the fourth example, if the defendant writes checks for \$5,000 under subdivision (c) and later discovers that he has expenses of a type described in subdivision (b) and so writes checks for such purposes, the defendant has violated the temporary protective order.

The introductory clause of Section 486.060 is amended to make clear that the defendant may issue checks for the purposes and in the amount provided regardless of the temporary protective order. The form of the temporary protective order is prescribed by the Judicial Council. See Section 482.030(b).

1982 Amendment

Comment. Subdivision (a) of Section 486.060 is amended to recognize that checks may be issued against accounts in financial institutions (defined in Section 481.113) other than banks. The amendment to subdivision (c)(1) is clarifying. See Section 483.015.

§ 486.070. Persons bound by temporary protective order

486.070. Except as otherwise provided by Section 486.110, a temporary protective order issued under this chapter binds only the defendant, whether or not any other person knows of or is served with a copy of the temporary protective order.

1974 Addition

Comment. Section 486.070 expands the policy of a provision in former Section 538.1 which absolved any bank from observing the terms of a restraining order. Section 486.070 does not, however, affect any other provisions of law such as the law relating to fraudulent conveyances. See CIVIL CODE §§ 3439-3440.1.

1976 Amendment

Comment. The amendment of Section 486.070 makes clear that a person other than the defendant is not bound by the temporary protective order even where such person knows of the order or is served with a copy of the order. This provision is based on a similar provision in the last sentence of former Section 538.1. Section 486.070 does not affect any other provisions of law such as the law relating to fraudulent conveyances. See Civil Code §§ 3439-3440.1.

§ 486.080. Service on defendant

486.080. The temporary protective order shall be personally served on the defendant together with the documents referred to in Section 484.040.

1982 Amendment

Comment. Section 486.080 is amended to make clear that personal service on the defendant is required. Since the temporary protective order binds only the defendant (Section 486.070), it is enforced by contempt proceedings and hence must be served on the defendant rather than the defendant's attorney. See Sections 482.070 and 684.030.

§ 486.090. Expiration of order

486.090. Except as otherwise provided in this title, the temporary protective order shall expire at the earliest of the following times:

(a) Forty days after the issuance of the order or, if an earlier date is prescribed by the court in the order, on such earlier date.

(b) As to specific property described in the order, when a levy of attachment upon that property is made by the plaintiff.

1974 Addition

Comment. Section 486.090 is based on a comparable provision in former Section 538.3. See also Section 489.320 (court order terminating temporary protective order).

1976 Amendment

Comment. The amendment to the introductory clause of Section 486.090 is technical and makes no substantive change. The effective date of the temporary protective order may be extended pursuant to Section 484.080 in the case of a continuance. The court may modify or vacate a temporary protective order pursuant to Section 486.100 (on application of defendant) or terminate the order pursuant to Section 489.320 (undertaking to secure termination). It should also be noted that, where the defendant claims an exemption for all the property described in the plaintiff's application for a writ and the plaintiff does not oppose the claim of exemption, the temporary protective order expires without a hearing or further court action. Section 484.070(f). In cases where the court determines at a hearing that property is exempt, or that a writ of attachment may not issue for any other reason, the defendant may move the court to vacate or modify the protective order pursuant to Section 486.100.

§ 486.100. Modification or vacation of order on defendant's application

486.100. Upon ex parte application of the defendant or, if the court so orders, after a noticed hearing, the court may modify or vacate the temporary protective order if it determines that such action would be in the interest of justice and equity to the parties, taking into account the effect on the defendant of the continuance of the original order, the effect on the plaintiff of modifying or vacating the order, and any other factors.

Comment. Section 486.100 expands a comparable provision in former Section 538.3.

§ 486.110. Lien of temporary protective order

486.110. (a) The service upon the defendant of a temporary protective order pursuant to Section 486.080 creates a lien upon any property, or the proceeds thereof, which is described in the order, is owned by the defendant at the time of such service, and is subject to attachment pursuant to this title. The lien continues on property subject to the lien, notwithstanding the transfer or encumbrance of the property subject to the lien, unless the person receiving the property is a person listed in Section 697.740.

(b) The lien terminates upon the date of expiration of the temporary protective order except with respect to property levied upon while the temporary protective order is in effect under a writ of attachment issued upon application of the plaintiff.

1974 Addition

Comment. Section 486.110 is based on former Section 542b. The levy of a writ of attachment perfects only the lien that could be initially created by the temporary protective order; hence, levy of a writ does not affect the prior rights of bona fide purchasers or buyers in the ordinary course of business who are not bound by the temporary protective order. [See Section 697.740.] Of course, transfers subsequent to the levy are subject to the lien of attachment. See Section 488.500. . . .

1982 Amendment

Comment. Subdivision (a) of Section 486.110 is amended for consistency with the Enforcement of Judgments Law. See also Section 488.500 (attachment lien). The provision formerly contained in subdivision (b) governing the interplay between the lien of the temporary protective order and the attachment lien is superseded by Section 488.500(e).

CHAPTER 7. PROPERTY SUBJECT TO ATTACHMENT

§ 487.010. Property subject to attachment

487.010. The following property of the defendant is subject to attachment:

(a) Where the defendant is a corporation, all corporate property for which a method of levy is provided by Article 2 (commencing with Section 488.300) of Chapter 8.

(b) Where the defendant is a partnership or other unincorporated association, all partnership or association property for which a method of levy is provided by Article 2 (commencing with Section 488.300) of Chapter 8.

(c) Where the defendant is a natural person, all of the following property:

(1) Interests in real property except leasehold estates with unexpired terms of less than one year.

(2) Accounts receivable, chattel paper, and general intangibles arising out of the conduct by the defendant of a trade, business, or profession, except any such individual claim with a principal balance of less than one hundred fifty dollars (\$150).

(3) Equipment.

(4) Farm products.

(5) Inventory.

(6) Final money judgments arising out of the conduct by the defendant of a trade, business, or profession.

(7) Money on the premises where a trade, business, or profession is conducted by the defendant and, except for the first one thousand dollars (\$1,000), money located elsewhere than on such premises and deposit accounts, but, if the defendant has more than one deposit account or has at least one deposit account and money located elsewhere than on the premises where a trade, business, or profession is conducted by the defendant, the court, upon application of the plaintiff, may order that the writ of attachment be levied so that an aggregate amount of one thousand dollars (\$1,000) in the form of such money and in such accounts remains free of levy.

(8) Negotiable documents of title.

(9) Instruments.

(10) Securities.

(11) Minerals or the like (including oil and gas) to be extracted.

(d) In the case of a defendant described in subdivision (c), community property of a type described in subdivision (c) is subject to attachment if the community property would be subject to enforcement of the judgment obtained in the action in which the attachment is sought. Unless the provision or context otherwise requires, if community property that is subject to attachment is sought to be attached:

(1) Any provision of this title that applies to the property of the defendant or to obligations owed to the defendant also applies to the community property interest of the spouse of the defendant and to obligations owed to either spouse that are community property.

(2) Any provision of this title that applies to property in the possession or under the control of the defendant also applies to community property in the possession or under the control of the spouse of the defendant.

Legislative Committee Comment—1974 Addition

Comment. Section 487.010 is substantially the same as former Section 537.3. The introductory paragraph of former Section 537.3 provided that property exempt from execution was not subject to attachment. The next to last paragraph of subdivision (b) of Section 537.3 provided that property necessary for the support of the defendant and his family was not subject to attachment. These provisions are continued in Section 487.020.

Subdivisions (a) and (b) of Section 487.010 are in the same in substance as subdivision (a) of former Section 537.3. These subdivisions have been revised in part to make clear that property for which a method of levy is not provided is not subject to attachment, *e.g.*, copyrights and patents.

Subdivision (c) is substantially the same as subdivision (b) of former Section 537.3. Some terms have been changed, but their meaning is still substantially the same, and some types of property have been added. . . .

The method of levy on real property tends to minimize the impact on the defendant of an attachment of such property. See [Sections 488.315 and 700.015] (levy on real property). Accordingly, attachment of real property is permitted whether or not the real property is business-related property. . . .

Section 487.010 does not affect rules governing priorities between creditors. See, *e.g.*, CODE CIV. PROC. § 1206 (laborer's preferred claim). Moreover, special rules as to what property is subject to attachment apply where the attachment is issued pursuant to Chapter 12 (nonresident attachment). See Section 492.040.

1976 Amendment

Comment. The amendment of the introductory clause of Section 487.010 makes clear that only the defendant's property is subject to attachment. All other property is exempt from attachment in the action as provided by subdivision (d) of Section 487.020. The fact that the defendant's property is subject to attachment does not in any way mean that the plaintiff may cause it to be attached in a particular action without incurring liability for abuse of process should the levy be excessive.

Subdivision (b) is amended to make clear that, where the defendant is an unincorporated association, all the property of the association for which a method of levy is provided is subject to attachment.

Subdivision (c) is amended to make clear that leasehold estates with an unexpired term of less than one year are not subject to attachment where the defendant is an individual. This amendment continues former law. See former Section 537.3(b)(6).

The provision concerning deposit accounts—formerly appearing in paragraph (2) of subdivision (c)—has been combined with the provision concerning money in paragraph (7). The effect of this amendment is that all of an individual defendant's money on the premises where he conducts a trade, business, or profession is subject to attachment. In addition, all but \$1,000 of the individual's deposit accounts and money not located on the premises where he conducts a trade, business, or profession is subject to attachment. However, where the individual defendant either has more than one deposit account or has one or more deposit accounts and money not on the premises, the plaintiff must apply to the court in order to levy on such money or on the deposit accounts so that the total remaining free from attachment is \$1,000. The plaintiff may apply for such order at the time of the hearing on issuance of the writ or thereafter.

... Where an individual is sued for his individual liability as a partner or a member of an association, subdivision (c) provides the property of the individual which may be reached by the attachment. Consequently, ... all individuals against whom attachment may properly be issued pursuant to Section 483.010 are treated the same regardless of whether their personal liability arises out of their conduct of a trade, business, or profession as a sole proprietor, a partner, or a member of an association.

1982 Amendment

Comment. Subdivisions (a) and (b) of Section 487.010 are amended to correct cross-references. Subdivision (c) is amended to conform to Sections 481.090 ("document of title" defined), 481.115 ("general intangibles" defined), 481.117 ("instrument" defined), 481.170 ("person" defined), 488.325 (levy on minerals and the like to be extracted), and 488.480 (levy on final money judgment). Subdivision (d) is new and is analogous to Section 695.020 in the Enforcement of Judgments Law.

§ 487.020. Property exempt from attachment

487.020. The following property is exempt from attachment:

(a) All property exempt from enforcement of a money judgment.

(b) Property which is necessary for the support of a defendant who is a natural person or the family of such defendant supported in whole or in part by the defendant.

(c) "Earnings" as defined by Section 706.011.

(d) All property not subject to attachment pursuant to Section 487.010.

Legislative Committee Comment—1974 Addition

Comment. Section 487.020 is substantively the same as the first paragraph of Section 537.3 and the next to last paragraph of subdivision (b) of that section. See Comment to Section 487.010.

Subdivision (a) embraces not only the exemptions provided in the [Enforcement of Judgments Law] but also . . . any other special exemptions provided by law. See, *e.g.*, . . . *Estate of Lawrence*, 267 Cal. App.2d 77, 72 Cal. Rptr. 851 (1968) (spendthrift trust); *Robbins v. Bueno*, 262 Cal. App.2d 79, 68 Cal. Rptr. 347 (1968) (property in *custodia legis*). See generally 5 B. Witkin, *California Procedure Enforcement of Judgment* §§ 1167 at 3396-3442 (2d ed. 1971, Supp. 1972); E. Jackson, *California Debt Collection Practice* §§ 19.1-19.44 at 460-88 (Cal. Cont. Ed. Bar 1968). Included under subdivision (a) is Section 690.6 [repealed] (partial exemption of employee's earnings). However, Section 690.6 is totally eclipsed by subdivision (c) which provides an exemption from attachment of *all* earnings arising out of an employer-employee relationship but not an exemption for earnings generally. This does not, of course, affect the federal exemptions from garnishment. See Consumer Credit Protection Act, §§ 301-307, 15 U.S.C. §§ 1671-1677 (1970). It should be noted that the exemptions provided or incorporated by Section 487.020 are applicable generally only to individual defendants. However, this includes an individual defendant who is a partner and whose property is reached pursuant to . . . Section 487.010. *But see* Corp. Code § 15025(2)(c) (partner may not claim exemption in partnership property attached for partnership debt); *Cowan v. Their Creditors*, 77 Cal. 403, 19 P. 755 (1888).

Subdivision (b) provides an additional exemption available to an individual defendant upon a showing of need.

The California Supreme Court in *Randone v. Appellate Department*, 5 Cal.3d 536, 562, 488 P.2d 13, 30, 96 Cal. Rptr. 709, 726 (1971), held that:

[T]he state cannot properly withdraw from a defendant the essentials he needs to live, to work, to support his family or to litigate the pending action before an impartial confirmation of the actual, as opposed to probable, validity of the creditor's claim after a hearing on that issue

This title attempts to satisfy the foregoing requirement (1) by providing prior to levy either an opportunity for the defendant to claim his exemptions or a requirement that the plaintiff show that the property sought to be attached is not exempt, (2) by generally subjecting only business property to levy, (3) by providing a nonseizure form of levy in many circumstances, and (4) by authorizing the court to issue a temporary protective order in lieu of a writ in the exceptional circumstances where a writ may be issued *ex parte*.

Subdivision (d) makes clear that property not subject to attachment under Section 487.010 may be claimed as "exempt" under the various procedures for claiming an exemption. See, *e.g.*, Section [485.610].

1976 Amendment

Comment. The introductory phrase of Section 487.020, reading "Notwithstanding Section 487.010," is deleted since it was confusing when read with subdivision (d); this amendment makes no substantive change. The language of subdivision (b) is amended to make clear that an individual defendant is entitled to the exemption as well as a defendant with a family and that the exemption applies where members of the defendant's family supported by the defendant are not living in the defendant's household.

Legislative Committee Comment—1982 Amendment

Comment. Subdivision (a) of Section 487.020 is amended for consistency with the Enforcement of Judgments Law. See, *e.g.*, Section 703.010. The amendment of subdivision (b) is not substantive. Subdivision (c) is amended to incorporate the definition of earnings provided in the Wage Garnishment Law; this amendment makes no substantive change.

§ 487.025. Right to attach declared homestead

487.025. (a) The recording of a homestead declaration (as defined in Section 704.910) does not limit or affect the right of a plaintiff to attach the declared homestead described in the homestead declaration, whether the homestead declaration is recorded before or after the declared homestead is attached.

(b) An attachment lien attaches to a homestead (as defined in Section 704.710) in the amount of any surplus over the total of the following:

(1) All liens and encumbrances on the homestead at the time the attachment lien is created.

(2) The homestead exemption set forth in Section 704.730.

(c) Nothing in subdivision (a) or (b) limits the right of the defendant to an exemption under subdivision (b) of Section 487.020.

(d) Notwithstanding subdivision (b), a homestead (as defined in Section 704.710) is exempt from sale to the extent provided in Section 704.800 when it is sought to be sold to enforce the judgment obtained in the action in which the attachment was obtained.

§ 487.030. Claim of exemption for real property

487.030. (a) At any time prior to the entry of judgment in the action, the defendant may claim any exemption provided by subdivision (a) of Section 487.020 with respect to real property by following the procedure set forth in Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9. A claim of exemption under this subdivision shall be denied if the claim has been denied earlier in the action.

(b) At any time prior to the entry of judgment in the action, the defendant may claim the exemption provided by subdivision (b) of Section 487.020 with respect to real property either (1) by following the procedure set forth in Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 or (2) by following the procedure set forth in subdivision (c) of Section 482.100 except that the requirement of showing changed circumstances under subdivision (a) of Section 482.100

does not apply. A claim of exemption under this subdivision shall be denied if the claim has been denied earlier in the action and there is no change in circumstances affecting the claim.

(c) For the purposes of this section, references in Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 to the "judgment debtor" shall be deemed references to the defendant, and references to the "judgment creditor" shall be deemed references to the plaintiff.

(d) Nothing in this section limits the right to claim after the entry of judgment a homestead exemption for real property under Article 4 (commencing with Section 704.710) of Chapter 4 of Division 2 of Title 9 unless prior to entry of judgment the defendant has claimed the exemption provided by subdivision (a) of Section 487.020 with respect to such property and the claim has been denied.

Comment. Section 487.030 provides a procedure for claiming an exemption for real property under this title. This procedure supplements the other provisions of this title that permit, but do not require, the defendant to claim an exemption for real property. See Sections 484.070, 484.350, 484.530, 485.610.

CHAPTER 8. LEVY PROCEDURES; LIEN OF ATTACHMENT; MANAGEMENT AND DISPOSITION OF ATTACHED PROPERTY

Comment. Former Chapter 8 (commencing with Section 488.010) is superseded by new Chapter 8 (commencing with Section 488.010). Provisions of the new law that supersede or continue the subject matter of former Chapter 8 (commencing with Section 488.010) are shown in the following table.

<i>Former Sections</i> 488.010-488.570	<i>New Law</i>
488.010(a)	488.010, 488.030, 488.040, 488.060
(b)	488.315, 700.015(a)
(c)	488.325, 700.020(a)
488.020	488.060

Former Sections
488.010–488.570

New Law

488.030	488.020
488.040 (a)	482.070, 684.110 (c)
(b)	482.070, 684.110 (a)
488.045	488.090
488.050	488.050 (a)
488.060 (a)	488.050 (b)
(b)	488.140 (b)
488.070	488.130 (a)
488.080 (a)	488.130 (b)
(b)	488.610
488.090	488.110
488.310 (a)	488.315, 700.015 (a)
(b)	488.315, 700.015 (a)
(c)	488.305, 488.315, 700.015 (b)
(d)	488.315, 700.015 (c)
(e)	488.120
488.320 (a)	488.335
(b)	488.120, 488.305
488.330 (a)	488.345, 488.365
(b)	488.600, 701.010
(c)	488.120, 488.305
(d)	488.345, 700.040 (b)
488.340 (a)	488.375 (a)
(b)	488.120, 488.305
(c)	488.375 (b)–(d)
(d)	488.375 (c), Com. Code § 9409
488.350 (a)	488.385 (a)
(b)	488.305
(c)	488.425, 700.090
(d)	488.500 (d)
(e)	488.120
(f)	488.358 (b), (c)
488.360 (a)	488.305, 488.395 (a)–(c)
(b)	488.395 (d)
(c)	488.305, 488.325, 488.405, 488.500 (c)
(d)	488.120
488.370 (a)	488.470 (a)
(b)	488.120, 488.305, 488.470 (b)

*Former Sections**488.010–488.570**New Law*

488.380 (a)	488.435 (a), 700.100 (a)
(b)	488.305
(c)	488.435 (a), 488.600, 700.100 (b), 701.050
(d)	488.120
(e)	488.600, 701.040
488.390 (a)	488.455 (a)
(b)	488.120, 488.305, 488.455 (b)
(c)	488.455 (d)
488.400 (a)	488.335, 488.345, 488.440, 488.445, 700.110 (a), 700.120
(b)	488.305
(c)	488.440, 488.600, 700.110 (b), 701.060
(d)	488.120
488.410 (a)	488.305, 488.450
(b)	488.305, 488.450
(c)	488.120
(d)	488.450
488.420 (a)	488.480 (b)–(c)
(b)	488.120, 488.305
(c)	488.480 (a)
488.430 (a)	488.485 (a)
(b)	488.120, 488.305
(c)	488.485 (b)
(d)	488.485 (a)
(e)	488.485 (b)
488.500	488.500
488.510	488.510
488.520	488.710
488.530	488.700
488.540	488.600, 701.010
488.550 (a)	488.600, 701.020
(b)	488.600, 701.020
(c)	491.310, 491.320, 491.330
488.555	488.720
488.560	488.730
488.570	488.740

Article 1. General Provisions

§ 488.010. Contents of writ of attachment

488.010. The writ of attachment shall include the following information:

- (a) The date of issuance of the writ.
- (b) The title of the court that issued the writ and the cause and number of the action.
- (c) The name and address of the plaintiff and the name and last known address of the defendant.
- (d) The amount to be secured by the attachment.
- (e) A description of the property to be levied upon to satisfy the attachment.

Legislative Committee Comment—1982 Addition

Comment. Section 488.010 supersedes former Section 488.010 and conforms more closely to Section 699.520 (contents of writ of execution). The notice of attachment contains a description of the specific property which is sought to be attached. See Section 488.060. The provision of former Section 488.010 which required the writ of attachment to identify persons (other than the defendant) in whose name real property, growing crops, or timber sought to be attached stands on the records of the county is not continued. The procedure for levy on such property requires this information to be in the notice of attachment. See Sections 488.315 and 488.325 (incorporating levy procedure of Enforcement of Judgments Law).

§ 488.020. Delivery and execution of writ

488.020. (a) A writ of attachment shall be directed to a levying officer in the county in which property of the defendant described in the writ may be located and to any registered process server.

(b) Upon the receipt of written instructions from the plaintiff's attorney of record or, if the plaintiff has no attorney of record, from the plaintiff, the levying officer to whom the writ is directed and delivered shall levy the writ without delay in the manner provided in this chapter on the property described in the writ or so much thereof as is clearly sufficient to satisfy the amount to be secured by the attachment. The levying officer is not liable for a determination made in good faith under this subdivision.

(c) If a copy of the summons and complaint has not previously been served on the defendant, the instructions

to the levying officer shall instruct the levying officer to make the service at the same time the levying officer serves the defendant with a copy of the writ of attachment.

Legislative Committee Comment—1982 Addition

Comment. Section 488.020 continues the substance of former Section 488.030. The provision in subdivision (a) providing that a writ of attachment be directed “to any registered process server” is new and is consistent with Section 699.510 (writ of execution). See Section 488.080 (levy by registered process server).

§ 488.030. Instructions to levying officer

488.030. (a) The plaintiff shall give the levying officer instructions in writing. The instructions shall be signed by the plaintiff’s attorney of record or, if the plaintiff does not have an attorney of record, by the plaintiff. The instructions shall contain the information needed or requested by the levying officer to comply with the provisions of this title, including but not limited to:

(1) An adequate description of any property to be levied upon.

(2) A statement whether the property is a dwelling.

(3) If the property is a dwelling, whether it is real or personal property.

(b) Subject to subdivision (c), the levying officer shall act in accordance with the written instructions to the extent the actions are taken in conformance with the provisions of this title.

(c) Except to the extent the levying officer has actual knowledge that the information is incorrect, the levying officer may rely on any information contained in the written instructions.

Comment. Section 488.030 supersedes a portion of the instruction provision formerly included in Section 488.010 (a) and is drawn from Section 687.010 (Enforcement of Judgments Law). See also Section 488.040 (instructions to include name and address of persons to be served) and Section 488.020 (instructions concerning service of copy of summons and complaint).

§ 488.040. Instructions to include name and address of persons to be served

488.040. (a) If the levying officer is required by any provision of this title to serve any writ, order, notice, or other paper on any person, the plaintiff shall include in the instructions to the levying officer the correct name and address of the person. The plaintiff shall use reasonable diligence to ascertain the correct name and address of the person.

(b) Unless the levying officer has actual knowledge that the name or address included in the instructions is incorrect, the levying officer shall rely on the instructions in serving the writ, order, notice, or other paper on the person.

Comment. Section 488.040 supersedes a portion of the instruction provision formerly included in Section 488.010(a) and is drawn from Section 684.130 (Enforcement of Judgments Law).

§ 488.050. Deposit of levying officer's costs

488.050. (a) Except as otherwise provided by law:

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

(2) As a prerequisite to the taking of property into custody by the levying officer under this chapter, whether by keeper or otherwise, the plaintiff shall deposit with the levying officer a sum of money sufficient to pay the costs of taking the property and keeping it safely for a period not to exceed 15 days. If continuation of the custody of the property is required, the levying officer shall, from time to time, demand orally or in writing that the plaintiff deposit additional amounts to cover estimated costs for periods not to exceed 30 days each. A written demand may be mailed or delivered to the plaintiff. The plaintiff has not less than three business days after receipt of the demand within which to comply with the demand. If the amount demanded is not paid within the time specified in the oral or written demand, the levying officer shall release the property.

(b) The levying officer is not liable for failure to take or hold property unless the plaintiff has complied with the provisions of this section.

Comment. Subdivision (a) of Section 488.050 supersedes former Section 488.050 and conforms to Section 685.100 (Enforcement of Judgments Law). See the Comment to Section 685.100. The provision of former Section 488.050 requiring release of property to the defendant is not continued. Property is released to the proper person as prescribed by Section 488.730. See also Section 481.055 ("costs" defined). Subdivision (b) continues the substance of former subdivision (a) of Section 488.060.

§ 488.060. Notice of attachment

488.060. The notice of attachment shall inform the person notified of all of the following:

- (a) The capacity in which the person is notified.
- (b) The specific property which is sought to be attached.
- (c) The person's rights under the attachment, including the right to make a third-party claim pursuant to Division 4 (commencing with Section 720.010) of Title 9.
- (d) The person's duties under the attachment.

Comment. Section 488.060 continues the substance of former Section 488.020. The former section has been revised to correct a cross-reference and to make other nonsubstantive changes. The notice of attachment also must identify any person (other than the defendant) in whose name real property or growing crops, timber to be cut, or minerals and the like stands upon the records of the county. See Section 700.015 (adopted by reference by Section 488.315) and Section 700.020 (adopted by reference by Section 488.325). [See also Section 489.230 (notice to defendant that undertaking has been filed and right to object to undertaking).]

§ 488.070. Attachment of property in private place

488.070. If a writ of attachment has been issued and personal property sought to be attached under the writ is located in a private place of the defendant:

- (a) The levying officer shall comply with the provisions of Section 699.030.

(b) The plaintiff may obtain the relief provided under Section 699.030 in the manner and subject to the requirements of that section.

Comment. Section 488.070 is new and adopts by reference the procedure provided in the Enforcement of Judgments Law.

§ 488.080. Levy of attachment by registered process server

488.080. (a) A registered process server may levy under a writ of attachment on the following types of property:

(1) Real property, pursuant to Section 488.315.

(2) Growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead, pursuant to Section 488.325.

(3) Personal property in the custody of a levying officer, pursuant to Section 488.355.

(4) Equipment of a going business, pursuant to Section 488.375.

(5) Motor vehicles, vessels, mobilehomes, or commercial coaches used as equipment of a going business, pursuant to Section 488.385.

(6) Farm products or inventory of a going business, pursuant to Section 488.405.

(7) Personal property used as a dwelling, pursuant to subdivision (a) of Section 700.080.

(8) Deposit accounts, pursuant to Section 488.455 or 488.465.

(9) Property in a safe deposit box, pursuant to Section 488.460 or 488.465.

(10) Accounts receivable or general intangibles, pursuant to Section 488.470.

(11) Final money judgments, pursuant to Section 488.480.

(12) Interest of a defendant in personal property in the estate of a decedent, pursuant to Section 488.485.

(b) If a registered process server levies on property pursuant to subdivision (a), the registered process server shall do all of the following:

(1) Comply with the applicable levy, posting, and

service provisions of Article 2 (commencing with Section 488.300).

(2) Deliver any undertaking required by Section 488.465.

(3) Request any third person served to give a garnishee's memorandum to the levying officer in compliance with Section 488.610.

(c) Within five days after levy under this section, all of the following shall be filed with the levying officer:

(1) The writ of attachment.

(2) An affidavit of the registered process server stating the manner of levy performed.

(3) Proof of service of the copy of the writ and notice of attachment on other persons as required by Article 2 (commencing with Section 488.300).

(4) Instructions in writing, as required by the provisions of Section 488.030.

(d) Upon receipt of the fee provided by Section 26721 of the Government Code, the levying officer shall perform all other duties under the writ as if the levying officer had levied under the writ and shall return the writ to the court.

The levying officer is not liable for actions taken in conformance with the provisions of this title in reliance on information provided to the levying officer under subdivision (c) except to the extent that the levying officer has actual knowledge that the information is incorrect. Nothing in this subdivision limits any liability the plaintiff or registered process server may have if the levying officer acts on the basis of incorrect information provided under subdivision (c).

(e) The fee for services of a registered process server under this section may, in the court's discretion, be allowed as a recoverable cost. If allowed, the amount of the fee to be allowed is governed by Section 1032.8.

Comment. Section 488.080 is new and is drawn from Section 699.080 (Enforcement of Judgments Law). See the Comment to Section 699.080. See also Section 481.205 ("registered process server" defined).

§ 488.090. Manner of custody

488.090. Except as otherwise provided by statute, where the method of levy upon property requires that

property be taken into custody or where the levying officer is otherwise directed to take property into custody, the levying officer may do so by any of the following methods:

- (a) Removing the property to a place of safekeeping.
- (b) Installing a keeper.
- (c) Otherwise obtaining possession or control of the property.

Comment. Section 488.090 supersedes former Section 488.045 and conforms to Section 687.030 (Enforcement of Judgments Law).

§ 488.100. Levying officer's lien

488.100. The levying officer has a special lien, dependent upon possession, on personal property levied upon in the amount of the levying officer's costs for which an advance has not been made.

Comment. Section 488.100, which continues the substance of a portion of former Civil Code Section 3057, is the same as Section 687.050 (Enforcement of Judgments Law).

§ 488.110. Third-party claims

488.110. A third person shall claim an interest in property attached in the manner provided for third-party claims under Division 4 (commencing with Section 720.010) of Title 9.

Comment. Section 488.110 continues the substance of former Section 488.090.

§ 488.120. Effect of failure to give notice of attachment

488.120. In any case where property has been levied upon and, pursuant to a levy, a copy of the writ of attachment and a notice of attachment are required by statute to be posted or to be served on or mailed to the defendant or other person, failure to post, serve, or mail the copy of the writ and the notice does not affect the attachment lien created by the levy.

Comment. Section 488.120 is drawn from Section 699.550 (Enforcement of Judgments Law). See the Comment to Section 699.550. Section 488.120 continues the substance of portions of former Sections 488.310-488.430.

§ 488.130. Return of writ

488.130. (a) The levying officer to whom the writ of attachment is delivered shall return the writ to the court from which the writ issued, together with a report of the levying officer's actions. The return shall be made promptly in accordance with the plaintiff's instructions given to the levying officer but in no event later than 60 days after the levying officer receives the writ.

(b) The levying officer shall make a full inventory of property attached and return the inventory with the writ.

Comment. Subdivision (a) of Section 488.130 continues the substance of former Section 488.070 and is consistent with a portion of Section 699.560 (Enforcement of Judgments Law). Subdivision (b) continues the substance of a provision that appeared in former Section 488.080.

§ 488.140. Liability of levying officer

488.140 (a) The levying officer is not liable for actions taken in conformance with the provisions of this title, including actions taken in conformance with the provisions of this title in reliance on information contained in the written instructions of the plaintiff except to the extent the levying officer has actual knowledge that the information is incorrect. Nothing in this subdivision limits any liability the plaintiff may have if the levying officer acts on the basis of incorrect information given in the written instructions.

(b) Unless the levying officer is negligent in the care or handling of the property, the levying officer is not liable to either the plaintiff or the defendant for loss by fire, theft, injury, or damage of any kind to personal property while (1) in the possession of the levying officer either in a warehouse or other storage place or in the custody of a keeper or (2) in transit to or from a warehouse or other storage place.

Comment. Section 488.140 is consistent with Section 687.040 (Enforcement of Judgments Law). Subdivision (b) continues the substance of former Section 488.060(b).

Article 2. Methods of Levy

§ 488.300. Incorporated terms

488.300. If the method of levy under a writ of execution is incorporated by this article, for the purposes of this article references in Article 4 (commencing with Section 700.010) of Chapter 3 of Division 2 of Title 9 to:

(a) "Judgment creditor" shall be deemed references to the plaintiff.

(b) "Judgment debtor" shall be deemed references to the defendant.

(c) "Notice of levy" shall be deemed references to a notice of attachment.

(d) "Writ" shall be deemed references to a writ of attachment.

Comment. Section 488.300 facilitates the incorporation by reference in this article of the applicable method of levy under a writ of execution provided in the Enforcement of Judgments Law.

§ 488.305. Service of writ and notice of attachment on defendant

488.305. At the time of levy pursuant to this article or promptly thereafter, the levying officer shall serve a copy of the writ of attachment and a notice of attachment on the defendant.

Comment. Section 488.305 is drawn from Section 700.010 (Enforcement of Judgments Law). Section 488.305 continues the requirement of former Sections 488.310-488.430 that the defendant be given notice of attachment. The requirement of former law that notice be given within 15 days (see former Section 488.310) or 45 days (see former Section 488.330) is superseded by the requirement of Section 488.305 that notice be given promptly after levy. For the manner of service, see Section 482.070. Under Section 482.070, service may be made personally or by mail.

§ 488.315. Real property

488.315. To attach real property, the levying officer shall comply with Section 700.015 and the recorder shall index the copy of the writ of attachment and a notice of attachment as provided in that section.

Comment. Section 488.315 is new and supersedes former Section 488.310. See also Sections 481.203 (“real property” defined), 488.300 (incorporated terms). For the effect of the attachment lien created under this section, see Section 488.500(b).

§ 488.325. Growing crops, timber to be cut, minerals to be extracted

488.325. To attach (1) growing crops, (2) timber to be cut, or (3) minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead, the levying officer shall comply with Section 700.020 and the recorder shall index the copy of the writ of attachment and a notice of attachment as provided in that section.

Comment. Section 488.325 is new and supersedes a portion of former Section 488.360(c). See also Section 488.300 (incorporated terms). The provisions in Section 488.325 relating to attachment of minerals or the like (including oil and gas) to be extracted and accounts receivable resulting from the sale thereof at the wellhead or minehead were not found in prior attachment law. See the Comment to Section 700.020. Once the crops are harvested, the timber is cut, or the minerals are extracted, the property may be attached pursuant to Sections 488.335-488.365 (tangible personal property), 488.395 (keeper for farm products), or 488.405 (lien on farm products), whichever is appropriate. The levying officer or a receiver may cultivate, care for, harvest, pack, and sell the attached property, if necessary, pursuant to court order under Section 488.700. See also Sections 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant), 482.070 (manner of service).

§ 488.335. Tangible personal property in possession of defendant

488.335. Unless another method of attachment is provided by this article, to attach tangible personal property in the possession or under the control of the defendant, the levying officer shall take the property into custody.

Comment. Section 488.335 is drawn from Section 700.030 (Enforcement of Judgments Law) and continues the substance

of former Section 488.320(a). See also Sections 482.070 (manner of service), 488.090 (manner of taking property into custody), 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant).

§ 488.345. Tangible personal property in possession of third person

488.345. Unless another method of attachment is provided by this article, to attach tangible personal property in the possession or under the control of a third person, the levying officer shall comply with Section 700.040.

Comment. Section 488.345 supersedes subdivisions (a) and (d) of former Section 488.330. The method of levy provided by Section 700.040(a) continues the substance of former Section 488.330(a). Subdivision (b) of Section 700.040 supersedes former Section 488.330(d). See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.300 (incorporated terms), 488.305 (service of notice of attachment on defendant).

§ 488.355. Personal property in custody of levying officer

488.355. (a) To attach personal property in the custody of a levying officer, the plaintiff or levying officer shall comply with subdivision (a) of Section 700.050.

(b) The levying officer having custody of the property shall comply with the writs in the order they are received and is not subject to the provisions of Article 4 (commencing with Section 488.600).

Comment. Section 488.355 is new. Subdivision (b) is drawn from Section 700.050(b). See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.300 (incorporated terms), 488.305 (service of notice of attachment on defendant).

§ 488.365. Bailed goods not covered by negotiable document of title

488.365. To attach goods in the possession of a bailee (as defined in Section 7102 of the Commercial Code) other than one who has issued a negotiable document of title therefor, the levying officer shall comply with Section 700.060.

Comment. Section 488.365 is new. Attachment of property in the possession of a third person was formerly governed by Section 488.330. See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.300 (incorporated terms), 488.305 (service of notice of attachment on defendant).

§ 488.375. Equipment of going business

488.375. (a) Except as provided by Section 488.385, to attach equipment of a going business in the possession or under the control of the defendant, the levying officer shall file with the office of the Secretary of State a notice of attachment, in the form prescribed by the Secretary of State, which shall contain all of the following:

- (1) The name and mailing address of the plaintiff.
- (2) The name and last known mailing address of the defendant.
- (3) The title of the court where the action is pending and the cause and number of the action.
- (4) A description of the specific property attached.
- (5) A statement that the plaintiff has acquired an attachment lien on the specified property of the defendant.

(b) Upon presentation of a notice of attachment under this section for filing, and tender of the filing fee to the office of the Secretary of State, the notice of attachment shall be filed, marked, and indexed in the same manner as a financing statement. The fee for filing in the office of the Secretary of State is the same as the fee for filing a financing statement in the standard form.

(c) Upon the request of any person, the Secretary of State shall issue a certificate showing whether there is on file in that office on the date and hour stated therein any notice of attachment filed against the equipment of a particular person named in the request. If a notice of attachment is on file, the certificate shall state the date and hour of filing of each such notice and any notice affecting any such notice of attachment and the name and address of the plaintiff. The fee for the certificate issued pursuant to this subdivision is the same as the fee for a certificate issued pursuant to Section 9407 of the

Commercial Code. Upon request, the Secretary of State shall furnish a copy of any notice of attachment or notice affecting a notice of attachment for the fee for a copy prescribed by subdivision (2) of Section 9407 of the Commercial Code.

(d) The fee for filing, indexing, and furnishing filing data for a notice of extension of attachment is the same as the fee for a continuation statement under Section 9403 of the Commercial Code. The fee for filing, indexing, and furnishing filing data for a notice of release of attachment is the same as the fee for a statement of release under Section 9405 of the Commercial Code.

Comment. Subdivision (a) of Section 488.375 continues the substance of former Section 488.340(a). See Section 481.100 ("equipment" defined). As under former law, if there is doubt whether the property is equipment or a fixture, the plaintiff may desire to attach pursuant to both this section and Section 488.315 (real property). Since this section is limited to the attachment of equipment of a going business, Section 488.335 (tangible personal property in defendant's possession) provides the appropriate method of levy where the business has failed or ceased to operate. For the effect of a lien created under this section, see Section 488.500(c). See also Sections 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant).

Subdivision (b) is drawn from Section 697.570 (filing notice of judgment lien on personal property) and supersedes a portion of former Section 488.340(c). Subdivision (c) continues the substance of the first, second, and fourth sentences of former Section 488.340(d) and is drawn from Section 697.580. See also Com. Code § 9409 (combined certificate). Subdivision (d) supersedes a portion of former Section 488.340(c) and is drawn in part from a portion of Section 697.650(c). Subdivisions (b), (c), and (d) incorporate the fee provisions in the Commercial Code rather than provide specific fees as did former Section 488.340 for the sake of consistency.

§ 488.385. **Vehicle, vessel, mobilehome, or commercial coach that is equipment of going business**

488.385. (a) To attach a vehicle or vessel for which a certificate of ownership has been issued by the Department of Motor Vehicles, or a mobilehome or

commercial coach for which a certificate of title has been issued by the Department of Housing and Community Development, which is equipment of a going business in the possession or under the control of the defendant, the levying officer shall file with the appropriate department a notice of attachment, in the form prescribed by the appropriate department, which shall contain all of the following:

- (1) The name and mailing address of the plaintiff.
- (2) The name and last known mailing address of the defendant.
- (3) The title of the court where the action is pending and the cause and number of the action.
- (4) A description of the specific property attached.
- (5) A statement that the plaintiff has acquired an attachment lien on the specific property of the defendant.

(b) Upon presentation of a notice of attachment, notice of extension, or notice of release under this section for filing and tender of the filing fee to the appropriate department, the notice shall be filed and indexed. The fee for filing and indexing the notice is three dollars (\$3).

(c) Upon the request of any person, the department shall issue its certificate showing whether there is on file in that department on the date and hour stated therein any notice of attachment filed against the property of a particular person named in the request. If a notice of attachment is on file, the certificate shall state the date and hour of filing of each such notice of attachment and any notice affecting any such notice of attachment and the name and address of the plaintiff. The fee for the certificate issued pursuant to this subdivision is three dollars (\$3). Upon request, the department shall furnish a copy of any notice of attachment or notice affecting a notice of attachment for a fee of one dollar (\$1) per page.

Comment. Subdivision (a) of Section 488.385 continues the substance of former Section 488.350(a) and recognizes the transfer of jurisdiction over mobilehomes and commercial coaches to the Department of Housing and Community Development. See, *e.g.*, Health & Safety Code §§ 18075, 18075.29, 18076.21, 18077.1-18077.3. See also Veh. Code §§ 6300, 6301

(motor vehicles), 9919, 9920 (vessels). For the effect of a lien created under this section, see Section 488.500(d). Section 488.385 governs attachment of vehicles, vessels, mobilehomes, and commercial coaches that are equipment; this section does not deal with inventory (see Sections 488.395 and 488.405) or such items that are neither equipment nor inventory. See Sections 481.100 (“equipment” defined), 488.335 (levy on tangible personal property in defendant’s possession), 488.345 (levy on tangible personal property in third person’s possession), 488.355 (levy on property in custody of levying officer). See also Sections 487.010 (property subject to attachment), 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant), 488.425 (notice to legal owner), 488.500 (attachment lien).

Subdivision (b) is drawn from Section 697.570 (filing notice of judgment lien on personal property) and continues the first sentence of former Section 488.350(f). Subdivision (c) continues the substance of the second, third, and fourth sentences of former Section 488.350(f), but the fee for a certificate under subdivision (c) is raised from \$2 to \$3.

§ 488.395. Keeper for farm products, inventory, and cash proceeds of going business

488.395. Except as provided by Sections 488.325 and 488.405:

(a) To attach farm products or inventory of a going business in the possession or under the control of the defendant, the levying officer shall place a keeper in charge of the property for the period prescribed by subdivisions (b) and (c). During the keeper period, the business may continue to operate in the ordinary course of business provided that all sales are final and are for cash or its equivalent. For the purpose of this subdivision, a check is the equivalent of cash. The levying officer is not liable for accepting payment in the form of a cash equivalent. The keeper shall take custody of the proceeds from all sales unless otherwise directed by the plaintiff.

(b) Subject to subdivision (c), the period during which the business may continue to operate under the keeper is:

(1) Ten days, if the defendant is a natural person and the writ of attachment has been issued *ex parte* pursuant

to Article 3 (commencing with Section 484.510) of Chapter 4 or pursuant to Chapter 5 (commencing with Section 485.010).

(2) Two days, in cases not described in paragraph (1).

(c) Unless some other disposition is agreed upon by the plaintiff and the defendant, the levying officer shall take the farm products or inventory into exclusive custody at the earlier of the following times:

(1) At any time the defendant objects to placement of a keeper in charge of the business.

(2) At the conclusion of the applicable period prescribed by subdivision (b).

(d) A defendant described in paragraph (1) of subdivision (b) may claim an exemption pursuant to subdivision (b) of Section 487.020 by following the procedure set forth in subdivision (c) of Section 482.100 except that the requirement of showing changed circumstances under subdivision (a) of Section 482.100 does not apply. Upon a showing that the property is exempt pursuant to subdivision (b) of Section 487.020, the court shall order the release of the exempt property and may make such further order as the court deems appropriate to protect against frustration of the collection of the plaintiff's claim. The order may permit the plaintiff to attach farm products or inventory of the going business and proceeds or after-acquired property, or both, by filing pursuant to Section 488.405 and may provide reasonable restrictions on the disposition of the property previously attached.

Comment. Section 488.395 supersedes subdivisions (a) and (b) of former Section 488.360. See Sections 481.110 ("farm products" defined), 481.120 ("inventory" defined). The introductory clause of Section 488.395 recognizes exceptions to the method of levy provided by this section. Section 488.325 provides the exclusive method of attaching growing crops and timber to be cut. Section 488.405 provides an alternative method of attaching farm products and inventory and their cash proceeds by filing with the Secretary of State.

Subdivisions (a)-(c) of Section 488.395 continue the substance of former Section 488.360(a), except that subdivision (b) provides new rules governing the length of the keeper period. Former Section 488.360(a) provided a 10-day keeper in all cases,

whereas subdivision (b) of this section limits the 10-day keeper to defendants who may have the need to claim an exemption, *i.e.*, natural persons who have not had the opportunity at a noticed hearing to claim the necessities exemption provided by Section 487.020(b). Subdivision (d) continues the substance of former Section 488.360(b) but incorporates the procedure of Section 482.100(c).

§ 488.405. Alternative method of attaching farm products or inventory of going business by filing with Secretary of State

488.405. (a) This section provides an alternative method of attaching farm products or inventory of a going business in the possession or under the control of the defendant, but this section does not apply to property described in Section 488.325. This section applies if the plaintiff instructs the levying officer to attach the farm products or inventory under this section.

(b) To attach under this section farm products or inventory of a going business in the possession or under the control of the defendant, the levying officer shall file a notice of attachment with the Secretary of State.

(c) Except as provided in subdivisions (d) and (e), the filing of the notice of attachment gives the plaintiff an attachment lien on all of the following:

(1) The farm products or inventory described in the notice.

(2) Identifiable cash proceeds (as that term is used in Section 9306 of the Commercial Code).

(3) If permitted by the writ of attachment or court order, after-acquired property.

(d) The attachment lien created by the filing of the notice of attachment under this section does not extend to either of the following:

(1) A vehicle or vessel required to be registered with the Department of Motor Vehicles or a mobilehome or commercial coach required to be registered pursuant to the Health and Safety Code.

(2) The inventory of a retail merchant held for sale, except to the extent that the inventory of the retail merchant consists of durable goods having a unit retail

value of at least five hundred dollars (\$500). For the purposes of this paragraph, "retail merchant" does not include (A) a person whose sales for resale exceeded 75 percent in dollar volume of the person's total sales of all goods during the 12 months preceding the filing of the notice of attachment or (B) a cooperative association organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code (agricultural cooperative associations) or Part 3 (commencing with Section 13200) of Division 3 of Title 1 of the Corporations Code (Fish Marketing Act).

(e) If property subject to an attachment lien under this section becomes a fixture (as defined in Section 9313 of the Commercial Code), the attachment lien under this section is extinguished.

(f) The notice of attachment shall be in the form prescribed by the Secretary of State and shall contain all of the following:

(1) The name and mailing address of the plaintiff.

(2) The name and last known mailing address of the defendant.

(3) The title of the court where the action is pending and the cause and number of the action.

(4) A description of the farm products and inventory attached.

(5) A statement that the plaintiff has acquired an attachment lien on the described property and on identifiable cash proceeds (as that term is used in Section 9306 of the Commercial Code) and, if permitted by the writ of attachment or court order, on after-acquired property.

(g) Upon presentation of a notice of attachment under this section for filing and tender of the filing fee to the office of the Secretary of State, the notice of attachment shall be filed, marked, and indexed in the same manner as a financing statement. The fee for filing in the office of the Secretary of State is the same as the fee for filing a financing statement in the standard form.

(h) Upon the request of any person, the Secretary of State shall issue a certificate showing whether there is on file in that office on the date and hour stated therein any

notice of attachment filed against the farm products or inventory of a particular person named in the request. If a notice of attachment is on file, the certificate shall state the date and hour of filing of each such notice of attachment and any notice affecting any such notice of attachment and the name and address of the plaintiff. The fee for the certificate issued pursuant to this subdivision is the same as the fee for a certificate issued pursuant to Section 9407 of the Commercial Code. Upon request, the Secretary of State shall furnish a copy of any notice of attachment or notice affecting a notice of attachment for the fee for a copy prescribed by subdivision (2) of Section 9407 of the Commercial Code.

(i) The fee for filing, indexing, and furnishing filing data for a notice of extension of attachment is the same as the fee for a continuation statement under Section 9403 of the Commercial Code. The fee for filing, indexing, and furnishing filing data for a notice of release of attachment is the same as the fee for a statement of release under Section 9405 of the Commercial Code.

Comment. Section 488.405 supersedes former Section 488.360(c). See Sections 481.110 (“farm products” defined), 481.120 (“inventory” defined). This section provides an alternate to the method of attaching farm products and inventory under Section 488.395 (keeper levy). As under former Section 488.360(c), Section 488.405 provides the plaintiff with a floating lien on the defendant’s farm products or inventory, cash proceeds, and after-acquired property. Subdivision (c) provides for the automatic coverage of identifiable cash proceeds, consistent with Commercial Code Sections 9203(3) and 9306(3)(b). Former Section 488.360(c) required specific authorization in a writ or order before identifiable cash proceeds were covered by the lien. Subdivisions (d) and (e) are provisions new to the Attachment Law that prescribe limitations on the property covered by the lien. These limitations are the same as those applicable to a judgment lien on personal property. See Section 697.530(d), (e). For a limitation on the coverage of the lien in insolvency proceedings, see Section 697.620 (incorporated by Section 488.500(c)). See also Sections 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant).

Subdivision (f) continues the substance of former Section 488.360 (c) pertaining to the form of the notice of attachment

and is analogous to Section 697.550 (contents of notice of judgment lien on personal property).

Subdivision (g) continues the substance of a portion of the sixth sentence of former Section 488.360(c) and is analogous to Section 697.570 (filing notice of judgment lien on personal property). Subdivision (h) continues the substance of the seventh, eighth, and tenth sentences of former Section 488.360(c) and is analogous to Section 697.580. See also Com. Code § 9409 (combined certificate). Subdivision (i) supersedes a portion of the sixth sentence of former Section 488.360(c) and is drawn in part from a portion of Section 697.650(c). Subdivisions (g), (h), and (i) incorporate the fee provisions in the Commercial Code rather than provide specific fees as did former Section 488.360(c).

§ 488.415. Personal property used as dwelling

488.415. To attach personal property used as a dwelling, the levying officer shall comply with Section 700.080.

Comment. Section 488.415 is new. See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.300 (incorporated terms), 488.305 (service of notice of attachment on defendant).

§ 488.425. Vehicle, vessel, mobilehome, or commercial coach for which certificate of ownership issued

488.425. If a vehicle or vessel is attached and a certificate of ownership has been issued by the Department of Motor Vehicles for the vehicle or vessel and the certificate of ownership is still in effect, or if a mobilehome or commercial coach is attached and a certificate of title has been issued by the Department of Housing and Community Development for the mobilehome or commercial coach and the certificate of title is still in effect, the levying officer shall comply with Section 700.090.

Comment. Section 488.425 supersedes former Section 488.350(c). See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.300 (incorporated terms), 488.305 (service of notice of attachment on defendant).

§ 488.435. Chattel paper

488.435. (a) To attach chattel paper, the levying officer shall comply with Section 700.100.

(b) In addition to any other rights created by a levy on chattel paper, the levy creates a lien on the defendant's rights in specific goods subject to the chattel paper.

Comment. Section 488.435 supersedes former Section 488.380. See Section 481.040 ("chattel paper" defined). Subdivision (a) of Section 700.100 continues the method of levy provided by former Section 488.380(a). Subdivision (b) of Section 700.100 supersedes former Section 488.380(c) and provides new preconditions for giving notice of attachment to the account debtor. Subdivision (b) of Section 488.435 is the same as Section 700.100(c). See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.300 (incorporated terms), 488.305 (service of notice of attachment on defendant).

§ 488.440. Instruments

488.440. To attach an instrument, the levying officer shall comply with Section 700.110.

Comment. Section 488.440 supersedes the portions of former Section 488.400 relating to attachment of negotiable instruments. See Section 481.117 ("instrument" defined). Subdivision (a) of Section 700.110 continues the method of levy provided by former Section 488.400(a). Subdivision (b) of Section 700.110 supersedes former Section 488.400(c) and provides new preconditions for giving notice of attachment to the obligor. See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.300 (incorporated terms), 488.305 (service of notice of attachment on defendant).

§ 488.445. Negotiable documents of title

488.445. To attach a negotiable document of title, the levying officer shall comply with Section 700.120.

Comment. Section 488.445 continues the substance of a portion of former Section 488.400(a) relating to the method of attachment of negotiable documents. See also Sections 481.090 ("document of title" defined), 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.300 (incorporated terms), 488.305 (service of notice of attachment on defendant).

§ 488.450. Securities

488.450. To attach a security, the levying officer shall comply with Section 8317 of the Commercial Code.

Comment. Section 488.450 supersedes former Section 488.410 and is drawn from Section 700.130 (Enforcement of Judgments Law). See Section 481.210 ("security" defined). The substance of former Section 488.410 relating to attachment of securities is prescribed in Commercial Code Section 8317. See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant).

§ 488.455. Deposit accounts

488.455. (a) To attach a deposit account, the levying officer shall personally serve a copy of the writ of attachment and a notice of attachment on the financial institution with which the deposit account is maintained.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of attachment and a notice of attachment on any third person in whose name the deposit account stands.

(c) Subject to Section 488.465, during the time the attachment lien is in effect, the financial institution shall not honor a check or other order for the payment of money drawn against, and shall not pay a withdrawal from, the deposit account that would reduce the deposit account to an amount less than the amount attached. For the purposes of this subdivision, in determining the amount of the deposit account, the financial institution shall not include the amount of items deposited to the credit of the deposit account that are in the process of being collected.

(d) During the time the attachment lien is in effect, the financial institution is not liable to any person for any of the following:

(1) Performance of the duties of a garnishee under the attachment.

(2) Nonpayment of a check or other order for the payment of money drawn or presented against the deposit account where the nonpayment is pursuant to the requirements of subdivision (c).

(3) Refusal to pay a withdrawal from the deposit account where the refusal is pursuant to the requirements of subdivision (c).

(e) When the amount attached pursuant to this section is paid to the levying officer, the attachment lien on the attached deposit account terminates.

Comment. Section 488.455 supersedes former Section 488.390 and is drawn from Section 700.140 (Enforcement of Judgments Law). Subdivision (a) continues the substance of former Section 488.390(a) relating to the method of attachment of deposit accounts. A deposit account evidenced by a negotiable certificate of deposit is a negotiable instrument and may be attached pursuant to Section 488.440, not pursuant to this section. See Sections 481.080 (incorporating definition of "deposit account" in Commercial Code Section 9105) and 481.117 (incorporating definition of "instrument" in Commercial Code Section 9105 which includes a "negotiable instrument" as defined by Commercial Code Section 3104).

Subdivision (b) continues the substance of a portion of former Section 488.390(b). See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant).

Subdivision (c) is a new provision that was not found in former attachment law. It is comparable to Section 700.140(c). The introductory clause of subdivision (c) recognizes that special rules apply where the deposit account stands in the name of a third person.

Subdivision (d) continues the substance of former Section 488.390(c).

§ 488.460. Safe deposit boxes

488.460. (a) To attach property in a safe deposit box, the levying officer shall personally serve a copy of the writ of attachment and a notice of attachment on the financial institution with which the safe deposit box is maintained.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of attachment and a notice of attachment on any third person in whose name the safe deposit box stands.

(c) Subject to Section 488.465, during the time the attachment lien is in effect, the financial institution shall

not permit the removal of any of the contents of the safe deposit box except pursuant to the attachment.

(d) The levying officer may first give the person in whose name the safe deposit box stands an opportunity to open the safe deposit box to permit the removal pursuant to the attachment of the attached property. The financial institution may refuse to permit the forcible opening of the safe deposit box to permit the removal of the attached property unless the plaintiff pays in advance the cost of forcibly opening the safe deposit box and of repairing any damage caused thereby.

(e) During the time the attachment lien is in effect, the financial institution is not liable to any person for any of the following:

(1) Performance of the duties of a garnishee under the attachment.

(2) Refusal to permit access to the safe deposit box by the person in whose name it stands.

(3) Removal of any of the contents of the safe deposit box pursuant to the attachment.

Comment. Section 488.460 is new and is drawn from Section 700.150 (Enforcement of Judgments Law). Former law providing methods of attachment did not provide special rules governing attachment of property in a safe deposit box, unless the box was rented to a person other than the defendant. See former Section 489.240. See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant).

§ 488.465. Deposit accounts and safe deposit boxes not exclusively in name of defendant

488.465. (a) The provisions of this section apply in addition to the provisions of Sections 488.455 and 488.460 if any of the following property is attached:

(1) A deposit account standing in the name of a third person or in the names of both the defendant and a third person.

(2) Property in a safe deposit box standing in the name of a third person or in the names of both the defendant and a third person.

(b) The plaintiff shall provide, and the levying officer shall deliver to the financial institution at the time of levy,

an undertaking given by a corporate surety authorized to execute the undertaking by Section 1056. The undertaking shall be for not less than twice the amount of the attachment or, if a lesser amount in a deposit account is sought to be levied upon, not less than twice the lesser amount. The undertaking shall indemnify any third person rightfully entitled to the property against actual damage by reason of the attachment of the property and shall assure to the third person the return of the property upon proof of the person's right thereto. The undertaking need not name the third person specifically but may refer to the third person generally in the same manner as in this subdivision. If the provisions of this subdivision are not satisfied, the attachment is ineffective and the financial institution shall not comply with the requirements of this section or with the attachment.

(c) Upon delivery of the undertaking to the financial institution, the financial institution shall immediately mail or deliver a notice of the delivery of the undertaking to the third person in whose name the deposit account or safe deposit box stands. If mailed, the notice shall be sent by registered or certified mail addressed to the person's last address known to the financial institution. The financial institution shall deliver the undertaking as directed by the third person.

(d) Notwithstanding Article 4 (commencing with Section 488.600), from the time of levy and delivery of the undertaking to the financial institution until 15 days after the notice is mailed or delivered under subdivision (c) if no objection to the undertaking is made or, if such objection is made, until the court determines that the undertaking is sufficient, the financial institution shall not do any of the following:

(1) Honor a check or other order for the payment of money drawn against, or pay a withdrawal from, the deposit account that would reduce the deposit account to less than the amount attached. For the purposes of this paragraph, in determining the amount of the deposit account, the financial institution shall not include the amount of items deposited to the credit of the deposit account that are in the process of being collected.

(2) Permit the removal of any of the contents of the safe deposit box except pursuant to the writ.

(e) The financial institution is not liable to any person for any of the following during the period prescribed in subdivision (d):

(1) Nonpayment of a check or other order for the payment of money drawn or presented against the deposit account where the nonpayment is pursuant to the requirements of subdivision (d).

(2) Refusal to pay a withdrawal from the deposit account where the refusal is pursuant to the requirements of subdivision (d).

(3) Refusal to permit access to the safe deposit box by the person in whose name it stands.

(4) Removal of any of the contents of the safe deposit box pursuant to the attachment.

(f) An objection to the undertaking may be made by any person claiming to be rightfully entitled to the property attached. The objection shall be made in the manner provided by Article 1 (commencing with Section 489.010) of Chapter 9.

(g) Upon the expiration of the period prescribed in subdivision (d), the financial institution shall comply with the attachment and Sections 488.455 and 488.460 apply.

Comment. Section 488.465 continues the substance of former Section 489.240 and contains additional provisions drawn from Section 700.160 (Enforcement of Judgments Law). Subdivision (a) of Section 488.465 continues the substance of former Section 489.240(a). See also Section 481.113 ("financial institution" defined). Subdivision (b) continues the substance of former Section 489.240(b). Subdivision (f) continues the substance of former Section 489.240(c).

§ 488.470. Accounts receivable and general intangibles

488.470. (a) Unless another method of attachment is provided by this article, to attach an account receivable or general intangible, the levying officer shall personally serve a copy of the writ of attachment and a notice of attachment on the account debtor.

(b) If an attachment is made under subdivision (a) and payments on the account receivable or general

intangible are made to a person other than the defendant (whether pursuant to a security agreement, assignment for collection, or otherwise), the levying officer shall, if so instructed by the plaintiff, personally serve a copy of the writ of attachment and a notice of attachment on such third person. Service of the copy of the writ and notice of attachment on the third person is an attachment of any amounts owed to the defendant by the third person.

Comment. Section 488.470 supersedes former Section 488.370 and is drawn from Section 700.170 (Enforcement of Judgments Law). Section 488.470 uses the term "general intangible" in place of "choses in action" which was used in former Section 488.370. See Section 481.115 ("general intangibles" defined). Subdivision (a) continues the method of levy provided by former Section 488.370(a). Subdivision (b) supersedes a portion of former Section 488.370(b) providing for service on a coobligee. See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant).

§ 488.475. Attachment of property that is subject of pending action or proceeding

488.475. (a) The following property may be attached pursuant to this article notwithstanding that the property levied upon is the subject of a pending action or special proceeding:

- (1) Real property.
- (2) Growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead.
- (3) Tangible personal property in the possession or under the control of the defendant or in the custody of a levying officer.
- (4) The interest of a defendant in personal property in the estate of a decedent, whether the interest arises by testate or intestate succession.

(b) Except as provided in subdivision (a), attachment of property that is the subject of an action or special proceeding pending at the time of the attachment is not effective.

(c) If attachment is attempted but is ineffective under subdivision (b) and the levying officer has requested a garnishee's memorandum under Section 488.610 in connection with the ineffective attachment, the garnishee's memorandum shall include the following information in addition to that required by Section 488.610:

(1) A statement that the attachment of the property is not effective because the property is the subject of a pending action or special proceeding.

(2) The title of the court and the cause and number of the pending action or proceeding.

(d) For the purpose of this section, an action or proceeding is pending from the time the action or proceeding is commenced until judgment has been entered and the time for appeal has expired or, if an appeal is filed, until the appeal has been finally determined.

(e) Nothing in this section affects or limits the right of the plaintiff to obtain a lien pursuant to Article 3 (commencing with Section 491.410) of Chapter 11.

Comment. Section 488.475 is new and is drawn from Section 700.180 (Enforcement of Judgments Law). See also Sections 491.410-491.460 (lien in pending action or proceeding).

§ 488.480. Final money judgments

488.480. (a) As used in this section, "final money judgment" means a money judgment after the time for appeal from the judgment has expired or, if an appeal is filed, after the appeal has been finally determined.

(b) To attach a final money judgment, the levying officer shall file a copy of the writ of attachment and a notice of attachment with the clerk of the court that entered the final money judgment. The court clerk shall endorse upon the judgment a statement of the existence of the attachment lien and the time it was created. If an abstract of the judgment is issued, it shall include a statement of the attachment lien in favor of the plaintiff.

(c) At the time of levy or promptly thereafter, the levying officer shall personally serve a copy of the writ of attachment and a notice of attachment on the judgment

debtor obligated to pay the final money judgment attached. The filing with the court clerk pursuant to subdivision (b) is not, of itself, notice to the judgment debtor obligated to pay the attached judgment so as to invalidate any payments made by him or her that would otherwise be applied to the satisfaction of the attached judgment.

Comment. Section 488.480 supersedes former Section 488.420 and is drawn from Section 700.190 (Enforcement of Judgments Law). Subdivision (a) continues the substance of former Section 488.420(c). Subdivision (b) supersedes former Section 488.420(a) which required both filing and service on the defendant's judgment debtor to attach a judgment. Subdivision (c) provides for notice to the defendant's judgment debtor, but such notice is not a prerequisite of a valid attachment. See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant).

§ 488.485. Interests in personal property of estate of decedent

488.485. (a) To attach the interest of a defendant in personal property in the estate of a decedent, whether the interest arises by testate or intestate succession, the levying officer shall personally serve a copy of the writ of attachment and a notice of attachment on the personal representative of the decedent. The attachment does not impair the powers of the representative over the property for the purposes of administration.

(b) The personal representative shall report the attachment to the court in which the estate is being administered when any petition for distribution is filed. If a decree orders distribution to the defendant, the court making the decree shall order the attached property to be delivered to the levying officer. The property may not be delivered to the levying officer until the decree distributing the property has become final. To the extent the property delivered to the levying officer is not necessary to satisfy the attachment, it shall be released to the defendant.

(c) Promptly after the property is delivered to the levying officer pursuant to subdivision (b), the levying

officer shall serve a notice describing the property on the defendant. Notwithstanding Sections 484.070, 484.350, 484.530, and 485.610, a claim of exemption for the property described in the notice may be made within 10 days after the notice was served on the defendant.

Comment. Section 488.485 supersedes former Section 488.430 and is drawn from Section 700.200(a)-(c) (Enforcement of Judgments Law). Subdivision (a) does not continue the requirement of former Section 488.430 that the writ and notice be filed in the office of the court clerk as a condition of a valid attachment. See also Sections 482.070 (manner of service), 488.120 (effect of failure to give notice of attachment), 488.305 (service of notice of attachment on defendant).

Article 3. Lien of Attachment

§ 488.500. Attachment lien

488.500. (a) A levy on property under a writ of attachment creates an attachment lien on the property from the time of levy until the expiration of the time provided by Section 488.510.

(b) Except as provided in subdivisions (c) and (d), if property subject to an attachment lien is transferred or encumbered, the property transferred or encumbered remains subject to the lien after the transfer or encumbrance to the same extent that the property would remain subject to an execution lien pursuant to Sections 697.720 to 697.750, inclusive.

(c) Except as otherwise provided in this title, if equipment is attached pursuant to Section 488.375 or farm products or inventory is attached pursuant to Section 488.405, the attachment lien on the property covered by the attachment lien has the same force and effect as a judgment lien on personal property created at the same time would have pursuant to Sections 697.590 to 697.620, inclusive.

(d) If equipment consisting of a vehicle, vessel, mobilehome, or commercial coach is attached pursuant to Section 488.385, the attachment lien on the specified property does not affect the rights of a person who is a bona fide purchaser or encumbrancer and obtains possession of both the property and its certificate of

ownership issued by the Department of Motor Vehicles or its certificate of title or registration card issued by the Department of Housing and Community Development. If the levying officer obtains possession of the certificate of ownership or certificate of title or registration card, the attachment lien has the priority of the lien of a lien creditor under Section 9301 of the Commercial Code as of the time possession is obtained by the levying officer. If the levying officer does not obtain possession of the certificate of ownership or certificate of title or registration card, the attachment lien has the same force and effect as an unperfected security interest that attached at the same time as the notice of attachment was filed.

(e) If an attachment lien is created on property that is subject to the lien of a temporary protective order or a lien under Article 1 (commencing with Section 491.110) of Chapter 11, the priority of the attachment lien relates back to the date the earlier lien was created. Nothing in this subdivision affects priorities or rights of third persons established while the lien of the temporary protective order or the lien under Article 1 (commencing with Section 491.110) of Chapter 11 was in effect as determined under the law governing the effect of such lien.

Comment. Section 488.500 supersedes former Section 488.500. Subdivision (a) states the effective date of attachment liens provided in subdivisions (b)-(h) of the former section. This is consistent with Section 697.710 (Enforcement of Judgments Law). The provision of subdivision (a) of former Section 488.500 concerning the effect of an attachment lien is superseded by subdivisions (b), (c), and (d).

Subdivision (b) provides the general rule which incorporates the provisions governing the effect of execution liens. See the Comments to Sections 697.720-697.750.

Subdivision (c) supersedes the eleventh sentence of subdivision (c) of former Section 488.360 (farm products and inventory). Note that the lien on inventory under Section 488.405 does not attach to (1) vehicles, vessels, mobilehomes, or commercial coaches required to be registered or (2) inventory of a retail merchant unless the inventory consists of durable goods having a unit retail value of at least \$500. See subdivision

(d) of Section 488.405. Likewise, the lien does not continue if the property becomes a fixture. See Section 488.405(e). The provision pertaining to the attachment lien on equipment is new; former Section 488.340 provided no special rules governing the effect of an attachment lien on equipment.

Subdivision (d) continues the substance of subdivision (d) of former Section 488.350 and provides new rules governing the effect and priority of an attachment lien depending upon whether the levying officer has obtained possession of the certificate of ownership of a vehicle or vessel or the certificate of title or registration card of a mobilehome or commercial coach. Possession of the certificate may be obtained in an appropriate case by a turnover order issued pursuant to Section 482.080. See also Health & Safety Code §§ 18077.1, 18077.2; Veh. Code §§ 6300, 6301, 9919, 9920.

Subdivision (e) continues the substance of subdivision (i) of former Section 488.500 and a provision formerly contained in subdivision (b) of Section 486.110. As to the effect of a lien of a temporary protective order, see Section 486.110. As to the lien of an examination proceeding under Article 1 (commencing with Section 491.110) of Chapter 11, see Sections 491.110 and 491.190 (creation and duration of liens), 491.200 (effect of lien).

§ 488.510. Duration of lien

488.510. (a) Unless sooner released or discharged, any attachment shall cease to be of any force or effect, and the property levied upon shall be released from the operation of the attachment, at the expiration of three years from the date of issuance of the writ of attachment under which the levy was made.

(b) Notwithstanding subdivision (a), upon motion of the plaintiff, made not less than 10 or more than 60 days before the expiration of the three-year period and upon notice of not less than five days to the defendant whose property is attached, the court in which the action is pending may, by order filed prior to the expiration of the period and for good cause, extend the time of the attachment for a period not exceeding one year from the date on which the attachment would otherwise expire.

(c) The levying officer shall serve notice of the order upon any person holding property pursuant to an attachment and shall record or file the notice in any office

where the writ and notice of attachment are recorded or filed prior to the expiration of the period described in subdivision (a) or any extension thereof. Where the attached property is real property, the plaintiff or the plaintiff's attorney, instead of the levying officer, may record the required notice.

(d) Any attachment may be extended from time to time in the manner prescribed in this section, but the maximum period of the attachment, including the extensions, shall not exceed eight years from the date of issuance of the writ of attachment under which the levy of attachment was made.

(e) The death of the defendant whose property is attached does not terminate the attachment.

Comment. Section 488.510 continues former Section 488.510 without change.

Article 4. Duties and Liabilities of Third Persons After Levy

§ 488.600. Duties and liabilities of third persons

488.600. (a) Sections 701.010, 701.020, 701.040, 701.050, and 701.060 prescribe duties and liabilities of a third person under a levy made under this title.

(b) For the purposes of this section, references in Sections 701.010, 701.020, 701.040, 701.050, and 701.060 to:

(1) "Amount required to satisfy the judgment" shall be deemed references to the amount required to satisfy the amount to be secured by the attachment.

(2) "Execution lien" or "lien" shall be deemed references to the attachment lien.

(3) "Judgment creditor" shall be deemed references to the plaintiff.

(4) "Judgment debtor" shall be deemed references to the defendant.

(5) "Levy" shall be deemed references to levy of attachment.

(6) "Notice of levy" shall be deemed references to notice of attachment.

(7) "Release" of property shall be deemed references to release of property pursuant to this title.

(8) "Satisfaction or discharge of the judgment" shall be deemed references to the satisfaction or termination of the attachment.

(9) "Writ" or "writ of execution" shall be deemed references to a writ of attachment.

Comment. Section 488.600 makes applicable to attachment the provisions of the Enforcement of Judgments Law governing the duties and liabilities of third persons after levy. See also Section 488.610 (garnishee's memorandum). Section 488.600 supersedes subdivision (b) of former Section 488.330 and portions of former Sections 488.540 and 488.550.

§ 488.610. Garnishee's memorandum

488.610. (a) At the time of service of a copy of the writ of attachment and a notice of attachment on a third person, the levying officer shall request the third person to give the levying officer a garnishee's memorandum containing the information required by this section. Within 10 days after the request is made, the third person shall mail or deliver the garnishee's memorandum to the levying officer whether or not the levy is effective.

(b) The garnishee's memorandum shall be executed under oath and shall contain the following information:

(1) A description of any property of the defendant sought to be attached that is not delivered to the levying officer and the reason for not delivering the property.

(2) A statement of the amount and terms of any obligation to the defendant sought to be attached that is due and payable and is not paid to the levying officer and the reason for not paying the obligation.

(3) A statement of the amount and terms of any obligation to the defendant sought to be attached that is not due and payable at the time of levy.

(4) A description of claims and rights of other persons to the attached property or obligation that are known to the third person and the names and addresses of those other persons.

(c) If a garnishee's memorandum is received from the third person, the levying officer shall promptly mail or deliver a copy of the memorandum to the plaintiff and attach the original to the writ when it is returned to the

court. If a garnishee's memorandum is not received from the third person, the levying officer shall so state in the return.

(d) Except as provided in subdivisions (e) and (f), if a third person does not give the levying officer a garnishee's memorandum within the time provided in subdivision (a) or does not provide complete information, the third person may, in the court's discretion, be required to pay the costs and reasonable attorney's fees incurred in any proceedings to obtain the information required in the garnishee's memorandum.

(e) Notwithstanding subdivision (a), where a deposit account or property in a safe deposit box is attached, the financial institution need not give a garnishee's memorandum to the levying officer if the financial institution fully complies with the levy and, if a garnishee's memorandum is required, the garnishee's memorandum need provide information with respect only to property which is carried on the records available at the office or branch where the levy is made.

(f) Notwithstanding subdivision (a), the third person need not give a garnishee's memorandum to the levying officer if both of the following conditions are satisfied:

(1) The third person has delivered to the levying officer all of the property sought to be attached.

(2) The third person has paid to the levying officer the amount due at the time of levy on any obligation to the defendant that was attached and there is no additional amount that thereafter will become payable on the obligation levied upon.

Comment. Section 488.610 supersedes former Section 488.080(b) and is drawn from Section 701.030 (Enforcement of Judgments Law). See the Comment to Section 701.030. Subdivision (a) continues the substance of a portion of the first sentence and the second sentence of former Section 488.080(b). Subdivision (b) supersedes the portion of former Section 488.080(b) that prescribed the information to be given by the garnishee. Subdivision (b) does not require the garnishee to state the amount owed, if the entire debt is paid over to the levying officer. Subdivision (c) continues the substance of the fourth sentence of former Section 488.080(b). Subdivision (d) continues the substance of the last sentence of former Section 488.080(b);

the liability for attorney's fees is new to the Attachment Law. Subdivisions (e) and (f) are consistent with the comparable provisions of Section 701.030.

Article 5. Management and Disposition of Attached Property

§ 488.700. Sale or receiver for attached property

488.700. (a) If property has been or is sought to be attached, the court may appoint a receiver or order the levying officer to take any action the court orders that is necessary to preserve the value of the property, including but not limited to selling the property, if the court determines that the property is perishable or will greatly deteriorate or greatly depreciate in value or that for some other reason the interests of the parties will be best served by the order. An order may be made under this subdivision upon application of the plaintiff, the defendant, or a person who has filed a third-party claim pursuant to Division 4 (commencing with Section 720.010) of Title 9. The application shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, the application may be made ex parte.

(b) If the levying officer determines that property is extremely perishable or will greatly deteriorate or greatly depreciate in value before a court order pursuant to subdivision (a) could be obtained, the levying officer may take any action necessary to preserve the value of the property or may sell the property. The levying officer is not liable for a determination made in good faith under this subdivision.

(c) Except as otherwise provided by order of the court, a sale of the property pursuant to this section shall be made in the manner provided by Article 6 (commencing with Section 701.510) of Chapter 3 of Division 2 of Title 9 and the proceeds shall be deposited in the court to abide the judgment in the action. Notwithstanding subdivisions (b) and (d) of Section 701.530, notice of sale shall be posted and served at a

reasonable time before sale, considering the character and condition of the property.

(d) If a receiver is appointed, the court shall fix the daily fee of the receiver and may order the plaintiff to pay the fees and expenses of the receiver in advance or may direct that the whole or any part of the fees and expenses be paid from the proceeds of any sale of the property. Except as otherwise provided in this section, 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 488.700 supersedes former Section 488.530 and is drawn from Section 699.070 (Enforcement of Judgments Law).

§ 488.710. Endorsement and collection of certain instruments by levying officer

488.710. (a) As used in this section, "instrument" means a check, draft, money order, or other order for the withdrawal of money from a financial institution, the United States, any state, or any public entity within any state..

(b) If an instrument is payable to the defendant on demand and comes into the possession of a levying officer pursuant to this title, the levying officer shall promptly endorse and present the instrument for payment.

(c) The levying officer shall endorse the instrument by writing on the instrument (1) the name of the defendant, (2) the name and official title of the levying officer, and (3) the title of the court and the cause in which the writ was issued. The endorsement is as valid as if the instrument were endorsed by the defendant. No financial institution or public entity on which the instrument is drawn is liable to any person for payment of the instrument to the levying officer rather than to the defendant by reason of the endorsement. No levying officer is liable by reason of endorsing, presenting, and obtaining payment of the instrument. The funds or credit resulting from the payment of the instrument shall be held by the levying officer subject to the lien of attachment.

(d) If it appears from the face of the instrument that it has been tendered to the defendant in satisfaction of a claim or demand and that endorsement of the instrument is considered a release and satisfaction by the defendant of the claim or demand, the levying officer shall not endorse the instrument unless the defendant has first endorsed it to the levying officer. If the defendant does not endorse the instrument to the levying officer, the levying officer shall hold the instrument for 30 days and is not liable to the defendant or to any other person for delay in presenting it for payment. At the end of the 30-day holding period, the levying officer shall return the instrument to the maker.

Comment. Section 488.710 supersedes former Section 488.520 and is drawn from Section 687.020 (Enforcement of Judgments Law). The provision in subdivision (d) for the return of an instrument to the maker after 30 days in certain circumstances is new to attachment law.

§ 488.720. Release of property in excess of that needed to satisfy amount secured

488.720. (a) The defendant may apply by noticed motion to the court in which the action is pending or in which the judgment in the action was entered for an order releasing the attachment of property to the extent that the value of the defendant's interest in the property clearly exceeds the amount necessary to satisfy the amount to be secured by the attachment.

(b) The notice of motion shall state the grounds on which the motion is based and shall be accompanied by an affidavit supporting any factual issues raised and points and authorities supporting any legal issues raised.

(c) At the hearing on the motion, the court shall determine the value of the defendant's interest in the property and order the release of the attachment of the property to the extent that the value of the defendant's interest in the property attached clearly exceeds the amount necessary to satisfy the amount to be secured by the attachment. After entry of judgment in the action in which the property was attached, the court shall also take into consideration in determining whether the

attachment is clearly excessive the value of any property not attached in the action that (1) has been levied upon pursuant to a writ of execution issued to satisfy the judgment in the action or (2) otherwise has been sought to be applied to the satisfaction of the judgment in the action.

(d) The court's determinations shall be made upon the basis of the pleadings and other papers in the record; but, upon good cause shown, the court may receive and consider at the hearing additional evidence, oral or documentary, and additional points and authorities, or it may continue the hearing for the production of the additional evidence or points and authorities.

Legislative Committee Comment—1982 Addition

Comment. Section 488.720 continues the substance of former Section 488.555, but the second sentence of subdivision (c) is new. Subdivision (c) of Section 488.720 also supersedes a portion of former Section 684.2 (satisfaction first from attached property).

§ 488.730. Release of attached property

488.730. (a) The levying officer shall release attached property when the levying officer receives a written direction to release the property from the plaintiff's attorney of record or, if the plaintiff does not have an attorney of record, from the plaintiff or when the levying officer receives a certified copy of a court order for release or when otherwise required to release the property. The release extinguishes any attachment lien in favor of the plaintiff on the property released.

(b) If the property to be released has been taken into custody under the levy, it shall be released to the person from whom it was taken unless otherwise ordered by the court. If the person does not claim the property to be released, the levying officer shall retain custody of the property and shall serve on the person a notice of where possession of the property may be obtained. If the person does not claim the property within 30 days after the notice is served, the levying officer shall sell the property (other than cash and property which does not have a value exceeding its face value) in the manner provided by Article 6 (commencing with Section 701.510) of

Chapter 3 of Division 2 of Title 9. The levying officer shall deposit the proceeds of sale and cash, after first deducting the levying officer's costs, with the county treasurer of the county where the property is located payable to the order of the person. If the amount deposited is not claimed by the person or the legal representative of the person within five years after the deposit is made, by making application to the treasurer or other official designated by the county, it shall be paid into the general fund of the county.

(c) If the property to be released has not been taken into custody under the levy, the levying officer shall release the attachment by issuing a written notice of release and serving it on the person who was served with a copy of the writ and a notice of attachment to create the lien.

(d) If the property to be released was levied upon by recording or filing a copy of the writ and a notice of attachment, the levying officer shall record or file a written notice of release in the same office.

(e) The levying officer is not liable for releasing an attachment in accordance with this section and no other person is liable for acting in conformity with the release.

Comment. Section 488.730 supersedes former Section 488.560 and is drawn from Section 699.060 (Enforcement of Judgments Law). See also Sections 481.055 ("costs" defined), 482.070 (manner of service).

§ 488.740. Release on judgment for defendant

488.740. If the defendant recovers judgment against the plaintiff and no timely motion for vacation of judgment or for judgment notwithstanding the verdict or for a new trial is filed and served and is pending and no appeal is perfected and undertaking executed and filed as provided in Section 921, any undertaking received from the defendant in the action, all the proceeds of sales and money collected by the levying officer, and all the property attached remaining in the levying officer's hands shall be delivered to the person from whom it was collected or taken, unless otherwise ordered by the court;

and the court shall order the discharge of any attachment made in the action and the release of any property held thereunder.

Comment. Section 488.740 continues former Section 488.570.

CHAPTER 9. UNDERTAKINGS

Article 1. General Provisions

§ 489.010 (repealed). Application of article

Comment. Former Section 489.010 is superseded by Section 995.020 (application of bond and undertaking chapter).

§ 489.020 (repealed). Definitions

Comment. The substance of former Section 489.020 is continued in Sections 995.130 (“beneficiary” defined) and 995.170 (“principal” defined).

§ 489.030 (repealed). Waiver of undertaking

Comment. The substance of former Section 489.030 is continued in Section 995.230 (waiver by beneficiary).

§ 489.040 (repealed). Number of sureties required

Comment. The substance of former Section 489.040 is continued in Section 995.310 (sureties on undertaking).

§ 489.050 (repealed). Estimate of value of property

Comment. The substance of former Section 489.050 is continued in Section 995.320 (contents of undertaking).

§ 489.060. Filing and approval of undertaking

489.060. (a) Except as provided in subdivision (b), all undertakings given pursuant to this title shall be presented to a proper court for approval and upon approval shall be filed with the court in which the action is pending.

(b) If the surety on the undertaking is an admitted surety insurer, the undertaking is not required to be approved by the court.

1974 Addition

Comment. [Subdivision (a) of] Section 489.060 requires approval of any undertaking under this title by a court before it may be filed[, except as provided in subdivision (b)]. This makes the requirement of former Section 540 (undertaking for release of attached property) applicable to all undertakings authorized or required by this title. The court approves the undertaking if it determines that the undertaking on its face and the affidavits of the sureties are sufficient. Such approval has no effect on the right of the beneficiary to object to the sufficiency of the undertaking. It should be noted that in some instances an undertaking may be approved by a court in a county other than the county in which the action is pending. See Section 489.310. However, following approval, all undertakings must be filed with the court in which the action is pending. Under prior law, the undertaking was filed with the court in some instances (former Section 540) and with the levying officer in others (former Section 539a)....

1982 Amendment

Comment. Subdivision (a) of Section 489.060 is amended to delete language made unnecessary by Section 995.420 (time undertaking becomes effective). Subdivision (b) is amended for consistency with the Bond and Undertaking Law. See Section 995.120 (“admitted surety insurer” defined). Subdivision (c) is superseded by Section 995.410 (approval of undertaking).

§ 489.070 (repealed). Grounds for objection to undertaking

Comment. The substance of former Section 489.070 is continued in 995.920 (grounds for objection).

§ 489.080 (repealed). Manner of making objection

Comment. The substance of subdivision (a) of former Section 489.080 is continued in Section 995.930 (manner of making objection). The substance of subdivision (b) is continued in Section 995.940 (objection to sufficiency of undertaking based on market value).

§ 489.090 (repealed). Hearing and determination of objection

Comment. The substance of subdivisions (a) and (b) of former Section 489.090 is continued in Section 995.950 (hearing on objection). The substance of subdivisions (c) through (e) is continued in Section 995.960 (determination of sufficiency of undertaking).

§ 489.100 (repealed). Hearing unnecessary where undertaking increased to amount of beneficiary's estimate of property value

Comment. The substance of former Section 489.100 is continued in Section 995.940 (objection to sufficiency of undertaking based on market value).

§ 489.110 (repealed). Liability of surety

Comment. The substance of former Section 489.110 is continued in Sections 996.460 (judgment of liability) and 996.470 (limitation on liability of surety).

§ 489.120 (repealed). Limitations period for recovery on undertaking

Comment. The substance of former Section 489.120 is continued in Section 996.440 (motion to enforce liability).

§ 489.130. Failure to increase undertaking

489.130. Where the court orders the amount of the undertaking increased pursuant to Section 489.220 or 489.410, the plaintiff's failure to increase the amount of the undertaking is not a wrongful attachment within the meaning of Section 490.010.

Comment. Section 489.130 makes clear that the mere failure of the plaintiff to increase the amount of an undertaking when ordered to do so pursuant to Section 489.220 (undertaking to obtain a writ of attachment or protective order) or Section 489.410 (undertaking on appeal) is not a wrongful attachment under Section 490.010. The insufficient undertaking remains in effect pursuant to [Section 995.960(b)(2)], and the plaintiff's liability for wrongful attachment pursuant to Section 490.010 is limited to the amount of the insufficient undertaking by subdivision (b) of Section 490.020. However, where an order to

increase the amount of the undertaking is not complied with, the rights which the plaintiff obtained by filing the original undertaking cease as provided in [Section 995.960(b)(1)] and subdivision (a) of Section 489.410. Hence, if a temporary protective order has been issued, it is vacated; if a writ of attachment has been issued and levied, the writ is quashed and the property released.

Article 2. Undertakings to Obtain Writ of Attachment or Protective Order

§ 489.210. Undertaking required

489.210. Before issuance of a writ of attachment or a temporary protective order, the plaintiff shall file an undertaking to pay the defendant any amount the defendant may recover for any wrongful attachment by the plaintiff in the action.

1974 Addition

Comment. Section 489.210 supersedes the first sentence of former Section 539.

For damages on wrongful attachment, see Chapter 10 (commencing with Section 490.010). The recovery for a wrongful attachment includes not only damages but also attorney's fees. See Section 490.020. See also Section 490.010 (acts constituting wrongful attachment).

§ 489.220. Amount of undertaking

489.220. (a) Except as provided in subdivision (b), the amount of an undertaking filed pursuant to this article shall be two thousand five hundred dollars (\$2,500) in an action in the municipal or justice court, and seven thousand five hundred dollars (\$7,500) in an action in the superior court.

(b) If, upon objection to the undertaking, the court determines that the probable recovery for wrongful attachment exceeds the amount of the undertaking, it shall order the amount of the undertaking increased to the amount it determines to be the probable recovery for wrongful attachment if it is ultimately determined that the attachment was wrongful.

1974 Addition

Comment. Section 489.220 supersedes portions of former Section 539. Unlike Section 539, this section provides no authorization for decreasing the amount of an undertaking. Instead, subdivision (a) provides certain minimum amounts which the defendant can then move to have increased where the circumstances indicate that the damages due to the

attachment may exceed such amount. Compare the second sentence of former Section 539. Under former law, the undertaking could be increased but no guide existed as to the proper amount. See the last sentence of former Section 539(a).

1976 Amendment

Comment. Section 489.220 is amended to provide for the amount of the undertaking in justice court.

§ 489.230. Notice to defendant

489.230. (a) The notice of attachment shall include a statement, in a form adopted by the Judicial Council, advising the defendant that the undertaking has been filed and informing the defendant of the right to object to the undertaking.

(b) The form for the temporary protective order shall include a statement comparable to the one required by subdivision (a).

1974 Addition

Comment. Section 489.230 is new. No comparable provision existed under former law. See Section [488.060] (notice of attachment).

1976 Amendment

Comment. Section 489.230 is amended to make clear that the statement required by subdivision (a) is to be included in the notice of attachment provided by Section [488.060]. The amendment of subdivision (b) is technical.

1982 Amendment

Comment. Subdivision (a) of Section 489.230 is amended to delete an incorrect section reference.

§ 489.240 (repealed). Deposit account or safe deposit box not exclusively in name of defendant

Comment. The substance of former Section 489.240 is continued in Section 488.465. See the Comment to Section 488.465.

Article 3. Undertaking to Obtain Release of Attachment or Protective Order

§ 489.310. Undertaking for release of attachment

489.310. (a) Whenever a writ is issued, a defendant who has appeared in the action may apply by noticed motion to the court in which the action is pending for an order permitting the defendant to substitute an undertaking for any of his property in the state which has been or is subject to being attached.

(b) In a case (1) where the defendant applies for an order to release a portion of property which has been attached or (2) where the defendant applies for an order preventing the attachment of property and the amount of the undertaking to be given is less than the amount to be secured by the attachment, the application shall include a statement, executed under oath, describing the property to be so released or so protected from attachment.

(c) The defendant shall file an undertaking to pay the plaintiff the value of the property released not exceeding the amount of any judgment which may be recovered by the plaintiff in the action against the defendant. The amount of the undertaking filed pursuant to this section shall be equal to the lesser of (1) the value of the property attached or prevented from being attached or (2) the amount specified by the writ to be secured by the attachment. The court shall issue such order upon the condition that a sufficient undertaking be filed.

(d) Where an action is against more than one defendant, any defendant may make such application. The filing of an undertaking by such defendant shall not subject him to any demand against any other defendant; however, the levying officer shall not be prevented thereby from attaching, or be obliged to release from attachment, any property of any other defendant. Where all the defendants do not join in the application, the application shall include a statement, executed under oath, describing the character of the defendant's title to the property and the manner in which the defendant acquired such title and stating whether any other defendant who has not joined in the application has an interest in the property. Where two or more defendants have an interest in the same property, a joint application and undertaking shall be filed to secure the release of such property.

1974 Addition

Comment. Section 489.310 is based on former Sections 540, 554, and 555. It should be noted that subdivision (a) [prior to the 1976 amendments required] only "reasonable" notice to the plaintiff. Depending on the circumstances, this period may be very short. For example, where a keeper has been placed in the defendant's business under a writ of attachment issued ex parte,

the impact on the defendant may be devastating and permission to file an undertaking in lieu of the attachment should be expedited.

Legislative Committee Comment—1976 Amendment

Comment. Subdivision (a) of Section 489.310 is amended to restrict the procedure for releasing or preventing attachment by the giving of an undertaking to the county where the action is pending. This amendment conforms the undertaking for release procedure to other sections that require applications to be made to the court where the action is pending. See, *e.g.*, Sections 482.100 (postlevy claims of exemption based on change in circumstances), 485.610 (claims of exemption after levy of *ex parte* writ), [488.720] (motion for release of excessive attachment), 490.020 (procedure for recovery for wrongful attachment).

Subdivision (b) is amended to require a description of property in the defendant's application only where the description serves a purpose, *i.e.*, where only a portion of attached property is sought to be released or, in a case where the property is sought to be protected from being attached, where the amount of the undertaking offered is less than the amount of the attachment. Where there are several defendants and all of them do not join in the application, a more extensive statement concerning the nature of the title to the property is required by subdivision (d). Note that the last sentence of subdivision (d) precludes release where a defendant who has not joined in the application has a joint interest in the property.

The amendment of subdivision (c) is technical.

§ 489.320. Application to terminate temporary protective order

489.320. (a) A defendant who has been served with a temporary protective order and who has appeared in the action may apply by noticed motion to the court in which the action is pending for an order terminating the temporary protective order with respect to that defendant.

(b) The defendant shall file an undertaking to pay the plaintiff the amount of any judgment recovered by the plaintiff in the action against the defendant. The amount of the undertaking filed pursuant to this section shall be equal to the amount sought to be secured by the

attachment. The court shall issue the order terminating the temporary protective order with respect to the defendant upon the condition that a sufficient undertaking be filed.

1974 Addition

Comment. Section 489.320 is based on former Sections 540, 554, and 555. See also Section 486.090 (expiration of temporary protective order) and the Comment to Section 489.310.

1976 Amendment

Comment. Subdivision (a) of Section 489.320 is amended to provide that an application for an order under this section is made by noticed motion.

1982 Amendment

Comment. The amendment to Section 489.320 is clarifying. See Section 483.015.

Article 4. Undertaking on Appeal

§ 489.410. Postjudgment continuance of attachment

489.410. (a) At any time after entry of judgment in favor of the defendant and before perfection of an appeal under Section 921, upon motion of the defendant, the trial court may order an increase in the amount of the original undertaking on attachment in such amount, if any, as is justified by the detriment reasonably to be anticipated by continuing the attachment. Unless such undertaking is filed within 10 days after such order, the attachment shall be set aside and the property released therefrom.

(b) If an order increasing the undertaking is made, the amount of the undertaking on appeal required by Section 921 shall be the same as the amount fixed by the trial court in such order.

(c) Neither the pendency nor granting of a motion timely filed and served by the plaintiff for vacation of judgment or for judgment notwithstanding the verdict or for new trial shall continue an attachment in force unless an undertaking is given by the plaintiff to pay all costs and damages sustained by continuing the attachment. The undertaking may be included in the undertaking specified

in Section 921. If not so included, the same procedure shall apply as in case of an undertaking pursuant to Section 921.

Comment. Section 489.410 is based on former Section 553.

§ 489.420. Release from attachment

489.420. If a defendant appeals and the enforcement of the judgment against the defendant is stayed by the filing of a sufficient undertaking on appeal as provided by this code, all property of the defendant which has been attached in the action shall be released from the attachment upon the failure of the respondent to object to the undertaking within the time prescribed by statute or, if an objection is made, upon a determination that the undertaking is sufficient.

1974 Addition

Comment. Section 489.420 is based on former Section 553.5. Section 489.420 provides for release where the defendant appeals and the trial court in its discretion requires an undertaking and the undertaking is given. See Section 917.9. Perfection of an appeal by the defendant stays the enforcement of the judgment but does not otherwise affect the lien of attachment. See Section 916. The defendant may, of course, have already obtained a release pursuant to Section 489.310. The provision for the levying officer's fees has been eliminated. These can be recovered eventually as costs, pending the final determination in the action.

1982 Amendment

Comment. Section 489.420 is amended for consistency with the Bond and Undertaking Law. See Section 995.910 (objections to undertakings).

CHAPTER 10. LIABILITY FOR WRONGFUL ATTACHMENT

§ 490.010. Acts constituting wrongful attachment

490.010. A wrongful attachment consists of any of the following:

(a) The levy under a writ of attachment or the service of a temporary protective order in an action in which attachment is not authorized, except that it is not a

wrongful attachment if both of the following are established:

(1) The levy was not authorized solely because of the prohibition of subdivision (c) of Section 483.010.

(2) The person who sold or leased, or licensed for use, the property, furnished the services, or loaned the money reasonably believed that it would not be used primarily for personal, family, or household purposes.

(b) The levy under a writ of attachment or the service of a temporary protective order in an action in which the plaintiff does not recover judgment.

(c) The levy under writ of attachment obtained pursuant to Article 3 (commencing with Section 484.510) of Chapter 4 or Chapter 5 (commencing with Section 485.010) on property exempt from attachment except where the plaintiff shows that the plaintiff reasonably believed that the property attached was not exempt from attachment.

Legislative Committee Comment—1974 Addition

Comment. Section 490.010 provides a statutory cause of action for wrongful attachment in four specific situations. As Section 490.060 makes clear, the liability provided by Section 490.010 is not exclusive. The defendant may pursue his common law remedies if he chooses.

Subdivision (a). Subdivision (a) provides that wrongful attachment occurs when a writ of attachment is levied or a protective order is served in an action where attachment is not authorized. An exception is provided, however, which protects the plaintiff where levy is not authorized because the goods, services, or money furnished were used primarily for consumer purposes but the person who furnished them reasonably believed that they would not be so used. This provision is based on a portion of subdivision (a) of former Section 539 which provided for recovery where “the restraining order or the attachment is discharged on the ground that the plaintiff was not entitled thereto under Sections 537 to 537.2, inclusive.”

Subdivision (b). Subdivision (b) provides that wrongful attachment occurs when a writ of attachment is levied or a protective order is served where judgment in the action is not in favor of the plaintiff. This provision is based on another portion of subdivision (a) of former Section 539 which provided for recovery where “the defendant recovers judgment.”

Subdivision (c). Subdivision (c) provides that wrongful attachment occurs when the plaintiff levies an ex parte writ of attachment on property which is exempt from attachment except where the writ was obtained under Chapter 12 (nonresident attachment) of this title or where the plaintiff reasonably believed that the property was not exempt from attachment. See Section 487.020 (property exempt from attachment). The determination that the property was not exempt made pursuant to Section 484.520, 485.220, or 485.540 does not preclude a finding that the plaintiff acted unreasonably. For example, the determination may have been based on false affidavits or inadequate investigation by the plaintiff. Attachment of exempt property was classified as a form of abuse of process. See *White Lighting Co. v. Wolfson*, 68 Cal.2d 336, 349, 438 P.2d 345, 353, 66 Cal. Rptr. 697, 705 (1968); *McNabb v. Byrnes*, 92 Cal. App. 337, 268 P. 428 (1928).

Subdivision (d). Subdivision (d) provides that wrongful attachment occurs when a writ of attachment is levied against property of a person other than the person against whom the writ is issued. . . . [This subdivision has been deleted by a later amendment.]

Legislative Committee Comment—1976 Amendment

Comment. The amendments of subdivisions (a) and (b) of Section 490.010 are technical and make no substantive change. The plaintiff's failure to increase the amount of an undertaking when ordered to do so is not a wrongful attachment. Section 489.130. It should be noted that an excessive attachment is a form of abuse of process. *White Lighting Co. v. Wolfson*, 68 Cal.2d 336, 347-51, 438 P.2d 345, 351-54, 66 Cal. Rptr. 697, 703-06 (1968). See Section 490.060 (common law remedies not limited).

1982 Amendment

Comment. Section 490.010 is amended to delete subdivision (d) which related to wrongful attachment of property of third persons. A third person whose property is levied upon may resort to the remedies provided by Division 4 (commencing with Section 720.010) of Title 9 (third-party claim) or to common law remedies.

§ 490.020. Liability for wrongful attachment

490.020. (a) The liability of a plaintiff for causing a wrongful attachment under Section 490.010 includes both of the following:

(1) All damages proximately caused to the defendant by the wrongful attachment.

(2) All costs and expenses, including attorney's fees, reasonably expended in defeating the attachment.

(b) The liability of a plaintiff for wrongful attachment pursuant to Section 490.010 is limited by the amount of the undertaking.

Legislative Committee Comment—1974 Addition

Comment. Section 490.020 provides the measure of the defendant's recovery under this chapter for a wrongful attachment. It should be noted, however, that the liability of the surety *and the plaintiff* together is limited to the amount of the undertaking. This limitation on the plaintiff's liability does not apply where an independent action is brought based on a common law theory of relief. See Section 490.060.

Under subdivision (a), the plaintiff's wrongful attachment liability extends to all damages proximately caused by the attachment. This includes such items as loss of credit and business losses. Any prior rule to the contrary is not continued. Compare *Elder v. Kutner*, 97 Cal. 490, 32 P. 563 (1893); *Heyman & Co. v. Landers*, 12 Cal. 107 (1859).

1982 Amendment

Comment. Section 490.020 is amended to make clear that only the defendant may recover for a wrongful attachment pursuant to Section 490.010. A third person is entitled to protection pursuant to Division 4 (commencing with Section 720.010) of Title 9 (third-party claims). See also Section 488.465 (objection by third person to undertaking where joint account or safe deposit box in name of third person).

§ 490.030 (repealed). Procedure for recovery for wrongful attachment

Comment. The substance of former Section 490.030 is continued in Sections 996.440 (motion to enforce liability) and 996.460 (judgment of liability).

§ 490.040. Setoff of wrongful attachment recovery

490.040. The amount of any recovery for wrongful attachment shall be offset insofar as possible against any unsatisfied amounts owed to the plaintiff by the defendant

on the judgment in the action for which wrongful attachment damages are awarded.

§ 490.050 (repealed). Recovery by third-party claimants

Comment. Section 490.050 is repealed to conform to the deletion of subdivision (d) of Section 490.010.

§ 490.060. Common law remedies not limited

490.060. Nothing in this chapter limits the right to recover for damages caused by an attachment or protective order on any common law theory of recovery.

Comment. Section 490.060 makes clear that this chapter does not limit the common law remedies for wrongful attachment such as malicious prosecution and abuse of process. See, e.g., *White Lighting Co. v. Wolfson*, 68 Cal.2d 336, 438 P.2d 345, 66 Cal. Rptr. 697 (1968).

CHAPTER 11. ATTACHING PLAINTIFF'S MISCELLANEOUS REMEDIES

Comment. Sections 491.010-491.040 are superseded by Sections 491.110-491.190.

Section 491.010. The first and third sentences of subdivision (a) of former Section 491.010 are superseded by Section 491.110(a). The second sentence of subdivision (a) is superseded by Section 491.140 (appearance at examination by representatives of organizations). Subdivision (b) of former Section 491.010 is superseded by Section 491.110(b) (10 days' notice to defendant). The substance of subdivision (c) of former Section 491.010 is continued in Section 491.160(a)(1) (failure to appear for examination). Subdivision (d) of former Section 491.010 is superseded by Sections 491.170 (determination of third person's adverse claim) and 491.190 (order for attachment, delivery, or payment).

Section 491.020. The substance of former Section 491.020 is continued in Section 491.150(b).

Section 491.030. The substance of former Section 491.030 is continued in Section 491.150(c)-(d).

Section 491.040. The substance of former Section 491.040 is continued in Section 491.120.

Article 1. Examination of Third Person

§ 491.110. Examination of third person

491.110. (a) Upon ex parte application by the plaintiff and proof by the plaintiff by affidavit or otherwise to the satisfaction of the proper court that the plaintiff has a right to attach order and that a third person has possession or control of property in which the defendant has an interest or is indebted to the defendant in an amount exceeding two hundred fifty dollars (\$250), the court shall make an order directing the third person to appear before the court, or before a referee appointed by the court, at a time and place specified in the order, to answer concerning the property or debt. The affidavit in support of the plaintiff's application may be based on the affiant's information and belief.

(b) Not less than 10 days prior to the date set for the examination, a copy of the order shall be:

- (1) Served personally on the third person.
- (2) Served personally or by mail on the defendant.

(c) If the property or the debt is described in the affidavit or application for an order under subdivision (a) in a manner reasonably adequate to permit it to be identified, service of the order on the third person creates a lien on the defendant's interest in the property in the third person's possession or control or on the debt owed by the third person to the defendant. The lien continues for a period of one year from the date of the order unless extended or sooner terminated by the court.

(d) The order shall contain the following statement in 14-point boldface type if printed or in capital letters if typed: "NOTICE TO PERSON SERVED. If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court and the court may make an order requiring you to pay the reasonable attorney's fees incurred by the plaintiff in this proceeding."

(e) The order is not effective unless, at the time it is served on the third person, the person serving the order tenders to the third person fees for the mileage necessary to be traveled from the third person's residence to the

place of examination. The fees shall be in the same amount generally provided for witnesses when legally required to attend civil proceedings in the court where the examination proceeding is to be conducted.

Comment. Section 491.110 supersedes the first and third sentences of subdivision (a) and all of subdivision (b) of former Section 491.010. Section 491.110 is drawn from subdivisions (a), (b), (c), (e) (1), and (f) of Section 708.120 (Enforcement of Judgments Law). See also Section 482.070 (manner of service). The provision in subdivision (a) limiting examinations to third persons owing more than \$250 and the provisions of subdivisions (c), (d), and (e) are new in the Attachment Law. Consistent with former law, Section 491.110 does not permit the general examination of the defendant.

§ 491.120. Witnesses

491.120. In any proceeding for the examination of a third person under this article, witnesses, including the defendant, may be required to appear and testify before the court or referee in the same manner as upon the trial of an issue.

Comment. Section 491.120 continues the substance of former Section 491.040.

§ 491.130. Powers and qualifications of referee

491.130. (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 491.190, may make a protective order authorized by Section 491.180, and may issue a warrant authorized by Section 491.160, and has the same power 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 do any of the following:

(1) Punish for contempt for disobeying an order of the referee.

(2) Make an award of attorney's fees pursuant to Section 491.160.

(3) Determine a third-party claim under Section 491.170.

(b) Only a member of the State Bar of California is eligible for appointment as a referee pursuant to this article.

(c) Nothing in subdivision (a) limits the power of a court to appoint a temporary judge pursuant to Section 21 of Article VI of the California Constitution.

Comment. Section 491.130 is new and is drawn from Section 708.140 (Enforcement of Judgments Law).

§ 491.140. Appearance for examination by representatives of organizations

491.140. (a) If a corporation, partnership, association, trust, or other organization is served with an order to appear for an examination, it shall designate to appear and be examined one or more officers, directors, managing agents, or other persons who are familiar with its property and debts.

(b) If the order to appear for an examination requires the appearance of a specified individual, the specified individual shall appear for the examination and may be accompanied by one or more officers, directors, managing agents, or other persons familiar with the property and debts of the corporation, partnership, association, trust, or other organization.

(c) If the order to appear for the examination does not require the appearance of a specified individual, the order shall advise the corporation, partnership, association, trust, or other organization of its duty to make a designation under subdivision (a).

Comment. Section 491.140 supersedes the second sentence of subdivision (a) of former Section 491.010 and is drawn from Section 708.150 (Enforcement of Judgments Law). See the Comment to Section 708.150.

§ 491.150. Proper court for examination; examination outside county where judgment entered

491.150. (a) Except as otherwise provided in this section, the proper court for examination of a person under this article is the court that issued the writ of attachment.

(b) A person sought to be examined may not 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 place of examination is less than 150 miles.

(c) If a person sought to be examined does not reside or have a place of business in the county where the court that issued the writ is located, a court of similar jurisdiction in the county where the person resides or has a place of business is a proper court for examination of the person. If there is no court of similar jurisdiction in the county, a court of higher jurisdiction is a proper court.

(d) If the plaintiff seeks an examination of a person before a court other than the court that issued the writ, the plaintiff shall do all of the following:

(1) File with the court from which the order is sought a certified copy of the complaint in the pending action.

(2) Present to the court an affidavit in support of the application for the order stating the place of residence or place of business of the person sought to be examined.

(3) Make any necessary affidavit or showing for the examination as required by Section 491.110.

(4) At the time of filing the application for the order, pay a filing fee of twelve dollars (\$12). No law library fee shall be charged.

Comment. Section 491.150 is drawn from Section 708.160 (Enforcement of Judgments Law). Subdivision (b) continues the substance of former Section 491.020. Subdivisions (c) and (d) continue the substance of former Section 491.030.

§ 491.160. Failure to appear for examination; penalty for unjustified arrest

491.160. (a) If an order requiring a person to appear for an examination was served by a sheriff, marshal, constable, a person specially appointed by the court in the order, or a registered process server, and the person fails to appear:

(1) The court may, pursuant to a warrant, have the person brought before the court to answer for the failure to appear and may punish the person for contempt.

(2) If the person's failure to appear is without good cause, the plaintiff shall be awarded reasonable attorney's fees incurred in the examination proceeding.

(b) 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) (1) of Section 491.160 continues the substance of former Section 491.010(c); the remainder of Section 491.160 is new and is consistent with Section 708.170 (Enforcement of Judgments Law). See also Section 481.205 ("registered process server" defined). The substance of the provision of Section 708.170 relating to attorney's fees awarded against the debtor is not included in Section 491.160 since the defendant is not permitted to be directly examined under this chapter.

§ 491.170. Determination of third person's adverse claim

491.170. (a) Subject to subdivision (b), if a third person examined pursuant to this article claims an interest in the property adverse to the defendant or denies the debt, the court may, if the plaintiff so requests, determine the interests in the property or the existence of the debt. Such a determination is conclusive as to the plaintiff, the defendant, and the third person, but an appeal may be taken from the determination in the manner provided for appeals from the court in which the proceeding takes place. The court may grant a continuance for a reasonable time for discovery proceedings, the production of evidence, or other preparation for the hearing.

(b) The court may not make the determination provided in subdivision (a) if the third person's claim is made in good faith and any of the following conditions is satisfied:

(1) The court would not be a proper court for the trial of an independent civil action (including a creditor's suit) for the determination of the interests in the property or the existence of the debt, and the third person objects to the determination of the matter under subdivision (a).

(2) At the time an order for examination pursuant to this article is served on the third person a civil action (including a creditor's suit) is pending with respect to the interests in the property or the existence of the debt.

(3) The court determines that the interests in the property or the existence of the debt should be determined in a creditor's suit.

(c) Upon application of the plaintiff made *ex parte*, the court may make an order forbidding transfer of the property to the defendant or payment of the debt to the defendant until the interests in the property or the existence of the debt is determined pursuant to subdivision (a) or until a creditor's suit may be commenced and an order obtained pursuant to Section 491.340. An undertaking may be required in the discretion of the court. The court may modify or vacate the order at any time with or without a hearing on such terms as are just.

(d) Upon application of the plaintiff upon noticed motion, the court, if it determines that the defendant probably owns an interest in the property or that the debt probably is owed to the defendant, may make an order forbidding the transfer or other disposition of the property to any person or forbidding payment of the debt until the interests in the property or the existence of the debt is determined pursuant to subdivision (a) or until a creditor's suit may be commenced and an order obtained pursuant to Section 491.340. The court shall require the plaintiff to furnish an undertaking as provided in Section 529. The court may modify or vacate the order at any time after notice and hearing on such terms as are just.

Comment. Section 491.170 is new and is drawn from Section 708.180 (Enforcement of Judgments Law). See the Comment to Section 708.180. Under former Section 491.010, the court was not permitted in an examination proceeding to determine an adverse claim of a third person to the property sought to be attached. See also Sections 491.190 (order attaching property or for payment of debt or delivery of property to levying officer), 491.310 (creditor's suit).

§ 491.180. Protective orders

491.180. In any proceeding under this article, the court may, on motion of the person to be examined or on its own motion, make such protective orders as justice may require.

Comment. Section 491.180 is new and is drawn from Section 708.200 (Enforcement of Judgments Law).

§ 491.190. Order in examination proceeding

491.190. (a) Except as provided in subdivision (b), at the conclusion of a proceeding pursuant to this article:

(1) The court may order the defendant's interest in the property in the possession or under the control of the third person or a debt owed by the third person to the defendant to be attached in the manner and under the conditions provided by this title or to be delivered or paid to the levying officer if the levying officer has a writ of attachment permitting the attachment of the property or debt. After the property or debt has been attached, the order may be enforced as provided in Section 491.360. The order creates a lien on the property or debt. The lien continues for a period of one year from the date of the order unless the court extends or reduces the period of the existence of the lien.

(2) If the property or debt has previously been attached, the court may make an order determining the third person's liability, and the order may be enforced as provided in Section 491.360.

(b) If a third person examined pursuant to this article claims an interest in the property adverse to the defendant or denies the debt and the court does not determine the matter as provided in subdivision (a) of Section 491.170, the court may not make an order under subdivision (a) of this section, but may make an order pursuant to subdivision (c) or (d) of Section 491.170 forbidding transfer or payment to the extent authorized by that section.

Comment. Section 491.190 supersedes former Section 491.010(d) and is drawn in part from Section 708.205 (Enforcement of Judgments Law). See the Comment to Section 708.205. See also Section 488.500 (e) (relation back of attachment lien).

§ 491.200. Effect of lien in examination proceeding

491.200. A lien created under this article continues on property subject to the lien notwithstanding the transfer or encumbrance of the property subject to the lien unless the transfer or encumbrance is made to a person listed in Section 697.740.

Comment. Section 491.200 is drawn from Section 697.920 (Enforcement of Judgments Law).

Article 2. Creditor's Suit**§ 491.310. Creditor's suit**

491.310. If a third person has possession or control of property in which the defendant has an interest or is indebted to the defendant and the property or debt has been subjected to an attachment lien, the plaintiff may bring an action against the third person to enforce the third person's liability under this title.

Comment. Section 491.310 supersedes a portion of subdivision (c) of former Section 488.550 and is drawn from Section 708.210 (Enforcement of Judgments Law). Section 491.310 retains the requirement of former Section 488.550 that the property or debt have been attached. The procedure provided by this article is available only to enforce attachment liens. If a plaintiff has obtained only a lien in an examination proceeding (Section 491.110, 491.190), the plaintiff may not bring a creditor's suit until the property or debt is levied upon under a writ of attachment.

§ 491.320. Joinder of defendant

491.320. The defendant shall be joined in an action brought pursuant to this article but is not an indispensable party. The residence of the defendant may not be considered in the determination of proper venue unless otherwise provided by contract between the defendant and the third person.

Comment. Section 491.320 supersedes the third sentence of subdivision (c) of former Section 488.550 and is drawn from Section 708.220 (Enforcement of Judgments Law). See the Comment to Section 708.220.

§ 491.330. Time for bringing creditor's suit

491.330. (a) Except as provided in subdivision (b), an action shall be commenced pursuant to this article before the expiration of the later of the following times:

(1) The time when the defendant may bring an action against the third person concerning the property or debt.

(2) One year after creation of an attachment lien on the property or debt pursuant to this title if the lien is created at the time when the defendant may bring an action against the third person concerning the property or debt.

(b) An action may not be commenced pursuant to this article if the attachment lien is not in effect.

(c) If an action is commenced pursuant to this article within the time permitted in this section, the action may be prosecuted to judgment so long as the attachment lien or a lien of the plaintiff on the same property pursuant to Title 9 (commencing with Section 680.010) is in effect.

Comment. Section 491.330 supersedes a portion of subdivision (c) of former Section 488.550 and is drawn from Section 708.230 (Enforcement of Judgments Law).

§ 491.340. Order forbidding transfer of property or payment of debt

491.340. The plaintiff may apply to the court in which an action under this article is pending for either or both of the following:

(a) An order restraining the third person from transferring the attached property to the defendant or from paying the attached debt to the defendant. The order shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, the order may be made on ex parte application. The order shall remain in effect until judgment is entered in the action or until such earlier time as the court may provide in the order. An undertaking may be required in the discretion of the court. The court may modify or vacate the order at any time with or without a hearing on such terms as are just.

(b) A temporary restraining order or a preliminary injunction or both, restraining the third person from

transferring to any person or otherwise disposing of the attached property, pursuant to Chapter 3 (commencing with Section 525) of Title 7, and the court may make, dissolve, and modify such orders as provided therein.

Comment. Section 491.340 is new and is drawn from Section 708.240 (Enforcement of Judgments Law).

§ 491.350. No right to jury trial

491.350. There is no right to a jury trial in an action under this article.

Comment. Section 491.350 is new and is the same as Section 708.270 (Enforcement of Judgments Law). See the Comment to Section 708.270.

§ 491.360. Judgment in creditor's suit

491.360. If the plaintiff establishes the liability of the third person, the court shall render judgment accordingly. The judgment may be enforced in the same manner as it could be enforced if it had been obtained by the defendant against the third party; but, prior to entry of judgment in favor of the plaintiff against the defendant, any money or property obtained in enforcing the judgment against the third party shall be paid or delivered into court to abide the judgment in the action of the plaintiff against the defendant or shall be held by a levying officer, or otherwise held, as ordered by the court.

Comment. Section 491.360 is new. The amount of the liability of the third person is determined under Section 488.600 which incorporates by reference the provisions of the Enforcement of Judgments Law, including subdivision (a) of Section 701.020.

§ 491.370. Costs

491.370. Costs incurred by or taxed against the plaintiff in an action under this article may not be recovered from the defendant.

Comment. Section 491.370 is new and is analogous to subdivision (b) of Section 708.290 (Enforcement of Judgments Law).

Article 3. Lien in Pending Action or Proceeding

§ 491.410. Plaintiff's lien in pending action or proceeding

491.410. (a) If the plaintiff has obtained a right to attach order and the defendant is a party to a pending action or special proceeding, the plaintiff may obtain a lien under this article, to the extent required to secure the amount to be secured by the attachment, on both of the following:

(1) Any cause of action of the defendant for money or property that is the subject of the other action or proceeding.

(2) The rights of the defendant to money or property under any judgment subsequently procured in the other action or proceeding.

(b) To obtain a lien under this article, the plaintiff shall file a notice of lien and a copy of the right to attach order in the other pending action or special proceeding.

(c) At the time of the filing under subdivision (b) or promptly thereafter, the plaintiff shall serve on all parties who, prior thereto, have made an appearance in the other action or special proceeding a copy of the notice of lien and a statement of the date when the notice of lien was filed in the other action or special proceeding. Failure to serve all parties as required by this subdivision does not affect the lien created by the filing under subdivision (b), but the rights of a party are not affected by the lien until the party has notice of the lien.

(d) For the purpose of this article, an action or special proceeding is pending until the time for appeal from the judgment has expired or, if an appeal is filed, until the appeal has been finally determined.

Comment. Section 491.410 is new and is drawn from Section 708.410 (Enforcement of Judgments Law). See also Sections 482.070 (manner of service), 483.015 (amount to be secured by attachment).

§ 491.420. Contents of notice of lien

491.420. The notice of lien under Section 491.410 shall contain all of the following:

(a) A statement that a lien has been created under this article and the title of the court and the cause and number of the pending action or proceeding in which the notice of lien is filed.

(b) The name and last known address of the defendant.

(c) The name and address of the plaintiff.

(d) The title of the court where the plaintiff's action against the defendant is pending and the cause and number of the action.

(e) The amount required to secure the amount to be secured by the attachment at the time the notice of lien is filed in the action or proceeding.

(f) A statement that the lien attaches to any cause of action of the defendant that is the subject of such action or proceeding and to the defendant's rights to money or property under any judgment subsequently procured in the action or proceeding.

(g) A statement that no compromise, dismissal, settlement, or satisfaction of the pending action or proceeding or any of the defendant's rights to money or property under any judgment procured therein may be entered into by or on behalf of the defendant, and that the defendant may not enforce the defendant's rights to money or property under any judgment procured in the pending action or proceeding by a writ or otherwise, unless one of the following requirements is satisfied:

(1) The prior approval by order of the court in which the action or proceeding is pending has been obtained.

(2) The written consent of the plaintiff has been obtained or the plaintiff has released the lien.

Comment. Section 491.420 is drawn from Section 708.420(a)-(g) (Enforcement of Judgments Law).

§ 491.430. Intervention; plaintiff deemed a party for certain purposes

491.430. (a) The court in which the action or special proceeding subject to the lien under this article is pending may permit the plaintiff who has obtained the lien to intervene in the action or proceeding pursuant to Section 387.

(b) For the purpose of subdivision (a) of Section 491.460, a plaintiff shall be deemed to be a party to the action or special proceeding even though the plaintiff has not become a party to the action or proceeding under subdivision (a).

Comment. Section 491.430 is drawn from Section 708.430 (Enforcement of Judgments Law).

§ 491.440. Enforcement, compromise, dismissal, settlement, satisfaction

491.440. (a) Except as provided in subdivision (c) of Section 491.410, unless the lien is released, the judgment recovered in the action or special proceeding in favor of the defendant may not be enforced by a writ or otherwise, and no compromise, dismissal, settlement, or satisfaction of the pending action or special proceeding or the judgment procured therein may be entered into by or on behalf of the defendant, without the written consent of the plaintiff or authorization by order of the court obtained under subdivision (b).

(b) Upon application by the defendant, the court in which the action or special proceeding subject to the lien under this article is pending or the judgment procured therein is entered may, in its discretion, after a hearing, make an order described in subdivision (a) that may include such terms and conditions as the court deems necessary. The application for an order under this subdivision shall be made on noticed motion. The notice of motion shall be served on the plaintiff.

Legislative Committee Comment—1982 Addition

Comment. Section 491.440 is drawn from Section 708.440 (Enforcement of Judgments Law). See also Section 482.070 (manner of service).

§ 491.450. Endorsement of lien on judgment and abstract

491.450. (a) If a lien is created pursuant to this article, the court clerk shall endorse upon the judgment recovered in the action or special proceeding a statement of the existence of the lien and the time it was created.

(b) Any abstract issued upon the judgment shall include a statement of the lien in favor of the plaintiff.

Comment. Section 491.450 is drawn from Section 708.460 (Enforcement of Judgments Law).

§ 491.460. Judgment and orders in action or special proceeding to enforce lien

491.460. (a) If the defendant is entitled to money or property under the judgment in the action or special proceeding and a lien created under this article exists, upon application of any party to the action or special proceeding, the court may order that the defendant's rights to money or property under the judgment be attached or otherwise applied to the satisfaction of the lien created under this article as ordered by the court. Application for an order under this section shall be on noticed motion. The notice of motion shall be served on all other parties.

(b) If the judgment determines that the defendant has an interest in property, the court may order the party having custody or control of the property not to transfer the property until it can be attached or otherwise applied to the satisfaction of the lien created under this article.

(c) If the court determines that a party (other than the defendant) having notice of the lien created under this article has transferred property that was subject to the lien, or has paid an amount to the defendant that was subject to the lien, the court shall render judgment against the party in an amount equal to the lesser of the following:

(1) The value of the defendant's interest in the property or the amount paid to the defendant.

(2) The amount of the plaintiff's lien created under this article.

(d) A judgment or order under this section may be enforced in the same manner as it could be enforced if it had been obtained by the defendant against the third party; but, prior to entry of judgment in favor of the plaintiff against the defendant, any money or property obtained in enforcing the judgment or order against the third party shall be paid or delivered into court to abide the judgment in the action of the plaintiff against the

defendant or shall be held by a levying officer, or otherwise held, as ordered by the court.

Comment. Section 491.460 is drawn from Section 708.470 (Enforcement of Judgments Law). See also Sections 482.070 (manner of service), 483.015 (amount to be secured by attachment).

CHAPTER 12. NONRESIDENT ATTACHMENT

§ 492.010. Attachment in action against nonresident

492.010. Notwithstanding subdivision (a) of Section 483.010, an attachment may be issued in any action for the recovery of money brought against any of the following:

- (a) A natural person who does not reside in this state.
- (b) A foreign corporation not qualified to do business in this state under the provisions of Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.
- (c) A foreign partnership which has not filed a designation pursuant to Section 15700 of the Corporations Code.

1974 Addition

Comment. Section 492.010 is based upon subdivision (b) of former Section 537.1 and subdivision (d) of former Section 537.2. As under prior law, Section 492.010 authorizes issuance of an attachment in any action for the recovery of money against a nonresident individual, a foreign corporation not qualified to do business in this state, or a foreign partnership which has not designated an agent for service of process. This authority supplements that provided by Section 483.010 and other miscellaneous statutory authorizations. See Section 483.010 and Comment thereto. Special procedures for the issuance of an attachment under this chapter are provided in Sections 492.020 and 492.030. See also Sections 492.060–492.090. A procedure for setting aside an attachment issued under this chapter and a significant limitation on this authority to attach are provided in Section 492.050.

1982 Amendment

Comment. Section 492.010 is amended for consistency with Section 481.170 (“person” defined).

§ 492.020. **Application for order and writ; supporting affidavit**

492.020. (a) Upon the filing of the complaint or at any time thereafter, the plaintiff may apply pursuant to this chapter for a right to attach order and a writ of attachment by filing an application for the order and writ with the court in which the action is brought.

(b) The application shall satisfy the requirements of Section 484.020 and shall be supported by an affidavit showing all of the following:

(1) The action is one described in Section 492.010 and is brought against a defendant described in Section 492.010.

(2) The plaintiff on the facts presented would be entitled to a judgment on the claim upon which the attachment is based.

(3) The property sought to be attached is subject to attachment pursuant to Section 492.040.

(c) The affidavit in support of the showing required by paragraph (3) of subdivision (b) may be based on the affiant's information and belief.

Comment. Sections 492.020 and 492.030 provide an ex parte procedure for the issuance of an attachment pursuant to the authority granted by Section 492.010. Compare Sections 485.210–485.220. See also subdivision (d) of former Section 538.5.

§ 492.030. **Issuance of order and writ**

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

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

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

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

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

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

(b) If the court finds that the application and supporting affidavit do not satisfy the requirements of this chapter, it shall so state and deny the order. If denial is solely on the ground that the defendant is not one described in Section 492.010, the judicial officer shall so state and such denial does not preclude the plaintiff from applying for a right to attach order and writ of attachment under Chapter 4 (commencing with Section 484.010) with the same affidavits and supporting papers.

1976 Amendment

Comment. Section 492.030 is amended in the same manner as Section 484.090. See Comment to Section 484.090.

§ 492.040. Property subject to attachment

492.040. Notwithstanding Sections 487.010 and 487.020, a writ of attachment issued under this chapter may be levied upon any property of a defendant for which a method of levy is provided by Article 2 (commencing with Section 488.300) of Chapter 8. However, after the defendant has filed a general appearance in the action, only nonexempt property of the defendant may be levied upon and property previously levied upon which is exempt under Section 487.020 shall be released upon order of the court.

1974 Addition

Comment. Section 492.040 describes the property which is subject to attachment under a writ issued pursuant to this chapter. Any property of any defendant for which a method of levy is provided by this title is subject initially to attachment. The limitations of Sections 487.010 and 487.020 do not apply until after the defendant has filed a general appearance in the action. However, after the defendant files a general appearance, he may secure either (1) a release of all property attached if there is no authorization for the attachment apart from the provisions of this chapter or (2) a release of any property exempt from attachment under Section 487.020 if an attachment is authorized under Section 483.010. See Section 483.010 and the Comment thereto. See also Section 492.050 and the Comment thereto.

1982 Amendment

Comment. Section 492.040 is amended to correct the reference to Article 2 of Chapter 8.

§ 492.050. Setting aside right to attach order and quashing writ

492.050. (a) Any defendant whose property has been attached pursuant to a writ issued under this chapter may apply for an order that the right to attach order be set aside, the writ of attachment quashed, and any property levied upon pursuant to the writ released. Such application shall be made by filing with the court and serving on the plaintiff a notice of motion.

(b) The notice of motion shall state the grounds on which the motion is based and shall be accompanied by an affidavit supporting any factual issues raised and points and authorities supporting any legal issues raised.

(c) If the defendant has filed a general appearance in the action, the right to attach order shall be set aside unless the plaintiff shows that his right to attach is authorized by a provision other than Section 492.010.

(d) At the hearing on the motion, the court shall determine whether the plaintiff is entitled to a right to attach order. If the court finds that the plaintiff is not entitled to a right to attach order, it shall order the right to attach order set aside, the writ of attachment quashed, and any property levied upon pursuant to the writ released. If the court finds that the plaintiff is entitled to a right to attach order, the attachment shall continue in effect except as provided in Section 492.040 and, thereafter, the plaintiff may apply for additional writs pursuant to Article 2 (commencing with Section 484.310) or Article 3 (commencing with Section 484.510) of Chapter 4.

(e) The court's determination shall be made upon the basis of the pleadings and other papers in the record; but, upon good cause shown, the court may receive and consider at the hearing additional evidence, oral or documentary, and additional points and authorities, or it may continue the hearing for the production of such additional evidence or points and authorities.

(f) The hearing provided for in this section shall take precedence over all other civil matters on the calendar of that day except older matters of the same character.

Comment. Section 492.050 provides a procedure for testing and setting aside a right to attach order and writ of attachment issued pursuant to this chapter. The noticed motion procedure is comparable to that provided by Section 485.240. Substantively, however, subdivision (c) requires the plaintiff to show that his attachment is authorized by a provision other than Section 492.010 if the defendant files a general appearance in the action. This continues an innovation introduced in 1972 (see former Section 538.5(d), Cal. Stats. 1972, Ch. 550, § 13) and demonstrates the jurisdictional nature of an attachment secured pursuant to this chapter. Even if the plaintiff can continue the attachment pursuant to some other statutory authority, *e.g.*, Section 483.010, the defendant is entitled to have such attachment limited to property subject to attachment under Sections 487.010 and 487.020. See Section 492.040 and Comment thereto. This section does not, of course, affect any right a defendant may have to a stay or dismissal of the action pursuant to Sections 410.30 and 418.10.

§ 492.060. Application for additional writ

492.060. At any time after a right to attach order and writ of attachment have been issued under this chapter and before the hearing provided by Section 492.050, the plaintiff may apply for an additional writ of attachment under this chapter as provided in Sections 492.060 to 492.090, inclusive. The application shall be filed with the court in which the action is brought.

Comment. Sections 492.060–492.090 provide a procedure which permits a plaintiff to secure additional writs under this chapter prior to the hearing contemplated by Section 492.050. Where there has been a hearing pursuant to Section 492.050 and the plaintiff's right to attach has been upheld, the plaintiff may apply for an additional writ pursuant to the procedures provided in Articles 2 and 3 of Chapter 4. See Section 492.050(d).

§ 492.070. Contents of application

492.070. The application shall be executed under oath and shall include all of the following:

(a) A statement that the plaintiff has been issued a right to attach order and writ of attachment pursuant to Section 492.030.

(b) A statement of the amount to be secured by the attachment.

(c) A description of the property to be attached under the writ of attachment and a statement that the plaintiff is informed and believes that such property is subject to attachment pursuant to Section 492.040. The description shall satisfy the requirements of Section 484.020.

1974 Addition

Comment. See Comment to Section 492.060.

1982 Amendment

Comment. The amendment to Section 492.070 is clarifying and conforms to the amendments made to Sections 484.020, 484.320, and 485.520.

§ 492.090. Issuance of additional writ

492.090. The court shall examine the application and supporting affidavit and shall order a writ of attachment to be issued upon the filing of an undertaking as provided by Sections 489.210 and 489.220, if it finds both of the following:

(a) A right to attach order has been issued in the action pursuant to Section 492.030.

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

1974 Addition

Comment. See Comment to Section 492.060.

1976 Amendment

Comment. Section 492.090 is amended in the same manner as Section 484.370. See Comment to Section 484.370.

CHAPTER 13. EFFECT OF BANKRUPTCY PROCEEDINGS AND GENERAL ASSIGNMENTS FOR THE BENEFIT OF CREDITORS

§ 493.010. "General assignment for the benefit of creditors" defined

493.010. As used in this chapter, "general assignment for the benefit of creditors" means an assignment which satisfies all of the following requirements:

(a) The assignment is an assignment of all the defendant's assets that are transferable and not exempt from enforcement of a money judgment.

(b) The assignment is for the benefit of all the defendant's creditors.

(c) The assignment does not itself create a preference of one creditor or class of creditors over any other creditor or class of creditors, but the assignment may recognize the existence of preferences to which creditors are otherwise entitled.

1977 Addition

Comment. Section 493.010 defines "general assignment for the benefit of creditors" so as to limit the application of the provisions of this chapter for the termination of the lien of a temporary protective order or of attachment upon the making of a general assignment. This section reflects the policy that an attaching plaintiff should not lose the attachment preference as against an assignment for the benefit of creditors unless the assignment is designed to distribute all of the defendant's transferable nonexempt assets ratably among all creditors. The provision that the assets must be transferable recognizes that some property, such as a lease which is subject to a condition that it may not be transferred without the consent of the lessor, may not be assignable; such property need not be included in a "general assignment for the benefit of creditors" under this section. See *Medinah Temple Co. v. Currey*, 162 Ill. 441, 44 N.E. 839 (1896); 16 Cal. Jur.3d *Creditors' Rights* § 62, at 419-420 (1974); Shapiro, *Assignment for the Benefit of Creditors*, in *California Remedies for Unsecured Creditors* 461 (Cal. Cont. Ed. Bar 1957). The general assignment for the benefit of creditors may not create preferences if it is to have the effect of terminating a lien under the Attachment Law. This rule is not violated by the recognition of preferences that are not created by the assignment, such as, for example, prior secured interests, wage claims, prior execution liens, or tax claims.

1982 Amendment

Comment. Section 493.010 is amended to conform to the terminology of Title 9 (commencing with Section 680.010) (Enforcement of Judgments Law). See, e.g., Section 703.010.

§ 493.020. General assignment for the benefit of creditors not precluded

493.020. Notwithstanding any other provision of this title, the defendant may make a general assignment for the benefit of creditors.

Comment. Section 493.020 makes clear that, regardless of the terms of any writ of attachment, temporary protective order (Sections 486.010–486.110), or turnover order (Section 482.080), the defendant may make a general assignment for the benefit of creditors. Section 493.020 and the remainder of Chapter 13 reflect the policy favoring general assignments for the benefit of creditors (which contemplate the ratable distribution to creditors of the assignor's assets) over attachment (which permits an unsecured creditor to establish a priority over other unsecured creditors).

§ 493.030. Termination of lien of temporary protective order or attachment

493.030. (a) The making of a general assignment for the benefit of creditors terminates a lien of a temporary protective order or of attachment if the lien was created within 90 days prior to the making of the general assignment.

(b) The filing of a petition commencing a voluntary or involuntary case under Title 11 of the United States Code (Bankruptcy) terminates a lien of a temporary protective order or of attachment if the lien was created within 90 days prior to the filing of the petition.

(c) Subdivisions (a) and (b) do not apply unless all liens of attachment on the defendant's property in other states that were created within 90 days prior to the making of a general assignment for the benefit of creditors or the filing of a petition commencing a case under Title 11 of the United States Code (Bankruptcy) have terminated.

1977 Addition

Comment. Section 493.030 provides for the termination of the lien of a temporary protective order or of an attachment upon the making of a general assignment for the benefit of creditors (defined in Section 493.010) or the commencement of bankruptcy proceedings within [90 days] after the creation of the lien. See also Sections 486.090 (expiration of temporary protective order), 486.110 (lien of temporary protective order from time of service), 488.500 (lien of attachment), 488.510 (duration of lien of attachment).

Section 493.030 is derived from a portion of former Section 542b which provided for the termination of the lien created by service of the notice of attachment hearing and the temporary restraining order when the defendant filed a proceeding under the Bankruptcy Act or made a general assignment for the benefit of creditors. It broadens the former section to provide for the automatic termination of the lien of attachment, thereby making it unnecessary to initiate court proceedings under the Bankruptcy Act to have the lien of attachment declared void. This principle is also applied where the defendant makes a general assignment for the benefit of creditors (defined in Section 493.010) within the specified time. . . .

Subdivision (c) prevents the termination of attachment liens under this section in a case where attachment liens on the defendant's property in other states are not terminated. This provision recognizes that, in another state, the lien may not be voided under Section 67a(1) of the Bankruptcy Act, 11 U.S.C. § 107(a)(1) (1970), or under the applicable laws in that state relating to general assignments for the benefit of creditors. For example, if the law relating to general assignments in another state does not provide for the termination of an attachment lien in that state, the making of a general assignment would not terminate the attachment lien in California if there is an attachment lien on the defendant's property located elsewhere that would not be terminated. Similarly, if the trustee in bankruptcy does not obtain a court order voiding an attachment lien in another state, an attachment lien in California will not be automatically terminated under subdivision (b) of this section.

This chapter does not affect other provisions voiding liens arising under this title. See, *e.g.*, Ins. Code § 1034 (voidable preferences in insolvency proceedings applicable to insurers).

1979 Amendment

Comment. Section 493.030 is amended to conform to the 90-day preference period prescribed by the Bankruptcy Reform Act of 1978 (Pub.L. No. 95-598), 11 U.S.C. § 547. Other changes in this section conform to the terminology of the new act. The provision relating to general assignments is made uniform with the bankruptcy provision. The reference to preservation of liens for the benefit of the estate is superseded by Section 493.060. See Comment to Section 493.060.

§ 493.040. Release of attachment

493.040. (a) Where a lien of attachment terminates pursuant to Section 493.030, the assignee under a general assignment for the benefit of creditors or, in the case of a bankruptcy, the trustee, interim trustee, or the debtor in possession if there is no trustee or interim trustee, may secure the release of the attached property by filing with the levying officer a request for release of attachment stating the grounds for release and describing the property to be released, executed under oath, together with a copy thereof.

(b) In the case of an assignee, the request shall include two copies of the general assignment for the benefit of creditors.

(c) In the case of a trustee, interim trustee, or debtor in possession, the request shall include a certified copy of the petition in bankruptcy, together with a copy thereof.

(d) If immediate release of the attachment is sought, the request shall be accompanied by an undertaking to pay the plaintiff any damages resulting from an improper release of the attachment, in the amount to be secured by the attachment, executed by an admitted surety insurer.

(e) Within five days after the filing of the request for release of attachment, the levying officer shall mail to the plaintiff:

(1) A copy of the request for release of the attachment, including the copy of the document filed pursuant to subdivision (b) or (c).

(2) If an undertaking has not been given, a notice that the attachment will be released pursuant to the request for release of attachment unless otherwise ordered by a court within 10 days after the date of mailing the notice.

(3) If an undertaking has been given, a notice that the attachment has been released.

(f) Unless otherwise ordered by a court, if an undertaking has not been given, the levying officer shall release the attachment pursuant to the request for release of attachment after the expiration of 10 days from the date of mailing the papers referred to in subdivision

(e) to the plaintiff. If an undertaking has been given, the levying officer shall immediately release the attachment pursuant to the request for release of attachment.

(g) Where the attached property has been taken into custody, it shall be released to the person making the request for release of attachment or some other person designated in the request. Where the attached property has not been taken into custody, it shall be released as provided in subdivision (c) or (d) of Section 488.730.

(h) The levying officer is not liable for releasing an attachment in accordance with this section nor is any other person liable for acting in conformity with the release.

1977 Addition

Comment. Section 493.040 provides a procedure for releasing property from an attachment the lien of which has terminated pursuant to Section 493.030. Under Section 493.040, the levying officer is provided with sufficient information to dispose of the attached property in an expeditious and orderly manner. By giving the plaintiff notice before the release takes place, the plaintiff in an appropriate case is able to protect his or her interests in preserving the attachment priority. In the alternative, where the person seeking release has given a proper undertaking, the property is released from attachment immediately and the plaintiff is protected by the undertaking in the amount of the plaintiff's claim to be secured by the attachment. Under the release provisions of Section . . . [488.730], which are incorporated by Section 493.040(g), garnishees are informed that they are relieved of the duties and liabilities of a garnishee arising from service of the notice and writ of attachment. Subdivision (h) protects persons acting in conformity with the release provisions of this section and is the same . . . [in substance as Section 488.730(e)].

1979 Amendment

Comment. Section 493.040 is amended to conform to the elimination of receivers and the creation of interim trustees by the Bankruptcy Reform Act of 1978 (Pub.L. No. 95-598), 11 U.S.C. §§ 105, 303, 701.

1982 Amendment

Comment. Section 493.040 is amended to insert a reference to Section 488.730 which replaced former Section 488.560.

§ 493.050. Reinstatement of lien

493.050. (a) The lien of a temporary protective order or of attachment, which has terminated pursuant to Section 493.030, is reinstated with the same effect as if it had not been terminated in the following cases:

(1) Where the termination is the result of the making of a general assignment for the benefit of creditors and the general assignment for the benefit of creditors is set aside otherwise than by the filing of a petition commencing a case under Title 11 of the United States Code (Bankruptcy).

(2) Where the termination is the result of the filing of a petition commencing a case under Title 11 of the United States Code (Bankruptcy) and the petition is dismissed.

(3) Where the termination is the result of the filing of a petition commencing a case under Title 11 of the United States Code (Bankruptcy) and the trustee abandons property which had been subject to the lien of the temporary protective order or of attachment.

(b) The period from the making of a general assignment for the benefit of creditors until reinstatement of the lien of the temporary protective order or of attachment is not counted in determining the duration of the temporary protective order or the lien of attachment.

1977 Addition

Comment. Section 493.050 provides for reinstatement of the terminated lien where the general assignment for the benefit of creditors is set aside, the [petition commencing a case under Title 11 of the United States Code is dismissed], or the trustee in bankruptcy abandons property that had been subject to a terminated lien. Paragraph (2) of subdivision (a) is derived from a proviso contained in Section 67a(1) of the Bankruptcy Act, 11 U.S.C. § 107(a)(1) (1970). Paragraph (1) applies this principle to the analogous situation where the general assignment for the benefit of creditors fails. Paragraph (3) codifies for the purposes of this chapter the principle that, after abandonment, the property is restored to its former status as if it had never been held by the trustee. See *Pounds v. Chicago Ins. Co.*, 298 So.2d 134 (La. Ct. App. 1974).

Subdivision (b) provides for the tolling of the running of the effective periods of the temporary protective order under Section 486.090 and the lien of attachment under Section 488.510 when the defendant makes a general assignment for the benefit of creditors. Federal law provides for the tolling of state statutes of limitation upon the filing of a petition in bankruptcy. Bankruptcy Act § 11f, 11 U.S.C. § 29(f) (1970); *Boloodian v.*

Ohanesian, 13 Cal. App.3d 635, 91 Cal. Rptr. 923 (1970) (tolling of period of attachment lien under former Section 542b). Note that the effective date of the lien of the reinstated attachment may relate back to the date of service of a temporary protective order as provided in Section 488.500.

1979 Amendment

Comment. Section 493.050 is amended to conform to the terminology of the Bankruptcy Reform Act of 1978 (Pub.L. No. 95-598), 11 U.S.C. § 303.

§ 493.060. Assignee subrogated to rights of plaintiff

493.060. (a) Upon the making of a general assignment for the benefit of creditors that terminates a lien under this chapter, the assignee is subrogated to the rights of the plaintiff under the temporary protective order or attachment.

(b) Upon the filing of a petition commencing a case under Title 11 of the United States Code (Bankruptcy), a lien terminated pursuant to this chapter is preserved for the benefit of the estate.

1977 Addition

Comment. Section 493.060 subrogates the assignee under the general assignment for the benefit of creditors to the rights of the attaching plaintiff in order to prevent the termination of the lien of the temporary protective order or of attachment from benefiting a lienholder whose lien was subordinate to the plaintiff's lien but whose lien is not terminated by the making of the general assignment. Hence, where the plaintiff has attached property of the defendant and the property later becomes subject to a security interest, a general assignment by the defendant gives the assignee the priority of the attaching plaintiff whose lien is terminated by Section 493.030(a). Without this provision, the secured party whose interest would otherwise be prior to the assignee's would move up in the line of priorities and the termination of the attachment lien would benefit the secured party rather than the entire estate under control of the assignee. This provision is analogous in effect to the provision in the Bankruptcy Act which permits the trustee to be subrogated to the rights of a lienholder whose lien is void. See Bankruptcy Act § 67a(3), 11 U.S.C. § 107(a)(3) (1970).

1979 Amendment

Comment. Subdivision (b) is added to Section 493.060 for consistency with the Bankruptcy Reform Act of 1978 (Pub.L. No. 95-598), 11 U.S.C. § 551. This subdivision supersedes the

provision formerly found in Section 493.030 (b) relating to a court order preserving the lien for the benefit of the bankrupt estate.

CONFORMING ADDITIONS, AMENDMENTS, AND REPEALS

The Law Revision Commission prepared a bill to make the necessary revisions (amendments, additions, and repeals) of existing codes to conform them to the new Enforcement of Judgments Law.¹ This bill was enacted as Chapter 497 of the Statutes of 1982.

To save printing costs, the entire text of the conforming revisions bill is not set out below. Instead, only those sections of the bill that are of special significance are set out.

In the material that follows, for each section of the conforming revisions bill:

- (1) A section heading for the section is set out.
- (2) The text of the code section being amended, added, or repealed is then set out in some cases.
- (3) The Comment to the section being amended, added, or repealed is then set out.

Unless otherwise indicated, the Comment is taken from the Law Revision Commission *Tentative Recommendation Proposing The Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980). The Comments designated "Legislative Committee Comment—Assembly" are taken from the Assembly Judiciary Committee report noted in the Assembly Journal for January 18, 1982. The Comments designated "Legislative Committee Comment—Senate" are taken from the Senate Judiciary Committee report printed in the Senate Journal for June 24, 1982.

Business & Professions Code § 24071 (technical amendment). Transfer of alcoholic beverage license

Note. There is no official Comment for this section.

Business & Professions Code § 24075 (technical amendment). Transfer of alcoholic beverage license

Comment. Section 24075 is amended to make clear that the priorities for distribution of proceeds from the sale of a liquor license provided by Section 24074 apply where a liquor license is to be sold to satisfy a money judgment by a receiver appointed pursuant to Section 708.630 of the Code of Civil Procedure.

¹ The significant provisions of this bill are noted at various points in the discussion of the provisions of the Enforcement of Judgments Law in the preliminary portion of this publication.

Civil Code § 765 (technical amendment). Nature of estates in property

Comment. Section 765 is amended to conform to the terminology of Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

Civil Code § 859 (technical amendment). Claims of creditors against trust surplus

859. Where a trust is created to receive the rents and profits of real or personal property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, may be applied to the satisfaction of a money judgment against the person as provided in Section 709.010 of the Code of Civil Procedure.

Comment. Section 859 is amended to refer to Code of Civil Procedure Section 709.010 which provides for enforcing a money judgment against trust assets.

Civil Code § 954.5 (added). Transfer of right represented by judgment

954.5. (a) Subject to subdivisions (b) and (c), a transfer of a right represented by a judgment excluded from coverage of Division 9 of the Commercial Code by subdivision (h) of Section 9104 of the Commercial Code shall be deemed perfected as against third persons upon there being executed and delivered to the transferee an assignment thereof in writing.

(b) As between bona fide assignees of the same right for value without notice, the assignee who first becomes an assignee of record, by filing an acknowledgment of assignment of judgment with the court as provided in Section 673 of the Code of Civil Procedure or otherwise becoming an assignee of record, has priority.

(c) The filing of an acknowledgment of assignment of the judgment with the court under Section 673 of the Code of Civil Procedure is not, of itself, notice to the

judgment debtor so as to invalidate any payments made by the judgment debtor that would otherwise be applied to the satisfaction of the judgment.

Comment. Section 954.5 continues the substance of a former portion of Section 955.1, but Section 954.5 changes prior law concerning the priorities of conflicting bona fide assignees of the same judgment for value without notice; such an assignee who first files an acknowledgment of assignment of judgment under Code of Civil Procedure Section 673 (or otherwise becomes an assignee of record) obtains a priority over other assignees of the same judgment. Under prior law formerly found in Section 955.1, the good faith, for value, without notice, assignee who first gave notice of the assignment in writing to the judgment debtor had priority. Nothing in Section 954.5 requires the filing of an acknowledgment of assignment of judgment with the court in order to accomplish the transfer of the interest in the judgment; the section merely covers the priorities between conflicting bona fide assignees of the same right for value and without notice and protects the judgment debtor who pays the judgment creditor without notice of the assignment.

Civil Code § 955 (technical amendment). Transfer of nonnegotiable instruments; sale of accounts or chattel paper as part of sale of business

Comment. Section 955 is amended to delete the reference to “contract rights” since that term is no longer used in the Commercial Code and to make other technical changes.

Civil Code § 955.1 (amended). Transfer of general intangibles, accounts, or chattel paper

Comment. Section 955.1 is amended to delete the reference to “contract rights,” since that term is no longer used in the Commercial Code. The reference to a “right represented by a judgment” is deleted because this provision is superseded by Section 954.5. The other changes are not substantive.

Civil Code § 986 (technical amendment). Sale of work of fine art

Legislative Committee Comment—Assembly

Comment. Section 986(a) (6) is amended to conform to the terminology of Title 9 (commencing with Section 680.010) of

Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). The reference to attachment has been deleted as unnecessary because Code of Civil Procedure Section 487.020 incorporates for attachment the exemptions from enforcement of a money judgment. Subdivision (b) (6) is added to make clear that the artist has no right to receive a percentage of proceeds from the sale of a work of art to satisfy a money judgment.

Civil Code §§ 1237-1304 (repealed). Declared homesteads

Legislative Committee Comment—Senate

Comment. Sections 1237 through 1304 relating to the declared homestead are superseded by Code of Civil Procedure Sections 704.710-704.850 (claimed homestead exemption) and 704.910-704.990 (declared homesteads). As a restraint on the ability to convey, encumber, or partition property (former Sections 1240 and 1242), the declared homestead is superseded by more general provisions governing conveyance, encumbrance, and partition of community and separate property and imposing obligations on spouses for mutual support and to provide a dwelling; the ability of one spouse to affect the separate property of the other spouse is not continued except as provided in Section 5102 of the Civil Code. See Civil Code §§ 5107 (wife may convey separate property without consent of husband), 5108 (husband may convey separate property without consent of wife), 5125 (spouse may not convey or encumber community personal property used as a dwelling without written consent of other spouse), 5127 (both spouses must join in conveyance or encumbrance of community real property), 5100 (spouses' obligation of mutual support), 5102 (right to occupy dwelling of spouse and restraint on alienation of dwelling); Code Civ. Proc. § 872.210(b) (no partition of community property).

Civil Code § 1861 (technical amendment). Innkeeper's lien

1861. Hotel, motel, inn, boardinghouse, and lodging house keepers shall have a lien upon the baggage and other property belonging to or legally under the control of their guests, boarders, tenants, or lodgers which may be in such hotel, motel, inn, or boarding or lodging house for the proper charges due from such guests, boarders, tenants, or lodgers, for their accommodation, board and lodging and room rent, and such extras as are furnished at their request, and for all money paid for or advanced to such guests, boarders, tenants, or lodgers, and for the costs of enforcing such lien. The lien may be enforced

only after final judgment in an action brought to recover such charges or moneys. During the pendency of the proceeding, the plaintiff may take possession of the baggage and property pursuant to a writ of possession as provided by Sections 1861.1 to 1861.27, inclusive. However, if any baggage or property becoming subject to the lien herein provided for does not belong to the guest, lodger, tenant, or boarder who incurred the charges or indebtedness secured thereby, at the time when such charges or indebtedness was incurred, and if the hotel, motel, inn, boarding or lodging house keeper entitled to such lien receives notice of such fact at any time before the sale of such baggage or property hereunder, then, and in that event, such baggage and property which is subject to said lien and did not belong to said guest, boarder, tenant, or lodger at the time when such charges or indebtedness was incurred shall not be subject to this lien.

Any property which is exempt from enforcement of a money judgment is not subject to the lien provided for in this section.

Legislative Committee Comment—Senate

Comment. The last paragraph of Section 1861 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). See Code Civ. Proc. § 703.010 *et seq.* (exemptions). The reference to attachment has been deleted as unnecessary because Code of Civil Procedure Section 487.020 incorporates for attachment the exemptions from enforcement of a money judgment.

Civil Code § 1861a (amended). Apartment keeper's lien

1861a. Keepers of furnished and unfurnished apartment houses, apartments, cottages, or bungalow courts shall have a lien upon the baggage and other property of value belonging to their tenants or guests, and upon all the right, title and interest of their tenants or guests in and to all property in the possession of such tenants or guests which may be in such apartment house, apartment, cottage, or bungalow court, for the proper charges due from such tenants or guests, for their accommodation, rent, services, meals, and such extras as are furnished at their request, and for all moneys

expended for them, at their request, and for the costs of enforcing such lien.

Such lien may be enforced only after final judgment in an action brought to recover such charges or moneys. During the pendency of the proceeding, the plaintiff may take possession of such baggage and property upon an order issued by the court, where it appears to the satisfaction of the court from an affidavit filed by or on behalf of the plaintiff that the baggage or property is about to be destroyed, substantially devalued, or removed from the premises. Ten days written notice of the hearing on the motion for such order shall be served on the defendant and shall inform the defendant that the defendant may file affidavits on the defendant's behalf and present testimony in the defendant's behalf and that if the defendant fails to appear the plaintiff will apply to the court for such order. The plaintiff shall file an undertaking with good and sufficient sureties, to be approved by the court, in such sum as may be fixed by the court.

Upon such order, the plaintiff shall have the right to enter peaceably the unfurnished apartment house, apartment, cottage, or bungalow court used by the guest or tenant without liability to the guest or tenant, including any possible claim of liability for conversion, trespass, or forcible entry. The plaintiff shall have the same duties and liabilities as a depository for hire as to property which the plaintiff takes into possession. An entry shall be considered peaceable when accomplished with a key or passkey or through an unlocked door during the hours between sunrise and sunset. Unless the judgment shall be paid within 30 days from the date when it becomes final, the plaintiff may sell the baggage and property, at public auction to the highest bidder, after giving notice of such sale by publication of a notice containing the name of the debtor, the amount due, a brief description of the property to be sold, and the time and place of such sale, pursuant to Section 6064 of the Government Code in the county in which said apartment house, apartment, cottage, or bungalow court is situated, and after by mailing, at least 15 days prior to the date of

sale, a copy of such notice addressed to such tenant or guest at the residence or other known address of the tenant or guest, and if not known, such notice shall be addressed to the tenant or guest at the place where such apartment house, apartment, cottage, or bungalow court is situated; and, after satisfying such lien out of the proceeds of such sale, together with any reasonable costs, that may have been incurred in enforcing said lien, the residue of said proceeds of sale, if any, shall, upon demand made within six months after such sale, be paid to such tenant or guest; and if not demanded within six months from the date of such sale, said residue, if any, shall be paid into the treasury of the county in which such sale took place; and if the same be not claimed by the owner thereof, or the owner's legal representative within one year thereafter, it shall be paid into the general fund of the county; and such sale shall be a perpetual bar to any action against said keeper for the recovery of such baggage or property, or of the value thereof, or for any damages, growing out of the failure of such tenant or guest to receive such baggage or property.

When the baggage and property are not in the possession of the keeper as provided herein, such lien shall be enforced only in the manner provided for enforcement of a money judgment.

Any property which is exempt from enforcement of a money judgment is not subject to the lien provided for in this section.

Comment. Section 1861a is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). The provision concerning the rights of chattel mortgagees and conditional sellers is not continued because it is unnecessary. See, *e.g.*, Com. Code §§ 9301 (rights of lien creditor), 9310 (priority of certain liens arising by operation of law). The last paragraph of Section 1861a is revised to read the same as the last paragraph of revised Section 1861. See the Comment to that section.

Civil Code § 1861.25 (added). Third-party claims

1861.25. Where the property taken is claimed by a third person, the rules and proceedings applicable in cases of third-party claims under Division 4 (commencing with Section 720.010) of Title 9 of Part 2 of the Code of Civil Procedure apply.

Legislative Committee Comment—Assembly

Comment. Section 1861.25 is a new provision that makes clear that the third-party claims procedures set forth in Code of Civil Procedure Sections 720.010-720.800 are available under this article.

Civil Code § 3057 (repealed). Levying officer's lien

Legislative Committee Comment—Assembly

Comment. The substance of Section 3057 is continued in Code of Civil Procedure Sections 488.100 (attachment) and 687.050 (enforcement of judgments).

Civil Code § 3058 (repealed). Judgment lien

Comment. Section 3058 is repealed because it is unnecessary. Judgment liens are governed by Code of Civil Procedure Sections 697.310-697.670.

Civil Code § 3152 (technical amendment). Collection of debt owed to mechanic's lien claimant

Comment. The first sentence of Section 3152 is amended to make clear that the holder of a mechanic's lien may resort to any available procedure for enforcement of a money judgment and is not limited to enforcement by writ of execution. See Chapter 6 (commencing with Section 708.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure. The other revisions make no substantive change.

Civil Code § 3193 (technical amendment). Priorities where stop notice for public work

Comment. Section 3193 is amended to refer to the provisions that superseded Sections 710 and 710a of the Code of Civil Procedure which formerly were referred to in the section.

Civil Code § 4383 (added). Execution to enforce support

4383. (a) Notwithstanding Section 4380, a judgment, order, or decree for the payment of child or spousal support may be enforced by a writ of execution without prior court approval for amounts that are not more than 10 years overdue on the date of the application for the writ.

(b) The application for a writ of execution shall be accompanied by an affidavit stating the total amount due and unpaid that is not more than 10 years overdue on the date of the application. If interest on the overdue installments is sought, the affidavit shall state the total amount of the interest and the amount of each due and unpaid installment and the date it became due. The affidavit shall be filed in the action and a copy shall be attached to the writ of execution delivered to the levying officer. The levying officer shall serve the copy of the affidavit on the judgment debtor when the writ of execution is first served on the judgment debtor pursuant to a levy under the writ.

Legislative Committee Comment—Senate

Comment. Section 4383 is a new provision permitting enforcement of child and spousal support judgments by execution without the necessity of obtaining prior court approval under Section 4380, so long as the amounts sought to be collected are not more than 10 years overdue. See Sections 4380 and 4384 (court approval required before amounts due more than 10 years may be enforced). See also Section 4385 (judgments enforceable under this chapter).

Subdivision (b) provides technical requirements that must be complied with in addition to the general provisions governing execution. The affidavit provides the court clerk with the information needed to issue the writ and informs the judgment debtor concerning the nature of the debt sought to be collected. If no interest is sought on the amount due and unpaid, the affidavit need state only the total amount. If interest is sought, the affidavit need state only the total amount of interest and also state the amount of each unpaid installment and the date it became due so that the judgment debtor can verify that the interest was accurately computed.

Civil Code § 4384 (added). Lack of diligence for more than 10 years in seeking enforcement of money judgment under Family Law Act

4384. The lack of diligence for more than 10 years in seeking enforcement of a judgment, order, or decree of

the court made, entered, or enforceable pursuant to this part that requires the payment of money shall be considered by the court in determining whether to permit enforcement of the judgment, order or decree under Section 4380. In the case of a judgment, order, or decree for the payment of money in installments, the 10-year period runs as to each installment from the date the installment became due.

Legislative Committee Comment—Senate

Comment. The first sentence of Section 4384 is drawn from a portion of former Code of Civil Procedure Section 635 that applied to issuance of writs of execution to enforce judgments under the Family Law Act. See, e.g., *Lesh v. Lesh*, 8 Cal. App.3d 883, 87 Cal. Rptr. 632 (1970); *Nutt v. Nutt*, 247 Cal. App.2d 166, 55 Cal. Rptr. 380 (1966). See also Section 4385 (judgments enforceable under this chapter). Unlike former Section 685, Section 4384 is not limited to enforcement by execution but applies to all enforcement procedures sought after the expiration of 10 years. The second sentence recognizes case law concerning the time within which installment judgments may be enforced without a showing of diligence. See, e.g., *Wolfe v. Wolfe*, 30 Cal.2d 1, 4, 180 P.2d 345 (1947). Nothing in Section 4384 precludes the court from permitting enforcement after 10 years even though diligence is not shown if the court, in its discretion, determines that enforcement would be equitable in light of all the circumstances of the particular case. Sections 4380–4385 provide an exception to the general provisions governing time for enforcement and renewal of judgments provided by Sections 683.010–683.220 of the Code of Civil Procedure. See Code Civ. Proc. § 683.310.

Civil Code § 4385 (added). Child or spousal support judgments enforceable under this chapter

4385. A judgment, order, or decree for child or spousal support made, entered, or enforceable in this state is enforceable under this chapter whether or not the judgment, order, or decree was made or entered pursuant to this part.

Legislative Committee Comment—Senate

Comment. Section 4385 is a new provision that makes clear that any child or spousal support judgment, order, or decree is enforceable under this chapter if it is made, entered, or enforceable in this state. The judgment need not be one that is made or entered pursuant to this part. Accordingly, for example, a foreign support judgment that has been registered in this state is enforceable under this chapter. See Code Civ. Proc. § 1699 (registered foreign support order treated in the same manner as a support order issued by a court of this state). In addition, Section 4385 eliminates any question

concerning the enforceability under this chapter of a child or spousal support order made or entered in this state in a case where it is not clear whether the order was made or entered under the Family Law Act. See, *e.g.*, Civil Code §§ 241–254 (civil liability for support).

Civil Code § 4701 (amended). Wage assignment for child support

4701. (a) In any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, the court may order either parent or both parents to assign to the county clerk, probation officer, or other officer of the court or county officer designated by the court to receive the payment, that portion of salary or wages of either parent due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance, and education of the minor child. The order shall operate as an assignment and shall be binding upon any existing or future employer of the defaulting parent upon whom a copy of the order is served. Any such order may be modified or revoked at any time by the court.

(b) (1) Notwithstanding the provisions of subdivision (a), in any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, upon a petition signed under penalty of perjury by the person or county officer to whom support has been ordered to have been paid that the parent so ordered is in arrears in payment in a sum equal to the amount of one month of the payment within the 24-month period immediately preceding filing of the petition with the court, the court shall issue without notice to the parent ordered to pay support an order requiring the parent ordered to pay support to assign either to the person to whom support has been ordered to have been paid or to a county officer designated by the court to receive the payment, that portion of the salary or wages of the parent due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance, and education of the minor child. Such an order shall operate as an assignment and

shall be binding upon any existing or future employer of the parent ordered to pay support upon whom a copy of the order is served.

The petition shall state the number of previous times a petition for assignment has been filed pursuant to this subdivision and the county in which any such petition was filed.

(2) No petition shall be accepted for filing pursuant to this subdivision unless it contains a declaration stating that the parent, or any other person designated pursuant to subdivision (a), to whom support has been ordered to be paid has given the parent ordered to pay support a written notice of his or her intent to seek a wage assignment in the event of a default in support payments and that the notice was transmitted by certified mail or personally served at least 15 days prior to the date of the filing of the petition. A written notice of intent to seek a wage assignment may be given at the time of the entry of the final decree of dissolution or at any time subsequent thereto. In addition to any other penalty provided by law, the filing of a petition with knowledge of the falsity of the declaration of notice is punishable as a contempt pursuant to Section 1209 of the Code of Civil Procedure. The parent ordered to pay support may at any time waive the written notice required by this subdivision.

(3) The parent to whom support has been ordered to be paid shall notify the court and the employer of the parent ordered to pay support, by any form of mailing requiring a return receipt, of any change of address within a reasonable period of time after any such change. In instances in which payments have been ordered to be made to a county officer designated by the court, the parent to whom support has been ordered to be paid shall notify the court and the county officer, by any form of mail requiring a return receipt, of any address change within a reasonable period of time after any such change. If the employer or county officer is unable to deliver payments under the assignment for a period of three months due to the failure of the person to whom support has been ordered to be paid to notify the employer or

county officer of a change of address, the employer or county officer shall not make any further payments under the assignment and shall return all undeliverable payments to the employee.

(4) An assignment order made pursuant to this subdivision shall not become effective until 10 days after service of the order on an employer.

(5) Within 10 days of service of an assignment order issued pursuant to this subdivision on an employer, the employer shall deliver a copy of the assignment order to the parent ordered to pay support.

(6) A parent alleged to be in default may move to quash an assignment order issued under this subdivision within 10 days after service on the parent of notice of the assignment order by his or her employer if the parent states under oath that a default in the amount alleged in the petition has not occurred within the 24-month period referred to in the petition or that the amount is not owed. The motion and notice of motion to quash the assignment order shall be filed with the court issuing the assignment order within 10 days after service on the parent of notice of the order by the employer. The clerk of the court shall set the motion to quash for hearing within not less than 15 days, nor more than 20 days, after receipt of the notice of motion and shall mail to the petitioner at the return address contained in the petition a copy of the notice of motion by first-class mail within five days after receipt of the notice of motion.

(7) The employer shall continue to withhold and forward support as ordered by the court until served with notice that the motion to quash under this subdivision has been granted.

(8) The due date of support payments under this subdivision shall be the date specifically stated in the order of support or if no date is stated in the support order, then it shall be the last day of the month in which the support payment is to be paid.

(9) For purposes of this subdivision, arrearages of payment shall be computed on the basis of the payments owed and unpaid on the date that the parent ordered to pay support has been given notice of the order of

assignment and the fact that the parent ordered to pay support may have subsequently paid such arrearages shall not relieve the court of its duty under this subdivision to order the assignment.

(10) Upon petition by the parent ordered to pay support, the court shall terminate an order of assignment entered pursuant to this subdivision upon proof of full payment pursuant to the wage assignment for the appropriate period of time, as follows:

(A) An assignment pursuant to this subdivision pursuant to an initial petition shall continue until support payments are current.

(B) An assignment under this subdivision pursuant to a second petition filed within 24 months shall continue for 12 months.

(C) An assignment under this subdivision pursuant to a third or subsequent petition filed within 48 months shall continue for 18 months.

Upon petition by the parent ordered to pay support the court shall terminate an order of assignment entered pursuant to this subdivision if the employer or county officer has been unable to deliver payments under the assignment for a period of three months due to the failure of the person to whom support has been ordered to be paid to notify the employer or county officer of a change of address.

(c) The Judicial Council shall prescribe forms for the orders for wage assignment required or authorized by this section. The employer may deduct from the salary or wages of the employee the sum of one dollar (\$1) for each payment made pursuant to the order. Any such assignment made pursuant to court order shall have priority as against any attachment, execution, or other assignment, unless otherwise ordered by the court.

(d) The employer shall cooperate with and provide relevant employment information to the district attorney for the purpose of enforcing the child support obligation.

(e) No employer shall use any assignment authorized by this section as grounds for the dismissal of such employee.

(f) As used in this section “employer” includes the United States government and any public entity as defined in Section 811.2 of the Government Code.

(g) On declaration or affidavit of the parent to whom support has been ordered to be paid to the court that: (1) the parent ordered to make support payments is in default in such payment in the amount specified in subdivision (b), and (2) the whereabouts of such defaulting parent or the identity of his employer are unknown to the parent to whom support has been ordered to be paid, the district attorney shall contact the central registry maintained by the Department of Justice in the manner prescribed in Section 11478.5 of the Welfare and Institutions Code, and upon receiving the requested information, notify the court of the last known address of the absent parent and the name and address of the absent parent’s last known employer. The court shall then order the defaulting parent to make support payments pursuant to subdivision (b).

(h) Nothing in this section shall limit the authority of the district attorney to utilize any and all civil and criminal remedies to enforce child support obligations regardless of whether or not the custodial parent receives welfare moneys.

(i) The provisions of this section apply to the money and benefits described in Sections 704.110 and 704.113 of the Code of Civil Procedure to the extent that such money and benefits are subject to a wage assignment for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(j) Notwithstanding any other provision of law, when a certified copy of any order of assignment is served on any public entity described in Section 704.110 of the Code of Civil Procedure other than the United States government, such entity shall comply with any request for a return of employee contributions by an employee named in such order by delivering such contributions to the clerk of the court from which such order issued, unless the entity has received a certified copy of an order terminating the order of assignment. Upon receipt of

moneys pursuant to this section, the clerk of the court, within 10 days, shall send written notice of such fact to the parties, and any agency through whom payments have been ordered under Section 4702. Such moneys shall be subject to any procedure available to enforce an order for child support, but if no enforcement procedure is commenced after 30 days have elapsed from the date the notice of receipt is sent, the clerk shall, upon request, return the moneys to the public entity that delivered the moneys to the court unless the public entity has informed the court in writing that the moneys shall be released to the defaulting parent. A court shall not directly or indirectly condition the issuance, modification, or termination of, or condition the terms or conditions of, any order for the support of a minor child upon the issuance of such a request by such an employee.

Legislative Committee Comment—Senate

Comment. Subdivision (i) of Section 4701 is replaced by a reference to the provisions of the Enforcement of Judgments Law that supersede the former subdivision. Paragraph (1) of former subdivision (i) is superseded by Code of Civil Procedure Sections 703.070 (application of exempt property to satisfaction of judgment for child or spousal support) and 704.110(d). Paragraph (2) of former subdivision (i) is superseded by subdivisions (b) and (c) of Code of Civil Procedure Section 704.110 and by subdivision (c) of Code of Civil Procedure Section 704.113. The last sentence of former subdivision (i) has been omitted as unnecessary in view of Code of Civil Procedure Sections 704.120 and 704.160. The one dollar sum that was provided for administrative costs under former subdivision (i) is increased to two dollars in Section 704.110; the increased fee conforms to the fee formerly provided for administrative costs in Government Code Section 21201. The reference to attachment in Section 4701 has been deleted because attachment of earnings is not permitted. See Code Civ. Proc. § 487.020(c). Subdivision (j) is revised to require contributions to be returned to the public retirement system (unless the system otherwise advises the court) rather than to the employee. This change reflects the fact that the employee may not have a right to return of the contributions under the provisions applicable to the particular public retirement system.

Civil Code § 4800 (technical amendment). Division of property under Family Law Act

Legislative Committee Comment—Senate

Comment. Section 4800 is amended to reflect the elimination of the collateral effects of a homestead declaration. See Code Civ. Proc. § 704.940 and the Comment thereto.

Civil Code § 4801.6 (amended). Wage assignment for spousal support

4801.6. (a) In any proceeding where the court has ordered a party to pay any amount of spousal support to the other party, the court, upon a showing of good cause, may order the party required to make such payment of spousal support to assign to the county clerk or other officer of the court or county officer designated by the court to receive such payment, that portion of salary or wages of the party due or to be due in the future as will be sufficient to pay the amount ordered by the court for spousal support. Such order shall operate as an assignment and shall be binding upon any existing or future employer of the party required to make such payment of spousal support upon whom a copy of such order is served. The Judicial Council shall prescribe forms for such orders. The employer may deduct the sum of one dollar (\$1) for each payment made pursuant to such order. Any such order may be modified or revoked at any time by the court. Any such assignment made pursuant to court order shall have priority as against any execution or other assignment, unless otherwise ordered by the court, with the exception of assignments made pursuant to Section 4701. The employer shall cooperate with and provide relevant employment information to the district attorney for the purpose of enforcing the spousal support obligation.

(b) Notwithstanding the provisions of subdivision (a), in any proceeding where the court has ordered a party to pay spousal support to the other party upon both a petition by the person to whom support has been ordered to have been paid and a finding by the court that the party so ordered to pay spousal support is in arrears in payment in a sum equal to the amount of two months of such payments within the 24-month period immediately preceding submission of such petition, the court shall order the defaulting party to assign either to the person to whom support has been ordered to have been paid or to a county officer designated by the court to receive such payment, that portion of the salary or wages of the party

required to make such payment of spousal support as will be sufficient to pay the amount ordered by the court for spousal support. Such an order shall operate as an assignment and shall be binding upon any existing or future employer of the party required to make such payment of spousal support upon whom a copy of such order is served. The Judicial Council shall prescribe forms for such orders. The employer may deduct the sum of one dollar (\$1) for each payment made pursuant to the order. Any such assignment made pursuant to court order shall have priority as against any execution or other assignment, unless otherwise ordered by the court, with the exception of assignments made pursuant to Section 4701.

The party to whom support has been ordered to be paid shall notify the court and the employer of the party ordered to pay spousal support, by any form of mail requiring a return receipt, of any change of address within a reasonable period of time after any such change. In instances in which payments have been ordered to be made to a county officer designated by the court, the party to whom spousal support has been ordered to be paid shall notify the court and such county officer, by any form of mail requiring a return receipt, of any address change within a reasonable period of time after such changes. If the employer or county officer is unable to deliver payments under the assignment for a period of three months due to the failure of the person to whom support has been ordered to be paid to notify the employer or county officer of a change of address, the employer or county officer shall not make any further payments under the assignment and shall return all undeliverable payments to the employee.

For purposes of this subdivision, arrearages in payment shall be computed on the basis of the payments owed and unpaid on the date that the defaulting party has been given notice personally, and not by mail pursuant to Sections 1010 and 1011 of the Code of Civil Procedure of the application for the order of assignment, and the fact that the defaulting party may have subsequently paid

such arrearages shall not relieve the court of its duty under this subdivision to order the assignment.

Upon a petition by the defaulting party, the court shall terminate such order of assignment entered pursuant to this subdivision if (1) there has been 18 continuous and uninterrupted months of full payment under the wage assignment or (2) the employer or county officer has been unable to deliver payments under the assignment for a period of three months due to the failure of the person to whom spousal support has been ordered to be paid to notify the employer or county officer of a change of address.

(c) No employer shall use any assignment authorized by this section as grounds for the dismissal of such employee.

(d) As used in this section "employer" includes the United States government and any public entity as defined in Section 811.2 of the Government Code.

(e) On declaration or affidavit of the party to whom spousal support has been ordered to be paid to the court that: (1) the party ordered to make a spousal support payment is in default in such payment in the amount specified in subdivision (b), and (2) the whereabouts of such defaulting party or the identity of his employer are unknown to the party to whom spousal support has been ordered to be paid, the district attorney shall contact the central registry maintained by the Department of Justice in the manner prescribed in Section 11478.5 of the Welfare and Institutions Code, and upon receiving the requested information, notify the court of the last known address of the absent party and the name and address of the absent party's last known employer. The court shall then order the party obligated to make spousal support payments to show cause why an order for assignment pursuant to subdivision (b) should not issue. The county may charge a reasonable fee not to exceed two dollars and fifty cents (\$2.50) for the services of the district attorney under this subdivision.

(f) Nothing in this section shall limit or expand the authority of the district attorney to utilize any and all civil and criminal remedies to enforce spousal support

obligations regardless of whether or not the party to be supported receives welfare moneys.

(g) The provisions of this section apply to the money and benefits described in Sections 704.110 and 704.113 of the Code of Civil Procedure to the extent that such moneys and benefits are subject to a wage assignment for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(h) Notwithstanding any other provision of law, when a certified copy of any order of assignment is served on any public entity described in Section 704.110 of the Code of Civil Procedure other than the United States government, such entity shall comply with any request for a return of employee contributions by an employee named in such order by delivering such contributions to the clerk of the court from which such order issued, unless the entity has received a certified copy of an order terminating the order of assignment. Upon receipt of moneys pursuant to this section, the clerk of the court, within 10 days, shall send written notice of such fact to the parties, and any agency through whom payments have been ordered under Section 4801.7. Such moneys shall be subject to any procedure available to enforce an order for spousal support, but if no enforcement procedure is commenced after 30 days have elapsed from the date the notice is sent, the clerk shall, upon request, return the moneys to the public entity that delivered the moneys to the court unless the public entity has informed the court in writing that the moneys shall be released to the defaulting party. A court shall not directly or indirectly condition the issuance, modification or termination of, or condition the terms or conditions of, any order for spousal support upon the issuance of such a request by such an employee.

Comment. The amendments made to Section 4801.6 are consistent with those made to Section 4701. See the Comment to Section 4701.

Civil Code § 4810 (technical amendment). Revision of marital property disposition

Legislative Committee Comment—Senate

Comment. Section 4810 is amended to reflect the elimination of the collateral effects of a homestead declaration. See Code Civ. Proc. § 704.940 and the Comment thereto.

Civil Code § 5102 (amended). Separate property

5102. (a) Except as otherwise provided in this section, neither husband nor wife has any interest in the separate property of the other, but neither can be excluded from the other's dwelling except as provided in Section 4359 or, in proceedings under Chapter 1 (commencing with Section 4400) or Chapter 2 (commencing with Section 4425) of Title 2 of this part, or under Chapter 1 (commencing with Section 4500) of Title 3 of this part, upon application of either party in the manner provided by Section 527 of the Code of Civil Procedure, the court may order the temporary exclusion of either party from the family dwelling or from the dwelling of the other upon a showing that the party to be excluded has assaulted or threatens to assault the other party, and that physical or emotional harm would otherwise result to the other party or any other person under the care, custody, or control of the other party, until the final determination of the proceeding.

(b) If notice of the pendency of a proceeding for separation or annulment or dissolution of marriage is recorded in any county in which the husband or wife resides on real property that is the separate property of the other, the real property shall not for a period of three months thereafter be transferred, encumbered, or otherwise disposed of voluntarily or involuntarily without the joinder of both spouses, unless the court otherwise orders.

Legislative Committee Comment—Senate

Comment. Subdivision (b) is added to Section 5102 to provide a means of restraining transfer or encumbrance of the dwelling that is the separate property of a spouse during the pendency of separation, annulment, or dissolution proceedings. The restraint applies to involuntary as well as voluntary dispositions of the dwelling, such as pursuant to writ of execution. This supersedes former law which

permitted a spouse to declare a homestead on the separate property of the other spouse with restrictive effect. See former Sections 1238(c), 1242, 1243; Code Civ. Proc. § 704.940 (right to convey or encumber declared homestead). As to the authority of the court to restrain transfer during pendency of the proceedings, see Section 4359. A community property dwelling may not be transferred or encumbered without joinder or consent of both spouses. See Sections 5125 and 5127.

Civil Code § 5121 (amended). Liability of separate property

5121. (a) The separate property of a spouse is liable for the debts of the spouse contracted before or after the marriage of the spouse, but is not liable for the debts of the other spouse contracted after marriage; provided, that the separate property of the spouse is liable for the payment of debts contracted by either spouse for the necessities of life pursuant to Section 5132.

(b) The separate property of a spouse is not subject to enforcement of a money judgment for a debt of the other spouse unless the spouse is made a judgment debtor under the judgment for the purpose of liability.

Comment. Subdivision (b) is added to Section 5121 to codify the rule that the separate property of a spouse may not be subjected to process by creditors of the other spouse unless the spouse has been made a party for the purpose of making the separate property liable. See, *e.g.*, *Evans v. Noonan*, 20 Cal. App. 288, 128 P. 794 (1912); *Credit Bureau of Santa Monica Bay Dist., Inc. v. Terranova*, 15 Cal. App.3d 854, 93 Cal. Rptr. 538 (1971).

Civil Code § 5125 (amended). Management and control of community personal property

5125. (a) Except as provided in subdivisions (b), (c), and (d) and Sections 5113.5 and 5128, either spouse has the management and control of the community personal property, whether acquired prior to or on or after January 1, 1975, with like absolute power of disposition, other than testamentary, as the spouse has of the separate estate of the spouse.

(b) A spouse may not make a gift of community personal property, or dispose of community personal

property without a valuable consideration, without the written consent of the other spouse.

(c) A spouse may not sell, convey, or encumber community personal property used as the family dwelling, or the furniture, furnishings, or fittings of the home, or the clothing or wearing apparel of the other spouse or minor children which is community personal property, without the written consent of the other spouse.

(d) A spouse who is operating or managing a business or an interest in a business which is community personal property has the sole management and control of the business or interest.

(e) Each spouse shall act in good faith with respect to the other spouse in the management and control of the community property.

Legislative Committee Comment—Senate

Comment. Section 5125 is amended to limit the disposition of personal property used as the family dwelling, such as a mobilehome. *Cf.* Code Civ. Proc. § 704.710(a) (“dwelling” defined).

**Code of Civil Procedure § 85 (technical amendment).
Enforcement of money judgment in municipal and
justice court**

Comment. Section 85 is amended to substitute references to the provisions that replaced the ones formerly listed in the section.

**Code of Civil Procedure § 86 (technical amendment).
Municipal and justice court jurisdiction**

Comment. Section 86 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 (Enforcement of Judgments Law).

**Code of Civil Procedure § 117 (technical amendment).
Informal hearing and disposition in small claims court;
costs**

Comment. Section 117 is amended to make clear that the prevailing party is entitled to the costs of enforcing the

judgment. See also Section 117.7 (small claims judgment may be enforced as provided in Enforcement of Judgments Law).

**Code of Civil Procedure § 117.7 (technical amendment).
Enforcement of judgments in small claims court**

Comment. The first sentence of Section 117.7 is amended to delete the reference to garnishment which is not a separate remedy. The second sentence is amended to reflect the enactment of a new Title 9 of Part 2 (Enforcement of Judgments Law).

**Code of Civil Procedure § 117.9 (technical amendment).
Payment of small claims court judgment;
acknowledgment of satisfaction**

Comment. Section 117.9 is amended to refer to an assignee "of record." A small claims judgment is enforced under the Enforcement of Judgments Law (Section 117.7), and an assignee of a judgment may not enforce the judgment under the Enforcement of Judgments Law unless an acknowledgment of assignment has been filed in the action or the assignee has otherwise become an assignee of record. See Sections 673, 681.020. The other revisions are not substantive changes.

**Code of Civil Procedure § 117.19 (technical amendment).
Amendment of claim to set forth legal name of
business; form concerning judgment debtor's assets**

Comment. Subdivision (b) of Section 117.19 is amended to refer to the sanction provision of the Enforcement of Judgments Law relating to failure to appear for an examination.

**Code of Civil Procedure § 166 (amended). Judicial
powers at chambers**

Comment. Subdivision (a)(4) is added to Section 166 to continue a provision of former Section 1033.7.

**Code of Civil Procedure § 339 (technical amendment).
Statute of limitations**

Comment. Subdivision 2 of Section 339 is amended to conform to the Enforcement of Judgments Law and to delete the

exception to the two-year statute of limitations for an action for an escape. Former subdivision 4 of Section 340 which applied a one-year statute of limitations in this case was repealed by 1973 Cal. Stats. ch. 20, § 1.

Code of Civil Procedure § 431.70 (amended). Offset of cross-demands for money

431.70. Where cross-demands for money have existed between persons at any point in time when neither demand was barred by the statute of limitations, and an action is thereafter commenced by one such person, the other person may assert in the answer the defense of payment in that the two demands are compensated so far as they equal each other, notwithstanding that an independent action asserting the person's claim would at the time of filing the answer be barred by the statute of limitations. If the cross-demand would otherwise be barred by the statute of limitations, the relief accorded under this section shall not exceed the value of the relief granted to the other party. The defense provided by this section is not available if the cross-demand is barred for failure to assert it in a prior action under Section 426.30. Neither person can be deprived of the benefits of this section by the assignment or death of the other. For the purposes of this section, a money judgment is a "demand for money" and, as applied to a money judgment, the demand is barred by the statute of limitations when enforcement of the judgment is barred under Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9.

Comment. Section 431.70 is amended to codify the case law rule that applies the offset principle where one of the claims to be offset is a judgment. See, *e.g.*, *Erlich v. Superior Court*, 63 Cal.2d 551, 555, 407 P.2d 649, 651, 47 Cal. Rptr. 473, 475 (1965); *Harrison v. Adams*, 20 Cal.2d 646, 648-49, 128 P.2d 9, 11-12 (1942); *Machado v. Borges*, 170 Cal. 501, 150 P. 351 (1915); *Coonan v. Loewenthal*, 147 Cal. 218, 223, 81 P. 527, 528 (1905); *Nash v. Krelig*, 136 Cal. 627, 69 P. 418 (1902). A judgment on which the time limit on enforceability has run (see Section 683.020) is analogous to a claim barred by the statute of limitations. The policy which allows the offsetting of cross-demands that have

coexisted at some point in time, notwithstanding that one of the claims is now barred by the statute of limitations (see *Jones v. Mortimer*, 28 Cal.2d 627, 632-33, 170 P.2d 893, 896-97 (1946); *Sunrise Produce Co. v. Malovich*, 101 Cal. App.2d 520, 522-23, 225 P.2d 973, 974-75 (1950)), applies equally to cross-demands where one of the demands which coexisted is a judgment on which the time for enforcement has expired. Section 431.70 as amended allows the offset of a judgment if the claim of the judgment debtor existed during the period during which the judgment was enforceable. However, where the judgment debtor's claim arises after the period for enforcement of the judgment has run, the judgment cannot be offset against the judgment debtor's claim; in this case, the demands have not "existed between persons at any point in time when neither demand was barred by the statute of limitations."

Code of Civil Procedure § 514.050 (technical amendment).
Third-party claims

Comment. Section 514.050 is amended to insert a reference to the appropriate provisions of the Enforcement of Judgments Law.

Code of Civil Procedure § 564 (technical amendment).
Receivers

Legislative Committee Comment—Assembly

Comment. Subdivision 4 of Section 564 is amended to conform to the Enforcement of Judgments Law. Proceedings in aid of execution are entitled examination proceedings under the new law. See Sections 708.110-708.205. The prerequisite that an execution be returned unsatisfied or that the debtor refuse to apply property to the satisfaction of the judgment is not continued. See Section 708.620 and the Comment thereto. The provision for appointment of a receiver during the redemption period applies in a more limited class of cases. See Sections 726(e), 729.010. Redemption is no longer available after execution sales. See Section 701.680. See also Section 712.060 (receiver to enforce judgment for possession or sale of property).

**Code of Civil Procedure § 568.5 (technical amendment).
Sale by receiver**

Legislative Committee Comment—Assembly

Comment. The first sentence of Section 568.5 is amended to refer to the sale provisions of the Enforcement of Judgments Law. The third sentence is deleted as unnecessary because the right of redemption is available only in cases described in Section 729.010. See also Section 701.680 (execution sales absolute).

**Code of Civil Procedure § 585.5 (technical amendment).
Motion to set aside default**

Comment. Subdivision (b) of Section 585.5 is amended to clarify the time within which a motion to set aside a default must be made. The 60-day period runs from the date notice of enforcement proceedings (whether levy, examination, or some other procedure) is received by the defendant rather than the date of levy itself. See Sections 699.010-701.830 (execution), 708.010-709.030 (miscellaneous creditors' remedies).

**Code of Civil Procedure § 667 (technical amendment).
Payment in specified currency**

Comment. Section 667 is amended to delete the portion relating to payment in a specified kind of money or currency. This provision is superseded by Section 577.5, which requires a judgment shall be computed and stated in dollars and cents. See also 65 Harv. L. Rev. 887 (1952) (if an obligation is payable in foreign currency, the judgment converts it into dollars). The deleted language dates back to 1851 (Cal. Stats. 1851 ch. 5, § 200 p. 82) and was applied, for example, to a judgment on a note containing a promise to pay in gold coin.

**Code of Civil Procedure § 673 (added). Acknowledgment
of assignment of judgment**

673. (a) An assignee of a right represented by a judgment may become an assignee of record by filing with the clerk of the court which entered the judgment an acknowledgment of assignment of judgment.

(b) An acknowledgment of assignment of judgment shall contain all of the following:

(1) The title of the court where the judgment is entered and the cause and number of the action.

(2) The date of entry of the judgment and of any renewals of the judgment and where entered in the records of the court.

(3) The name and address of the judgment creditor and name and last known address of the judgment debtor.

(4) A statement describing the right represented by the judgment that is assigned to the assignee.

(5) The name and address of the assignee.

(c) The acknowledgment of assignment of judgment shall be:

(1) Made in the manner of an acknowledgment of a conveyance of real property.

(2) Executed and acknowledged by the judgment creditor or by the prior assignee of record if there is one.

(d) This section is in addition to, and does not limit or restrict, any other means by which an assignee may become an assignee of record.

Comment. Section 673 is a new provision that prescribes the content and manner of execution of an acknowledgment of assignment of judgment. Although prior law referred to an "assignee of record" (see reference in former Section 675 relating to satisfaction of judgment), it was unclear how a person became an "assignee of record." Section 673 fills this gap, but the section does not limit or restrict the use of any other means by which an assignee may become an assignee of record. See subdivision (d).

The required contents and manner of execution of the acknowledgment of assignment of judgment are comparable to those specified in Section 724.060 (contents and manner of execution of acknowledgment of satisfaction of judgment).

The filing of the acknowledgment of assignment with the court under this section does not, of itself, give notice to the judgment debtor so as to invalidate any payments made by the judgment debtor to the judgment creditor or a prior assignee of record. See Civil Code § 954.5(c). The filing with the court, however, affects the priorities between conflicting assignments. See Civil Code § 954.5(b).

Nothing in Section 673 requires the filing of the acknowledgment of assignment of judgment with the court in order to accomplish the transfer of the interest in the judgment. See Civil Code § 954.5(a). But, unless the assignee becomes an

assignee of record by some other means, the failure to file an acknowledgment of assignment of judgment precludes the use by the assignee of a writ of execution and other enforcement remedies. See Section 681.020.

Code of Civil Procedure § 674 (amended). Abstract of judgment

674. An abstract of a judgment or decree requiring the payment of money shall be certified by the clerk of the court where the judgment or decree was entered and shall contain all of the following:

(a) The title of the court where the judgment or decree is entered and cause and number of the action.

(b) The date of entry of the judgment or decree and of any renewals of the judgment or decree and where entered in the records of the court.

(c) The name and last known address of the judgment debtor and the address at which the summons was either personally served or mailed to the judgment debtor or the judgment debtor's attorney of record.

(d) The name and address of the judgment creditor.

(e) The amount of the judgment or decree as entered or as last renewed.

(f) The social security number and driver's license number of the judgment debtor if they are known to the judgment creditor; and, if either or both of such numbers are not known to the judgment creditor, that fact shall be indicated on the abstract of judgment.

(g) Whether a stay of enforcement has been ordered by the court and, if so, the date the stay ends.

(h) The date of issuance of the abstract.

Legislative Committee Comment—Senate

Comment. Section 674 is amended so that the section states the person who certifies an abstract of a judgment or decree and the contents of the abstract. The remainder of the section is superseded. Subdivisions (g) and (h) state required contents not formerly specified in the section but required by the Judicial Council form for an abstract of judgment. See Official Form for Abstract of Judgment (Form Adopted by Rule 982 Judicial Council of California—Revised Effective January 1, 1979). The contents specified in this section for the abstract of judgment are subject to the general authority of the Judicial Council to prescribe forms.

The portion of the first sentence of Section 674 which specified the courts that may issue judgments as the basis for a judgment lien is not continued as such, but its substance is continued in Section 697.310 except for the misleading language pertaining to judgments of federal courts. A federal money judgment may be recorded to create a judgment lien pursuant to federal law if it is rendered in California or is registered in a federal court sitting in California. See Section 697.060; 28 U.S.C. §§ 1962 (judgment lien of federal judgment), 1963 (registration of judgment of one federal district court in another district) (1976). The portion of the first sentence providing for certification by the judge or justice of the court is omitted as unnecessary in view of the general provision of Section 167. The remainder of the first sentence is continued in substance in Section 697.310 but a lien may be created under that section by recording on any interest in real property subject to levy of execution (see Section 697.340) except real property subject to a declared homestead (see Section 704.950).

The portion of the second sentence of Section 674 which specified the duration of the lien is superseded by subdivision (b) of Section 697.310. The portion of the second sentence relating to stay of enforcement of the judgment is superseded by Section 697.040. The portion relating to an undertaking on release of attachment has not been continued, since this portion is unnecessary in view of Sections 489.310, 489.420, and 697.050. See also Sections 697.400 and 697.410. The portion relating to the release of the lien if the judgment is satisfied or the lien is otherwise discharged is superseded by Sections 697.050 and 697.370.

Former subdivision (b) of Section 674 has been omitted. This subdivision is unnecessary in view of subdivision (b) of Section 908 of the Welfare and Institutions Code.

Former subdivision (c) is superseded by Sections 697.340 (property subject to judgment lien) and 704.950 (judgment lien does not attach to declared homestead). See also Section 704.910 ("homestead declaration" includes declaration under former law).

Code of Civil Procedure § 674.5 (repealed). Lien of judgment or order for spousal or child support

Legislative Committee Comment—Assembly

Comment. Former Section 674.5 is superseded by provisions of the new Enforcement of Judgments Law. Subdivision (a) of former Section 674.5 is superseded by Sections 697.320-697.390. The remainder of former Section 674.5 is superseded by Sections 697.370-697.400 and 724.210-724.260.

Code of Civil Procedure § 674.7 (repealed). Lien of periodic payment judgment

Comment. Former Section 674.7 is superseded by provisions of the new Enforcement of Judgments Law. The first paragraph

of former Section 674.7 is superseded by Sections 697.320-697.390. The second and third paragraphs are superseded by Sections 697.370-697.400 and 724.210-724.260.

Code of Civil Procedure § 675 (repealed). Satisfaction of judgment

Legislative Committee Comment—Assembly

Comment. Former Section 675 is superseded by Sections 697.410 and 724.010-724.260. See those sections and the Comments thereto.

Code of Civil Procedure § 675b (repealed). Discharge in bankruptcy

Comment. Sections 675b and 675c are repealed because they are unnecessary. The effect of a discharge in bankruptcy is determined by the Bankruptcy Code. See 11 U.S.C. § 524.

Code of Civil Procedure § 675c (repealed). Discharge in bankruptcy

Comment. See the Comment to former Section 675b.

Code of Civil Procedure § 725a (technical amendment).

Foreclosure of deed of trust or mortgage with power of sale

725a. The beneficiary or trustee named in a deed of trust or mortgagee named in a mortgage with power of sale upon real property or any interest therein to secure a debt or other obligation, or if there be a successor or successors in interest of such beneficiary, trustee or mortgagee, then such successor or successors in interest, shall have the right to bring suit to foreclose the same in the manner and subject to the provisions, rights and remedies relating to the foreclosure of a mortgage upon such property.

Legislative Committee Comment—Senate

Comment. Section 725a is amended to delete provisions relating to the statutory right of redemption which are set forth in Sections 726(e), 729.010-729.090.

**Code of Civil Procedure § 726 (technical amendment).
Foreclosure of mortgage or deed of trust**

726. (a) 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, the expenses of levy and 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.

(b) 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 or a deficiency judgment is prohibited by Section 580b, 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, or if the prohibition of Section 580b is applicable the decree shall so declare and there shall be no judgment for a deficiency. In the event that a deficiency is not waived or prohibited 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 levy and 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 the 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 the mortgage or deed of trust. Notice of the hearing shall 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 the hearing. Upon application of any party made at least 10 days before the date set for the hearing the court shall, and upon its own motion the court at any time may, appoint one of the inheritance tax referees provided for by law to appraise the property or the interest therein sold as of the time of sale. The inheritance tax referee shall file the appraisal with the clerk and the appraisal is admissible in evidence. The inheritance tax referee shall take and subscribe an oath to be attached to the appraisal that he or she has truly, honestly and impartially appraised the property to the best of his or her knowledge and ability. Any inheritance tax referee so appointed may be called and examined as a witness by any party or by the court itself. The court must fix the compensation, in an amount as determined by the court to be reasonable, but such fees shall not exceed similar fees for similar services in the community where such services are rendered, which may be taxed and allowed in like manner as other costs.

(c) 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 person holding such unrecorded conveyance or lien as if the person had been a party to the action. Notwithstanding Section 701.630, the sale of the

encumbered property does not affect the interest of a person who holds a conveyance from or under the mortgagor of the property mortgaged, or has a lien thereon, if the conveyance or lien appears of record in the proper office at the time of the commencement of the action and the person holding the recorded conveyance or lien is not made a party to the action.

(d) 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, and upon such proceedings, and with like effect, as if the whole of the property were situated in that county.

(e) If a deficiency judgment is waived or prohibited, the property shall be sold as provided in Section 716.020. If a deficiency judgment is not waived or prohibited, the property shall be sold subject to the right of redemption as provided in Sections 729.010 to 729.090, inclusive.

NOTE. This revision of Section 726 was superseded by 1982 Cal. Stats. ch. 1535, but will be resubmitted in 1983.

Legislative Committee Comment—Assembly

Comment. The provisions of Section 726 relating to commissioners appointed to sell real property under a judgment of foreclosure are repealed. Pursuant to Section 712.060 a receiver may be appointed to sell the property under the direction of the court. See also Sections 567 (oath and undertaking of receiver), 568 (powers of receiver), 568.5 (sales by receiver), 708.620 (appointment of receiver). The provisions concerning the qualification and duties of receivers and commissioners were essentially the same under former law. Consequently, special commissioners have been eliminated in favor of the uniform provisions concerning receivers. The provisions of Section 726 concerning elisors are unnecessary. See, *e.g.*, Section 262.8.

A provision for the application of the costs of levy is added to Section 726(a) because Section 716.010 requires levy under a writ of sale if the judgment is enforced by a levying officer.

Subdivision (c) codifies the rule in *Carpentier v. Brenham*, 40 Cal. 221, 235 (1870), to the effect that the interest of a junior lienholder of record is not affected by the foreclosure of a senior lien if the junior lienholder is not joined.

Subdivision (e) specifies the manner of sale depending upon whether the property is to be sold subject to the right of redemption.

See Chapter 1 (commencing with Section 712.010) and Chapter 4 (commencing with Section 716.010) of Division 3 of Title 9 for provisions governing the enforcement of judgments for sale of real property.

Code of Civil Procedure § 729 (repealed). Commissioners

Comment. Section 729 is not continued. The function formerly performed by a specially appointed commissioner may be performed by a receiver. See the Comment to Section 726.

Code of Civil Procedure § 729.010 (added). Property subject to redemption; manner of sale

729.010. (a) If the decree of foreclosure of a mortgage or deed of trust on real property pursuant to Section 726 determines that a deficiency judgment may be ordered against the defendant, the real property (other than a leasehold estate with an unexpired term of less than two years at the time of levy) shall be sold subject to the right of redemption.

(b) If the property is to be sold subject to the right of redemption, the sale is governed by Section 716.020, except that:

(1) The notice of sale of the property shall state that the property will be sold subject to the right of redemption and shall state the amount of the secured indebtedness with interest and costs.

(2) Notice of sale may be given upon entry of the judgment for sale of the property and the provision of Section 701.545 delaying notice of sale does not apply.

(3) Notice of sale may be given to persons having liens on the property upon entry of the judgment for sale of the property and the provision of subdivision (h) of Section 701.540 delaying such notice does not apply.

Legislative Committee Comment—Assembly

Comment. Sections 729.010-729.090 provide a limited procedure for redemption of real property from sale. Under Section 729.010, redemption is available only in a case where the judgment creditor is seeking a deficiency judgment. If the proceeds of sale are insufficient to satisfy the secured indebtedness the property may be redeemed until one year after the sale; if the secured indebtedness is satisfied by the sale, the

redemption period is three months. See Section 729.030. This continues a former portion of Section 725a.

Subdivision (b) contains special provisions applicable where property is to be sold subject to the right of redemption.

Code of Civil Procedure § 729.020 (added). Persons entitled to redeem

729.020. Property sold subject to the right of redemption may be redeemed only by the judgment debtor or the judgment debtor's successor in interest. For the purpose of this article, the purchaser of the property at the foreclosure sale is not a successor in interest.

Legislative Committee Comment—Assembly

Comment. Section 729.020 supersedes former Section 701 and restricts the right of redemption to the judgment debtor and his or her successor in interest. Successors in interest may include an assignee after the foreclosure 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.

Code of Civil Procedure § 729.030 (added). Redemption period

729.030. The redemption period during which property may be redeemed from a foreclosure sale under this chapter ends:

(a) Three months after the date of sale if the proceeds of the sale are sufficient to satisfy the secured indebtedness with interest and costs of action and of sale.

(b) One year after the date of sale if the proceeds of the sale are not sufficient to satisfy the secured indebtedness with interest and costs of action and of sale.

Legislative Committee Comment—Assembly

Comment. Section 729.030 continues the substance of a former portion of Section 725a.

729.040 (added). Certificate of sale

729.040. (a) Notwithstanding Section 701.660, when the purchaser of an interest in real property sold subject

to the right of redemption pays the amount due, the levying officer conducting the sale shall execute and deliver a certificate of sale to the purchaser and record a duplicate of the certificate of sale in the office of the county recorder.

(b) The certificate of sale shall contain the information required by Section 701.670 and shall also contain the following:

(1) The price paid for each distinct lot or parcel of real property sold subject to the right of redemption.

(2) The total price paid.

(3) A statement that the property is subject to the right of redemption, indicating the applicable redemption period.

Legislative Committee Comment—Senate

Comment. Section 729.040 continues the substance of a portion of subdivision (a) of former Section 700a. See also Sections 729.030 (redemption period), 729.080 (deed issued upon expiration of redemption period).

Code of Civil Procedure § 729.050 (added). Notice of right of redemption

729.050. If property is sold subject to the right of redemption, promptly after the sale the levying officer who conducted the sale shall serve notice of the right of redemption on the judgment debtor. Service shall be made personally or by mail. The notice of the right of redemption shall indicate the applicable redemption period.

Legislative Committee Comment—Assembly

Comment. Section 729.050 supersedes the first sentence of subdivision (b) of former Section 700a. See Section 729.030 (redemption period).

Code of Civil Procedure § 729.060 (added). Deposit of redemption price

729.060. (a) A person who seeks to redeem the property shall deposit the redemption price with the levying officer who conducted the sale before the expiration of the redemption period. If a successor in

interest to the judgment debtor seeks to redeem the property, the successor in interest shall, at the time the redemption price is deposited, file with the levying officer either (1) a certified copy of a recorded conveyance or (2) 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.

(b) The redemption price is the total of the following amounts, less any offset allowed under subdivision (c).

(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 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 rate of interest on money judgments from the time such amount was paid until the date the deposit is made.

(c) 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 offset against the amounts described in subdivision (b).

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 729.060 supersedes the first paragraph of former Section 702 and portions of former Section 705. Under Section 729.060, the redemption price is deposited with the levying officer whereas under former Sections 702-704 the judgment debtor or redemptioner could pay the redemption price directly to the purchaser or earlier redemptioner. Under paragraph (4) of subdivision (b), interest on the amounts comprising the redemption price is at the legal rate (see Section 685.010) whereas it was two-thirds of one percent per month in the case of redemption from the purchaser under former Section 702.

Subdivision (c) 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, 245-46, 29 Cal. Rptr. 450 (1963), pertaining to the value to the purchaser of the use of the

premises. If these amounts are not offset, they may be recovered as provided in Section 729.090.

Code of Civil Procedure § 729.070 (added). Disagreement on redemption; summary proceeding

729.070. (a) If the purchaser and the person seeking to redeem the property disagree on the redemption price or as to whether the person is entitled to redeem the property, or if the purchaser refuses the tender of the redemption price pursuant to Section 729.080, the person seeking to redeem may file a petition with the court for an order determining the redemption price or whether the person is entitled to redeem the property. The petition shall be filed before the expiration of the redemption period. 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 shall be in writing and shall include the following statements:

(1) The amounts demanded to which the person seeking to redeem objects and the reasons for the objection.

(2) Any amounts offset to which the purchaser objects and the justification for such offset.

(3) The status of the petitioner that qualifies the petitioner to redeem the property. A copy of the papers required by subdivision (a) of Section 729.060 shall be filed with the petition.

(c) The hearing on the petition shall be held not later than 20 days after the date the petition was filed unless continued by the court for good cause.

(d) Not less than 10 days before the hearing, the person seeking to redeem the property shall personally 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 person seeking to redeem the property has the burden of proof.

(f) At the conclusion of the hearing, the court shall determine by order the amount required to redeem the property. The determination shall be made upon affidavit or evidence satisfactory to the court.

(g) 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 10 days after the issuance of the order, pay such additional amount to the levying officer.

Legislative Committee Comment—Assembly

Comment. Section 729.070 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 729.060 and the elimination of the option of paying the redemption price directly to the purchaser. See Section 729.060 and the Comment thereto. Under Section 729.070, the redemption price is deposited with the levying officer just as under Section 729.060, 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 729.080 at the expiration of the redemption period.

Code of Civil Procedure § 729.080 (added). Issuance of deed of sale or certificate of redemption; tender of deposit

729.080. (a) If the redemption price is not deposited pursuant to Section 729.060 before the expiration of the redemption period, or if no additional deposit is made pursuant to subdivision (g) of Section 729.070 before the expiration of the time therein provided, the levying officer who conducted the sale shall promptly execute and deliver to the purchaser a deed of sale that complies with the requirements of Section 701.670.

(b) If the person seeking to redeem the property deposits the redemption price pursuant to Section 729.060 or 729.070 during the redemption period, the levying officer shall tender the deposit to the purchaser. If the purchaser accepts the tender or if the redemption price determined by court order is tendered, the levying

officer shall promptly 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.

(c) 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 is refused, the levying officer shall deposit the amount tendered with the county treasurer of the county where the property is located, payable to the order of the purchaser. If the amount deposited is not claimed by the purchaser, or the legal representative of the purchaser, within five years after the deposit is made, by making application to the treasurer or other official designated by the county, it shall be paid into the general fund of the county.

(d) Except as provided in subdivision (e), upon redemption the effect of the sale is terminated and the person who redeemed the property is restored to the estate therein sold at the sale.

(e) Liens extinguished by the sale as provided in Section 701.630 do not reattach to the property after redemption and the property that was subject to the extinguished lien may not be applied to the satisfaction of the claim or judgment under which the lien was created.

Legislative Committee Comment—Assembly

Comment. Section 729.080 is new. If no redemption takes place within the redemption period applicable under Section 729.030 or as extended by Section 729.070(g), subdivision (b) requires the levying officer who conducted the sale to issue a deed to the purchaser. If the property is redeemed, subdivision (b) requires the levying 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 729.070. Under former law, 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, if 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 (c) continues the former rule that tender was equivalent to payment which applied 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 (c), 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 remainder of subdivision (c) is new.

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

Subdivision (e) changes the prior rule that liens subordinate to that under which the sale was held reattach upon redemption by the judgment debtor or a successor in interest. See *Call v. Thunderbird Mortgage Co.*, 58 Cal.2d 542, 548, 375 P.2d 169, 25 Cal. Rptr. 265 (1962). 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 is also not continued. See *Moore v. Hall*, 250 Cal. App.2d 25, 29, 58 Cal. Rptr. 70 (1967). Only unsatisfied liens that are superior to the lien on which the property is sold survive the sale, whether or not there is a redemption. This encourages the judgment creditor and subordinate lienholders to protect their interests by looking to the property sold. See Sections 701.630 (extinction of liens upon sale), 726(c) (preservation of lien of record where lienholder not made a party to action). Subdivision (e) 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, for example, a judgment creditor whose judgment lien is extinguished may not again record the judgment to create a lien on the same property, nor may the judgment creditor obtain an execution lien by levy of a writ of execution on the property.

Code of Civil Procedure § 729.090 (added). Rents and profits; entry of purchaser; waste

729.090. (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 of the property.

(b) Notwithstanding subdivision (a), the purchaser is liable to the person who redeems for any rents or profits that have been received by the purchaser pursuant to subdivision (a).

(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. Such order may be granted with or without notice in the discretion of the court.

Legislative Committee Comment—Assembly

Comment. Section 729.090 is based on former Sections 706 and 707 and the second sentence of the first paragraph of former Section 702. 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 (see Section 729.060) or may be recovered after redemption as provided in subdivision (b). If the purchaser is in possession of the property during the time between 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, 245-46, 29 Cal. Rptr. 450 (1963); *Christensen v. Forst*, 153 Cal. App.2d 465, 471-72, 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. Rents and profits that are not offset pursuant to Section 729.060(c) or determined pursuant to 729.070 may be recovered in an action.

Subdivision (c) is drawn 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 Sav. & Loan Ass'n v. Leeds*, 68 Cal.2d 611, 614 n.2, 440 P.2d 933, n.2, 68 Cal. Rptr. 453, n.2 (1968).

Code of Civil Procedure § 745 (amended). Restraint of waste during foreclosure or before sale pursuant to levy

Legislative Committee Comment—Assembly

Comment. Section 745 is amended to reflect the provision which requires a delay in the sale of certain real property. See Section 701.545.

Code of Civil Procedure § 746 (amended). Damages for waste after sale pursuant to levy

Legislative Committee Comment—Assembly

Comment. Section 746 is amended to reflect that execution sales and certain foreclosure sales (see Section 726(e)) are absolute pursuant to Section 701.680 and that Section 701.545 requires a delay of such sales after levy.

Code of Civil Procedure § 874.140 (technical amendment). Costs of partition

Comment. Section 874.140 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 (Enforcement of Judgments Law).

Code of Civil Procedure §§ 881-883 (added)

CHAPTER 2. CONTRIBUTION AMONG OTHER JUDGMENT DEBTORS

§ 881. Application of chapter

881. This chapter governs contribution among joint judgment debtors other than joint tortfeasors.

Comment. Section 881 clarifies the relationship between this chapter and Chapter 1 (commencing with Section 875) which is applicable to contribution among joint tortfeasors.

§ 882. Right to contribution

882. If two or more judgment debtors are jointly liable on a money judgment:

(a) A judgment debtor who has satisfied more than his or her due proportion of the judgment, whether voluntarily or through enforcement procedures, may compel contribution from another judgment debtor who has satisfied less than his or her due proportion of the judgment.

(b) If the judgment is based upon an obligation of one judgment debtor as surety for another and the surety satisfies the judgment or any part thereof, whether voluntarily or through enforcement procedures, the surety may compel repayment from the principal.

Comment. Section 882 continues the substance of the first sentence of former Section 709. This section permits contribution where a joint judgment debtor satisfies a disproportionate share of a money judgment, or satisfies the judgment as a surety, whether by voluntary payment or involuntarily through levy upon and sale of property, wage garnishment, examination proceedings, or some other procedure. This section does not determine the proportionate shares of the obligation on a judgment; the joint judgment debtor's share depends on the circumstances of the case. See, *e.g.*, Section 578; *Tucker v. Nicholson*, 12 Cal.2d 427, 433, 84 P.2d 1045 (1938); *Pacific Freight Lines v. Pioneer Express Co.*, 39 Cal. App.2d 609, 614, 103 P.2d 1056 (1940); *Stowers v. Fletcher*, 84 Cal. App.2d Supp. 845, 848, 190 P.2d 338 (1948).

§ 883. Procedure for compelling contribution or repayment

883. (a) A judgment debtor entitled to compel contribution or repayment pursuant to this chapter may apply on noticed motion to the court that entered the judgment for an order determining liability for contribution or repayment. The application shall be made at any time before the judgment is satisfied in full or within 10 days thereafter.

(b) The order determining liability for contribution or repayment entitles the judgment debtor to the benefit of the judgment to enforce the liability, including every

remedy that the judgment creditor has against the persons liable, to the extent of the liability.

(c) Nothing in this section limits any other remedy that a judgment debtor entitled to contribution or repayment may have.

Comment. Section 883 supersedes the second sentence of former Section 709. This section codifies the practice under former law of determining the right to contribution only after a hearing on noticed motion. See *Stowers v. Fletcher*, 84 Cal. App.2d Supp. 845, 848, 190 P.2d 338 (1948); 5 B. Witkin, *California Procedure Enforcement of Judgment* § 211, at 3564 (2d ed. 1971).

The language in subdivision (b) relating to the entitlement of the judgment debtor to the remedies of the judgment creditor is drawn from Civil Code Section 2848 (right of surety against principal). Under subdivision (b), the judgment debtor receives the priority of any liens created by the judgment creditor.

Subdivision (c) makes clear that Section 883 does not prescribe the exclusive procedure for enforcement of the right to contribution. A joint judgment debtor may take an assignment of the judgment or may bring an action to obtain a judgment for contribution. See, *e.g.*, *Painter v. Berglund*, 31 Cal. App.2d 63, 87 P.2d 360 (1939) (assignment); *Tucker v. Nicholson*, 12 Cal.2d 427, 431, 84 P.2d 1045 (1938) (action). See also Section 1059 (surety on appeal substituted to rights of judgment creditor).

Code of Civil Procedure § 904.1 (amended). Appeal in superior court

Comment. Subdivision (e) of Section 904.1 is amended to make clear that an appeal may be taken from issuance of a right to attach order. See, *e.g.*, Section 484.090.

Code of Civil Procedure § 904.2 (amended). Appeal in municipal or justice court

Comment. Subdivision (f) of Section 904.2 is amended to make clear that an appeal may be taken from issuance of a right to attach order. See, *e.g.*, Section 484.090.

**Code of Civil Procedure § 916 (technical amendment).
Stay on appeal**

Comment. Subdivision (b) of Section 916 has been deleted as unnecessary in view of Sections 697.040(a) (effect of stay of enforcement on enforcement liens) and 697.050 (release of property). See also Section 917.1 (undertaking required as condition of stay of enforcement of money judgment). Subdivision (a) has been revised to substitute the correct cross-reference.

Code of Civil Procedure § 918 (amended). Stay of enforcement of judgment by trial court

918. (a) Subject to subdivision (b), the trial court may stay the enforcement of any judgment or order.

(b) If the enforcement of the 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.

(c) This section applies whether or not an appeal will be taken from the judgment or order and whether or not a notice of appeal has been filed.

Comment. Subdivision (c) is added to Section 918 to make clear that, subject to the limitations specified in Section 918, the court is authorized to stay the enforcement of a judgment whether or not an appeal has been or will be taken. In this respect, Section 918 supersedes former Section 681a, which granted the court authority similar to that granted by Section 918 but prescribed limitations that were inconsistent with later enacted Section 918. As to the effect of a stay of enforcement under Section 918 on enforcement liens, see Section 697.040(b) and Section 697.050.

Code of Civil Procedure § 918.5 (added). Stay to protect possible set-off

918.5. (a) The trial court may, in its discretion, stay the enforcement of a judgment or order if the judgment debtor has another action pending on a disputed claim against the judgment creditor.

(b) In exercising its discretion under this section, the court shall consider all of the following:

(1) The likelihood of the judgment debtor prevailing in the other action.

(2) The amount of the judgment of the judgment creditor as compared to the amount of the probable recovery of the judgment debtor in the action on the disputed claim.

(3) The financial ability of the judgment creditor to satisfy the judgment if a judgment is rendered against the judgment creditor in the action on the disputed claim.

Comment. Section 918.5 codifies a judicially developed rule. See *Erllich v. Superior Court*, 63 Cal.2d 551, 407 P.2d 649, 47 Cal. Rptr. 473 (1965); *Airfloor Company of California, Inc. v. The Regents of the University of California*, 97 Cal. App.3d 739 (1979). The rationale for the rule is based on equitable principles that not to stay enforcement of the judgment unfairly deprives the judgment debtor not only of the right to offset but also—with an impecunious creditor—of any right to recover at all.

Code of Civil Procedure § 1007 (repealed). Enforcement of order for payment of money

Comment. Section 1007 is repealed because it is unnecessary. See Sections 680.230 (“judgment” includes order) and 680.270 (“money judgment” defined).

Code of Civil Procedure § 1027 (technical amendment). Costs of appeal

Comment. Section 1027 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 (Enforcement of Judgments Law).

Code of Civil Procedure § 1032.6 (repealed). Costs in supplementary proceedings

Comment. Section 1032.6 is superseded by Section 685.040 (right to costs of enforcing judgment).

Code of Civil Procedure § 1033.7 (repealed). Costs after judgment

Legislative Committee Comment—Assembly

Comment. Former Section 1033.7 is superseded by Chapter 5 (commencing with Section 685.010) of Division 1 of Title 9. The reference to superior, municipal, and justice courts in the introductory clauses of the first and second paragraphs of former Section 1033.7 is not continued because it is unnecessary. The substance of subdivisions (a) and (b) is continued in Section 685.070(a)(1). Subdivisions (c) and (d) are superseded by Sections 685.070(a)(3) (unsatisfied costs allowable pursuant to memorandum) and 685.050(a)(1) (entry on writ of costs of issuing writ). See also Section 680.380 (“writ” defined). The portion of subdivision (c) pertaining to a writ of prohibition is not continued because it is unnecessary. Subdivision (e) is superseded by Sections 685.050 (costs under writ) and 685.070(a)(3) (unsatisfied costs of levying officer). Subdivision (f) is superseded by Section 685.070(a)(5) (costs determined in special enforcement procedures).

The substance of the procedural provisions concerning the memorandum of costs in the first paragraph of former Section 1033.7 is continued in Section 685.070(b), (c), except that the time for filing the memorandum has been increased from six months to two years. Section 685.070(b) also makes clear that the motion to tax must be noticed. See 4 B. Witkin, *California Procedure Judgment* § 113, at 3264 (2d ed. 1971) (motion customarily made on notice). The references in former law to the judgment creditor’s agent and attorney are not continued; Section 685.070(b) provides for a memorandum on oath of a person who has knowledge of the facts. See 1 B. Witkin, *California Procedure Attorneys* § 23, at 32-33, § 107, at 117-19 (2d ed. 1970) (authority of attorney). See also Sections 680.150 (“costs” means fees, commissions, charges, disbursements, and other expenses), 166 (judicial powers at chambers).

The substance of the procedural provisions concerning the motion for costs in the second paragraph of former Section 1033.7 is continued in Section 685.080, but the time for making the motion has been increased from six months to two years. See also Section 167 (judge performing clerk’s duties).

The third paragraph of former Section 1033.7 is superseded by Sections 685.090 (addition of costs to judgment) and 685.050 (costs entered on writ).

**Code of Civil Procedure § 1034 (technical amendment).
Costs on appeal**

Comment. The last sentence of Section 1034 is amended to make clear that an award for costs may be enforced by any available means, not only by levy of execution. See Title 9 (commencing with Section 680.010). The other changes are not substantive.

**Code of Civil Procedure § 1034.5 (technical amendment).
Costs in unlawful detainer**

Comment. Section 1034.5 is amended to make clear that a judgment for costs may be enforced by any available means, not only by levy of execution. See Title 9 (commencing with Section 680.010). The other changes are not substantive.

**Code of Civil Procedure § 1095 (technical amendment).
Costs in writ of mandate proceedings**

Comment. Section 1095 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 (Enforcement of Judgments Law). The other changes are not substantive.

**Code of Civil Procedure § 1161a (technical amendment).
Removal of person holding over after notice**

Comment. Section 1161a is amended to conform to the Enforcement of Judgments Law. See Sections 701.510-701.680 (sale under writ of execution), 716.020 (sale under writ of sale). The other changes are not substantive.

**Code of Civil Procedure § 1162a (technical amendment).
Service of levying officer's deed**

Comment. Section 1162a is amended to conform to the Enforcement of Judgments Law. See Sections 701.660 (deed of sale of real property), 712.060 (receiver to enforce judgment for sale of real property), 716.020 (sale under writ of sale).

**Code of Civil Procedure § 1166a (amended). Order for
immediate possession**

1166a. (a) Upon filing the complaint, the plaintiff may, upon motion, have immediate possession of the

premises by a writ of possession of real property issued by the court and directed to the sheriff of the county, or constable or marshal, for execution, where it appears to the satisfaction of the court, after a hearing on the motion, from the verified complaint and from any affidavits filed or oral testimony given by or on behalf of the parties, that the defendant resides out of state, has departed from the state, cannot, after due diligence, be found within the state, or has concealed himself or herself to avoid the service of summons.

(b) Written notice of the hearing on the motion shall be served on the defendant by the plaintiff in accordance with the provisions of Section 1011, and shall inform the defendant as follows: "You may file affidavits on your own behalf with the court and may appear and present testimony on your own behalf. However, if you fail to appear, the plaintiff will apply to the court for a writ of possession of real property."

(c) The plaintiff shall file an undertaking with good and sufficient sureties, to be approved by the judge, in such sum as shall be fixed and determined by the judge, to the effect that, if the plaintiff fails to recover judgment against the defendant for the possession of the premises or if the suit is dismissed, the plaintiff will pay to the defendant such damages, not to exceed the amount fixed in the undertaking, as may be sustained by the defendant by reason of such dispossession under the writ of possession of real property. An action to recover such damages shall be commenced by the defendant in a court of competent jurisdiction within one year from the date of entry of dismissal or of final judgment in favor of the defendant.

(d) If, at the hearing on the motion, the findings of the court be in favor of the plaintiff and against the defendant, an order shall be entered for the immediate possession of the premises.

(e) The order for the immediate possession of the premises may be enforced as provided in Division 3 (commencing with Section 712.010) of Title 9 of Part 2.

(f) For the purposes of this section, references in Division 3 (commencing with Section 712.010) of Title 9

of Part 2 and in subdivisions (e) to (m), inclusive, of Section 1174, to the “judgment debtor” shall be deemed references to the defendant, to the “judgment creditor” shall be deemed references to the plaintiff, and to the “judgment of possession or sale of property” shall be deemed references to an order for the immediate possession of the premises.

Legislative Committee Comment—Senate

Comment. Subdivisions (d), (e), and (f) are added to Section 1166a to clarify the procedure for enforcing an order for immediate possession. The amendments of subdivisions (a), (b), and (c) are technical.

Code of Civil Procedure § 1174 (amended). Judgment for possession of premises

1174. (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 possession 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 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.

Except as provided in Section 1166a, in any action for unlawful detainer brought by a petroleum distributor against a gasoline dealer, possession shall not be restored to the petroleum distributor unless the court in the unlawful detainer action determines that the petroleum distributor had good cause under Section 20999.1 of the Business and Professions Code to terminate, cancel, or refuse to renew the franchise of the gasoline dealer.

In any action for unlawful detainer brought by a petroleum distributor against the gasoline dealer, the court may, at the time of request of either party, require the tenant to make rental payments into the court, for the

lessor, at the contract rate, pending the resolution of the action.

(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 a writ shall not be issued to enforce the judgment 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 the tenant's estate. If payment as provided in this subdivision is 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) Subject to subdivision (c), the judgment for possession of the premises may be enforced as provided

in Division 3 (commencing with Section 712.010) of Title 9 of Part 2.

(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 is disposed 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 possession 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 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 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.

Legislative Committee Comment—Assembly

Comment. Section 1174 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 (Enforcement of Judgments Law). Former subdivision (d) is superseded by a new subdivision (d). The substance of former subdivision (d) is continued in Sections 715.010 (writ of possession of real property), 715.020 (execution of writ of possession).

Code of Civil Procedure § 1206 (technical amendment).

Preferred labor claim

Comment. Section 1206 is amended to delete references to garnishment which is not a separate remedy. The other changes are not substantive.

Code of Civil Procedure § 1208 (technical amendment).

Payment of preferred labor claims

Comment. Section 1208 is amended to delete references to garnishment which is not a separate remedy. The other changes are not substantive.

**Code of Civil Procedure § 1710.30 (technical amendment).
Service of notice of entry of judgment based on sister
state judgment**

Comment. Section 1710.30 is amended to correct a cross-reference. See Sections 685.050 (costs satisfied under writ), 685.070 (memorandum of costs).

**Code of Civil Procedure § 1710.45 (technical amendment).
Delay of enforcement of judgment entered on basis of
sister state judgment**

Legislative Committee Comment—Assembly

Comment. Section 1710.45 is amended to make clear that all procedures for the enforcement of a money judgment entered pursuant to this chapter are subject to the limitations on enforcement by execution provided by this section.

**Code of Civil Procedure § 1800 (technical amendment).
Recovery of preferences**

1800. (a) In this section:

(1) The term “insolvent” means:

(A) With reference to a person other than a partnership, a financial condition such that the sum of such person’s debts is greater than all of such person’s property, at a fair valuation, exclusive of:

(i) Property transferred, concealed, or removed with intent to hinder, delay, or defraud such person’s creditors; and

(ii) Property that is exempt from property of the estate pursuant to the election of such person made pursuant to Section 1801; and

(B) With reference to a partnership, financial condition such that the sum of such partnership’s debts are greater than the aggregate of, at a fair valuation—

(i) All of such partnership’s property, exclusive of property of the kind specified in subparagraph (A) (i); and

(ii) The sum of the excess of the value of each general partner’s separate property, exclusive of property of the kind specified in subparagraph (A) (ii), over such partner’s separate debts.

(2) The term “inventory” means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease.

(3) The term “insider” means:

(A) If the assignor is an individual, any of the following:

(i) A relative of the assignor or of a general partner of the assignor.

(ii) A partnership in which the assignor is a general partner.

(iii) A general partner of the assignor.

(iv) A corporation of which the assignor is a director, officer, or person in control.

(B) If the assignor is a corporation, any of the following:

(i) A director of the assignor.

(ii) An officer of the assignor.

(iii) A person in control of the assignor.

(iv) A partnership in which the assignor is a general partner.

(v) A general partner of the assignor.

(vi) A relative of a general partner, director, officer, or person in control of the assignor.

(C) If the assignor is a partnership, any of the following:

(i) A general partner in the assignor.

(ii) A relative of a general partner in, general partner of, or person in control of the assignor.

(iii) A partnership in which the assignor is a general partner.

(iv) A general partner of the assignor.

(v) A person in control of the assignor.

(D) An affiliate of the assignor or an insider of an affiliate as if such affiliate were the assignor.

(E) A managing agent of the assignor.

As used in this paragraph, “relative” means an individual related by affinity or consanguinity with the third degree as determined by the common law, or an

individual in a step or adoptive relationship within such third degree; and an “affiliate” means a person that directly or indirectly owns, controls or holds with power to vote 20 percent or more of the outstanding voting securities of the assignor or 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the assignor (excluding securities held in a fiduciary or agency capacity without sole discretionary power to vote, or held solely to secure a debt if the holder has not in fact exercised the power to vote), or a person who operates the business of the assignor under a lease or operating agreement or whose business is operated by the assignor under a lease or operating agreement.

(4) The term “judicial lien” means a lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

(5) The term “new value” means money or money’s worth in goods, services, or new credit, or release by a transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the assignor or the assignee under any applicable law, but does not include an obligation substituted for an existing obligation.

(6) The term “receivable” means a right to payment, whether or not such right has been earned by performance.

(7) The term “security agreement” means an agreement that creates or provides for a security interest.

(8) The term “security interest” means a lien created by an agreement.

(9) The term “statutory lien” means a lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute.

(10) The term “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, or disposing of or parting with property or

with an interest in property, including retention of title as a security interest.

(b) Except as provided in subdivision (c), the assignee of any general assignment for the benefit of creditors (as defined in Section 493.010) may recover any transfer of property of the assignor:

(1) To or for the benefit of a creditor;

(2) For or on account of an antecedent debt owed by the assignor before such transfer was made;

(3) Made while the assignor was insolvent;

(4) Made on or within 90 days before the date of the making of the assignment or made between 90 days and one year before the date of making the assignment if the creditor, at the time of the transfer, was an insider and had reasonable cause to believe the debtor was insolvent at the time of the transfer; and

(5) That enables such creditor to receive more than another creditor of the same class.

(c) The assignee may not recover under this section a transfer:

(1) To the extent that such transfer was:

(A) Intended by the assignor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the assignor; and

(B) In fact a substantially contemporaneous exchange;

(2) To the extent that such transfer was:

(A) In payment of a debt incurred in the ordinary course of business or financial affairs of the assignor and the transferee;

(B) Made not later than 45 days after such debt was incurred;

(C) Made in the ordinary course of business or financial affairs of the assignor and the transferee; and

(D) Made according to ordinary business terms;

(3) Of a security interest in property acquired by the assignor:

(A) To the extent such security interest secures new value that was:

(i) Given at or after the signing of a security agreement that contains a description of such property as collateral;

(ii) Given by or on behalf of the secured party under such agreement;

(iii) Given to enable the assignor to acquire such property; and

(iv) In fact used by the assignor to acquire such property; and

(B) That is perfected within 10 days after such security interest attaches;

(4) To or for the benefit of a creditor, to the extent that, after such transfer, such creditor gave new value to or for the benefit of the assignor:

(A) Not secured by an otherwise unavoidable security interest; and

(B) On account of which new value the assignor did not make an otherwise unavoidable transfer to or for the benefit of such creditor;

(5) Of a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all such transfers to the transferee caused a reduction, as of the date of the making of the assignment and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by such security interest exceeded the value of all security interest for such debt on the later of:

(A) Ninety days before the date of the making of the assignment; and

(B) The date on which new value was first given under the security agreement creating such security interest; or

(6) That is the fixing of a statutory lien.

(d) An assignee of any general assignment for the benefit of creditors (as defined in Section 493.010), may avoid a transfer of property of the assignor transferred to secure reimbursement of a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the assignee under subdivision (b) of this section. The liability of such surety under such

bond or obligation shall be discharged to the extent of the value of such property recovered by the assignee or the amount paid to the assignee.

(e) (1) For the purposes of this section:

(A) A transfer of real property other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, is perfected when a bona fide purchaser of such property from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest that is superior to the interest of the transferee; and

(B) A transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.

(2) For the purposes of this section, except as provided in paragraph (3), a transfer is made:

(A) At the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 10 days after, such time;

(B) At the time such transfer is perfected, if such transfer is perfected after such 10 days; or

(C) Immediately before the date of the making of the assignment if such transfer is not perfected at the later of:

(i) The making of the assignment; and

(ii) Ten days after such transfer takes effect between the transferor and the transferee.

(3) For the purposes of this section, a transfer is not made until the assignor has acquired rights in the property transferred.

(f) For the purposes of this section, the assignor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the making of the assignment.

(g) An action by an assignee under this section must be commenced within one year after the making of the assignment.

Legislative Committee Comment—Senate

Comment. Section 1800 is amended to substitute a reference to Section 1801 in place of the former reference to Title 9 of Part 2.

Note. Section 1800 also was amended by 1982 Cal. Stats.ch. 35 to make substantive changes which are continued in the subsequently amended section as set out above.

Code of Civil Procedure § 1801 (added). Exempt property where assignment for benefit of creditors

Comment. Section 1801 continues former Section 690.60 without substantive change.

Commercial Code § 9301 (amended). Priority of lien creditor

9301. (1) Except as otherwise provided in subdivision (2), an unperfected security interest is subordinate to the rights of:

(a) Persons entitled to priority under Section 9312.

(b) A person who becomes a lien creditor before the security interest is perfected.

(c) In the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected.

(d) In the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within 10 days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like, or by filing a notice of judgment lien on personal property, and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

(5) For the purpose of subdivision (4), a secured party shall be deemed not to have knowledge of a judgment lien on personal property acquired pursuant to Section 697.510 of the Code of Civil Procedure until the time the judgment creditor serves a copy of the notice of judgment lien on the secured party personally or by mail pursuant to Chapter 4 (commencing with Section 684.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure. If service on the secured party is by mail, it shall be sent to the secured party at the address shown in the financing statement or security agreement.

Legislative Committee Comment—Assembly

Comment. Subdivision (3) of Section 9301 is amended to make clear that a judgment creditor who acquires a judgment lien on personal property pursuant to Code of Civil Procedure Sections 697.510-697.670 is a "lien creditor." See Code Civ. Proc. § 697.590 (priority of judgment lien on personal property against security interest).

Subdivision (5) requires a judgment creditor who seeks to establish the priority of a judgment lien on personal property to serve a copy of the notice of judgment lien on the secured party as a prerequisite to a determination that the secured party had knowledge of the judgment lien.

Commercial Code § 9304 (amended). Perfection of security interest in instrument in custody of levying officer

9304. (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subdivisions (4), (5),

and (7) of this section and subdivisions (2) and (3) of Section 9306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subdivision (3) of Section 9312; or

(b) Delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subdivisions (4) and (5) perfection depends upon compliance with applicable provisions of this division.

(7) If an instrument claimed as proceeds (other than cash proceeds) under Section 9306 is in the custody of a levying officer, a secured party may perfect a security

interest in such instrument by filing a third-party claim with the levying officer pursuant to Chapter 3 (commencing with Section 720.210) of Division 4 of Title 9 of Part 2 of the Code of Civil Procedure within the 10-day period allowed under Section 9306.

Legislative Committee Comment—Senate

Comment. Subdivision (7) is added to Section 9304 to provide a method of perfecting a security interest in an instrument constituting proceeds (other than cash proceeds) of collateral when the instrument is in the custody of a levying officer.

Commercial Code § 9306 (amended). Security interest in proceeds

9306. (1) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are "cash proceeds." All other proceeds are "noncash proceeds."

(2) Except where this division otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor unless

(a) A filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or

(b) A filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(c) The security interest in the proceeds is perfected before the expiration of the 10-day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this division for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds

(a) In identifiable noncash proceeds and in a separate deposit account containing only proceeds;

(b) In identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) In identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) In all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is

(i) Subject to any right of setoff; and

(ii) Limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subdivision (4).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale, for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under Section 9308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

(6) Cash proceeds retain their character as cash proceeds while in the possession of a levying officer pursuant to Title 6.5 (commencing with Section 481.010) or Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

Legislative Committee Comment—Assembly

Comment. Subdivision (6) is added to Section 9306 to make clear that custody of cash proceeds by a levying officer does not affect the status of the cash proceeds provided by this section.

Commercial Code § 9409 (technical amendment).

Combined certificate of Secretary of State

9409. (a) Upon request of any person, the Secretary of State shall issue a combined certificate showing the information as to financing statements as specified in Section 9407 of this code, the information as to state tax

liens as specified in Section 7226 of the Government Code, the information as to attachment liens as specified in Sections 488.375 and 488.405 of the Code of Civil Procedure, the information as to judgment liens as specified in Section 697.580 of the Code of Civil Procedure, and, if the name requested appears to be other than an individual, the information as to federal liens as specified in Section 2103 of the Code of Civil Procedure. The fee for such a combined certificate is five dollars (\$5).

(b) The Secretary of State shall construe a request for a certificate as one for a combined certificate pursuant to this section unless the request is specifically limited to federal liens, state tax liens, judgment liens, or attachment liens.

Legislative Committee Comment—Senate

Comment. Section 9409 is amended to add a provision requiring that judgment liens on personal property be included in the combined certificate and to correct the cross-references to provisions relating to attachment liens.

Commercial Code § 9504 (amended). Disposition of surplus proceeds of collateral

9504. (1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the division on sales (Division 2). The proceeds of disposition shall be applied in the order following to

(a) The reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) The satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed and to the satisfaction of any subordinate attachment lien or

execution lien pursuant to subdivision (b) of Section 701.040 of the Code of Civil Procedure if notice of the levy of attachment or execution is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus except as provided in Section 701.040 of the Code of Civil Procedure, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides and the provisions of Section 701.040 of the Code of Civil Procedure relating to payment of proceeds and the liability of the secured party apply only if the security agreement provides that the debtor is entitled to any surplus.

(3) A sale or lease of collateral may be as a unit or in parcels, at wholesale or retail and at any time and place and on any terms, provided the secured party acts in good faith and in a commercially reasonable manner. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the secured party must give to the debtor, if he has not signed after default a statement renouncing or modifying his right to notification of sale, and to any other person who has a security interest in the collateral and who has filed with the secured party a written request for notice giving his address (before that secured party sends his notification to the debtor or before debtor's renunciation of his rights), a notice in writing of the time and place of any public sale or of the time on or after which any private sale or other intended disposition is to be made. Such notice must be delivered personally or be deposited in the United States mail postage prepaid addressed to the debtor at his address as set forth in the financing statement or as set forth in the security

agreement or at such other address as may have been furnished to the secured party in writing for this purpose, or, if no address has been so set forth or furnished, at his last known address, and to any other secured party at the address set forth in his request for notice, at least five days before the date fixed for any public sale or before the day on or after which any private sale or other disposition is to be made. Notice of the time and place of a public sale shall also be given at least five days before the date of sale by publication once in a newspaper of general circulation published in the county in which the sale is to be held. Any public sale shall be held in the county or place specified in the security agreement, or if no county or place is specified in the security agreement, in the county in which the collateral or any part thereof is located or in the county in which the debtor has his residence or chief place of business, or in the county in which the secured party has his residence or a place of business if the debtor does not have a residence or chief place of business within this state. If the collateral is located outside of this state or has been removed from this state, a public sale may be held in the locality in which the collateral is located. Any public sale may be postponed from time to time by public announcement at the time and place last scheduled for the sale. The secured party may buy at any public sale and if the collateral is customarily sold in a recognized market or is the subject of widely or regularly distributed standard price quotations he may buy at private sale. Any sale of which notice is delivered or mailed and published as herein provided and which is held as herein provided is a public sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interest even though the secured party fails to comply with the requirements of this chapter or of any judicial proceedings

(a) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not

buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) In any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this division.

Legislative Committee Comment—Assembly

Comment. Section 9504 is amended to clarify the manner of disposition of proceeds of collateral remaining after satisfaction of the indebtedness to a secured party who has a priority over a lien creditor.

**Corporations Code § 15025 (technical amendment).
Partnerships**

Comment. Subdivision (c) of Section 15025 is amended to conform to the terminology of Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). The reference to attachment has been deleted as unnecessary because Code of Civil Procedure Section 487.020 incorporates for attachment the exemptions from enforcement of a money judgment. The other changes are not substantive.

**Corporations Code § 24002 (technical amendment).
Property of unincorporated association subject to enforcement**

Comment. Section 24002 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

**Education Code § 22005 (technical amendment).
Exemption of retirement fund**

Comment. Section 22005 is amended to conform to the Enforcement of Judgments Law. See Code Civ. Proc. §§ 704.110 (public retirement exemption), 703.070 (exception for support

judgment), 487.020 (exemptions from attachment). See also Civil Code §§ 4701, 4801.6 (wage assignment for support). The second paragraph of Section 22005 is superseded by the provisions listed above.

Financial Code § 864 (amended). Bank setoff

Legislative Committee Comment—Senate

Comment. Section 864 is amended to correct cross-references and to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). The form of the declaration is amended to conform to Code of Civil Procedure Section 2015.5(b).

Financial Code § 1875 (technical amendment). Exemption of trust funds

Comment. Section 1875 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). See also Code Civ. Proc. § 487.020 (exemptions from attachment).

Financial Code § 3105 (technical amendment). Exemption of bank or trust company property

Comment. Section 3105 is amended to delete unnecessary language. A writ of execution may not be issued prior to final judgment. See Code Civ. Proc. § 699.510.

Financial Code § 7609.5 (amended). Savings and loan association setoff

Legislative Committee Comment—Assembly

Comment. Section 7609.5 is amended to correct cross-references and to conform Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). The form of the declaration is amended to conform to Code of Civil Procedure Section 2015.5(b).

Financial Code § 11209 (technical amendment). Exemption of association property

Comment. Section 11209 is amended to delete unnecessary language. A writ of execution may not be issued prior to final judgment. See Code Civ. Proc. § 699.510.

Financial Code § 14864 (amended). Exemption of credit union shares

Legislative Committee Comment—Senate

Comment. Section 14864 is amended to replace the former exemption for credit union shares with a reference to the applicable provisions of the Enforcement of Judgments Law. See Code Civ. Proc. §§ 703.080 (tracing exempt amounts into deposit accounts), 704.070 (exemption for paid earnings), 704.080 (exemption for deposit account in which social security payments are directly deposited).

**Financial Code § 17410 (technical amendment).
Exemption of escrow and trust funds**

Comment. Section 17410 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). See also Code Civ. Proc. § 487.020 (exemptions from attachment).

**Government Code § 965.5 (technical amendment).
Enforcement of money judgment against state**

Comment. Section 965.5 is amended to correct the cross-reference.

**Government Code § 970.1 (technical amendment).
Enforcement of money judgment against local public entity**

Comment. Section 970.1 is amended to correct the cross-reference and to make technical revisions.

**Government Code § 1587 (technical amendment).
Enforcement of official bond**

Comment. Section 1587 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law) and to make technical revisions.

Government Code § 6103.2 (amended). Writ fees

Comment. Section 6103.2 is amended to add references to writs of possession and sale.

Government Code § 7170 (amended). State tax lien

7170. (a) Except as provided in subdivisions (b) and (c), a state tax lien attaches to all property and rights to property whether real or personal, tangible or intangible, including all after-acquired property and rights to property, belonging to the taxpayer and located in this state.

(b) A state tax lien is not valid as to real property against the right, title, or interest of any of the following persons where the person's right, title, or interest was acquired or perfected prior to recording of the notice of state tax lien in the office of the county recorder of the county in which the real property is located pursuant to Section 7171:

(1) A successor in interest of the taxpayer without knowledge of the lien.

(2) A holder of a security interest.

(3) A mechanic's lienor.

(4) A judgment lien creditor.

(c) A state tax lien is not valid as to personal property against:

(1) The holder of a security interest in the property whose interest is perfected pursuant to Section 9303 of the Commercial Code prior to the time the notice of the state tax lien is filed with the Secretary of State pursuant to Section 7171.

(2) Any person (other than the taxpayer) who acquires an interest in the property under the law of this state without knowledge of the lien or who perfects an interest in accordance with the law of this state prior to the time that the notice of state tax lien is filed with the Secretary of State pursuant to Section 7171.

(3) A buyer in ordinary course of business who, under Section 9307 of the Commercial Code, would take free of a security interest created by the seller.

(4) Any person (other than the taxpayer) who, notwithstanding the prior filing of the notice of the state tax lien:

(A) Is a holder in due course of a negotiable instrument.

(B) Is a holder to whom a negotiable document of title has been duly negotiated.

(C) Is a bona fide purchaser of a security.

(D) Is a purchaser of chattel paper or an instrument who gives new value and takes possession of the chattel paper or instrument in the ordinary course of business.

(E) Is a holder of a purchase money security interest.

(F) Is a collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Commercial Code.

(G) Acquires a security interest in a deposit account or in the beneficial interest in a trust or estate.

(H) Acquires any right or interest in letters of credit, advices of credit, or money.

(I) Acquires without actual knowledge of the state tax lien a security interest in or a claim in or under any policy of insurance including unearned premiums.

(J) Acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of the security interest.

(5) A judgment lien creditor whose lien was created by the filing of a notice of judgment lien on personal property with the Secretary of State prior to the time the notice of state tax lien is filed with the Secretary of State pursuant to Section 7171.

Legislative Committee Comment—Assembly

Comment. Subdivision (c) (5) is added to Section 7170 to make clear that a judgment lien on personal property filed pursuant to Code of Civil Procedure Sections 697.510-697.670 will have priority over a later filed notice of state tax lien.

Government Code § 7173 (amended). State tax lien in pending action or proceeding

Comment. Section 7173 is amended to delete the unnecessary introductory clause and to delete the unnecessary reference in subdivision (c). These are not substantive changes. The abstract contains the matter required by Sections 674,

700.190, 708.460, and 1206 of the Code of Civil Procedure and by this section. The provision added to subdivision (b) to protect the rights of a party who does not have notice of the lien is consistent with Code of Civil Procedure Section 708.410(c) (lien of judgment creditor in pending action or proceeding).

**Government Code § 9359.3 (technical amendment).
Exemption of retirement fund**

Comment. Section 9359.3 is amended to conform to the Enforcement of Judgments Law. See Code Civ. Proc. §§ 704.110 (public retirement exemption), 703.070 (exception for support judgment), 703.080 (tracing exempt funds), 487.020 (exemptions from attachment). See also Civil Code §§ 4701, 4801.6 (wage assignment for support).

**Government Code § 16211.5 (amended). Voluntary sale
of residence of claimant of property, tax postponement**

Legislative Committee Comment—Senate

Comment. Section 16211.5 is amended for consistency with the Senior Citizens Property Tax Postponement Law. See Rev. & Tax. Code §§ 20581, 20583.

**Government Code § 21201 (technical amendment).
Exemption of retirement fund**

Comment. Section 21201 is amended to conform to the Enforcement of Judgments Law. See Code Civ. Proc. §§ 704.110 (public retirement exemption), 703.070 (exception for support judgment), 703.080 (tracing exempt funds), 487.020 (exemptions from attachment). See also Civil Code §§ 4701, 4801.6 (wage assignment for support). The deleted portion of Section 21201 is superseded by the provisions listed above.

**Government Code § 26606 (repealed). Release of
attachments and garnishments**

Legislative Committee Comment—Assembly

Comment. Section 26606 is superseded by Code of Civil Procedure Sections 488.730, 699.060.

Government Code § 26664 (amended). Liability of sheriff

26664. Any sheriff who neglects or refuses to perform the duties under a writ of attachment, execution, possession, or sale, after being required by the creditor's attorney of record or, if the creditor does not have any attorney of record, by the creditor and after the sheriff's fees have been paid or tendered, is liable to the creditor for all actual damages sustained by the creditor.

Legislative Committee Comment—Assembly

Comment. Section 26664 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law) and to Code of Civil Procedure Section 262 (instructions from attorney or from party if no attorney). This amendment also makes the sheriff liable for failure to perform duties under a writ of attachment or a prejudgment writ of possession. See Code Civ. Proc. §§ 481.010-493.060 (attachment), 511.010-516.050 (claim and delivery).

Government Code § 26725 (technical amendment). Fee for execution of process on real property

Comment. Section 26725 is amended to add a reference to a writ of sale. See Code Civ. Proc. §§ 716.010-716.030.

Government Code § 26726 (technical amendment). Fee for keeper levy on motor vehicle

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 26726 is amended to conform to the terminology of Division 3 (commencing with Section 712.010) of Title 9 of Part 2 of the Code of Civil Procedure. Subdivision (b) provides a new daily fee for maintaining custody under a keeper levy. Subdivision (c) is amended to provide the standard fee.

Government Code § 26728 (technical amendment). Fee for notice of sale of personal property

Comment. Section 26728 is amended to add a reference to a writ of sale. See Code Civ. Proc. §§ 716.010-716.030.

Government Code § 26733 (technical amendment). Fee for service of writ of possession of real property

Comment. Section 26733 is amended to conform to the terminology of Chapter 3 (commencing with Section 715.010) of Division 3 of Title 9 of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

Government Code § 26738 (technical amendment). Fee for not-found return

Comment. Section 26738 is amended to conform to the terminology of Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

Government Code § 26741 (technical amendment). Fee for certificate or deed of sale

Comment. Section 26741 is amended to add a reference to the deed of sale. See Code Civ. Proc. § 701.660.

Government Code § 26744 (technical amendment). Fee for bench warrant

Comment. Section 26744 is amended to correct cross-references.

Government Code § 26750 (technical amendment). Fee for duties under Wage Garnishment Law

Legislative Committee Comment—Assembly

Comment. Section 26750 is amended to correct the references to the Wage Garnishment Law and to provide the standard fee.

Government Code § 26820.4 (technical amendment). Fee for filing first paper

Comment. Section 26820.4 is amended to insert a reference to the provision that replaced former Section 722 and to add a reference to Section 704.750.

Government Code § 26828 (technical amendment). Fee for issuance of writ

Comment. Section 26828 is amended to conform to the terminology of Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). See, *e.g.*, Code Civ. Proc. 716.010.

Government Code § 27248 (technical amendment). Books of county recorder

Legislative Committee Comment—Assembly

Comment. Section 27248 is amended to conform to the terminology of Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law) and to add subdivision (b) which provides for the manner of the recording and indexing of certified copies of certain judgments payable in installments that are recorded to create judgment liens and other documents affecting judgment liens in real property. Subdivision (b) implements the provisions of Code of Civil Procedure Sections 697.320, 697.330, and 697.400. Nothing in Section 27248 is intended to require the county recorder to keep a separate, rather than a general, index as prescribed in Section 27257.

Government Code § 27249 (technical amendment). Books of county recorder

Legislative Committee Comment—Assembly

Comment. Section 27249 is amended to conform to the language used in the Attachment Law. See Title 6.5 (commencing with Section 481.010) of Part 2 of the Code of Civil Procedure. The issuance of a writ of attachment does not result in a recording with the county recorder; only the levy is recorded with the county recorder.

Government Code § 31452 (technical amendment). Exemption of retirement fund

Comment. Section 31452 is amended to conform to the Enforcement of Judgments Law. See Code Civ. Proc. §§ 704.110 (public retirement exemption), 703.070 (exception for support judgment), 703.080 (tracing exempt funds), 487.020 (exemptions from attachment). See also Civil Code §§ 4701, 4801.6 (wage

assignment for support). The public retirement exemption is available in bankruptcy. See 11 U.S.C. § 522(b).

**Government Code § 31913 (technical amendment).
Exemption of retirement fund**

Comment. Section 31913 is amended to conform to the Enforcement of Judgments Law. See Code Civ. Proc. §§ 704.110 (public retirement exemption), 703.070 (exception for support judgments), 703.080 (tracing exempt funds), 487.020 (exemptions from attachment). See also Civil Code §§ 4701, 4801.6 (wage assignment for support). The public retirement exemption is available in bankruptcy. See 11 U.S.C. § 522(b).

**Government Code § 32210 (technical amendment).
Exemption of retirement fund**

Comment. Section 32210 is amended to conform to the Enforcement of Judgments Law. See Code Civ. Proc. §§ 704.110 (public retirement exemption), 703.070 (exception for support judgments), 703.080 (tracing exempt funds), 487.020 (exemptions from attachment). See also Civil Code §§ 4701, 4801.6 (wage assignment for support). The public retirement exemption is available in bankruptcy. See 11 U.S.C. § 522(b).

**Government Code § 66499.6 (technical amendment).
Liability of performance bond**

Comment. Section 66499.6 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). See also Code Civ. Proc. § 487.020 (exemptions from attachment).

**Government Code § 69503.1 (technical amendment).
Destruction of court records**

Legislative Committee Comment—Assembly

Comment. Section 69503.1 is amended to delete a reference to former Code of Civil Procedure Section 685. The court procedure provided by former Code of Civil Procedure Section 685 is superseded by Code of Civil Procedure Sections 683.110-683.220 (renewal of judgments by filing notice of renewal).

Government Code § 72055 (technical amendment). Fee for filing first paper

Comment. Section 72055 is amended to insert a reference to the provision that replaced former Section 722 and to add a reference to Section 704.750.

Health & Safety Code § 7925 (technical amendment). Unused cemetery lands

Comment. Section 7925 is amended to conform to the terminology of Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). See also Code Civ. Proc. § 487.020 (exemptions from attachment).

Health & Safety Code § 8561 (amended). Exemption of dedicated property

Comment. Section 8561 is amended for consistency with the general exemption provision.

Health & Safety Code § 33124 (repealed). Exemption of redevelopment agency's property from levy and sale

Comment. Former Section 33124 is not continued. Property of a redevelopment agency—a public entity—is not subject to enforcement of a money judgment. See Code Civ. Proc. § 695.050; Gov't Code § 970.1. See also Code Civ. Proc. § 487.020 (exemptions from attachment).

Health & Safety Code § 34142 (repealed). Exemption of property of community development commission

Comment. Former Section 34142 is not continued. Property of a community development commission—a public entity—is not subject to enforcement of a money judgment. See Code Civ. Proc. § 695.050; Gov't Code § 970.1. See also Code Civ. Proc. § 487.020 (exemptions from attachment).

Health & Safety Code § 34217 (repealed). Exemption of housing authority realty

Comment. Former Section 34217 is not continued. Property of a housing authority—a public entity—is not subject to

enforcement of a money judgment. See Code Civ. Proc. § 695.050; Gov't Code § 970.1. See also Code Civ. Proc. § 487.020 (exemptions from attachment).

Insurance Code § 10213 (repealed). Exemption of group life insurance

Comment. Section 10213 is superseded by Code of Civil Procedure § 704.100 (exemption of insurance cash value and proceeds). See also Code Civ. Proc. § 487.020 (exemptions from attachment).

Insurance Code § 10498.5 (technical amendment). Funds of certificate of exemption holder

Comment. Section 10498.5 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). See also Code Civ. Proc. § 487.020 (exemptions from attachment).

Insurance Code § 11045 (repealed). Fraternal benefit society aid

Comment. Former Section 11045 is superseded by exemptions provided by Code of Civil Procedure Sections 704.100 (life insurance benefits), 704.130 (disability and health benefits), and 704.170 (charitable aid). See also Code Civ. Proc. § 487.020 (exemptions from attachment).

Labor Code § 101 (technical amendment). Costs

Comment. Section 101 is amended to delete unnecessary language. Garnishment is not a separate remedy. See, *e.g.*, Code Civ. Proc. §§ 700.010-700.200 (method of levy). The provision permitting the serving officer to recover "mileage fees" has been replaced by one permitting the recovery of "service fees." Levying officers no longer charge mileage fees for service of process. See 1975 Cal. Stats. ch. 368, § 24 (repealing Gov't Code § 26746).

Labor Code § 270.5 (technical amendment). Logging trust fund exemption

Comment. Section 270.5 is amended to delete unnecessary language and to make nonsubstantive revisions. See also Code Civ. Proc. § 487.020 (exemptions from attachment).

Labor Code § 270.6 (technical amendment). Seller's trust fund exemption

Comment. Section 270.6 is amended to delete unnecessary language and to make nonsubstantive revisions. See also Code Civ. Proc. § 487.020 (exemptions from attachment).

Labor Code § 300 (amended). Wage assignment

300. (a) As used in this section, the phrase "assignment of wages" includes the sale or assignment of, or giving of an order for, wages or salary but does not include an order or assignment made pursuant to Section 4701 or 4801.6 of the Civil Code or Section 3088 of the Probate Code.

(b) No assignment of wages, earned or to be earned, is valid unless all of the following conditions are satisfied:

(1) The assignment is contained in a separate written instrument, signed by the person by whom the wages or salary have been earned or are to be earned, and identifying specifically the transaction to which the assignment relates.

(2) Where the assignment is made by a married person, the written consent of the spouse of the person making the assignment is attached to the assignment. No such consent is required of any married person (i) after entry of a judgment decreeing a legal separation from such person's spouse or (ii) if the married person and the spouse of the married person are living separate and apart after entry of an interlocutory judgment of dissolution of their marriage, if a written statement by the person making the assignment, setting forth such facts, is attached to or included in the assignment.

(3) Where the assignment is made by a minor, the written consent of a parent or guardian of the minor is attached to the assignment.

(4) Where the assignment is made by a person who is unmarried or who is an adult or who is both unmarried and an adult, a written statement by the person making the assignment, setting forth such facts, is attached to or included in the assignment.

(5) No other assignment exists in connection with the same transaction or series of transactions and a written

statement by the person making the assignment to that effect is attached to or included in the assignment.

(6) A copy of the assignment and of the written statement provided for in paragraphs (2), (4), and (5), authenticated by a notary public, is filed with the employer, accompanied by an itemized statement of the amount then due to the assignee.

(7) At the time the assignment is filed with the employer, no other assignment of wages of the employee is subject to payment and no earnings withholding order against the employee's wages or salary is in force.

(c) Under any assignment of wages, a sum not to exceed 50 per centum of the assignor's wages or salary shall be withheld by, and be collectible from, the assignor's employer at the time of each payment of such wages or salary.

(d) The employer is entitled to rely upon the statements of fact in the written statement provided for in paragraphs (2), (4), and (5) of subdivision (b), without the necessity of inquiring into the truth thereof, and the employer shall incur no liability whatsoever by reason of any payments made by the employer to an assignee under any assignment in reliance upon the facts so stated.

(e) An assignment of wages to be earned is revocable at any time by the maker thereof. Any power of attorney to assign or collect wages or salary is revocable at any time by the maker thereof. No revocation of such an assignment or power of attorney is effective as to the employer until the employer receives written notice of revocation from the maker.

(f) No assignment of wages, earned or to be earned, is valid under any circumstances if the wages or salary earned or to be earned are paid under a plan for payment at a central place or places established under the provisions of Section 204a.

(g) This section does not apply to deductions which the employer may be requested by the employee to make for the payment of life, retirement, disability or unemployment insurance premiums, for the payment of taxes owing from the employee, for contribution to funds, plans or systems providing for death, retirement,

disability, unemployment, or other benefits, for the payment for goods or services furnished by the employer to the employee or the employee's family at the request of the employee, or for charitable, educational, patriotic or similar purposes.

(h) No assignment of wages is valid unless at the time of the making thereof, such wages or salary have been earned, except for necessities of life and then only to the person or persons furnishing such necessities of life directly and then only for the amount needed to furnish such necessities.

Legislative Committee Comment—Assembly

Comment. Subdivision (a) of Section 300 is amended to supply cross-references to other sections that provide for wage assignments for support. The provision formerly contained in subdivision (c) for delaying the effective date of an earnings withholding order where a wage assignment is in effect when the earnings withholding order is served is not continued because it was an unnecessary complication. Subdivisions formerly lettered as (d) through (i) are relettered as (c) through (h) respectively.

Labor Code § 404 (technical amendment). Exemption of bond

Comment. Section 404 is amended to conform with Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

Labor Code § 3862 (technical amendment). Enforcement of employer's lien

Comment. Section 3862 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

Penal Code § 597e (technical amendment). Liability for care of animal

Comment. The last sentence of Section 597e is amended to make clear that a judgment creditor under this section may resort to any appropriate procedures to enforce the judgment. See, *e.g.*, Code Civ. Proc. § 708.205 (order applying property to

satisfaction of money judgment). The other revisions are not substantive.

Penal Code § 987.8 (technical amendment). Collection of costs of legal assistance

Comment. Section 987.8 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

Penal Code § 1206 (repealed). Judgment lien for fine

Comment. Section 1206 is repealed because it is unnecessary. See Section 1214 and the Comment thereto.

Penal Code § 1214 (amended). Enforcement of fine

Comment. Section 1214 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). Pursuant to Code of Civil Procedure Sections 697.310-697.410, a judgment lien may be created on the defendant's real property as provided by former Penal Code Section 1206.

Penal Code § 1306 (technical amendment). Enforcement of bail bond

Comment. Section 1306 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

Penal Code § 1397 (technical amendment). Collection of fine against corporation

Comment. Section 1397 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

Penal Code § 1448 (technical amendment). Collection of costs against prosecutor

Comment. Section 1448 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

Probate Code § 205 (technical amendment). Liability of surviving spouse

Legislative Committee Comment—Assembly

Comment. Section 205 is amended to conform to the terminology of Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

Probate Code § 660 (technical amendment). Possession of family dwelling

Legislative Committee Comment—Assembly

Comment. Section 660 is amended to conform to the terminology of Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

Probate Code § 663 (technical amendment). Liability of probate homestead

Legislative Committee Comment—Assembly

Comment. Section 663 is amended to conform to the terminology of Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

Probate Code § 704.2 (technical amendment). Debts of deceased spouse

Legislative Committee Comment—Assembly

Comment. Section 704.2 is amended to conform to the terminology of Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

Probate Code § 704.4 (technical amendment). Debts of surviving spouse

Legislative Committee Comment—Assembly

Comment. Section 704.4 is amended to conform to the terminology of Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

Probate Code § 732.5 (repealed). Redemption from sale

Legislative Committee Comment—Assembly

Comment. Section 732.5 is repealed. The right of redemption from execution sales has been repealed. See Code Civ. Proc. §§ 701.545, 701.680. The right of redemption from foreclosure sales is limited as provided in Code of Civil Procedure Section 729.010.

Probate Code § 734 (repealed). Payment in specified currency

Comment. Section 734 is repealed, consistent with changes made by Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure. See the Comment to Code of Civil Procedure Section 667.

Probate Code § 954 (technical amendment). Enforcement against executor or administrator

Comment. Section 954 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law).

Heading of Part 6 (commencing with Section 3000) of Division 4 of the Probate Code (technical amendment)

Comment. See the Comment to Section 3002.

Probate Code § 3002 (technical amendment). Community property defined

Legislative Committee Comment—Senate

Comment. The heading of Part 6 (commencing with Section 3000) is amended and provisions of Part 6 are amended or repealed to reflect the elimination of the collateral effects of a homestead declaration. See Code Civ. Proc. § 704.940 and the Comment thereto.

Probate Code § 3010 (repealed). Homestead defined

Comment. See the Comment to Section 3002.

Probate Code § 3012 (technical amendment). Legal capacity with respect to property

Comment. See the Comment to Section 3002.

Probate Code § 3021 (repealed). Acquisition of new homestead

Comment. See the Comment to Section 3002.

Probate Code § 3022 (repealed). Homestead exemption

Comment. See the Comment to Section 3002.

Probate Code § 3023 (technical amendment). Determination of homestead

Comment. See the Comment to Section 3002.

Probate Code § 3052 (repealed). Separate property constituting homestead

Comment. See the Comment to Section 3002.

Probate Code § 3053 (repealed). Separate property of both spouses constituting homestead

Comment. See the Comment to Section 3002.

Probate Code § 3054 (technical amendment). Authority of court

Comment. See the Comment to Section 3002.

Probate Code § 3055 (technical amendment). Effect on consent of death or subsequent lack of legal capacity

Comment. See the Comment to Section 3002.

Probate Code § 3056 (technical amendment). Manner of management of community property

Comment. See the Comment to Section 3002.

Probate Code § 3071 (technical amendment). Satisfaction of joinder or consent requirements

Comment. See the Comment to Section 3002.

Probate Code § 3073 (technical amendment). Manner of joinder or consent

Comment. See the Comment to Section 3002.

Probate Code § 3088 (amended). Wage assignment

3088. (a) The court may order the spouse who has the management or control of community property to apply the income or principal, or both, of the community property to the support and maintenance of the conservatee (including care, treatment, and support of a conservatee who is a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services) as ordered by the court.

(b) In determining the amount ordered for support and maintenance, the court shall consider the following circumstances of the spouses:

- (1)** The earning capacity and needs of each spouse.
- (2)** The obligations and assets, including the separate property, of each spouse.
- (3)** The duration of the marriage.
- (4)** The age and health of the spouses.
- (5)** The standard of living of the spouses.
- (6)** Any other relevant factors which it considers just and equitable.

(c) At the request of any interested person, the court shall make appropriate findings with respect to the circumstances.

(d) The court may order the spouse who has the management or control of community property to make a specified monthly or other periodic payment to the conservator of the person of the conservatee or to such other person as is designated in the order. The court may order the spouse required to make the periodic payments to give reasonable security therefor.

(e) The court may order the spouse required to make the periodic payments to assign, to the person designated in the order to receive the payments, that portion of the earnings of the spouse due or to be due in the future as will be sufficient to pay the amount ordered by the court

for the support and maintenance of the conservatee. Such order shall operate as an assignment and shall be binding upon any existing or future employer upon whom a copy of the order is served. The order shall be in the form for an order assigning salary or wages prescribed by the Judicial Council for use in family law proceedings. The employer may deduct the sum of one dollar (\$1) for each payment made pursuant to the order. Any such assignment made pursuant to court order shall have priority as against any execution or other assignment unless otherwise ordered by the court or unless the other assignment is made pursuant to Section 4701 of the Civil Code. No employer shall use any assignment authorized by this subdivision as grounds for the dismissal of such employee. As used in this subdivision, "employer" includes the United States government and any public entity as defined in Section 811.2 of the Government Code. The provisions of this subdivision apply to the money and benefits described in Sections 704.110 and 704.113 of the Code of Civil Procedure to the extent that such moneys and benefits are subject to a wage assignment for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(f) The court shall retain jurisdiction to modify or to vacate an order made under this section where justice requires, except as to any amount that may have accrued prior to the date of the filing of the petition to modify or revoke the order. At the request of any interested person, the order of modification or revocation shall include findings of fact and may be made retroactive to the date of the filing of the petition to revoke or modify, or to any date subsequent thereto. At least 15 days before the hearing on the petition to modify or vacate the order, the petitioner shall mail a notice of the time and place of the hearing on the petition, accompanied by a copy of the petition, to the spouse who has the management or control of the community property. Notice shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1 to any other

persons entitled to notice of the hearing under that chapter.

(g) In a proceeding under Title 3 (commencing with Section 4500) of Part 5 of Division 4 of the Civil Code, the court has jurisdiction to modify or vacate an order made under this section to the same extent as it may modify or vacate an order made in a proceeding under that title.

Legislative Committee Comment—Assembly

Comment. Subdivision (e) of Section 3088 is amended for consistency with other comparable provisions. See Civil Code §§ 4701, 4801.6.

Probate Code § 3100 (technical amendment). Transaction defined

Comment. See the Comment to Section 3002.

Probate Code § 3101 (technical amendment). Nature of proceeding

Comment. See the Comment to Section 3002.

Probate Code § 3121 (technical amendment). Contents of petition

Comment. See the Comment to Section 3002.

Probate Code § 3122 (technical amendment). Petition for court order authorizing transaction

Comment. See the Comment to Section 3002.

Probate Code § 3144 (technical amendment). Order authorizing transaction

Comment. See the Comment to Section 3002.

Public Utilities Code § 12337 (technical amendment). Exemption of retirement fund

Comment. Sections 12337, 25337, 28896, 50146, 95836, and 98196 are amended to conform to the Enforcement of Judgments Law. See Code Civ. Proc. §§ 704.110 (public retirement exemption), 703.070 (exception for support judgment), 703.080

(tracing exempt funds), 487.020 (exemptions from attachment). See also Civil Code §§ 4701, 4801.6 (wage assignment for support).

**Public Utilities Code § 25337 (technical amendment).
Exemption of retirement fund**

Comment. See Comment to Section 12337.

**Public Utilities Code § 28896 (technical amendment).
Exemption of retirement fund**

Comment. See the Comment to Section 12337.

**Public Utilities Code § 50146 (technical amendment).
Exemption of retirement fund**

Comment. See the Comment to Section 12337.

**Public Utilities Code § 95836 (technical amendment).
Exemption of retirement fund**

Comment. See the Comment to Section 12337.

**Public Utilities Code § 98196 (technical amendment).
Exemption of retirement fund**

Comment. See the Comment to Section 12337.

**Revenue & Taxation Code § 32373 (amended).
Redemption from sale**

Legislative Committee Comment—Assembly

Comment. Section 32373 is amended to reflect the repeal of the statutory right of redemption from execution sales. See Code Civ. Proc. §§ 701.545, 701.680, and the Comments thereto.

**Streets & Highways Code § 5422 (amended). Redemption
from sale**

Legislative Committee Comment—Assembly

Comment. Section 5422 is amended to reflect the repeal of the statutory right of redemption from execution sales. See Code Civ. Proc. §§ 701.545, 701.680, and the Comments thereto.

Streets & Highways Code § 6617 (repealed). Redemption from judicial sale

Legislative Committee Comment—Assembly

Comment. Section 6617 is repealed because the statutory right of redemption from execution sales has been repealed. See Code Civ. Proc. §§ 701.545, 701.680, and the Comments thereto.

Streets & Highways Code § 8832 (amended). Judicial sale of property subject to assessment lien

Legislative Committee Comment—Assembly

Comment. Section 8832 is amended to reflect the repeal of the statutory right of redemption from execution sales. See Code Civ. Proc. §§ 701.545, 701.680, and the Comments thereto.

Streets & Highways Code § 9356 (amended). Sale of property subject to reassessment lien

Legislative Committee Comment—Assembly

Comment. Section 9356 is amended to reflect the repeal of the statutory right of redemption from execution sales. See Code Civ. Proc. §§ 701.545, 701.680, and the Comments thereto.

Unemployment Insurance Code § 988 (technical amendment). Exemption of contributions

Comment. Section 988 is amended to delete unnecessary language. See Code Civ. Proc. §§ 487.020 (exemptions from attachment), 704.120 (exemption of unemployment benefits and contributions from enforcement of money judgments).

Unemployment Insurance Code § 1342 (technical amendment). Exemption of benefits

Comment. Section 1342 is amended to delete unnecessary language. See Code Civ. Proc. §§ 487.020 (exemptions from attachment), 704.120 (exemption of unemployment benefits and contributions from enforcement of money judgments).

Unemployment Insurance Code § 1788 (repealed). Third-party claim

Comment. Section 1788 is superseded by Section 688.030 of the Code of Civil Procedure which generally applies the

third-party claim procedure of Division 4 (commencing with Section 720.010) of Title 9 of Part 2 of the Code of Civil Procedure.

Water Code § 8537 (repealed). Property exempt from execution or attachment

Legislative Committee Comment—Senate

Comment. Former Section 8537 is not continued. Property of a public entity is not subject to enforcement of a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure. See Code Civ. Proc. § 695.050; Gov't Code §§ 965.5, 970.1. See also Code Civ. Proc. § 487.020 (exemptions from attachment). See also former Code Civ. Proc. § 690.26 and the Comment thereto.

Water Code § 22142 (repealed). Exemption of retirement fund

Comment. Section 22142 is superseded by Code of Civil Procedure Sections 704.110 (public retirement exemption), 703.070 (exception for support judgments), 703.080 (tracing exempt fund), and 487.020 (property exempt from attachment).

Welfare & Institutions Code § 908 (technical amendment). Enforcement of order for payment in proceeding for support of ward or dependent child

Comment. Section 908 is amended to correct a cross-reference in subdivision (b).

Welfare & Institutions Code § 929 (technical amendment). Earnings of minor

Comment. Section 929 is amended to supply a cross-reference to the provisions governing wage garnishment which are the exclusive provisions governing the levy on earnings. The reference to attachment is deleted because wages may not be levied upon before judgment. See Code Civ. Proc. § 487.020(c).

Welfare & Institutions Code § 11002 (technical amendment). Exemption of aid

Comment. Section 11002 is amended to conform to the Enforcement of Judgments Law. See Sections 487.020

(exemptions from attachment), 704.170 (exemption of aid). The aid exemption is available in bankruptcy. See 11 U.S.C. § 522(b).

**Welfare & Institutions Code § 11477 (amended).
Assignment of support rights**

11477. As a condition of eligibility for aid paid under this chapter, each applicant or recipient shall:

(a) Assign to the county any rights to support from any other person such applicant may have in their own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and which have accrued at the time such assignment is made. Receipt of public assistance under this chapter shall operate as an assignment by operation of law. An assignment of support rights to the county shall also constitute an assignment to the state. If support rights are assigned pursuant to this subdivision, the assignee may become an assignee of record by the district attorney or other public official filing with the court clerk an affidavit showing that an assignment has been made or that there has been an assignment by operation of law. This procedure does not limit any other means by which the assignee may become an assignee of record.

(b) Cooperate with the county welfare department and district attorney in establishing the paternity of a child born out of wedlock with respect to whom aid is claimed, and in obtaining any support payments due any person for whom aid is requested or obtained. The State Department of Social Services shall establish an exclusive list of acts, in accordance with federal law, which shall be the only acts deemed to be a refusal to offer reasonable cooperation and assistance. The county welfare department shall verify that the applicant or recipient refused to offer reasonable cooperation prior to determining that such applicant or recipient is ineligible. The granting of aid shall not be delayed or denied if the applicant is otherwise eligible, if the applicant completes the necessary forms and agrees to cooperate with the district attorney in securing support and determining paternity, where applicable.

A recipient shall be considered to be cooperating with the county welfare department or the district attorney's office and they shall be eligible for aid, if otherwise eligible, if they cooperate to the best of their ability or have good cause for refusal to cooperate. The department, in accordance with federal law, shall establish standards for determining good cause for refusal to cooperate. With respect to any application or any questionnaire relating to any application, no questions on paternity shall be asked in cases where paternity is not legally an issue. Persons eligible for immediate aid pursuant to Section 11056 or Section 11266 shall receive such aid prior to completing the forms required to obtain child and spousal support and establish paternity, provided that they indicate they will cooperate in these matters. Appearances at public agencies required pursuant to this section, subsequent to certification of the applicant shall be scheduled with due regard for his parental duties and employment responsibilities. If an appearance is required at a time other than normal working hours, a statement as to the reason for such appearance shall be inserted in the file of the applicant.

If the relative with whom a child is living is found to be ineligible because of failure to comply with the provisions of this section, any aid for which such child is eligible will, to the extent required by federal law, be provided in the form of protective payments.

The county welfare department shall insure that all applicants for or recipients of aid under this chapter are properly notified of the conditions imposed by this section.

Legislative Committee Comment—Senate

Comment. Subdivision (a) of Section 11477 is amended to provide a method by which an assignment of support rights under this section may be made of record. Becoming an assignee of record is a prerequisite to enforcement under the Enforcement of Judgments Law as provided by Section 681.020 of the Code of Civil Procedure. As the last sentence of subdivision (a) makes clear, the method of becoming an assignee of record therein provided is not necessarily exclusive. See *e.g.*, Code Civ. Proc § 673 (acknowledgment of assignment of judgment).

Welfare & Institutions Code § 14115.5 (technical amendment). Exemption of Medi-Cal funds

Comment. Section 14115.5 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure (Enforcement of Judgments Law). See also Code Civ. Proc. § 487.020 (exemptions from attachment).

Welfare & Institutions Code § 17409 (amended). Exemptions from public aid reimbursement

Comment. Section 17409 is amended to correct cross-references.

DISPOSITION OF EXISTING ENFORCEMENT OF JUDGMENTS LAW

(Sections 681-724e of the Code of Civil Procedure)

Note. A Comment to each section of existing law relating to enforcement of judgments—Title 9 (commencing with Section 681) of Part 2 of the Code of Civil Procedure—is set out below. Existing Title 9 will be repealed when the new Enforcement of Judgments Law becomes operative on July 1, 1983. The disposition of each section of existing law is indicated in the Comment to the section.

TITLE 9. EXECUTION OF JUDGMENT IN CIVIL ACTIONS

CHAPTER 1. EXECUTION

§ 681 (repealed). Time for issuance of execution

Comment. The first sentence of former Section 681 is superseded by Sections 683.010 (judgment enforceable upon entry), 683.020 (ten-year period for enforcement of judgment), 699.510 (issuance of writ of execution), 712.010 (issuance of writ to enforce nonmoney judgment). The tolling provision of the second sentence of former Section 681 is not continued. See the Comment to Section 683.020.

§ 681a (repealed). Stay of execution

Comment. Former Section 681a is superseded by Section 918, which has been amended to make clear that it authorizes the trial court to grant a stay of enforcement whether or not an appeal has been or will be taken.

§ 682 (repealed). Issuance and contents of writ

Legislative Committee Comment—Senate

Comment. The introductory paragraph of former Section 682 is superseded by Sections 699.510 (issuance of writ of execution) and 699.520 (contents of writ of execution). See also Sections 681.080 (b) Judicial Council authority to prescribe form of writ), 693.010 (form of writ), 712.010 (issuance of writ of possession or sale), 712.020 (contents of writ of possession or sale). The portion of the introductory paragraph relating to payment in a specified kind of money or currency is not continued. See the Comment to Section 667 as amended.

Subdivision 1 of former Section 682 is superseded by Sections 697.390 (judgment lien on real property), 699.520 (contents of writ), 699.710 (property subject to execution). The order of levy specified in subdivisions 1 and 4 of former Section 682 is not continued. See the Comment to Section 699.530.

Subdivision 2 of former Section 682 is not continued because it is unnecessary. Property of the judgment debtor is generally subject to execution regardless of who possesses it. See, e.g., Sections 699.710 (property subject to execution), 700.015 (levy on real property), 700.040 (levy on tangible personal property in possession of third

person), 700.170 (levy on accounts receivable and general intangibles), 700.200 (levy on interest in personal property in decedent's estate).

Subdivision 3 of former Section 682 is not continued. See the Comment to Section 667 as amended.

Subdivision 4 of former Section 682 is superseded by Sections 712.020 (contents of writ of possession or sale), 712.040 (collection of money amounts), 714.010 (contents of writ of possession of personal property), 714.020 (execution of writ of possession of personal property), 715.010 (contents of writ of possession of real property), 715.020 (execution of writ of possession of real property).

§ 682a (repealed). Levy on joint deposit accounts and safe deposit boxes

Comment. The substance of former Section 682a is generally continued in Section 700.160 (levy on deposit accounts and safe deposit boxes not exclusively in name of judgment debtor). See the Comment to Section 700.160. See also Sections 680.170 ("deposit account" defined), 680.200 ("financial institution" defined), 699.090 (levy by registered process server), 700.150(c)-(d) (levy on safe deposit boxes).

§ 682.1 (repealed). Writ of execution form

Comment. Former Section 682.1 is superseded by Section 693.010 (statutory form of writ). The Judicial Council is given authority to prescribe superseding forms by Section 681.030(b). See also Sections 685.030 (cessation of interest), 695.220 (order of application of money received), 699.520 (contents of writ of execution), 700.010 (service of writ and notice of levy on judgment debtor), 701.810 (distribution of proceeds of sale or collection).

§ 682.2 (repealed). Interest and costs entered on writ

Legislative Committee Comment—Senate

Comment. Former Section 682.2 is superseded by Sections 683.020 (commencement of interest), 685.030 (cessation of interest), 685.050 (costs and interest under writ), and 699.520 (contents of writ of execution). See also Sections 693.010 (form of writ), 701.810 (distribution of proceeds). The authorization for the judge to act if there is no clerk is unnecessary. See Section 167.

§ 683 (repealed). Return of writ; issuance of new writ

Comment. The first sentence of subdivision (a) of former Section 683 is superseded by Sections 699.530(b) (time for levy under writ of execution) and 699.560 (return of writ of execution). See also Sections 712.030(b) (time for executing writ of possession or sale), 712.050 (return of writ of possession or sale). The last sentence of subdivision (a) is not continued. See Section 681.030(a) (Judicial Council may provide by rule for procedure under Title 9).

Subdivision (b) is superseded by Section 699.510 (issuance of writs of execution). See also Section 712.010 (issuance of writs of possession and sale).

Subdivisions (c) and (d) are superseded by Section 699.560 (return of writ of execution). See also Section 712.050 (return of writ of possession or sale).

Subdivision (e) is superseded by Section 684.210 (proof of service of notice of hearing). See also Sections 704.770 (notice of hearing for sale of dwelling), 704.790 (proof of service where no appearance by debtor at first hearing).

Subdivision (f) is superseded by Section 699.560 (return of writ of execution). See the Comment to Section 706.026.

§ 684 (repealed). Process for enforcing judgments

Comment. Former Section 684 is superseded by Section 681.010 (provisions for enforcing judgments). See also Sections 712.010 (issuance of writ of possession or sale), 712.020 (contents of writ of possession or sale), 714.010 (writ of possession of personal property), 715.010 (writ of possession of real property), 716.010 (writ of sale), 716.020 (execution of writ of sale), 717.010 (enforcement of other judgments).

§ 684.1 (repealed). Enforcement of judgment for possession of personal property

Comment. Former Section 684.1 is superseded by Section 714.020 (execution of writ of possession of personal property). See also Section 680.260 ("levying officer" defined).

§ 684.2 (repealed). Satisfaction first from attached property

Legislative Committee Comment—Senate

Comment. Former Section 684.2 is not continued. See Section 488.720 (release of attached property in excess of that needed to satisfy amount secured).

§ 685 (repealed). Enforcement after 10 years

Comment. Former Section 685 is superseded by Sections 683.110-683.220 (renewal of judgments). See the Comment to Section 683.110.

§ 685.010 (repealed). Rate of interest on judgments

Legislative Committee Comment—Senate

Comment. Former Section 685.010 (as enacted by 1982 Cal. Stats. ch. 150) is superseded by new Section 685.010.

§ 686.010 (repealed). Enforcement after death of creditor

Comment. Former Section 686.010 is continued in Section 686.010.

§ 686.020 (repealed). Enforcement after death of debtor

Comment. Former Section 686.020 is continued in Section 686.020.

§ 687 (repealed). Officer to whom writ issued

Comment. The substance of the first, second, and fourth sentences of subdivision (a) of former Section 687 is continued in Sections 699.510(a) (issuance of writ of execution to enforce money judgment) and 712.010(a) (issuance of writ of possession or sale). See also Section 680.260 ("levying officer" defined). The third sentence of subdivision (a) is not continued.

Subdivisions (b) and (c) are superseded by Section 699.080 (levy by registered process server). See also Section 680.330 ("registered process server" defined).

§ 688 (repealed). Property subject to execution

Legislative Committee Comment—Senate

Comment. Subdivision (a) of former Section 688 is superseded by Sections 695.010-695.035 (property subject to enforcement of money judgment) and 699.710-699.720 (property subject to execution).

Subdivision (b) is superseded by Sections 699.080 (release from lien and custody) and 700.010-700.200 (methods of levy). See also Sections 684.010-684.140 (manner of service).

The substance of the first sentence of subdivision (c) is continued in Section 700.030 (levy on tangible personal property in possession

of judgment debtor). The substance of the second sentence is continued in Section 687.030 (manner of custody). The third and fourth sentences are superseded by Section 700.080 (levy on personal property used as dwelling). The remainder of subdivision (c) is superseded by Section 700.070 (levy on tangible personal property of going business).

Subdivision (d) is not continued because it is unnecessary. See Section 697.710 (creation of execution lien).

The first sentence of subdivision (e) is superseded by Sections 699.710 (duration of execution lien) and 700.200(d) (exception where interest in personal property of decedent's estate levied upon). The second sentence of subdivision (e) is not continued. See Section 699.510 (issuance of writ, successive writs).

Subdivision (f) is superseded by Sections 695.060 (licenses not subject to enforcement), 699.720(a) (1) (alcoholic beverage license not subject to execution), 699.720(a) (3) (pending cause of action not subject to execution), 699.720(a) (4) (nonfinal judgment not subject to execution), 700.190 (levy on final money judgment owing to judgment debtor), and 708.630 (receiver to transfer alcoholic beverage license). See also Section 701.520(a) (4) (collection of final money judgment levied upon).

The substance of subdivision (g) is continued in Section 687.020 (endorsement and collection of certain instruments by levying officer).

§ 688.1 (repealed). Lien on cause of action

Legislative Committee Comment—Senate

Comment. Subdivision (a) of former Section 688.1 is superseded by Sections 708.410–708.480 (lien in pending action or proceeding). See also Sections 695.030(b) (2) (cause of action subject to enforcement), 699.720(a) (3) (cause of action not subject to execution), 699.720(a) (4) (nonfinal judgment not subject to execution). Subdivision (b) is not continued because it was held to be in conflict with the Bankruptcy Act. See *In re Kanter*, 505 F.2d 228 (9th Cir. 1974), *affg*, 345 F. Supp. 1151 (C.D. Cal. 1972).

§ 689 (repealed). Third-party claims of title and right to possession

Legislative Committee Comment—Senate

Comment. The first paragraph of former Section 689 is superseded by Sections 720.110–720.140, 720.160(b), (c), 720.170(a), and 720.730. See also Section 684.120 (manner of service by mail).

The substance of the second paragraph is continued in Sections 720.160(c) (undertaking) and 699.090 (liability for levy based on record ownership).

The third, fourth, and fifth paragraphs are superseded by Sections 720.760–720.780.

The substance of the first sentence of the sixth paragraph is continued in Section 720.140(d). The second sentence is superseded by Section 687.040 (liability of levying officer).

The substance of the seventh paragraph of former Section 689 is continued in Sections 720.160(a) and 720.660.

The substance of the first, second, third, and fifth sentences of the eighth paragraph of former Section 689 is continued in Section

720.310 (application for hearing). The fourth sentence is superseded by Section 720.320 (notice of hearing). The substance of the sixth sentence is continued in Section 720.370 (dismissal). The seventh sentence is superseded by Section 699.070 (disposition of perishable property during pendency of proceedings). The eighth sentence is superseded by Section 720.380(a), (b) (stay). The substance of the ninth sentence is continued in Section 720.380(c) (modification of order). The substance of the tenth sentence is continued in Section 720.360 (burden of proof). The substance of the eleventh sentence is continued in Sections 720.330 (filing claim in court) and 720.350(a) (1), (b) (pleadings). The twelfth sentence is superfluous and is not continued; it has been decided that there is no right to a jury trial in third-party claim proceedings (see *Misrach v. Liederman*, 14 Cal. App.2d Supp. 757, 58 P.2d 746 (1936)) and, in any event, if there were a right to a jury trial, it would exist independently under the Constitution. The substance of the thirteenth sentence is continued in Section 720.400 (findings). The substance of the fourteenth and fifteenth sentences is continued in Section 720.390 (determination of claim and disposition of property). The sixteenth sentence is superseded by Section 720.430 (satisfaction from released property). The substance of the seventeenth sentence is continued in Section 720.420 (appeal).

§ 689a (repealed). **Certain collateral subject to levy**

Comment. Former Section 689a is not continued. It is unnecessary in view of Commercial Code Section 9311 (alienability of debtor's rights in collateral).

§ 689b (repealed). **Third-party claims under chattel mortgage or conditional sale**

Comment. Subdivision (1) of former Section 689b is superseded by Section 700.090 (notice to legal owner of vehicle or boat).

The first sentence of subdivision (2) is superseded by Sections 720.210-720.230 (secured party claim of superior interest in the property). The substance of the second sentence of subdivision (2) is continued in Section 720.240(d).

Subdivision (3) is superseded by Section 720.240 (service of claim). See also Sections 684.120 (manner of service by mail), 684.010, 684.050 (service on creditor's attorney).

Subdivision (4) is superseded by Sections 720.240(b) (time for responding) and 720.270(a) (release).

The substance of subdivisions (5), (6), and (7) is continued in Section 720.290 (payment to secured party).

Subdivision (8) is superseded by Section 720.250(a) (delay of sale until deposit or undertaking), 720.260(a) (effect of undertaking or deposit), and Sections 720.510, 720.520, and 720.550 (judgment creditor's demand for third-party claim).

The first paragraph of subdivision (9) is superseded by Sections 720.260 (effect of undertaking or deposit) and 720.280 (verified statement). The levying officer's discretion to require an undertaking in an amount twice the value of the property is not continued. The substance of the first sentence of the second paragraph of subdivision (9) is continued in Section 720.260(c) (contents of undertaking). The remainder of the second paragraph of subdivision (9) is superseded by Sections 720.760 (objections to undertakings) and 720.770(c) (hearing on objections). The third paragraph of subdivision (9) is superseded by Section 687.040 (liability of levying officer).

The substance of the first sentence of the first paragraph of subdivision (10) is continued in Section 720.310(a), (b) (application for hearing). 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 combined in Chapter 4 (commencing with Section 720.310) of Division 4. The substance of the third sentence

of the first paragraph of subdivision (10) is continued in Section 720.390 (determination of claim). The substance of the fourth sentence of the first paragraph of subdivision (10) is continued in Section 720.310(a). See also Section 680.160 ("court" defined). The second paragraph of subdivision (10) is superseded by Section 720.430 (satisfaction from released property).

References to attachment and execution throughout former Section 689b are superseded by Section 720.210 (application of third-party claims provisions).

§ 689c (repealed). **Distribution of sale proceeds**

Comment. The substance of former Section 689c is continued in Section 701.810 (disposition of proceeds of sale).

§ 689d (repealed). **Third-party claim to property levied upon to collect tax**

Comment. Former Section 689d is superseded by Sections 688.010 (jurisdiction) and 688.030 (third-party claims).

§ 689.5 (repealed). **Release of property under third-party claim**

Comment. Former Section 689.5 is superseded by Sections 720.170(b), (c) and 720.270(b), (c). See also Section 699.060 (general rules governing release).

§ 690 (repealed). **Exemptions; defined terms**

Legislative Committee Comment—Senate

Comment. Subdivision (a) of former Section 690 is superseded by Sections 703.010(a) (application of exemptions), 703.030(a) (procedure for claiming exemptions), and 703.510(a) (exemption claims). Subdivision (b) is superseded by Section 703.130 (exemptions in bankruptcy). The substance of subdivision (c) is continued in Section 703.030(b) (property exempt without making claim). See also Sections 487.020(a) (property exempt from enforcement of money judgment is exempt from attachment), 703.510(b) (release of property exempt without making claim). Subdivision (d) is superseded by Section 680.250 ("judgment debtor" defined) and Section 703.020 (persons entitled to exemptions). Subdivision (e) is superseded by Section 680.240 ("judgment creditor" defined).

§ 690.1 (repealed). **Household goods and works of art exemption**

Legislative Committee Comment—Senate

Comment. The first sentence of former Section 690.1 is superseded by Sections 704.020 (household furnishings, personal effects) and 704.040 (jewelry, heirlooms, works of art). The second sentence is superseded by Section 704.040.

§ 690.2 (repealed). **Motor vehicle exemption**

Legislative Committee Comment—Senate

Comment. The first sentence of subdivision (a) of former Section 690.2 is superseded by Sections 680.190 ("equity" defined) and 704.010(a) (motor vehicle exemption). The substance of the second sentence of subdivision (a) is continued in Section 704.010(c). Subdivision (b) is superseded by Sections 701.620 (minimum bid) and 699.060 (release). Subdivision (c) is superseded by Sections 701.810 (distribution of proceeds of sale) and 704.010(d) (exemption without making claim). Subdivision (d) is superseded by Sections

704.010(d) (consultation with records of DMV), 703.520(b) (3) (description of property in claim of exemption), and 701.810 (distribution of proceeds of sale). See also Section 699.540 (contents of notice of levy). The special provisions in subdivision (d) relating to additional notices to the judgment debtor and extensions of time for filing a claim of exemption are not continued. The substance of subdivision (e) is continued in Section 704.010(b) (proceeds exemption).

§ 690.3 (repealed). Personal property dwelling exemption

Legislative Committee Comment—Senate

Comment. The substance of the introductory paragraph of subdivision (a) of former Section 690.3 is continued in Section 704.710. Paragraphs (1)–(3) of subdivision (a) are superseded by Sections 690.190 (“equity” defined), 704.720 (homestead exemption), and 704.730 (amount of exemption). Subdivision (b) is not continued; the various homestead provisions of former law are consolidated in Sections 704.710–704.990.

§ 690.4 (repealed). Tools of trade exemption

Comment. Former Section 690.4 is superseded by Sections 690.190 (“equity” defined) and 704.060 (tools of trade exemption).

§ 690.5 (repealed). Prosthetic and orthopedic appliances exemption

Comment. The substance of former Section 690.5 is continued in Section 704.050.

§ 690.7 (repealed). Savings and loan association account exemption

Legislative Committee Comment—Senate

Comment. Former Section 690.7 is not continued. See the Comment to Section 704.070 (exemption for paid earnings in deposit account).

§ 690.8 (repealed). Condemnation proceeds exemption

Comment. Former Section 690.8 is superseded by Section 704.720(b) (exemption of dwelling proceeds).

§ 690.8a (repealed). Relocation benefits exemption

Comment. Former Section 690.8a is superseded by Section 704.180, which requires the judgment debtor to make an exemption claim for relocation benefits after payment. Section 487.020(b) incorporates the exemption for purposes of attachment.

§ 690.9 (repealed). Life insurance exemption

Comment. Former Section 690.9 is superseded by Section 704.100 (life insurance).

§ 690.10 (repealed). Group life insurance exemption

Comment. Former Section 690.10 is superseded by Section 704.100 (life insurance).

§ 690.11 (repealed). Disability and health insurance exemption

Comment. Former Section 690.11 is superseded by Section 704.130 (disability and health benefits and contributions).

§ 690.12 (repealed). **Segregated benefit funds exemption**

Comment. Former Section 690.12 is not continued; it duplicated Insurance Code Section 10498.5.

§ 690.13 (repealed). **Fraternal organization funds exemption**

Comment. Former Section 690.13 is superseded by Sections 704.120 (unemployment benefits) and 704.130 (disability and health benefits).

§ 690.14 (repealed). **Fraternal benefit society aid exemption**

Comment. Former Section 690.14 is superseded by Sections 704.100 (life insurance benefits), 704.130 (disability and health benefits), and 704.170 (aid).

§ 690.15 (repealed). **Workers' compensation exemption**

Comment. The substance of former Section 690.15 is continued in Section 704.160 (workers' compensation).

§ 690.16 (repealed). **Unemployment insurance exemption**

Comment. The substance of former Section 690.16 is continued in Section 704.120 (unemployment benefits).

§ 690.17 (repealed). **Building materials exemption**

Comment. Former Section 690.17 is superseded by Sections 704.030 (materials for repair of dwelling) and 704.060 (materials used in trade, business, or profession).

§ 690.175 (repealed). **Unemployment compensation exemption**

Comment. The substance of former Section 690.175 is continued in Section 704.120 (unemployment benefits and contributions).

§ 690.18 (repealed). **Retirement exemption**

Comment. Subdivisions (a) and (b) are superseded by Sections 704.110 (public retirement benefits), 704.113 (public employee vacation credit), and 703.060 (tracing exempt funds). The substance of subdivision (c) is continued in Section 704.120 (unemployment benefits). Subdivision (d) is superseded by Section 704.115 (private retirement benefits). The portion of subdivision (d) relating to moneys withheld under the Unemployment Insurance Code is superseded by Section 688.030 (exemptions from enforcement of tax).

§ 690.19 (repealed). **Public assistance exemption**

Legislative Committee Comment—Senate

Comment. The substance of the first and last sentences of former Section 690.19 is continued in Section 704.170. The substance of the second sentence is continued in Section 17409 of the Welfare and Institutions Code (limited set of exemptions for recipient of public support) which is an exception to the application of exemptions recognized by Section 703.010.

§ 690.20 (repealed). **Hospital endowment fund exemption**

Comment. Former Section 690.20 is not continued. It duplicated a portion of Health and Safety Code Section 32508.

§ 690.21 (repealed). **Prisoners' funds exemption**

Comment. Former Section 690.21 is superseded by Section 704.090 (prisoners' trust funds).

§ 690.22 (repealed). Public property exemption

Comment. Former Section 690.22 is not continued. A money judgment against a local public entity is not enforceable under Title 9. See Section 695.050; Gov't Code § 970.1 (b).

§ 690.24 (repealed). Cemetery lots exemption

Comment. The first two paragraphs of former Section 690.24 are superseded by Section 704.200(a)-(c). The substance of the third paragraph is continued in Section 704.200(d). The fourth paragraph is superseded by Section 704.200(a)-(c). See also Health & Saf. Code § 8561. The last paragraph is not continued; it duplicated Health and Safety Code Section 7925.

§ 690.25 (repealed). Church pew exemption

Comment. The church pew exemption provided by former Section 690.25 is not continued. This exemption no longer serves a useful purpose because the practice of member ownership of pews has ceased. See 6 J. Weinstein, H. Korn, & A. Miller, *New York Civil Practice* ¶ 5205.15 (rev. 1980).

§ 690.26 (repealed). Certain board and district property exemption

Comment. Former Section 690.26 is not continued. A money judgment against a public entity is not enforceable under Title 9. See Section 695.050; Gov't Code §§ 965.5, 970.1. See also former Water Code Section 8537 and the Comment thereto.

§ 690.27 (repealed). Housing authority realty exemption

Comment. Former Section 690.27 is not continued. A money judgment against a public entity is not enforceable under Title 9. See Section 695.050; Gov't Code §§ 965.5, 970.1. See also former Health & Saf. Code § 34217 and the Comment thereto.

§ 690.28 (repealed). Educational grant exemption

Comment. Former Section 690.28 is not continued. It duplicated Education Code Section 21116.

§ 690.29 (repealed). Redevelopment agency property exemption

Comment. Former Section 690.29 is not continued. A money judgment against a public entity is not enforceable under Title 9. See Section 695.050; Gov't Code § 970.1. See also former Health & Saf. Code § 33124 and the Comment thereto.

§ 690.30 (repealed). Social Security direct deposit exemption

Legislative Committee Comment—Senate

Comment. Former Section 690.30 is superseded by Section 704.080 (deposit account in which social security payments are directly deposited). See also Section 703.080(b) (burden of tracing).

§ 690.31 (repealed). Dwelling house exemption

Legislative Committee Comment—Senate

Comment. Former Section 690.31 is superseded by Sections 704.710–704.850 (homestead exemption), 703.010 (application of exemptions), and 693.050–693.060 (forms).

§ 690.50 (repealed). Exemption procedure

Comment. Former Section 690.50 is generally superseded by Sections 703.510–703.610 (procedure for claiming exemptions after levy). Subdivision (a) is superseded by Section 703.520. Subdivision (b) is superseded by Section 703.540. Subdivision (c) is superseded by Sections 703.550–703.570. Subdivision (d) is superseded by Section 703.550. Subdivision

(e) is superseded by Sections 703.550 and 703.570. Subdivision (f) is superseded by Section 703.550. Subdivision (g) is superseded by Sections 699.070 (perishable property) and 703.610(b). Subdivision (h) is superseded by Section 703.610(a). Subdivision (i) is superseded by Sections 703.550 and 703.580(a)-(d); the reference to the constitutional provision for jury trials is not continued because it is unnecessary. The first sentence of subdivision (j) is superseded by Section 703.580(e); the second sentence is superseded by Section 703.610(a). Subdivision (k) is superseded by Sections 684.110-684.140. The substance of subdivision (l) is continued in Section 703.590. The substance of subdivision (m) is continued in Section 703.600.

§ 690.51 (repealed). Exemptions from tax enforcement

Comment. Section 690.51 is superseded by Sections 688.010 (jurisdiction) and 688.030 (exemptions from tax liability).

§ 690.52 (repealed). Exception where judgment for price or of foreclosure

Comment. The portion of former Section 690.52 pertaining to foreclosure judgments is continued in Section 703.010(b). The portion pertaining to judgments recovered for the purchase price of property is not continued since it is unenforceable in practice.

§ 690.60 (repealed). Exemptions upon general assignment

Comment. Former Section 690.60 is continued in Section 1801 without substantive change.

§ 691 (repealed). Execution of writ; collection or sale

Comment. The portion of the first sentence of former Section 691 that related to levy of execution is superseded by Section 699.530(a) (execution of writ). The portion of the first sentence that related to collecting or selling things in action is superseded by Sections 701.510 (sale of property levied upon) and 701.520 (collection). The portion of the first sentence that related to the disposition of proceeds and the second sentence are superseded by Sections 701.810-701.830 (disposition of proceeds). The last sentence is not continued, but the judgment debtor may request that property be sold in a certain order pursuant to Section 701.570(d).

§ 692 (repealed). Notice of execution sale

Legislative Committee Comment—Senate

Comment. The substance of subdivision 1 of former Section 692 is continued in Section 699.070(c) (notice of sale of perishable property).

The substance of the first sentence of subdivision 2 is continued in Section 701.530(a)-(c). See also Section 684.120 (manner of service by mail). The substance of the last sentence of subdivision 2 is continued in Section 687.010 (instructions to levying officer).

The first sentence of subdivision 3 is superseded by Section 701.340(a)-(d), (g). See also Section 680.320 ("real property" defined). The substance of the second sentence is continued in Section 607.010 (instructions to levying officer). The third sentence is superseded by Section 701.540(d). The fourth, fifth, and sixth sentences are superseded by Section 701.540(a). The seventh sentence is superseded by Section 701.540(g) (notice published pursuant to Gov't Code § 6063). See also Gov't Code §§ 6000 (newspaper of general circulation), 6060 (publication of notice). The last sentence is not continued. See Sections 680.250 ("judgment debtor" defined), 716.020(b) (notice of sale under writ of sale).

Subdivision 4 is not continued. See the Comment to Section 667 as amended.

§ 692a (repealed). Request for notice of execution sale

Comment. The substance of former Section 692a is continued in Sections 699.520(h) (notation on writ) and 701.550 (requested notice of sale).

§ 693 (repealed). Penalty for sale without notice

Comment. The portion of former Section 693 relating to actual damages against a levying officer failing to give notice is continued in Section 701.560(b). The forfeiture provisions are not continued. *Cf.* Penal Code § 616 (penalty for taking down or defacing notice).

§ 694 (repealed). Execution sale procedure

Comment. The substance of the first sentence of former Section 694 is continued in Section 701.570(a)-(b). The substance of the second sentence is continued in Section 701.570(e). The substance of the third sentence is continued in Section 701.610.

The fourth and fifth sentences of former Section 694 are superseded by Section 701.570(c)-(d). The authority of a third person to direct a separate sale of property claimed is not continued. If 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. See Sections 720.150, 720.250.

The substance of the second paragraph of former Section 694 is continued in Section 701.580.

§ 695 (repealed). Resale and liability upon nonpayment of bid

Legislative Committee Comment—Senate

Comment. The first portion of former Section 695 is superseded by Section 701.600(a) (sale to next highest bidder). The remainder of former Section 695 is superseded by Section 701.600(c) (liability of defaulting bidder).

§ 696 (repealed). Rejection of bid of defaulting bidder

Legislative Committee Comment—Senate

Comment. The substance of former Section 696 is continued in Section 701.600(d) (rejection of bid of defaulting bidder).

§ 697 (repealed). Liability of officer

Comment. Former Section 697 is superseded by Section 687.040 (liability of levying officer). The levying officer is no longer provided with authority to sue the defaulting bidder. See Section 701.600(c).

§ 698 (repealed). Delivery of personal property capable of manual delivery

Comment. The substance of the first sentence of former Section 698 is continued in Section 701.650(a)(1) (certificate of sale). The second sentence is superseded by Section 701.640 (interest acquired by purchaser).

§ 699 (repealed). Certificate of sale of personal property not capable of manual delivery

Comment. The substance of the first sentence of former Section 699 is continued in Section 701.650(a)(2) (certificate of sale). The second sentence is superseded by Section 701.640 (interest acquired by purchaser).

§ 700 (repealed). Purchaser's title to real property sold on execution

Comment. Former Section 700 is superseded by Section 701.640 (interest acquired by purchaser).

§ 700a (repealed). Absolute sales; redemption

Legislative Committee Comment—Senate

Comment. The first sentence of subdivision (a) of former Section 700a is superseded by Section 701.680(a) (sales absolute). The second sentence is superseded by Sections 726(e) and 729.010(a) pursuant to which the statutory right of redemption from judicial sales is limited to foreclosure sales where a deficiency judgment is allowed. The substance of the first portion of the third sentence is superseded by Section 701.660 (delivery and recording of deed of sale). The portion of the third sentence prescribing the contents of the certificate of sale is superseded by Sections 701.670 (contents of deed of sale) and 729.040 (certificate of sale of property sold subject to redemption).

The first sentence of subdivision (b) is superseded by Section 729.050. The second sentence is not continued.

§ 701 (repealed). Persons entitled to redeem

Legislative Committee Comment—Senate

Comment. The statutory right of redemption provided by former Sections 701-707 is not continued for execution sales. See Section 701.680 and the Comment thereto. However, notice of sale of an interest in real property, other than a leasehold estate with an unexpired term of less than two years, is delayed for 120 days after notice of levy is given. See Section 701.545. A limited right of redemption is available after a foreclosure sale where a deficiency judgment is allowed. See Sections 726(e), 729.010-729.090, and the Comments thereto.

§ 702 (repealed). Time for redemption; dispute as to amount

Legislative Committee Comment—Senate

Comment. See the Comment to former Section 701.

§ 703 (repealed). Second redemptioner; dispute as to amount

Legislative Committee Comment—Senate

Comment. See the Comment to former Section 701.

§ 704 (repealed). Person to whom redemption payment made

Legislative Committee Comment—Senate

Comment. See the Comment to former Section 701.

§ 705 (repealed). Instruments to be produced by redemptioner

Legislative Committee Comment—Senate

Comment. See the Comment to former Section 701.

§ 706 (repealed). Restraint of waste

Legislative Committee Comment—Senate

Comment. See the Comment to former Section 701.

§ 707 (repealed). Rents and profits from property subject to redemption

Legislative Committee Comment—Senate

Comment. See the Comment to former Section 701.

§ 708 (repealed). Remedies where sale irregular or judgment reversed or discharged

Comment. Former Section 708 is superseded by Section 701.680 (sales absolute; liability).

§ 709 (repealed). Contribution among judgment debtors

Comment. The substance of the first sentence of former Section 709 is continued in Section 882 (right to contribution). The second sentence is superseded by Section 883 (procedure for compelling contribution). The last sentence is not continued.

§ 710 (repealed). Collection of judgment where debtor is creditor of public entity

Comment. The substance of former Section 710 is continued in Sections 708.710-708.795.

§ 710a (repealed). Collection of judgment where debtor is contractor on public work

Comment. The substance of the first and second sentences of former Section 710a is continued in Section 708.760(a) (collection where debtor is contractor on public works). The last sentence is superseded by Section 708.760(b).

§ 710b (repealed). Third person's undertaking to release property

Comment. Former Section 710b is superseded by Sections 720.610 (application of chapter) and 720.620 (filing of undertaking to release property). See also Section 680.280 ("person" defined).

§ 710c (repealed). Contents of undertaking to release

Comment. Portions of former Section 710c are superseded by Section 720.630 (contents of undertaking). The substance of the portion of former Section 710c regarding the amount of undertaking is continued in Section 720.630(c), subject to the exception provided in 720.630(d). See also Sections 680.280 ("person" defined), 720.730 (number of sureties), 720.740 (principal's estimate of property value).

§ 711 (repealed). Filing and service of undertaking to release

Comment. Former Section 711 is superseded by Sections 720.620 (filing of undertaking with levying officer) and 720.640 (service of undertaking on creditor). See also Sections 684.010, 684.050 (service on creditor's attorney).

§ 711½ (repealed). Objection to sureties

Comment. Former Section 711½ is superseded by Sections 720.760 (beneficiary's objection to undertaking) and 720.780 (acceptance of beneficiary's estimate of value). See also Section 680.280 ("person" defined).

§ 712 (repealed). Justification of sureties

Comment. Former Section 712 is superseded by Section 720.770 (hearing on objection).

§ 712½ (repealed). Dispute as to property value; new undertaking

Comment. Former Section 712½ is superseded by Sections 720.770 (hearing on objection) and 720.780 (acceptance of beneficiary's estimate of value). See also Section 680.280 ("person" defined).

§ 713 (repealed). Justification of sureties

Comment. Former Section 713 is not continued because it is unnecessary. Section 1057 applies by its terms.

§ 713½ (repealed). Effective date of undertaking

Comment. Former Section 713½ is superseded by Sections 720.650 (effective date of undertaking) and 720.660 (release of property pursuant to undertaking).

**CHAPTER 2. PROCEEDINGS SUPPLEMENTAL
TO EXECUTION**

§ 714 (repealed). Examination of judgment debtor

Comment. The first sentence of former Section 714 is superseded by Section 708.110(a) (examination of judgment debtor). See also Section 708.140(a) (power of referee). The remainder of the first paragraph is superseded by Section 708.110(b) (examination of judgment debtor on ex parte application not more than once every 120 days). The substance of the second paragraph is continued in Section 708.170(a) (1). The substance of the third paragraph is continued in Section 708.110(e). The substance of the last paragraph is continued in Section 708.170(b).

§ 714.5 (repealed). Written interrogatories to judgment debtor

Comment. The substance of the first sentence of former Section 714.5 is continued in Section 708.020(a) (written interrogatories to judgment debtor), except that interrogatories may be propounded to all judgment debtors, not just those represented by counsel. The second sentence is superseded by Section 708.010(a) (time for serving interrogatories). The third sentence is continued in Section 708.020(c) (enforcement of interrogatories). The fourth sentence is omitted as unnecessary. The substance of the last sentence is continued in Section 708.020(b) (frequency of interrogatories).

§ 715 (repealed). Examination of judgment debtor upon refusal to apply property to judgment

Comment. The first sentence of former Section 715 is superseded by Section 708.110(a) (examination of judgment debtor). See also Section 708.140(a) (power of referee). The introductory clause requiring issuance of a writ of execution is not continued because it was an unnecessary formality. The language pertaining to the unjust refusal to apply property to the satisfaction of the judgment is superseded by Section 708.110(c) (examination more often than every 120 days upon showing of good cause). The remainder of former Section 715 is not continued. These provisions for the arrest of the judgment debtor on the ex parte application of the judgment creditor and providing the alternative of giving of an undertaking or imprisonment 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 (repealed). Payment by debtor of judgment debtor

Comment. The substance of former Section 716 is continued in Section 699.020 (payment by debtor of judgment debtor).

§ 717 (repealed). Examination of debtor of judgment debtor

Comment. The first sentence of former Section 717 is superseded by Section 708.120(a) (examination of third person). See also Sections 690.290 ("person" defined), 708.140(a) (power of referee), 708.150 (appearance by organization). The requirement that a writ of execution be issued or returned is not continued. See the Comment to Section 708.120. The second sentence of former Section 717 is superseded by Section 708.130(b) (marital privilege not applicable). The substance of the second paragraph is continued in Section 708.170(a) (1). The substance of the third paragraph is continued in Section 708.120(e) (1). The substance of the last paragraph is continued in Section 708.170(b).

§ 717.1 (repealed). Examination within 150 miles of residence or business

Comment. The substance of the first sentence of former Section 717.1 is continued in Section 708.160(b). See also Section 708.140(a) (power of referee). The substance of the first sentence of the second paragraph is continued in Section 708.120(f) except that the mileage fee for witnesses in civil proceedings generally is incorporated by Section 708.120(f). The last sentence is superseded by the general provisions relating to costs. See Sections 685.040, 685.070(a)(5), 685.080(a).

§ 718 (repealed). Witnesses

Comment. The substance of former Section 718 is continued in Section 708.130(a) (appearance of witnesses). See also Section 708.140(a) (power of referee).

§ 719 (repealed). Order applying property to satisfaction of judgment

Comment. The substance of the first portion of former Section 719 is continued in Section 708.205(a) (order applying property to satisfaction of judgment). See also Sections 708.140(a) (power of referee), 708.120(d) (exemption claim by judgment debtor in examination of third person). The latter portion of former Section 719 is superseded by Sections 708.180(a)-(b) (determination of third person's adverse claim) and 708.205(b) (remedy where third person's adverse claim not determined).

§ 720 (repealed). Adverse claim by third person; protective orders

Comment. The first portion of the first sentence of former Section 720 is superseded by Section 708.210 (creditor's suit). See also Section 680.280 ("person" defined). The latter portion of the first sentence and the second sentence are superseded by Sections 708.180(c)-(d) and 708.240 (order forbidding transfer of property of payment of debt). See also Section 708.140(a) (power of referee).

§ 721 (repealed). Contempt

Comment. The substance of former Section 721 is continued in Section 708.140(a)(1) (court's power to punish for disobeying referee's order).

§ 722 (repealed). Examination in other county

Comment. The substance of former Section 722 is continued in Section 708.160(c)-(d) (examination outside county where judgment entered).

§ 722.5 (repealed). Remedies of certain state agencies

Comment. The substance of the first sentence of former Section 722.5 is continued in Section 688.020(a) (remedies of state when warrant may be issued). The second sentence is superseded by Sections 688.010 (jurisdiction) and 688.020(b) (proper court).

§ 723 (repealed). Powers and qualifications of referee

Comment. Former Section 723 is superseded by Section 708.140(a)-(b) (powers and qualifications of referee).

**CHAPTER 25. EMPLOYEES' EARNINGS
PROTECTION LAW** **§§ 723.010-723.154 (repealed). Wage garnishment**

Comment. Former Sections 723.010-723.154 are generally continued in Sections 706.010-706.154 (Wage Garnishment Law). For an explanation of the technical and substantive changes made in the former sections, see the Comments to the corresponding sections in the new law.

CHAPTER 3. SALE OF FRANCHISES

§§ 724a-724e (repealed). Sale of franchises

Comment. Sections 724a-724e are superseded by Sections 699.720(a) (7) (franchises not subject to execution) and 708.910-708.930 (enforcement against franchise).

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