

Scope of Guide

This Action Guide tells you when you can attach defendant's property, and it identifies which property of individual, corporate, and nonresident defendants is subject to attachment. It covers how and when to proceed ex parte or on noticed motion, explains how and when you obtain a temporary protective order (TPO), and sets forth the requirements for levying on the writ and pursuing other remedies. It also assists defendants to determine and pursue appropriate remedies.

Abbreviations

Debt Collection

Judicial Council Forms Man

TPO

[Debt Collection Practice in California \(2d ed Cal CEB 1999\)](#) (2 vols)

California Judicial Council Forms Manual (Cal CEB 1981) (4 vols)

Temporary Protective Order

About the Author

Peter M. Rehon is a shareholder in the law firm of Rehon & Roberts, A Professional Corporation, San Jose. His practice focuses on banking and financial institutions law, commercial and real estate litigation, appellate work, real estate, and bankruptcy. Mr. Rehon received his B.A. degree from the University of California, Santa Cruz, and his J.D. from the University of California, Hastings College of the Law. He is the author of Obtaining a Writ of Possession (Cal CEB Action Guide August 2004) and Obtaining an Injunction (Cal CEB Action Guide Fall 2000). Mr. Rehon has been an instructor for the University of California Extension Program and a panelist for programs presented by the California Bankers Association, the Santa Clara Bar Association, and the National Business Institute.

Acknowledgments

CEB appreciates and gratefully acknowledges the valuable contributions to this Action Guide of the following consultants:

Mel Aranoff is a partner in the firm of Horgan, Rosen, Beckham & Coren, LLP, in Calabasas, California. He is a 1975 graduate of the University of California, Los Angeles, School of Law. His practice focuses on bankruptcy, complex commercial litigation, real property receiverships, loan workouts, equipment leasing, and litigation involving financial institutions and banking operations. He is the author of articles on bankruptcy, equipment leasing, and writs of attachment, and a consultant on "Personal Property Leases," chapter 48, *Business Litigation (California Civil Practice)*, (Bancroft-Whitney, San Francisco, 1992).

CEB legal staff who worked on this action guide include CEB Attorney Editor David Saunders and Legal Editor Enrique De Anda. Elizabeth J. Asborn was responsible for copyediting and production. Composition was performed by CEB's Electronic Publishing staff.

Cutoff Dates

We completed legal editing and analysis of authorities cited in this publication as of April 8, 2009, and monitored developments through May 26, 2009.

CEB Citation

Cite this publication as: Obtaining a Writ of Attachment (Cal CEB Action Guide August 2009).

This Action Guide supersedes Obtaining a Writ of Attachment (Cal CEB Action Guide December 2006).

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Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/Before Seeking Writ/STEP 1. DETERMINE WHETHER WRIT AVAILABLE IN THIS CASE

Before Seeking Writ

STEP 1. DETERMINE WHETHER WRIT AVAILABLE IN THIS CASE

ATTACHMENT DEFINED

Attachment is a prejudgment provisional remedy allowing plaintiff (or cross-complainant) to:

- a. Levy on defendant's (or cross-defendant's) property; and
- b. Ensure availability of sufficient property to satisfy any judgment plaintiff obtains against that defendant.

NOTE

Specific requirements must be met for particular defendants. See [step 2](#), below.

AVAILABILITY

On behalf of plaintiff (or cross-complainant), you can pursue writ of attachment against any defendant in the following circumstances:

Type of Claim

- a. Client's claim is for money ([CCP §483.010\(a\)](#));
- b. Client's claim is at least \$500, excluding costs, interest, and attorney fees ([CCP §483.010\(a\)](#); see Comment to [CCP §483.010](#));
- c. Client bases claim on written or implied contract ([CCP §483.010\(a\)](#)); and
- d. Claim amount is fixed or readily ascertainable ([CCP §483.010\(a\)](#)).

NOTE

Uncertainty about the specific amount of ultimate damages is not a basis to deny attachment. As long as there is a clear and definite formula for the computation of damages, an order of attachment is proper. *CIT Group/Equip. Fin., Inc. v Super DVD, Inc.* (2004) 115 CA4th 537, 540, 8 CR3d 927.

Security for Claim

Writ of attachment will be available only if claim is not secured by interest in real property, unless claim was originally secured by interest in real property but, *through no fault of client*, the security:

- a. Has become worthless; or
- b. Has decreased in value to less than amount then owing on claim (amount to be secured cannot exceed lesser of amount of decrease or difference between security's value and amount owing on claim). [CCP §483.010\(b\)](#).

NOTE

A creditor whose claim is secured by an interest in real property apparently cannot obtain a writ of attachment unless one of the exceptions set forth above is met. A creditor who does not meet that exception, *e.g.*, one who took inadequate security initially, may not simply waive the security in order to obtain a writ of attachment. See Comment to [CCP §483.010](#).

Proper Purpose

Client's *only* purpose in seeking attachment is to recover on underlying claim ([CCP §484.090\(a\)\(3\)](#)).

Claim Probably Valid

Claim has "probable validity" (CCP §484.090(a)(2)) when it is "more likely than not" that plaintiff will obtain judgment against defendant on that claim. See CCP §481.190; Loeb v Loeb v Beverly Glen Music Co. (1985) 166 CA3d 1110, 1118, 212 CR 830; Howard S. Wright Constr. Co. v Superior Court (2003) 106 CA4th 314, 319, 130 CR2d 641.

Remedy Not Exclusive

Writ of attachment is available even if plaintiff seeks other relief. CCP §483.010(d).

NOTE

If you assert both contract and tort claims, an attachment levy may be viewed as the election of a contract remedy. Baker v Superior Court (1983) 150 CA3d 140, 147 n5, 197 CR 480. But see Waffer Int'l Corp. v Khorasandi (1999) 69 CA4th 1261, 1264, 82 CR2d 241.

If Dispute Arbitrable

Writ of attachment is available even if the dispute is subject to arbitration or is in arbitration, but only on ground that award to which applicant would be entitled may be rendered ineffectual without provisional relief. CCP §1281.8(b). See Dream Theater, Inc. v Dream Theater (2004) 124 CA4th 547, 556, 21 CR3d 322.

State and Federal Court

Writ of attachment is available in district courts in California, to extent permitted under California law. Fed R Civ P 64.

NOTE

Some district court clerks accept Judicial Council forms with appropriate revisions, *e.g.*, reference to court.

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/Before Seeking Writ/STEP 2. CONSIDER HOW REQUIREMENTS FOR OBTAINING WRIT DEPEND ON PARTICULAR DEFENDANT

STEP 2. CONSIDER HOW REQUIREMENTS FOR OBTAINING WRIT DEPEND ON PARTICULAR DEFENDANT

SIGNIFICANCE OF PARTICULAR DEFENDANT

- a. Attachment is available against all parties (natural persons, corporations, partnerships, limited liability companies, and associations); *but*
- b. Particular defendant determines specific requirements for the application.

IF NATURAL PERSON

If defendant is *natural person*, client's claim:

a. Must be based on obligation arising from defendant's conduct of trade, business, or profession (CCP §483.010(c); *Kadison, Pfaelzer, Woodard, Quinn & Rossi v Wilson* (1987) 197 CA3d 1, 242 CR 595).

(1) "Conduct of trade, business, or profession" means defendant is engaged in "business activity of a frequent or continuous nature" (*Security Pac. Nat'l Bank v Matek* (1985) 175 CA3d 1071, 1074, 223 CR 288);

(2) Defendant may be primary obligor, or alter ego of primary obligor, and also guarantor who is (*Advance Transformer Co. v Superior Court* (1974) 44 CA3d 127, 118 CR 350):

- (a) Occupied to substantial degree and on continuing basis in seeking profit through providing credit to primary obligor; or
- (b) Engaged generally in business of guaranteeing debts of primary obligors; *but*

(3) Defendant need *not* depend on business for livelihood or even devote substantial amount of time to it (*Security Pac. Nat'l Bank v Matek, supra*; *Advance Transformer Co. v Superior Court, supra*; but see *Nakawone v Randall* (1982) 129 CA3d 757, 764, 181 CR 324 (defendant who merely owned property with husband for almost 30 years and sold it following his death was not engaged in trade, business, or profession of selling real estate)).

b. Must not be based on sale or lease of property, license to use property, furnishing of services, or loan of money when property, services, or money was used by defendant for personal, family, or household purposes. CCP §483.010(c).

IF CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR ASSOCIATION

Claim does *not* need to arise from the trade, business, or profession. CCP §483.010(c). See Debt Collection Practice in California §§6.4-6.12 (2d ed Cal CEB 1999), referred to throughout this Action Guide as Debt Collection.

IF NONRESIDENT

If defendant is *nonresident*:

- a. You may not be able to obtain personal jurisdiction over *nonresident* debtor; but
- b. You can obtain *quasi in rem* jurisdiction by proceeding with attachment of defendant's property within California. See *Root v Superior Court* (1962) 209 CA2d 242, 246, 25 CR 784.

Nonresident Defined

Nonresident debtor includes (CCP §492.010):

- a. Natural person not residing in California;
- b. Foreign corporation not qualified to do business in California under Corp C §§2100-2117; and
- c. Foreign partnership not having filed designation under Corp C §15800.

Must Proceed Ex Parte

You can attach nonresident defendant's property *only* by proceeding ex parte *unless* some manner for effecting service on defendant is available. See step 9, below.

Statutory Requirements Inapplicable

When proceeding against nonresident defendant, statutory requirements (CCP §483.010(a)) of minimum dollar amount and underlying contract *do not apply*.

TRUST

Attachment *may* be available against (see Kadison, Pfaelzer, Woodard, Quinn & Rossi v Wilson (1987) 197 CA3d 1, 4, 242 CR 595):

- a. Trust; and
- b. Trust's assets.

AVAILABILITY OF OTHER CLAIMS

Attachment may also be available under a claim:

- a. Involving financial abuse of elder or dependent adult under Welf & I C §15657.01, even if requirements of CCP §483.010 have not been met;
- b. Under the Contractors' State License Law (Bus & P C §§7000-7191) against unlicensed contractor (Goldstein v Barak Constr. (2008) 164 CA4th 845, 853, 79 CR3d 603); or
- c. For fraudulent conveyance but can only reach fraudulently transferred property (CC §§3439.04, 3439.07(a)(2)).

Further Research: Debt Collection §§6.4-6.8.

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Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/Before Seeking Writ/STEP 3. DETERMINE TYPE AND VALUE OF DEFENDANT'S PROPERTY THAT YOU CAN ATTACH

STEP 3. DETERMINE TYPE AND VALUE OF DEFENDANT'S PROPERTY THAT YOU CAN ATTACH

ALL DEFENDANTS

Writ of attachment reaches only *California* property. See *Pacific Decision Sciences Corp. v Superior Court* (2004) 121 CA4th 1100, 1108, 18 CR3d 104.

IF DEFENDANT IS CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR ASSOCIATION

All California property is subject to attachment, *as long as method of levy is provided under CCP §§488.500-488.485. CCP §487.010(a)-(b).* See *Studwell, Inc. v Korean Exch. Bank* (1997) 55 CA4th 1185, 1190, 64 CR2d 538 (beneficiary's interest in executory negotiable letter of credit is not property of beneficiary subject to attachment because no method of levy).

IF DEFENDANT IS NATURAL PERSON

Attachable Property

The following types of property may be attached:

a. Any interest in real property *except*:

- (1) Leasehold estates with unexpired terms of less than 1 year (CCP §487.010(c)(1)); or
- (2) *If defendant's real property is subject to homestead declaration*, amount of any surplus over total of (CCP §487.025(b)):
 - (a) All liens and encumbrances on homestead when attachment lien created; *plus*
 - (b) Homestead exemption (regardless of whether and when it is recorded).

b. Accounts receivable, chattel paper, and general intangibles arising out of conduct by defendant of trade, business, or profession *except* claims with principal balance of less than \$150 (CCP §487.010(c)(2)).

c. Equipment (CCP §487.010(c)(3)).

d. Farm products (CCP §487.010(c)(4)).

e. Inventory (CCP §487.010(c)(5)).

f. Final money judgments arising out of defendant's conduct of trade, business, or profession (CCP §487.010(c)(6)).

g. Money on premises where defendant conducts trade, business, or profession (CCP §487.010(c)(7)).

h. *Except for the first \$1000*, money located elsewhere than on defendant's business premises (CCP §487.010(c)(7)).

NOTE

If defendant has either more than one deposit account or a combination of at least one deposit account and money located away from the premises, and the *aggregate* of the accounts and money exceeds \$1000, the court may grant your application to levy on the money and deposit accounts; the order would provide that an aggregate of \$1000 remain free of levy. CCP §487.010(c)(7).

i. Negotiable documents of title (CCP §487.010(c)(8)).

j. Instruments (CCP §487.010(c)(9)).

k. Securities (CCP §487.010(c)(10)).

l. Minerals, oil, or gas to be extracted (CCP §487.010(c)(11)).

Exempt Property

Writ of attachment cannot reach exempt property owned by defendant, *except for property involved in fraudulent transfer under CC §3439.07. CCP §487.020*. The following are examples of exempt property:

- a. Property exempt from enforcement of money judgment (CCP §487.020(a); see *Studwell, Inc. v Korean Exch. Bank* (1997) 55 CA4th 1185, 1190, 64 CR2d 538 (beneficiary's interest in executory negotiable letter of credit is not property of beneficiary subject to attachment because exempt from enforcement));
- b. Property necessary for support of defendant or defendant's family (CCP §487.020(b));
- c. "Earnings," as defined by CCP §706.011: "Compensation payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise" (CCP §487.020(c)); and
- d. Property *not* subject to attachment under CCP §487.010 (see Attachable Property, this step, above). CCP §487.020(d).

Further Research: Debt Collection §§6.11-6.12.

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Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/Before Seeking Writ/STEP 4. CONSIDER ADVANTAGES AND DISADVANTAGES OF SEEKING WRIT

STEP 4. CONSIDER ADVANTAGES AND DISADVANTAGES OF SEEKING WRIT

ADVANTAGES

Secured Position

- a. Attachment allows plaintiff as unsecured creditor to "bootstrap" into secured position, thereby:
 - (1) Gaining priority over defendant's other unsecured creditors; and
 - (2) Ensuring that any judgment ultimately obtained will be enforceable as a judicial lien on attached property.
- b. If defendant files for bankruptcy more than **90 days** after lien is perfected, plaintiff can become secured creditor (CCP §493.030), provided creditor gets relief from stay and proceeds to obtain judgment to perfect attachment lien. *In re Southern Cal. Plastics, Inc.* (9th Cir 1999) 165 F3d 1243.
- c. If defendant is suspected of making fraudulent transfer, creditor may also enforce claim against the transferred property by seeking writ of attachment. CC §3439.07(a)(2), (b); *Whitehouse v Six Corp.* (1995) 40 CA4th 527, 48 CR2d 600.

Settlement Motivation

Although you cannot seek attachment for any purpose other than recovery on underlying claim (CCP §484.020(c)), obtaining writ may have ancillary effect of motivating settlement by (see Debt Collection §6.1):

- a. Creating additional financial burden for defendant;
- b. Forcing defendant to analyze and evaluate merits of your claim; and
- c. *If you obtain writ*, showing defendant that you probably will prevail at trial.

Quasi in Rem Jurisdiction Over Nonresident Defendant

Attachment allows you to obtain quasi in rem jurisdiction over nonresident defendant. See *Root v Superior Court* (1962) 209 CA2d 242, 246, 25 CR 784.

Informal Discovery

Hearing procedure permits you to discover nature of defense and supporting facts.

DISADVANTAGES

Election of Remedy

If you assert both contract and tort claims, your attachment levy *may* be viewed as election of the contract remedy. *Baker v Superior Court* (1983) 150 CA3d 140, 146 n5, 197 CR 480. But see *Waffer Int'l Corp. v Khorzandi* (1999) 69 CA4th 1261, 1264, 82 CR2d 241.

Time and Cost

Time and cost of obtaining writ of attachment outweigh advantages if:

- a. Defendant is already judgment-proof or has assets that cannot be located; or
- b. Claim is too small.

NOTE

If plaintiff's claim warrants the additional cost, consider having an investigative agency prepare a full financial report on

defendant to assist you in weighing the financial considerations of proceeding with writ application.

Risk of Wrongful Attachment Claim

a. Defendant may later claim wrongful attachment if (CCP §490.010):

- (1) You levied writ or served temporary protective order (TPO) (see step 11, below) without authority, *unless*:
 - (a) Writ was not authorized solely because of CCP §483.010(c) prohibition of issuing writ on claim against individual defendant for property or money used for personal, family, or household purposes; *and*
 - (b) You reasonably believed that goods, services, or money furnished would *not* be so used;
- (2) You do not prevail on underlying action; and
- (3) You levy on exempt property under an ex parte writ, *unless* you reasonably believed property was not exempt.

b. If defendant proves wrongful attachment (Debt Collection §§6.91-6.92):

- (1) Recognize client's liability for all (CCP §490.020(a)):
 - (a) Damages proximately caused to defendant or any other person by wrongful attachment; *and*
 - (b) Costs and expenses, including legal fees, reasonably expended by defendant in defeating your attachment;
- (2) Plaintiff's liability is limited by amount of any undertaking (see step Z, below) (CCP §490.020(b)); and
- (3) Amount of any recovery for wrongful attachment must be offset against any amount still unsatisfied on any judgment you obtained. CCP §490.040.

c. If defendant prevails on underlying action, defendant simultaneously can pursue wrongful attachment and common law remedies of malicious prosecution and abuse of process. CCP §490.060.

Risk of Third Party Claim

Third parties whose property is wrongfully attached can pursue remedy under CCP §§720.110-720.800.

IMPACT OF DEBTOR'S IMMINENT BANKRUPTCY

a. If no bankruptcy is filed within **90 days**, you can convert your unsecured claim to secured claim having preference in bankruptcy, provided you get relief from bankruptcy stay and proceed to obtain judgment to perfect attachment lien (see *In re Southern Cal. Plastics, Inc.* (9th Cir 1999) 165 F3d 1243), *but*

b. Your attachment lien automatically terminates if, within **90 days** after lien is perfected, defendant (CCP §493.030):

- (1) Files for bankruptcy; or
- (2) Makes general assignment for benefit of creditors, with or without showing of insolvency.

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/Before Seeking Writ/STEP 5. REVIEW STRICT TECHNICAL PROCEDURES

STEP 5. REVIEW STRICT TECHNICAL PROCEDURES

STATUTE IS STRICTLY CONSTRUED

Remember that:

- a. Attachment is a strictly construed, *statutory* remedy (see *Jordan-Lyon Prods., Ltd. v Cineplex Odeon Corp.* (1994) 29 CA4th 1459, 35 CR2d 200; *Vershbow v Reiner* (1991) 231 CA3d 879, 282 CR 684); therefore,
- b. It is extremely important to review and strictly comply with all statutory requirements and applicable rules.

UNDERSTAND COURT PROCEDURE

When Writ Is Issued

After statutory bond is filed, court issues (CCP §485.220(a)):

- a. Right to attach order; and
- b. Order for issuance of writ of attachment.

Who Issues Writ

Clerk will then:

- a. Issue writ of attachment; and
- b. Direct writ to levying officer of any and all counties in which property is located (*e.g.*, single order may give rise to multiple writs involving property all over state).

When

NOTE

Judicial Council Form AT-120 contains both orders. See Appendix F to this Action Guide; California Judicial Council Forms Manual 4-9 (Cal CEB 1981), referred to throughout this Action Guide as Judicial Council Forms Man.

OBTAIN FORMS

- a. Identify and obtain proper Judicial Council forms for applications, notices, orders, and other documents required by attachment statutes. CCP §482.030.
- b. For sample forms, see Appendixes A-M to this Action Guide; Judicial Council Forms Man.

DEVELOP SYSTEM

Develop system to prepare moving papers *on time* and *correctly* on short notice so they are not returned.

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Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/Before Seeking Writ/STEP 6. SELECT APPROPRIATE ATTACHMENT PROCEDURE FOR YOUR CASE

STEP 6. SELECT APPROPRIATE ATTACHMENT PROCEDURE FOR YOUR CASE

POSSIBLE PROCEDURES

There are three methods for approaching attachment:

- a. Ex parte application (CCP §§485.010-485.240; Debt Collection §§6.33-6.36);
- b. Application by noticed hearing (CCP §§484.010-484.110; Debt Collection §§6.18-6.32); and
- c. Temporary Protective Order (TPO) (CCP §§486.010-486.110; Debt Collection §§6.37-6.44).

EX PARTE

Proceed by ex parte application (see steps 8-9, below) if:

- a. Plaintiff will suffer "great or irreparable injury" if required to wait for noticed hearing (CCP §485.010(a)) (*e.g.*, property you seek to attach may be concealed, sold, or impaired in value before date of noticed hearing (CCP §485.010(b)(1));
- b. Defendant is insolvent (CCP §485.010(b)(2)); for discussion of required showing, see step 8, below); or
- c. Defendant is nonresident; unless there is some means of effecting service on defendant, you can proceed *only* by ex parte application. See step 9, below.

NOTICED HEARING

Proceed by noticed hearing (see step 10, below) if ex parte method not available. CCP §§484.010-484.110.

TEMPORARY PROTECTIVE ORDER (TPO)

Pending noticed hearing, consider TPO as alternative to ex parte writ to prevent defendant from transferring or otherwise disposing of assets (CCP §§486.010-486.110).

- a. *Noticed hearing procedure*: Apply (see step 11, below) by noticed hearing procedure.
- b. *Ex parte procedure*:
 - (1) Submit application for TPO along with application for ex parte writ for court to consider if it denies ex parte writ; or
 - (2) Do not submit application, but if court denies ex parte application, ask that it issue TPO on its own discretion under CCP §486.030(a).

NOTE

Some practitioners prefer *not* to include the alternative TPO application and instead request the court to consider issuing TPO only *after* it denies the ex parte writ application. Under this approach, the court must deal with the merits of the ex parte application without having the TPO application as an alternative solution.

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/Before Seeking Writ/STEP 7. REVIEW UNDERTAKING (BOND) REQUIREMENTS

STEP 7. REVIEW UNDERTAKING (BOND) REQUIREMENTS

WHEN BOND REQUIRED

Plaintiff

Bond is required *any time* plaintiff seeks (CCP §§489.210-489.230):

- a. TPO;
- b. Writ of attachment; or
- c. Both.

NOTE

Bond does not have to be filed at time of application, but it *must* be filed before issuance of writ or TPO. CCP §489.210.

Defendant

Bond is required if defendant seeks:

- a. Order permitting defendant to substitute undertaking for any California property that (CCP §489.310(a)):
 - (1) Has been attached; or
 - (2) Is subject to attachment; *or*
- b. Terminating TPO. CCP §489.320(a).

NOTE

Defendant's undertaking does not have to be filed at time of application, but order issued by court will be conditional on filing of undertaking. CCP §§489.310(c), 489.320(b).

Parties Appealing

A bond is required if either you or defendant seeks to file appeal from right to attach order. CCP §§489.410-489.420.

IF NO BOND POSTED

Failure to post bond voids any writ of attachment ab initio. *Versbbow v Reiner* (1991) 231 CA3d 879, 282 CR 684.

PURPOSE OF BOND

Plaintiff

Plaintiff files bond to pay defendant amount recoverable by him or her in wrongful attachment action. CCP §489.210.

Defendant

Defendant files bond to pay plaintiff value of property released, not exceeding amount of any judgment plaintiff may recover in action against defendant. CCP §489.310(c).

AMOUNT OF BOND

Plaintiff

Subject to court increasing amount if defendant files objection, post minimum amount of \$10,000 (CCP §489.220).

NOTE

Defendant's claim that plaintiff may levy on property whose value exceeds amount of attachment is not a basis for increasing amount of undertaking. *North Hollywood Marble Co. v Superior Court* (1984) 157 CA3d 683, 204 CR 55.

Defendant

a. *When seeking order permitting substitution:* Defendant's bond amount is lesser of (CCP §489.310(c)):

(1) Value of property attached or prevented from being attached; or

(2) Amount specified by writ to be secured by attachment.

b. *When seeking order terminating TPO:* Defendant's bond amount is equal to amount sought to be secured by attachment. CCP §489.320(b).

Further Research: Debt Collection §§6.45-6.49.

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Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/When Seeking Writ/STEP 8. PROCEED WITH EX PARTE APPLICATION (RESIDENT DEFENDANT), IF APPROPRIATE

When Seeking Writ

STEP 8. PROCEED WITH EX PARTE APPLICATION (RESIDENT DEFENDANT), IF APPROPRIATE

ANTICIPATE DENIAL OF EX PARTE APPLICATION

Because courts are usually very reluctant to issue ex parte writs, prepare and submit alternative applications for:

- a. Writ by noticed hearing (see [step 10](#), below); and
- b. TPO. See [step 11](#), below.

GENERAL REQUIREMENTS

Requirements for obtaining writ by ex parte application are same as for noticed hearing application. See [step 10](#), below.

WHEN EX PARTE APPROPRIATE

Ex parte application is appropriate when you can show circumstances indicating "great or irreparable injury" if attachment were delayed until hearing. [CCP §485.010](#).

WHEN TO FILE

File the ex parte application:

- a. When you file complaint; or
- b. At any time thereafter (in same court) when you can show "great or irreparable injury." [CCP §485.210\(a\)](#), (c)(2). For discussion of required showing, see directly below.

SHOWING GREAT OR IRREPARABLE INJURY

REQUIRED SHOWING

For proceeding ex parte, application must include declaration providing *evidence*, not mere conclusory statements, indicating that plaintiff will suffer great or irreparable injury. [CCP §485.010\(a\)](#); [Western Steel v Ship Repair, Inc. v RMI, Inc. \(1986\) 176 CA3d 1108, 1114, 222 CR 556](#).

Property at Risk

To prove great or irreparable injury, plaintiff may show that there is danger that property plaintiff seeks to attach would be ([CCP §485.010\(b\)\(1\)](#)):

- a. Concealed;
- b. Substantially impaired in value; or
- c. Otherwise made unavailable to levy.

Defendant Insolvent

Plaintiff may also show that defendant ([CCP §485.010\(b\)\(2\)](#)):

- a. Has failed to pay debt underlying attachment; and

b. Is generally not paying debts, unless debts are subject to bona fide dispute. (Be sure to verify facts in affidavit; for discussion of supporting affidavit or declaration, see Supporting Affidavit or Declaration, this step, below. Because there need only be an *inference* of insolvency, the evidentiary standards are more relaxed under §485.010(b)(2) than under §485.010(b)(1).)

NOTE

If the court issues the writ on the basis of defendant's insolvency, defendant is entitled to a hearing within **5 court days** after plaintiff is served with notice of defendant's request. CCP §485.010(c).

Bulk Sale

Plaintiff may show that bulk sale has been recorded and published in connection with bulk transfer by defendant. CCP §485.010(b)(3).

a. Writ of attachment issued ex parte on this basis is limited to:

- (1) Property covered by bulk sale notice; or
- (2) Proceeds from sale of that property.

b. Not more than **5 days** after levy of ex parte writ of attachment, levying officer would serve writ on auctioneer or transferee identified by sales notice. CCP §485.010(c).

Sale of Liquor License

Plaintiff may show that escrow has been opened for sale of liquor license by defendant. CCP §485.010(b)(4).

NOTE

Writ of attachment issued ex parte on this basis is limited to client's "pro rata share of the proceeds of the sale in escrow." CCP §485.010(c).

Generally

Plaintiff may also show that "[a]ny 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." CCP §485.010(b)(5).

PAPERS TO SUBMIT

SUMMONS AND COMPLAINT

File summons and complaint with application for attachment if you seek ex parte right to attach order at beginning of action.

APPLICATION

Form

Use Judicial Council Form AT-105. For sample, see Appendix A to this Action Guide. See also Judicial Council Forms Man 4-3; CCP §§484.020, 485.210(b)-(c).

NOTE

Judicial Council Form AT-105 is also used for applications for noticed hearings and TPOs.

Check Turnover Provision

Be certain to check the turnover provision (item 1.d.(1)-(3), directing defendant to transfer attached property to levying officer).

- a. Unless you check the turnover provision, you will not get turnover order as part of right to attach order.
- b. Defendant who fails to comply with turnover order may be subject to contempt.

Limitations

Note the limitations on turnover order:

- a. It cannot be used to compel turnover of property outside California; and
- b. It cannot be used to compel turnover of accounts receivable and deposit accounts, since both are intangible forms of personal property.

See *Pacific Decision Sciences Corp. v Superior Court* (2004) 121 CA4th 1100, 1109, 18 CR3d 104.

Execution

Execute completed form under penalty of perjury.

Requirements

Include the following required statements (CCP §484.020):

- a. Statement showing that attachment is sought to secure recovery on claim on which court may issue attachment (see item 3 on Judicial Council Form AT-105).
- b. Statement of amount to be secured by attachment (see item 8 on Judicial Council Form AT-105; CCP §483.015), *i.e.*:
 - (1) *The sum of:*
 - (a) Plaintiff's claim against defendant;

NOTE

If the underlying claim is unlawful detainer, plaintiff's claim can include rent due and unpaid at the time complaint is filed *as well as* anticipated rents accumulating until date of judgment. See CCP §483.020.

- (b) Contract or statutory prejudgment interest until hearing date; *plus*
- (c) Any allowable attorney fees and costs under CCP §482.110;
- (2) *Less the sum of:*
 - (a) Any current and unsatisfied money judgment against your client and in favor of defendant; *plus*
 - (b) Amount of your client's indebtedness subject to attachment that defendant has claimed in cross-complaint; *plus*
 - (c) Amount of any claim defendant asserts in answer as defense if court can issue attachment on claim; *plus*
 - (d) Value of security interest; *plus*
 - (e) Any decrease in value of security due to conduct by plaintiff (CCP §483.015(b)).

NOTE

To avoid any claim by defendant of "excessive attachment," ascertain that value of assets you seek to secure does not exceed amount of underlying claim.

- c. Statement that attachment not sought for purpose other than recovery on underlying claim (see item 4 on Judicial Council Form AT-105);
- d. Statement that applicant (plaintiff) has no information or belief that claim is discharged or that prosecution of action is stayed under the Bankruptcy Code (see item 5 on Judicial Council Form AT-105);
- e. *For individual resident defendant*, statement that (see item 9c on Judicial Council Form AT-105):
 - (1) Describes property to be attached; and
 - (2) Identifies statute providing for method of levy (under CCP §§488.300-488.485) to show property is subject to attachment,

i.e., is not exempt;

NOTE

Description of individual's property sought to be attached need be only specific enough to alert defendant about the general categories of property sought to be attached so defendant can specify the property claimed to be exempt. For instance, a description such as "all automobiles of defendant" appears to be sufficient. See *Bank of America v Salinas Nissan, Inc.* (1989) 207 CA3d 260, 254 CR 748. While a general description may suffice to obtain a writ of attachment, if the plaintiff fails to provide a sufficient description of the property sought to be attached, the levying officer may not be able to complete the levy.

f. *For property belonging to defendant organization*, description of property as any property for which method of levy is provided (see item 9a on Judicial Council Form AT-105); and

g. Statement showing that "great or irreparable injury" requirement is satisfied. See item 13 on Judicial Council Form AT-105. For discussion of required showing, see Showing Great or Irreparable Injury, this step, above. See also CCP §485.210(b).

SUPPORTING AFFIDAVIT OR DECLARATION

a. Establish declarant's competency by explaining how declarant came to have personal knowledge of facts. CCP §482.040; Cal Rules of Ct 3.1201.

b. Show by affirmative factual showing (Cal Rules of Ct 3.1202(c)) under penalty of perjury (CCP §2015.5) that (CCP §§485.210(c)-(d)):

(1) On facts presented, plaintiff would be entitled to judgment on underlying claim; and

(2) Plaintiff would suffer great or irreparable injury if issuance of order were delayed until matter could be heard on notice.

c. *If relying on fact that defendant is insolvent to show risk of great or irreparable injury* (for discussion of required showing, see Required Showing, this step, above), show that (CCP §485.010(b)(2)):

(1) Defendant has known debts; and

(2) Debts are not subject to bona fide dispute (including basis for plaintiff's determination that debts are undisputed).

d. Include name, address, and telephone number of any attorney known to represent any party; and if no attorney is known, include name, address, and telephone number of party. Cal Rules of Ct 3.1202(a).

e. State whether any previous ex parte application has been refused in whole or in part, and provide full description of prior application and court action. Cal Rules of Ct 3.1202(b).

MEMORANDUM IN SUPPORT OF APPLICATION

Memorandum in support of application for ex parte right to attach (see Cal Rules of Ct 3.1201) should comply with Cal Rules of Ct 3.1113.

ATTORNEY'S DECLARATION

Show that you complied with notice requirements of Cal Rules of Ct 3.1204(b) (see Giving Notice, below), stating either:

a. That notice was given, including:

(1) Date, time, and manner of notice;

(2) Name of party informed and party's response; and

(3) Whether opposition is expected; or

b. Reasons why notice should not be required.

ORDERS

Submit the following (see Cal Rules of Ct 3.1201; Debt Collection §6.99):

- a. Ex parte right to attach order and order for issuance of writ of attachment (use Judicial Council Form AT-125; see [Appendix C](#) to this Action Guide for sample; Judicial Council Forms Man 4-11 (be sure to check turnover provision (item 3c) in proposed right to attach order form)); and
- b. Writ of attachment (use Judicial Council Form AT-135; see [Appendix G](#) to this Action Guide for sample; Judicial Council Forms Man 4-15).

ALTERNATIVE APPLICATIONS

When going to court on application for ex parte writ, anticipate denial by having the following with you:

- a. Application for writ of attachment by noticed hearing (see [step 10](#), below); and
- b. Application for TPO (see [step 11](#), below).

BOND

File bond when order is granted. See [step 7](#), above. See also [CCP §§485.220\(a\), 489.210, 489.220](#).

NOTE

Court will not issue writ before bond is filed.

GIVING NOTICE

WHEN TO GIVE NOTICE

No later than 10:00 a.m. on court day before appearance, give notice to all other parties unless you can show exceptional circumstances. [Cal Rules of Ct 3.1203\(a\)](#).

CONTENT OF NOTICE

In notice, state with specificity ([Cal Rules of Ct 3.1204\(a\)\(1\)](#)):

- a. Nature of relief requested; and
- b. Date, time, and place when you will present application.

ASCERTAIN FROM OTHER PARTIES

When giving notice, attempt to determine whether opposing party or opposing party's counsel will appear to oppose application. [Cal Rules of Ct 3.1204\(a\)\(2\)](#).

PREPARE DECLARATION SHOWING COMPLIANCE WITH CAL RULES OF CT 3.1203

Prepare declaration or affidavit stating that ([Cal Rules of Ct 3.1204\(b\)\(1\)](#)):

- a. Within reasonable time before making this application, and no later 10:00 a.m. of prior court day ([Cal Rules of Ct 3.103\(a\)](#)), plaintiff informed defendant or defendant's counsel when and where application would be made, including:
 - (1) Date, time, and manner of notice;
 - (2) Name of party informed;
 - (3) Relief sought;
 - (4) Any response;
 - (5) Whether opposition is expected; *or*
- b. Plaintiff in good faith attempted to inform defendant and defendant's attorney but was unable to do so (specify efforts made to inform them); *or*

- c. Plaintiff should not be required to inform defendant or defendant's counsel for reasons you specifically set forth in declaration.

CONSIDER RISKS AND BENEFITS OF GIVING NOTICE

In determining whether you should give notice at all, consider:

- a. Likelihood that court would consider failure to give notice unreasonable; and
- b. Policy of some courts *not* to permit ex parte applications without notice to adverse party.

HEARING

SERVING APPLICATION

Serve ex parte application on opposing party appearing at hearing at first reasonable opportunity. Cal Rules of Ct 3.1206.

NOTE

Absent exceptional circumstances, court will not conduct hearing unless papers have been served. Cal Rules of Ct 3.1206.

WHEN EX PARTE APPLICATION GRANTED

Court must issue ex parte right to attach order on finding *all* of the following (CCP §485.220(a)-(b)):

- a. Underlying claim is one on which court may issue attachment;
- b. Plaintiff has established probable validity of claim on which attachment is based;
- c. Attachment not sought for purpose other than recovery on underlying claim;
- d. Accompanying affidavit shows that property sought to be attached is not exempt from attachment; and
- e. Plaintiff will suffer great or irreparable harm if court delays issuing order until matter can be heard on notice.

WHEN EX PARTE APPLICATION DENIED

If application is denied solely because "great or irreparable injury" requirement is not satisfied (CCP §485.220(b)):

- a. Court "shall so state"; and
- b. You can use same affidavits and supporting papers to apply for right to attach order (writ of attachment) under noticed procedure.

Temporary Protective Order (TPO)

- a. If you included alternative application for TPO with ex parte submission, court may grant your request for issuance of TPO pending noticed hearing.
- b. Even if you did not include alternative application, court has discretion to issue TPO on its own under CCP §486.030(a).

NOTE

Some practitioners prefer *not* to include alternative TPO application and instead request court to consider issuing TPO only *after* it denies ex parte writ application. Under this approach, the court must deal with the merits of the ex parte application without having the TPO application as an alternative solution.

Further Research: See Debt Collection §§6.33-6.36.

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/When Seeking Writ/STEP 9. PROCEED WITH EX PARTE APPLICATION (NONRESIDENT DEFENDANT)

STEP 9. PROCEED WITH EX PARTE APPLICATION (NONRESIDENT DEFENDANT)

WHEN APPROPRIATE

An ex parte application is *always* appropriate for nonresident defendant because nonresident is presumed unavailable for notice and service.

WHEN TO FILE

File ex parte application (CCP §492.020(a)) either:

- a. When you file complaint; or
- b. Any time thereafter.

PAPERS TO SUBMIT

SUMMONS AND COMPLAINT

File summons and complaint if you seek ex parte right to attach order when commencing action.

APPLICATION

Form

Use Judicial Council Form AT-105, which conforms with requirements for application by noticed hearing. For discussion of application, see Papers to Submit, step 8, above. For sample, see Appendix A to this Action Guide. See also Judicial Council Forms Man 4-3; CCP §§492.020(b), 484.020.

Check Boxes Concerning Nonresident

Check:

- a. "Against Property of Nonresident" in caption; and
- b. Box 9b.

Check Turnover Provision

Be certain to check the turnover provision (item 1.d.(1)-(3), directing defendant to transfer attached property to levying officer). See Check Turnover Provision, step 8, above.

SUPPORTING AFFIDAVIT OR DECLARATION

Supporting affidavit or declaration must:

- a. Establish declarant's competency by explaining how declarant came to have personal knowledge of facts. CCP §482.040; Cal Rules of Ct 3.1202(c).
- b. Show in *detail* under penalty of perjury (CCP §2015.5) that (CCP §492.070):
 - (1) Defendant is "nonresident" as defined in CCP §492.010(a);
 - (2) Plaintiff's claim is one on which attachment may be issued (CCP §§483.010, 492.020(b), 492.030(a)(1));
 - (3) Plaintiff's claim has probable validity (CCP §§481.190, 492.020(b), 492.030(a)(2); see step 1, above);

(4) Attachment is not sought for purpose other than recovery on underlying claim (CCP §492.030(a)(4)); and

(5) Property sought to be attached is subject to attachment (may be based on information and belief) (CCP §§484.020(e), 492.020(b)(3), 492.030(a)(5)):

(a) Initially, *all* California property of a nonresident, exempt and nonexempt, is subject to attachment if statute prescribes method of levy; *but*

(b) Once nonresident has filed general appearance, only nonexempt property may be levied on, and exempt property previously levied on must be released on order of court. CCP §492.040.

c. Provide name, address, and telephone number of any attorney known to represent any party; if no attorney is known, provide name, address, and telephone number of party. Cal Rules of Ct 3.1202(a).

d. State whether any previous ex parte application has been refused in whole or in part, and include full description of prior application and court action. Cal Rules of Ct 3.1202(b).

MEMORANDUM IN SUPPORT OF APPLICATION

Support application with memorandum (see Cal Rules of Ct 3.1201) should comply with Cal Rules of Ct 3.1113.

ATTORNEY'S DECLARATION

Show that you complied with notice requirements of Cal Rules of Ct 3.1200-3.1207. For discussion of notice requirements, see Giving Notice, step 8, above. For discussion of attorney's declaration, see Attorney's Declaration, step 8, above.

ORDERS

Submit ex parte right to attach order and order for issuance of writ of attachment (nonresident). Use Judicial Council Form AT-130. For sample, see Appendix D to this Action Guide. See also Judicial Council Forms Man 4-13.

Check Turnover Provision

Be sure to check the turnover provision in item 3c. For discussion of checking turnover provision box, see Check Turnover Provision, step 8, above.

BOND

File bond (see step 7, above) when order granted, under CCP §§489.210; 492.030(a).

GIVING NOTICE

NOTICE REQUIREMENTS OF CAL RULES OF CT 3.1200-3.1207

Comply with Cal Rules of Ct 3.1200-3.1207. For discussion of notice requirements of Cal Rules of Ct 3.1200-3.1207, see Giving Notice, step 8, above.

HEARING

SERVING APPLICATION

Serve ex parte application on opposing party appearing at hearing at first reasonable opportunity. Cal Rules of Ct 3.1206.

NOTE

Unless there are exceptional circumstances, court will not conduct hearing unless papers have been served. Cal Rules of Ct 3.1206.

IF APPLICATION DENIED

If plaintiff's application is denied solely because defendant is *not* nonresident (CCP §492.030(b)):

a. Court "shall so state"; and

b. You can use same affidavits and supporting papers to apply for right to attach order (writ of attachment) under noticed procedure.

Further Research: Debt Collection §§6.33-6.36.

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Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/When Seeking Writ/STEP 10. PROCEED WITH NOTICED HEARING APPLICATION

STEP 10. PROCEED WITH NOTICED HEARING APPLICATION

WHEN TO FILE

File application ([CCP §484.010](#)):

- a. When you file complaint (or cross-complaint); or
- b. At any time thereafter.

PAPERS TO SUBMIT

SUMMONS AND COMPLAINT

File if you seek right to attach order when commencing action.

APPLICATION

Form

Use Judicial Council Form AT-105. For sample, see [Appendix B](#) to this Action Guide. See also Judicial Council Forms Man 4-3.

Judicial Council Form AT-105 is also used for noticed hearing applications, ex parte applications (see [steps 8-9](#), above), and TPOs (see [step 11](#), below).

Check Turnover Provision

Be certain to check the turnover provision (item 1.d.(1)-(3), directing defendant to transfer attached property to levying officer). See Check Turnover Provision, [step 8](#), above.

Execution

Execute application under penalty of perjury. [CCP §484.020](#).

Requirements

Application should include the following requirements ([CCP §484.020](#)):

- a. Statement showing that plaintiff seeks attachment to secure recovery on underlying claim and that attachment may be issued on that claim (see item 3 on Judicial Council Form AT-105);
- b. Statement of amount to be secured by attachment and how you arrived at this figure (see item 8 on Judicial Council Form AT-105);
- c. Statement that plaintiff does not seek attachment for purpose other than recovery on underlying claim (see item 4 on Judicial Council Form AT-105);
- d. Statement that the applicant has no information or belief that underlying claim has been discharged *or* that prosecution of action is stayed under the Bankruptcy Code (see item 5 on Judicial Council Form AT-105); and
- e. *For individual resident defendant*, in order to show property not exempt, description of property to be attached and statutory authority prescribing method of levy (see item 9c on Judicial Council Form AT-105; see also [CCP §§488.300-488.485](#)).

NOTE

Property description need only be specific enough to alert defendant about the general categories of property sought to be

attached so defendant can specify the property claimed to be exempt. For instance, a description such as "all automobiles of defendant" appears to be sufficient. See *Bank of America v Salinas Nissan, Inc.* (1989) 207 CA3d 260, 254 CR 748.

f. *For property belonging to defendant organization*, description of property as any property for which method of levy is provided.

NOTICE

Use Judicial Council Form AT-115, notice of application and hearing, to inform defendant of nine items set forth in CCP §484.050. For sample, see Appendix E to this Action Guide. See also Judicial Council Forms Man 4-7.

SUPPORTING AFFIDAVIT OR DECLARATION

- a. Establish declarant's competency by explaining how declarant came to have personal knowledge of facts.
- b. Show by *detailed* affidavit or declaration under penalty of perjury (CCP §2015.5) that, on facts presented, plaintiff is entitled to judgment on underlying claim (CCP §484.030).

NOTE

Because verified complaints usually do not meet CCP §482.040 requirements relating to allegations on information and belief, use an affidavit for allegations needed to support application. CCP §446. Be sure your evidence is admissible; attachment applications are often denied for failure to provide admissible evidence.

APPLICATION FOR TPO

If appropriate, file application for TPO (use Judicial Council Form AT-105; for sample, see Appendix B to this Action Guide; see also Judicial Council Forms Man 4-3). See step 11, below.

MEMORANDUM IN SUPPORT OF APPLICATION

Support application for right to attach order (see Cal Rules of Ct 3.1112) should comply with Cal Rules of Ct 3.1113.

ORDERS

- a. Submit right to attach order after hearing and order for issuance of writ of attachment. Use Judicial Council Form AT-120. For sample, see Appendix F to this Action Guide. See also Judicial Council Forms Man 4-9.

NOTE

Be sure to check the turnover provision in item 3d (directing defendant to transfer attached property to levying officer). see Check Turnover Provision, step 8, above.

- b. Depending on local rule, either:
 - (1) Include orders with application; or
 - (2) Bring orders to hearing.
- c. Be aware that if you delay submitting orders, court may delay until opposing counsel has opportunity to review orders.

WRIT OF ATTACHMENT

Submit writ with application if you want it issued immediately. Use Judicial Council Form AT-135. For sample, see Appendix H to this Action Guide. See also Judicial Council Forms Man 4-15.

BOND

Delay filing bond required by CCP §§484.090(b), 489.210, 489.220 (see step 7, above) until you obtain order.

NOTE

If you post bond first, you will have to pay the premium even if court does not grant order. Check box on application (item 15) indicating that bond has not been posted.

GIVING NOTICE

WHEN TO GIVE NOTICE

Give notice **16 court days** before hearing (CCP §1005(b)) if serving personally, but add time if mailing notice. See Service by Mail, this step, below.

WHAT TO INCLUDE

Plaintiff serves defendant with (CCP §484.040; Debt Collection §6.19):

- a. Notice of application and hearing (Judicial Council Form AT-115; see Judicial Council Forms Man 4-7);
- b. Copy of summons and complaint; and
- c. Copy of application and any affidavits supporting it.

Further Research: See Debt Collection §6.19.

SERVICE

If defendant has not yet made general appearance and therefore is not yet a "party," service must be made in same manner as summons under CCP §§413.10-417.40. See CCP §§482.070(d), 1010.

SERVICE BY MAIL

Service by mail is *permissible* only if defendant has appeared.

Add **5 days** to notice period if you serve by mail within California. CCP §§482.070, 684.120, 1005(b).

HEARING

UNANTICIPATED EVIDENCE

If court permits defendant to introduce additional evidence on showing of good cause under CCP §484.090(d), consider applying for a continuance under CCP §484.080.

CONTINUANCE

Court has discretion to grant continuance for reasonable period of time. Debt Collection §6.31.

a. If *plaintiff* requests continuance, court *may* extend TPO for period not more than **10 days** after new hearing date. CCP §484.080(a).

b. If *defendant* requests continuance, court *must* extend period of any protective order for period ending not more than **10 days** after new hearing date *unless* defendant shows that protective order should be modified or vacated. CCP §484.080(b).

ADDITIONAL EVIDENCE

On showing of good cause, court has discretion to receive and consider additional evidence, oral or documentary, and additional points and authorities. CCP §484.090(d).

NOTE

Court may not issue right to attach order under noticed hearing procedure without conducting hearing. See Hobbs v Weiss (1999) 73 CA4th 76, 79, 86 CR2d 146.

WHAT PLAINTIFF MUST PROVE

Plaintiff must prove that:

- a. Claim is one on which attachment may be issued;
- b. Underlying claim has probable validity;
- c. Attachment is not sought for purpose other than recovery on underlying claim; *and*
- d. Property is not exempt from attachment.

COURT FINDINGS AND ORDER

- a. If the court *finds* that plaintiff proved items a-d above, it issues right to attach order stating amount to be secured by attachment. CCP §484.090(a)-(b); Debt Collection §6.30.
- b. If some of property is exempt from attachment, court will limit order to nonexempt property. CCP §484.090(c).

Effect of Findings on Underlying Action

- a. Court's rulings on application (CCP §484.100; Debt Collection §6.32):
 - (1) "*Shall have no effect on the determination of any issues in the action*" other than issues relating to attachment application; and
 - (2) Cannot be used as evidence at trial of underlying claim.
- b. Defendant does *not* waive any defense to plaintiff's underlying claim by failing to (CCP §484.110(a)):
 - (1) Oppose issuance of right to attach order; *or*
 - (2) Rebut evidence plaintiff presents.
- c. Plaintiff does *not* waive any claims by failing to (CCP §484.110(b)):
 - (1) Oppose issuance of order reducing amount to be secured by attachment; *or*
 - (2) Rebut any evidence presented by defendant.

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/When Seeking Writ/STEP 11. APPLY FOR TEMPORARY PROTECTIVE ORDER (TPO) WHEN APPROPRIATE

STEP 11. APPLY FOR TEMPORARY PROTECTIVE ORDER (TPO) WHEN APPROPRIATE

PURPOSE OF TPO

TPO restrains defendant from transferring, concealing, or encumbering property until noticed hearing can be held on plaintiff's application for writ of attachment. [Debt Collection §6.37](#).

HOW TO OBTAIN

TPO may be obtained:

- a. *By application:* Apply for TPO, to remain in effect until hearing can be held on pending application for right to attach order ([CCP §486.010\(a\)](#)); or
- b. *By discretion of court:* Court has discretion to issue TPO when it denies ex parte right to attach order, provided that requirements of [CCP §485.220](#) are satisfied. [CCP §486.030\(a\)](#).

NOTE

When court issues TPO instead of ex parte right to attach order, plaintiff's application is converted automatically to application for right to attach order after hearing. [CCP §§484.010, 486.030\(b\)](#).

PAPERS TO SUBMIT

SUMMONS AND COMPLAINT

File summons and complaint if you seek TPO when commencing action.

APPLICATION

Form

Use Judicial Council Form AT-105. For sample, see [Appendix B](#) to this Action Guide. See also Judicial Council Forms Man 4-3.

NOTE

Judicial Council Form AT-105 is also used for noticed hearing applications (see [step 10](#), above) and ex parte applications (see [step 8](#), above).

Execution

Execute completed form under penalty of perjury.

SUPPORTING AFFIDAVIT OR DECLARATION

A supporting affidavit or declaration should:

- a. Set forth supporting facts required in application ([CCP §§485.210\(c\), 484.090, 486.020](#)); and
- b. Show that plaintiff would suffer great or irreparable injury if TPO not issued ([CCP §485.010\(a\)](#)). For discussion of required showing, see [step 8](#), above.

NOTE

Declaration may be based on information and belief.

MEMORANDUM IN SUPPORT OF APPLICATION

Support application for TPO. See Cal Rules of Ct 3.1112.

ATTORNEY'S DECLARATION

Show that you complied with notice requirements of Cal Rules of Ct 3.1200-3.1207. For notice requirements, see Giving Notice, step 8, above. For discussion of attorney's declaration, see Attorney's Declaration, step 8, above.

ORDER

Submit TPO. Use Judicial Council Form AT-140. For sample, see Appendix I to this Action Guide. See also Judicial Council Forms Man 4-17.

BOND

File bond after order issued. CCP §§486.020, 489.210, 489.220.

Further Research: Debt Collection §§6.38-6.39.

GIVING NOTICE

NOTICE REQUIREMENTS OF CAL RULES OF CT 3.1200-3.1207

Comply with Cal Rules of Ct 3.1200-3.1207. For discussion of notice requirements of Cal Rules of Ct 3.1200-3.1207, see Prepare Declaration Showing Compliance With Cal Rules of Ct 3.1200-3.1207, step 8, above.

COURT FINDINGS AND ORDER

WHEN TPO GRANTED

Court grants TPO if it *finds all* of the following (CCP §486.020; Debt Collection §6.39):

- a. Claim is one on which attachment may be issued;
- b. Plaintiff has established that claim has probable validity;
- c. TPO is not sought for any purpose other than recovery on underlying claim; and
- d. Plaintiff will suffer great or irreparable injury if court does not issue TPO.

SERVICE OF TPO

Personally serve TPO on defendant, along with the following (CCP §486.080; Debt Collection §§6.38-6.40):

- a. Copy of summons and complaint;
- b. Notice of application and hearing; and
- c. Copy of application and any supporting affidavits or declaration.

NOTE

Because TPO binds only defendant and is enforceable by contempt proceedings, serve it on defendant rather than on defendant's attorney. CCP §486.070.

RECORD TPO

If TPO names real property, record certified copy of TPO in county in which property is located, even though statute does not specifically provide for recording.

WHEN TPO TERMINATES

By Operation of Law

Unless terminated sooner, TPO expires by operation of law at *earliest* of the following times (CCP §486.090; Debt Collection §6.42):

- a. Date specified in order;
- b. **40 days** after issuance of order; or
- c. For specific property described in order, when plaintiff makes levy of attachment on that property.

After Action by Defendant

TPO may expire after action by defendant. See steps 12-13, below.

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Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/When Seeking Writ/STEP 12. ANTICIPATE DEFENDANT'S OPPOSITION TO APPLICATION FOR TPO AND RIGHT TO ATTACH ORDER

STEP 12. ANTICIPATE DEFENDANT'S OPPOSITION TO APPLICATION FOR TPO AND RIGHT TO ATTACH ORDER

WHEN EX PARTE PROCEDURE

When plaintiff makes ex parte application, because of expedited nature of proceeding, expect defendant to confine opposition to persuasive and relevant oral argument.

WHEN NOTICED HEARING PROCEDURE

When plaintiff makes noticed hearing, defendant *must* file notice of opposition. CCP §484.060(a).

When

Defendant must file notice of opposition no later than **5 court days** before hearing date. CCP §484.060(a).

Procedure

Defendant must file and serve all three of the following (CCP §484.060(a); Debt Collection §6.23):

- a. Notice of opposition, stating grounds for defendant's opposition (use Judicial Council Form AT-155; for sample, see Appendix J to this Action Guide; see also Judicial Council Forms Man 4-23).
- b. Affidavit setting forth factual issues raised.
- c. Memorandum in support of application.

If Defendant Fails to File Notice

- a. If defendant fails to file required notice *on time*, "the defendant shall not be permitted to oppose the issuance of the order" (CCP §484.060(a)); *but*
- b. *On a showing of good cause*, court still has discretion under CCP §484.090(d) to allow additional evidence and points and authorities.

GROUNDINGS FOR OPPOSITION

Grounds for opposition include the following:

- a. Plaintiff failed to show, through competent evidence, entitlement to provisional relief sought (CCP §482.040), *e.g.*:
 - (1) Plaintiff did not provide sufficient *particularity* regarding each fact forming basis for plaintiff's claim for relief, *e.g.*:
 - (a) Individual defendant is not engaged in trade or business;
 - (b) Obligation of individual defendant did not arise from engagement in trade or business; or
 - (c) Amount of obligation is *not* certain or ascertainable.
 - (2) Application lacked *affirmative showing* of declarant's competence to testify to facts stated.
- b. Claim lacked probable validity.
- c. Plaintiff seeks excessive attachment, *i.e.*, assets whose value exceeds amount of plaintiff's claim. For discussion of application, see Papers to Submit, step 8, above.

NOTE

Defendant has the burden to establish reasonable market value of property in question.

d. *If TPO or ex parte writ application*, plaintiff failed to show that he or she would suffer great or irreparable harm if not granted.

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Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/When Seeking Writ/STEP 13. ANTICIPATE AND OPPOSE DEFENDANT'S CLAIM OF EXEMPTION

STEP 13. ANTICIPATE AND OPPOSE DEFENDANT'S CLAIM OF EXEMPTION

TO CLAIM EXEMPTION

Defendant seeking to exempt property from attachment must file claim of exemption.

When

Defendant must file claim of exemption not less than **5 court days** before hearing date. CCP §484.070(e).

Procedure

Defendant must file and serve all three of the following (CCP §484.070(c)-(e); Debt Collection §6.24):

a. Claim of exemption (CCP §484.070(c)); use Judicial Council Form AT-155; for sample, see Appendix J to this Action Guide; see also Judicial Council Forms Man 4-23):

(1) Describing property referred to in application that defendant claims is exempt; and

(2) Specifying statutory authority for claim of exemption.

b. Affidavit setting forth factual issues raised by claim (CCP §484.070(d)).

c. Memorandum of points and authorities supporting any legal issues raised by the claim. CCP §484.070(e).

Waiver

Defendant *waives* later exemption claim by (CCP §484.070(a)); Bank of America v Salinas Nissan, Inc. (1989) 207 CA3d 260, 268, 254 CR 748):

a. Failing to make claim for exemption; or

b. Making, but failing to prove, exemption claim.

Exception to Waiver

Defendant can make post-levy claims of exemption if circumstances change (CCP §482.100):

a. After denial of exemption claim; or

b. After expiration of time for claiming exemption.

If Property Omitted From Application

Defendant also may claim whole or partial exemption for property *not* described in plaintiff's application by filing timely claim of exemption (not less than **5 court days** before hearing date) (CCP §484.070(e); Debt Collection §6.27).

a. Even if defendant misses filing date, he or she can later claim exemption (CCP §484.070(b)).

b. If defendant's claim is unsuccessful, defendant may not later claim property is exempt unless he or she can show changed circumstances (CCP §482.100).

OPPOSING EXEMPTION CLAIM

Mandatory Notice of Opposition

You must file and serve notice of opposition, or "no writ of attachment shall be issued as to the property claimed to be exempt." CCP §484.070(f); Bank of America v Salinas Nissan, Inc. (1989) 207 CA3d 260, 270, 254 CR 748.

When

File and serve notice of opposition not less than **2 days** before hearing date. CCP §484.070(f).

Procedure

File and serve on defendant (CCP §484.070(f)):

- a. Notice of opposition;
- b. Affidavit supporting any factual issues raised; and
- c. Memorandum of points and authorities, if defendant raises any legal issues.

Burden of Proof

Defendant then has burden of proving that property is exempt from attachment. CCP §484.070(g).

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Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/After TPO or Right to Attach Order Is Issued/STEP 14. ANTICIPATE DEFENDANT'S ATTEMPTS TO MODIFY, VACATE, OR SET ASIDE TPO OR RIGHT TO ATTACH ORDER, OR TO QUASH WRIT

After TPO or Right to Attach Order Is Issued

STEP 14. ANTICIPATE DEFENDANT'S ATTEMPTS TO MODIFY, VACATE, OR SET ASIDE TPO OR RIGHT TO ATTACH ORDER, OR TO QUASH WRIT

TPO

DEFENDANT'S EX PARTE APPLICATION

Defendant can file ex parte application requesting court to *modify* or *vacate* TPO. CCP §486.100; Debt Collection §§6.39-6.44.

Hearing

Court may require noticed hearing. CCP §486.100.

When Court Will Modify or Vacate

Court will modify or vacate if that is "in the interest of justice and equity to the parties," considering (CCP §486.100):

- a. Effect on defendant of continuance of original order;
- b. Effect on plaintiff of modifying or vacating order; and
- c. Any other factors court deems proper.

DEFENDANT'S NOTICED MOTION TO TERMINATE

If defendant has appeared in action, defendant can file noticed motion to *terminate* TPO. CCP §489.320.

Procedure

Defendant files the following (CCP §489.320(a)):

- a. Application to terminate, modify, or vacate TPO (use Judicial Council Form AT-145; for sample, see Appendix K to this Action Guide; see also Judicial Council Forms Man 4-19);
- b. Memorandum of points and authorities; and
- c. Order to terminate, modify, or vacate order. Use Judicial Council Form AT-150; for sample, see Appendix L to this Action Guide; see also Judicial Council Forms Man 4-21.

Bond

For court to issue order terminating TPO, defendant is required to file bond equal to amount sought to be secured by attachment. CCP §489.320(b).

DEFENDANT'S STIPULATION

To save time and expense of formal court process, defendant can seek written stipulation to substitute required bond for TPO.

NOTE

As long as the bond is adequate, plaintiff should usually agree to stipulation for posting bond, because a bond facilitates prompt and reliable payment.

Procedure

If plaintiffs agree to stipulate, incorporate into written stipulation Judicial Council form order for termination of TPO (use Judicial Council Form AT-150; for sample, see [Appendix L](#) to this Action Guide; see also Judicial Council Forms Man 4-21).

DEFENDANT'S APPEAL OF TPO

TPO is:

- a. *Not* directly appealable ([CCP §904.1](#) (unlimited civil cases); [CCP §904.2](#) (limited civil cases)); and
- b. *Not* subject to review by filing petition for writ of mandate or prohibition.

EX PARTE RIGHT TO ATTACH ORDER

DEFENDANT'S AVAILABLE MOTIONS

Defendant can file noticed motion to (see [CCP §§485.240\(a\)](#), [492.050\(a\)](#)):

- a. Set aside right to attach order;
- b. Quash writ of attachment;
- c. Release attached property, under:
 - (1) [CCP §492.050](#) (nonresident defendant); or
 - (2) [CCP §485.240\(a\)\(1\)](#) (resident defendant); or
- d. Reduce amount to be secured by attachment, under [CCP §483.015\(b\)](#).

Procedure

Defendant files ([CCP §§485.240\(b\)](#), [492.050\(b\)](#)):

- a. Application (Judicial Council Form AT-170; see Judicial Council Forms Man 4-29);
- b. Affidavit or declaration;
- c. Memorandum of points and authorities; and
- d. Order to set aside attachment, to substitute undertaking, etc. (Judicial Council Form AT-175; see Judicial Council Forms Man 4-31).

If Resident Defendant

If defendant is resident, application *cannot* be based on ground that plaintiff would not have suffered great or irreparable injury if issuance of order had been delayed until matter could be heard on notice. [CCP §485.240\(b\)](#).

If Nonresident Defendant

If nonresident defendant *has filed general appearance in action*, right to attach order *must* be set aside *unless* plaintiff shows it is authorized by provision other than nonresident attachment provision. [CCP §492.050\(c\)](#).

RIGHT TO ATTACH ORDER AFTER NOTICED HEARING

DEFENDANT'S AVAILABLE MOTIONS

Defendant can file noticed motion to (see [Debt Collection §§6.45-6.49](#), [6.89-6.90](#)):

- a. Release attached property exceeding value of amount attachment will secure (CCP §488.720; see *North Hollywood Marble Co. v Superior Court* (1984) 157 CA3d 683, 692, 204 CR 55);
- b. Substitute an undertaking for property (CCP §489.310);
- c. Increase plaintiff's undertaking (CCP §§489.220, 489.410, 995.960); or
- d. Determine sufficiency of plaintiff's sureties. CCP §995.920.

OPPOSING DEFENDANT'S ATTEMPTS

OPPOSITION PAPERS

Address factual and legal issues raised by defendant in your opposition papers, *e.g.*:

- a. Memorandum of points and authorities; and
- b. Affidavit or declaration under penalty of perjury.

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Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/After TPO or Right to Attach Order Is Issued/STEP 15. OBTAIN ANY NECESSARY ADDITIONAL WRITS OF ATTACHMENT AGAINST INDIVIDUAL DEFENDANTS

STEP 15. OBTAIN ANY NECESSARY ADDITIONAL WRITS OF ATTACHMENT AGAINST INDIVIDUAL DEFENDANTS

REVIEW RULES

Before seeking additional writs, review pertinent rules and statutes. See [step 5](#), above. See also [Debt Collection §6.50](#).

Individual Defendants Only

Seek additional writs only against *individual defendants* because [CCP §487.010\(a\)-\(b\)](#) already permits plaintiff to attach all property of corporate or partnership defendant.

Nonexempt and Available Property

When applying for additional writs, be prepared to show that property plaintiff seeks to attach is nonexempt and available for attachment.

NOTE

Once a right to attach order has been issued, plaintiff may use discovery procedures under [CCP §§2016.010-2036.050](#) to discover identity, location, and value of property in which defendant has an interest. [CCP §485.230](#).

Further Research: On discovery generally, see [California Civil Discovery Practice \(4th ed Cal CEB 2006\)](#).

AFTER EX PARTE ORDER GRANTED

WHEN TO FILE

Make ex parte application for additional writs at any time after court has issued initial ex parte right to attach order. [CCP §485.510](#).

PAPERS TO SUBMIT

Application

When applying for additional writ of attachment, plaintiff should:

- a. Use Judicial Council Form AT-105 (for sample, see [Appendix A](#) to this Action Guide. Check "ORDER FOR ISSUANCE OF ADDITIONAL WRIT OF ATTACHMENT" in caption and item 1b, and appropriately modify item 11 (see Judicial Council Forms Man 4-3).
- b. Execute completed Judicial Council Form AT-105 under penalty of perjury ([CCP §§485.520, 2015.5](#)).
- c. Include the following ([CCP §485.520\(a\)-\(d\)](#); [Debt Collection §6.50](#)):
 - (1) Statement that court has issued right to attach order and writ of attachment ex parte (see item 11 of Form AT-105);
 - (2) Statement of amount to be secured by attachment under right to attach order (see item 8 of Form AT-105; see also Papers to Submit, [step 8](#), above);
 - (3) Description of property to be attached under writ of attachment and statutory authority providing for method of levy to show property not exempt (see item 9c of Form AT-105; see also [CCP §§488.300-488.485](#)); and
 - (4) Statement showing that the "great or irreparable injury" requirement set forth in [CCP §485.010](#) has been satisfied (see item 13 of Form AT-105; see also [step 8](#), above).

Affidavit or Declaration

Supporting affidavit or declaration must:

- a. Establish declarant's competency by explaining how declarant came to have personal knowledge of facts. CCP §482.040.
- b. Show under penalty of perjury (CCP §2015.5) that (CCP §485.530(a); Debt Collection §§6.33, 6.50):
 - (1) Plaintiff would suffer great or irreparable harm if issuance of additional writ of attachment were delayed until matter could be heard on notice; and
 - (2) Property sought to be attached is not exempt from attachment (this may be stated on information and belief).

Memorandum

Memorandum must support application for additional writs.

Attorney's Declaration

Show that you complied with Cal Rules of Ct 3.1200-3.1207. See step 8, above.

Order

Submit order for issuance of writ of attachment. Use Judicial Council Form AT-125 (for sample, see Appendix C to this Action Guide (modify by checking appropriate box under item 2j); see also Judicial Council Forms Man 4-11; Debt Collection §6.99).

Bond

File *bond* required by CCP §§489.210 and 489.220 (if not previously filed).

GIVE PROPER NOTICE

Although this is an ex parte application, plaintiff:

- a. Gives notice to opposing counsel (use Judicial Council Form AT-115; for sample, see Appendix E to this Action Guide (modify by checking "ADDITIONAL WRIT OF ATTACHMENT" in caption and by checking box in item 2j); see also Judicial Council Forms Man 4-7); *or*
- b. Satisfies requirements of Cal Rules of Ct 3.1200-3.1207. For discussion of notice requirements of Cal Rules of Ct 3.1200-3.1207, see step 8, above.

ANTICIPATE DEFENDANT CLAIMING PROPERTY EXEMPT

Defendant may claim exemption of levied-on property under additional writs by filing exemption claim (CCP §485.610(b)):

- a. Under statutory procedure of the enforcement of judgment statute (CCP §§703.510-703.610); *or*
- b. With respect to property necessary to support individual defendant or his or her family (CCP §487.020(b)), under procedure set forth in CCP §482.100(c) (CCP §485.610(b)). For discussion of how to claim exemption, see step 13, above.

NOTE

Defendant who follows CCP §482.100(c) procedure does not need to show the "changed circumstances" required by CCP §482.100(a).

When

Defendant must claim exemption:

- a. For *personal property*: Within **30 days** after the levying officer serves defendant with notice of attachment (CCP §485.610(a)).
- b. For *real property*: Before entry of judgment (CCP §§485.610, 487.030).

COURT ORDER AND FINDINGS

Court must order issuance of additional writ of attachment *if it finds that* (CCP §§485.010, 485.540; Debt Collection §6.50):

- a. Right to attach order has been issued;
- b. Plaintiff's affidavit or declaration shows that property sought to be attached is not exempt; and
- c. Plaintiff will suffer great or irreparable harm if issuance of writ is delayed until the matter can be heard on notice.

AFTER ORDER ON NOTICED HEARING

WHEN TO FILE

File application for additional writs of attachment at any time after right to attach order is issued or upheld after noticed hearing. CCP §§484.310, 484.510.

IF EX PARTE APPLICATION

Papers to Submit

Plaintiff should submit:

- a. Application meeting requirements of CCP §484.320 (use Judicial Council Form AT-105; for sample, see Appendix A to this Action Guide (check "ORDER FOR ISSUANCE OF ADDITIONAL WRIT OF ATTACHMENT" in caption and check box item 1b, and appropriately modify item 11); see also Judicial Council Forms Man 4-3);
- b. Declaration or affidavit in support of application, showing that property is not exempt from attachment (may be made on information and belief);
- c. Attorney's declaration under Cal Rules of Ct 3.1200-3.1207 (for discussion of attorney's declaration, see Attorney's Declaration, step 8, above);
- d. Memorandum in support of application; and
- e. Order for issuance of additional writ of attachment (Judicial Council Form AT-125; see Judicial Council Forms Man 4-11).

Give Proper Notice

Although this is ex parte application, plaintiff is still required to:

- a. Give notice to opposing counsel (use Judicial Council Form AT-115; for sample, see Appendix E to this Action Guide (modify by checking "ADDITIONAL WRIT OF ATTACHMENT" in caption and by checking box in item 2c); see also Judicial Council Forms Man 4-7); *or*
- b. Satisfy requirements of Cal Rules of Ct 3.1200-3.1207. For discussion of notice requirements of Cal Rules of Ct 3.1200-3.1207, see Prepare Declaration Showing Compliance With Cal Rules of Ct 3.1200-3.1207, step 8, above.

Anticipate Defendant Claiming Property Exempt

- a. Defendant may file claim of exemption under CCP §484.530. For discussion of how to claim exemption, see step 13, above.
- b. Defendant's claim will be denied *if* (CCP §484.530(c); see Debt Collection §6.50):
 - (1) Exemption claim was already denied earlier in action; *and*
 - (2) There has been no change in circumstances affecting claim.

Court Order and Findings

Court must order issuance of additional writ of attachment *if it finds that* (CCP §484.520; Debt Collection §6.50):

- a. Right to attach order has been issued after a CCP §484.010 noticed hearing (see step 10, above); *or*

- b. Plaintiff is entitled under CCP §485.240 to right to attach order; *and*
- c. Plaintiff's affidavit or declaration shows that property sought to be attached is not exempt.

IF NOTICED MOTION

Papers to Submit

Plaintiff should submit:

a. Application (use Judicial Council Form AT-105; for sample, see Appendix B to this Action Guide (check "ORDER FOR ISSUANCE OF ADDITIONAL WRIT OF ATTACHMENT" in caption and check box item 1b, and appropriately modify item 11); see also Judicial Council Forms Man 4-3) executed under penalty of perjury and containing:

(1) Statement that (CCP §484.320(a)):

- (a) Plaintiff has been issued right to attach order after noticed hearing under CCP §484.010 (see item 11 of Form AT-105); *or*
- (b) Court has found that plaintiff is entitled to right to attach order under CCP §485.240;

(2) Statement of the amount to be secured by the additional attachment (see item 8 of Form AT-105; CCP §484.320(b));

(3) Description of property plaintiff seeks to attach and statutory authority providing for method of levy to show property not exempt (see item 9c of Form AT-105; CCP §§484.320(c), 488.300-488.485); *and*

(4) Statement that applicant has no information or belief that claim is discharged or stayed by operation of the Bankruptcy Code (see item 5 of Form AT-105; CCP §484.320(d)).

b. Notice of application (use Judicial Council Form AT-115; for sample, see Appendix E to this Action Guide (modify by checking "ADDITIONAL WRITS OF ATTACHMENT" in caption and by checking box in item 2c); see also Judicial Council Forms Man 4-7) informing defendant of *all* six items specified in CCP §484.340, *i.e.*:

(1) Plaintiff applied for writ of attachment on property described in application (see item 2c of Form AT-115; CCP §484.340(a));

(2) Date, time, place of hearing (see item 3 of Form AT-115; CCP §484.340(b));

(3) Court will order writ of attachment to be issued *unless* court determines property is exempt or its value clearly exceeds amount necessary to satisfy amount attachment would secure (see item 6c of Form AT-115; CCP §484.340(c));

(4) Defendant may file for exemption (see items 6d-f of Form AT-115; CCP §484.340(d));

(5) Defendant or defendant's counsel or both may be present at hearing (see item 6i of Form AT-115; CCP §484.340(e)); *and*

(6) The following required 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" (see item 4j of Form AT-115; CCP §484.340(f)).

c. Affidavit or declaration in support of application (see Supporting Affidavit or Declaration, step 10, above).

d. Memorandum of points and authorities.

e. Order for issuance of additional writ of attachment (use Judicial Council Form AT-120; for sample, see Appendix F to this Action Guide (modified to reflect that additional writ obtained); see also Judicial Council Forms Man 4-9).

f. Undertaking under CCP §484.370 (if not previously filed).

Give Proper Notice

Serve application and notice of application **16 court days** before hearing. CCP §1005(a). For service by mail within California, add **5 days** to notice period. CCP §1005(b).

Anticipate Defendant Claiming Property Exempt

a. *When*: Not less than **5 court days** before hearing date.

b. *Procedure*: Defendant files and serves (CCP §484.350(d)):

(1) Claim of exemption (CCP §484.350(d); use Judicial Council Form AT-155; for sample, see Appendix J to this Action Guide; see also Judicial Council Forms Man 4-23);

(2) Affidavit in support of application; and

(3) Memorandum of points and authorities. CCP §484.350(b)-(c).

c. *Waiver*: Unless there is a showing of changed circumstances (CCP §§482.100, 484.350; for discussion of how to claim exemption, see step 13, above), defendant may not later claim exemption if defendant (CCP §484.350(a)):

(1) Fails to make claim with respect to personal property; or

(2) Makes unsuccessful claim regarding real or personal property.

Opposing Defendant's Exemption Claim

a. *Mandatory*: You must file and serve notice of opposition, or "no writ of attachment shall be issued as to the property claimed to be exempt." CCP §484.360(b); Bank of America v Salinas Nissan, Inc. (1989) 207 CA3d 260, 268, 254 CR 748.

b. *When*: Not less than **2 days** before hearing date. CCP §484.360(a).

c. *Procedure*: Plaintiff files and serves on defendant (CCP §484.360(a)):

(1) Notice of opposition;

(2) Affidavit supporting any factual issues raised; and

(3) Memorandum of points and authorities, if defendant raises any legal issues.

d. *Burden of proof*: Burden of proving that property is exempt from attachment is on defendant. CCP §484.360(c).

Court Order and Findings

Court must issue order for additional writ if it finds that (CCP §484.370):

a. Right to attach order has been issued after noticed hearing under CCP §484.010; *or*

b. Court has found that plaintiff is entitled under CCP §485.240 to right to attach order; *and*

c. Defendant has failed to prove that property is exempt.

AFTER NONRESIDENT RIGHT TO ATTACH ORDER

EX PARTE APPLICATION

When to File

Plaintiff may apply for additional writs any time *after* issuance of nonresident right to attach order and *before* any hearing on motion to set aside attachment order. CCP §492.060.

Papers to Submit

Plaintiff should submit:

a. Application (Judicial Council Form AT-105; see Judicial Council Forms Man 4-3) executed under penalty of perjury and containing (CCP §492.070(a)-(c)):

(1) Statement that plaintiff has been issued nonresident right to attach order;

- (2) Statement of amount to be secured by attachment; and
 - (3) Description of property plaintiff seeks to attach and statement that plaintiff is informed and believes that such property is subject to attachment under nonresident attachment statute.
- b. Affidavit in support of declaration (CCP §492.090(b)).
 - c. Attorney's declaration, as required by Cal Rules of Ct 3.1200-3.1207 (for discussion of attorney's declaration, see Attorney's Declaration, step 8, above).
 - d. Memorandum in support of application.
 - e. Undertaking, under CCP §§489.210 and 489.220 (if not previously filed).
 - f. Order for issuance of writ of attachment (Judicial Council Form AT-130; see Judicial Council Forms Man 4-13).

Give Proper Notice

Although this is ex parte application, plaintiff is still required to:

- a. Give notice to opposing counsel (use Judicial Council Form AT-115; for sample, see Appendix E to this Action Guide (modify by checking "ADDITIONAL WRIT OF ATTACHMENT" in caption and by checking box in item 2c); see also Judicial Council Forms Man 4-7); *or*
- b. Satisfy requirements of Cal Rules of Ct 3.1200-3.1207. For discussion of notice requirements of Cal Rules of Ct 3.1200-3.1207, see Giving Notice, step 8, above.

Court Order and Findings

Court must order issuance of additional writ if it finds that (CCP §492.090):

- a. Nonresident right to attach order has been issued; and
- b. Affidavit accompanying plaintiff's application shows that the property sought to be attached is subject to attachment by nonresident attachment procedure.

Further Research: Debt Collection §§6.50-6.51.

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/After TPO or Right to Attach Order Is Issued/STEP 16. LEVY ON WRIT OF ATTACHMENT

STEP 16. LEVY ON WRIT OF ATTACHMENT

NEED FOR LEVY

Plaintiff effects the levy on the writ (has the proper papers served and the property in question seized or lien) in order to (see [Debt Collection §§6.52-6.67](#)):

- a. Perfect attachment lien; and
- b. Make orders binding on defendant and third parties.

REVIEW LEVY PROCEDURES

Who May Levy

- a. Levying officer, who is either sheriff or marshal of county, may levy. [CCP §§488.020, 481.140](#).
- b. Registered process server may levy if writ of attachment is on type of property that is not taken into immediate possession of levying officer, *e.g.*, equipment of ongoing business, real property, bank accounts, etc. See list in [CCP §488.080\(a\)](#).

Who May Not Levy

Neither plaintiff nor plaintiff's attorney may levy.

Comply With Statutes

- a. Because levy process is usually best accomplished *with speed*, plaintiff must exercise great care to ensure that levy fully complies with statutory requirements.
- b. Review carefully levy procedures of [CCP §§488.010-488.740](#) and provisions relating to executions on judgments ([CCP §§700.010-700.200](#)).

NOTE

Do this for every levy. Code may require additional documents or information to be provided to levying officer, *e.g.*, fictitious business statement. See [CCP §488.465\(b\)\(3\)](#).

Proper County

- a. Make sure that writ of attachment is directed to levying officer *in county in which property of defendant is located* ([CCP §488.020\(a\)](#)).
- b. If attaching property is located in several counties, obtain writ for each county for levy by levying officer in each county.

Consult Levying Officer

In order to ensure proper levy, contact levying officer *immediately* to:

- a. Explain scope of writ, *i.e.*, what is being levied on, and code section providing the method of levy; and
- b. Ascertain levy procedures from officer, who will consult his or her levying book, *e.g.*:
 - (1) Cost of levy, which must be paid in advance;
 - (2) Time frame within which the levying officer can accomplish the levy;
 - (3) Whether there are local practices or procedures to be followed;

(4) What documents are needed and number of copies of each document.

NOTE

Develop a good relationship with the office of the levying officer. Its cooperation and persistence are often the primary factors affecting the levy's success.

When to Use Registered Process Server

Use registered process server to levy under writ of attachment:

- a. *Only* on types of property listed in CCP §488.080(a), *e.g.*, real property or substantial bank accounts, when timing really counts; and
- b. When levying officer is not immediately available (process servers often are available sooner than levying officer).

Review Levy Procedures With Process Server

a. Make sure process server knows levy procedures and requirements to which he or she is subject. Process server must:

- (1) Deposit, *before levying*, copy of the writ with levying officer and pay fee required for serving or executing process or notice (CCP §488.080(b));
- (2) Comply with all applicable levying, posting, and service requirements for particular property in question (CCP §488.080(c)(1));
- (3) Request any third party served to give garnishee's memorandum to levying officer on form provided by process server (CCP §488.080(c)(2); for discussion of effect on third parties, see step 18, below); and
- (4) Within **5 court days** after levying, file with levying officer (CCP §488.080(d)):
 - (a) Writ of attachment;
 - (b) Affidavit of registered process server stating manner of levy performed;
 - (c) Proof of service of copy of writ and notice of attachment on other persons; and
 - (d) Written instructions, as required by CCP §488.030.

NOTE

Unless the process server performs both (1) and (4), above, "the levy is ineffective and the levying officer is not required to perform any duties under the writ and may issue a release for any property sought to be attached." CCP §488.080(e).

- b. If fee is paid to levying officer, he or she (CCP §488.080(e)):
 - (1) Returns writ to court; and
 - (2) Performs all other functions required under writ as if levying officer had effected levy.
- c. Plaintiff can recover as a cost, fee paid to registered process server to levy. CCP §§488.080(f), 1033.5(a)(4).

NOTE

You *may* recover cost of levy paid to levying officer, although it is not clearly set forth in the statute.

WHEN TO LEVY

Levy must occur within **180 days** after writ issued. CCP §699.530(b).

WHAT TO SEND LEVYING OFFICER

Whether directly or through the process server, send all documents levying officer requests.

Instructions

Plaintiff should send instructions to levying officer, signed by plaintiff or plaintiff's attorney, containing (CCP §§488.030(a), 488.040):

- a. Adequate description of property to be levied on;
- b. Statement whether property is dwelling;
- c. If property is dwelling, whether it is real or personal property, *e.g.*, mobilehome;
- d. Names and addresses of persons to be served;
- e. *If summons and complaint not previously served*, direction to serve (CCP §488.020(c));
- f. *If plaintiff anticipates need to levy on writ again*, direction to hold writ after levy pending further instructions;
- g. If using process server, a statement that process server has been instructed to perform portions of levy and description of services required of process server; and
- h. All other information needed or required by levying officer to complete levy properly.

Fees and Expenses

Plaintiff should check to cover levying officer's expenses as required (CCP §488.050):

- a. For a keeper (someone who stays with property to protect it), you will need to pay 15 days' expenses (CCP §488.050(a)(2)).
- b. If levying officer must keep property more than **15 days**, he or she may demand additional fees (CCP §488.050(a)(2)).
- c. If not paid, the levying officer may release attached property (CCP §488.050(a)(2)).
- d. Levying officer has special lien on attached personal property in amount of any of his or her unpaid costs. CCP §488.100.

Notice of Attachment

Plaintiff should send notice of attachment (use Judicial Council Form AT-165; for sample, see Appendix M to this Action Guide; see also Judicial Council Forms Man 4-27) containing all information required by CCP §488.060:

- a. Capacity in which person notified;
- b. Specific property to be attached;
- c. Person's rights under attachment; and
- d. Person's duties under attachment.

Writ

Plaintiff should send original writ with one copy for each party to be served.

Orders

Plaintiff should send copies of:

- a. Order for issuance of writ (CCP §488.305); and
- b. Right to attach order.

(1) Consider having right to attach order personally served to enforce, if necessary, the turnover provision of right to attach order.

(2) If you seek to have order personally served on defendant, so state in instructions to levying officer and include additional copies.

Summons and Complaint

Plaintiff should send summons and complaint, if they have not previously been served on defendant.

Further Research: See Debt Collection §§6.52-6.6Z.

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Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/After TPO or Right to Attach Order Is Issued/STEP 17. MONITOR LEVYING OFFICER'S ACTIVITIES

STEP 17. MONITOR LEVYING OFFICER'S ACTIVITIES

UNDERSTAND LEVYING OFFICER'S FUNCTION

After receiving directions and documents from plaintiff, levying officer or registered process server:

- a. Serves notice and writ;
- b. Effects the levy;
- c. Takes custody and control of property; and
- d. Returns writ and inventory to court.

SERVES NOTICE AND WRIT

a. *On defendant:* At time of levy or "promptly thereafter," levying officer serves on defendant (CCP §488.305):

- (1) Copy of writ of attachment; and
- (2) Notice of attachment.

NOTE

If original notice of attachment was served on third party holding attachment property, levying officer's service of copy of that notice on defendant or any other party constitutes adequate notice of attachment. CCP §488.065.

b. *On third parties:* When third party has property of defendant or interest in property at time of levy, levying officer serves on third party (CCP §§488.345, 488.465, 488.610, 700.040):

- (1) Copy of writ of attachment;
- (2) Notice of attachment; and
- (3) Garnishee's memorandum.

NOTE

Because garnishee's memorandum is form usually provided by levying officer or registered process server, you need only provide instructions.

Manner of Service

Mail service is permitted for any party who has already appeared in action, unless order being served is enforceable by court's contempt power. CCP §§482.070, 684.120.

NOTE

Levying officer is required to use personal service on third party in most instances. CCP §§488.345, 488.470, 700.040.

LEVIES ON PROPERTY

Specific methods of levy and procedures by which levying officer levies on various types of property are statutorily defined:

- a. Real property (CCP §§488.315, 700.015);
- b. Growing crops, timber to be cut, minerals to be extracted (CCP §§488.325, 700.020);

- c. Tangible personal property in defendant's possession (CCP §488.335);
- d. Tangible personal property in third person's possession (CCP §§488.345, 700.040);
- e. Personal property in levying officer's custody (CCP §§488.355, 700.050);
- f. Bailed goods not covered by negotiable document of title (CCP §§488.365, 700.060);
- g. Equipment of going business (CCP §488.375);
- h. Vehicle, vessel, mobilehome, or commercial coach that is going business's equipment (CCP §488.385);
- i. Farm products, inventory, and cash proceeds of going business (CCP §§488.395, 488.405);
- j. Personal property used as dwelling (CCP §§488.415, 700.080);
- k. Vehicle, vessel, manufactured home, mobilehome, or commercial coach for which certificate of ownership issued (CCP §§488.425, 700.090);
- l. Chattel paper (CCP §§488.435, 700.100);
- m. Instruments (CCP §§488.440, 700.110);
- n. Negotiable documents of title (CCP §§488.445, 700.120);
- o. Securities (CCP §488.450; Com C §8112);
- p. Deposit accounts (CCP §488.455);
- q. Safe deposit boxes (CCP §488.460);
- r. Deposit accounts and safe deposit boxes not exclusively in defendant's name (CCP §488.465);
- s. Accounts receivable and general intangibles (CCP §488.470);
- t. Property that is subject of pending action or proceeding (CCP §488.475);
- u. Final money judgment (CCP §488.480);
- v. Interests in personal property of decedent's estate (CCP §488.485); and
- w. *Other property*: If questionable whether particular property falls within one of above categories, see "Definitions" in CCP §§481.010-481.225.

TAKES CUSTODY AND CONTROL

Levying officer takes custody and control of the property (as required by method of levy) by (CCP §488.090):

- a. Removing property to place of safekeeping, usually bonded warehouse;
- b. Installing a keeper; or
- c. Otherwise obtaining possession or control of property.

NOTE

Levying officer holds property until judgment is entered or property is released. CCP §§488.730-488.740.

RETURNS WRIT AND INVENTORY TO COURT

Within **60 days** after receiving the writ of attachment, the levying officer returns the following to the court (CCP §488.130):

- a. Original writ, "together with a report of the levying officer's actions"; and
- b. Levying officer's full inventory taken of property attached.

NOTE

Levying officer usually will send plaintiff or plaintiff's counsel a copy of this return. If you anticipate the need to levy on the writ again, your initial instructions (see [step 16](#), above) should direct the levying officer to hold writ pending further instructions.

LEVYING OFFICER'S LIABILITY

Levying officer (or registered process server):

- a. Will *not* be held liable for failure to take or hold property *unless* plaintiff has complied with statutory deposit provisions ([CCP §488.050\(b\)](#));
- b. Is entitled to rely in good faith on instructions provided by plaintiff *except* to extent officer has actual knowledge that information is incorrect ([CCP §§488.030\(c\)](#), [488.040\(b\)](#));
- c. Is not liable for determinations made in good faith about property being attached ([CCP §488.020\(b\)](#)); and
- d. *Unless negligent in handling of property*, is not liable to plaintiff or defendant for loss or damage to that property. [CCP §488.140\(b\)](#).

Further Research: [Debt Collection §§6.52-6.6Z](#).

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Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/After TPO or Right to Attach Order Is Issued/STEP 18. REVIEW EFFECT OF LEVY

STEP 18. REVIEW EFFECT OF LEVY

EFFECT ON DEFENDANT

- a. Levy creates attachment lien on defendant's property until attachment expires or is released. CCP §488.500(a).
- b. Levy on chattel paper creates lien on defendant's rights *in specific goods* subject to chattel paper in addition to any other rights created by the levy on chattel paper. CCP §488.435(b).
- c. Lien survives and takes priority over all transfers and encumbrances *except* as provided by CCP §488.500(b)-(e).

Relation Back of Lien

- a. Priority of attachment lien relates back to when TPO is served (CCP §488.500(e));
- b. After plaintiff obtains judgment *and* effects judgment lien, judgment lien relates back to effective date of attachment lien.

EFFECT ON THIRD PARTIES

Levy on writ of attachment creates the same attachment lien regarding third parties as against defendant. CCP §488.600 (incorporating CCP §§701.010-701.070).

Garnishee's Memorandum

- a. Along with copy of writ of attachment and notice of attachment on third party, levying officer also gives garnishee's memorandum to third party. CCP §488.610(a); Judicial Council Form AT-167. See Judicial Council Forms Man 4-28.1; Debt Collection §§6.84-6.87.
- b. Within **10 days** after request is made, third party must mail or deliver completed garnishee's memorandum to the levying officer, *regardless of whether the levy is effective*. CCP §488.610(a).
- c. Garnishee's memorandum must be executed under oath and contain the following (CCP §488.610(b)):
 - (1) Description of any of defendant's property plaintiff seeks to attach that is *not* delivered to the levying officer, and reason for nondelivery;
 - (2) Statement of amount and terms of any obligation to defendant that plaintiff seeks to attach that is due and payable and is *not* paid to levying officer, and reason for nonpayment;
 - (3) Statement of amount and terms of any obligation to defendant that plaintiff seeks to attach and is *not* due and payable at time of levy; and
 - (4) Description of claims and rights of other persons to attached property that are known to third party, and names and addresses of those other persons.
- d. Third party need *not* give garnishee's memorandum to levying officer when:
 - (1) Property is in deposit account or safe deposit box in financial institution and institution (as third person) has fully complied with levy. CCP §488.610(e); or
 - (2) Third person has delivered to levying officer all property sought to be attached *and* has paid to levying officer full amount due on any obligation to defendant. CCP §488.610(f).
- e. If garnishee's memorandum is received from third party, levying officer (CCP §488.610(c)):
 - (1) Promptly mails or delivers copy of memorandum to plaintiff; *and*
 - (2) Attaches original memorandum to writ when it is returned to court.

NOTE

Mark your calendar for **30 days** after levying officer served memorandum. If you have not received it by then, contact third party and remind of obligation to furnish memorandum. Expect to receive from third party what that party gave levying officer.

f. Third party may "be required to pay the costs and reasonable attorney fees incurred in any proceedings to obtain the information required in the garnishee's memorandum" if third party (CCP §488.610(d)):

- (1) Does not give levying officer garnishee's memorandum; or
- (2) Does not provide complete information in memorandum.

DURATION OF ATTACHMENT LIEN

Unless released, discharged, or extended, attachment lien expires **3 years** after writ's issuance date. CCP §488.510(a).

EXTENSION

Bring Motion to Extend

Plaintiff may extend writ by obtaining order permitting extension of attachment for period *not exceeding 1 year* from expiration date (CCP §488.510(b)),

Deadlines

Deadlines are as follows:

- a. *For motion:* **10 to 60 days** before 3-year period expires, plaintiff brings motion to secure an extension.
- b. *For notice of motion:* Plaintiff gives defendant no less than **5 days' notice** that he or she is making a motion to extend.

Order Served

Levying officer serves notice of any extension order. CCP §488.510(c).

8-Year Maximum Period

Any attachment can be extended "from time to time," but maximum period of time for any attachment is 8 years. CCP §488.510(d).

RELEASE OF ATTACHMENT

Plaintiff

Plaintiff has right to release property voluntarily by written direction to levying officer. CCP §488.730(a).

NOTE

Judgment for plaintiff does not automatically release attachment lien.

Defendant

Defendant can secure release of attachment by:

- a. Filing bond (CCP §489.310);
- b. Obtaining favorable judgment in action on underlying claim (CCP §488.740);
- c. Making successful motion to release attachment (CCP §488.720); or
- d. Making successful post-levy claim of exemption. CCP §485.610.

NOTE

Death of defendant whose property is attached does *not* terminate attachment lien. CCP §488.510(e).

Bankrupt Defendant

If *all* liens of attachment on defendant's property in other states that were created within statutorily specified 90-day period have terminated, then (CCP §493.030(c)):

a. General assignment by defendant for benefit of creditors terminates lien of TPO or attachment *if* the lien was created within **90 days before** making of general assignment (CCP §493.030(a)); or

b. Filing of petition by defendant commencing voluntary or involuntary case under Chapter 11 of the Bankruptcy Code terminates lien of TPO or attachment *if* lien was created within **90 days before** petition was filed (CCP §493.030(b)).

Further Research: Debt Collection §6.67.

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Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/After TPO or Right to Attach Order Is Issued/STEP 19. CONSIDER ANY POST-LEVY CLAIMS BY DEFENDANT OR THIRD PARTIES

STEP 19. CONSIDER ANY POST-LEVY CLAIMS BY DEFENDANT OR THIRD PARTIES

DEFENDANT'S CLAIM OF EXEMPTION

At any time before judgment entered, defendant can file claim of exemption regarding *real property* (CCP §487.020(b) (property necessary for support of defendant or defendant's family), §487.030(b)).

Procedure

- a. Defendant makes post-levy claim of exemption by following CCP §§703.510-703.610 or CCP §482.100(c) procedures.
- b. Defendant's claim does not need to include showing of changed circumstances. See step 12, above.

THIRD PARTY CLAIM

Third party claiming interest in attached property also may file and serve third party claim to that property in accord with procedures set forth in the Enforcement of Judgments Act (CCP §§720.010-720.800). For allocation of burden of proof, see *Whitehouse v Six Corp.* (1995) 40 CA4th 527, 48 CR2d 600.

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/After TPO or Right to Attach Order Is Issued/STEP 20. PURSUE ENFORCEMENT PROCEDURES, IF NECESSARY

STEP 20. PURSUE ENFORCEMENT PROCEDURES, IF NECESSARY

TPO

Enforce TPO by contempt proceeding under CCP §§1209-1222.

Limited Enforcement

Lien on property subject to TPO may be enforceable against third parties except when property has been transferred to persons listed in CCP §697.740. See CCP §486.110.

RIGHT TO ATTACH ORDER AND WRIT OF ATTACHMENT

Against Defendant

a. Right to attach order and order for issuance of writ of attachment may include turnover language (see step 6, above; for discussion of papers to submit, see step 8, above) requiring defendant to transfer to levying officer (CCP §482.080(a)) possession of:

- (1) Property, if officer is to attach by taking property into custody; and
- (2) Documentary evidence of title to property or debt owed to defendant that plaintiff seeks to attach.

b. Plaintiff can enforce turnover order against defendant by contempt proceeding *if* (CCP §482.080(b)):

- (1) Order is personally served on defendant; and
- (2) Order contains notice to defendant that failure to comply may result in punishment for contempt of court.

c. Constitutional and statutory prohibitions of imprisonment for debt *do not* preclude imprisonment for violation of court order, including turnover order. See CCP §501.

Against Third Parties

Plaintiff can:

- a. Enforce completion and return of garnishee's memorandum (CCP §488.610);
- b. Examine the garnishee (CCP §§491.110-491.200);
- c. File creditor's suit to enforce third party's liability (CCP §§491.310-491.370); and
- d. File fraudulent transfer action. See the Uniform Fraudulent Transfer Title Act (CC §§3439-3439.12).

NOTE

The summary procedure for an attaching creditor under CCP §491.170 is inappropriate to determine a claim of a third party that denies the debt in good faith if the court finds that the complex claim is more suitable for a creditor's suit. See *Foods Co. Ltd. v O.M. Foods Co., Ltd.* (2007) 150 CA4th 769, 785, 58 CR3d 700.

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/After TPO or Right to Attach Order Is Issued/STEP 21. CONSIDER OPPORTUNITIES FOR APPEAL OF ATTACHMENT ORDERS

STEP 21. CONSIDER OPPORTUNITIES FOR APPEAL OF ATTACHMENT ORDERS

BY WRIT OF MANDATE

Plaintiff and defendant can seek review of attachment order by writ of mandate (see Weaver v Superior Court (1949) 93 CA2d 729, 735, 210 P2d 246; Alexander v Superior Court (1928) 91 CA 312, 316, 266 P 993; but see Lobr v Superior Court (1952) 111 CA2d 231, 235, 244 P2d 5).

- a. *Defendant* may file when attachment application is granted.
- b. *Plaintiff* may file when attachment order is discharged.

BY DIRECT APPEAL

a. Party may take direct appeal from (CCP §904.1(a)(5) (unlimited civil cases), CCP §904.2(f) (limited civil cases); but see Perpetual Am. Bank v Terrestrial Sys., Inc. (9th Cir 1987) 811 F2d 504 (order granting right to attach application nonappealable)):

- (1) Order discharging attachment order;
- (2) Order denying motion or application to discharge attachment order; or
- (3) Right to attach order and order for issuance of writ of attachment.

b. No appeal may be taken from order denying application for writ of attachment. International Typographical Union Negotiated Pension Plan v Ad Compositors, Inc. (1983) 142 CA3d 733, 735, 191 CR 227.

Undertaking on Appeal by Plaintiff

a. Plaintiff's appeal from adverse judgment on underlying claim releases attachment unless (CCP §921):

- (1) Plaintiff posts bond that "will pay all costs and damages which the respondent may sustain by reason of the attachment"; *and*
- (2) Appeal is perfected within **5 days** after written notice that order plaintiff is appealing from has been entered. For how to proceed on appeal, see Handling Civil Appeals (Cal CEB Action Guide June 2008).

b. Amount of plaintiff's bond must equal (CCP §921):

- (1) Amount of CCP §489.410 order; *or*
- (2) If no order was issued under CCP §489.410, twice amount of obligation secured by the attachment. CCP §921.

Undertaking on Appeal by Defendant

Defendant's appeal from judgment releases attachment if (CCP §489.420):

- a. Judgment is stayed by filing of appeal bond; *and*
- b. Plaintiff respondent fails to object to bond's sufficiency within time allowed by statute, or court determines that bond is sufficient.

APPENDIXES

WHEN USING FORMS, REMEMBER THESE POINTS:

Application

Submit with:

- a. Declaration;
- b. Memorandum in support of application; and
- c. If ex parte, declaration of counsel showing compliance with Cal Rules of Ct 3.1200-3.1207. For discussion of this declaration, see Attorney's Declaration, step 8, above.

Declaration

- a. Include each fact required by relevant code section, *e.g.*, CCP §484.020.
- b. Base facts on competent and admissible evidence. CCP §482.040.
- c. Ensure attached documents are authenticated and otherwise made admissible. CCP §482.040.

The following table lists the description of each form, Appendix location, Judicial Council (JC) reference number, and a reference to the relevant steps of this Action Guide that discuss the form and its use.

<u>Appendix</u>	<u>JC Form</u>	<u>Description</u>	<u>Action Guide Steps</u>
A	AT-105	Application for Right to Attach Order, Temporary Protective Order, Etc. (Ex Parte Application)	<u>8-9, 15</u>
B	AT-105	Application for Right to Attach Order, Temporary Protective Order, Etc. (Application After Hearing)	<u>10-11, 15</u>
C	AT-125	Ex Parte Right to Attach Order and Order for Issuance of Writ of Attachment (Resident)	<u>8, 15</u>
D	AT-130	Ex Parte Right to Attach Order and Order for Issuance of Writ of Attachment (Nonresident)	<u>9, 15</u>
E	AT-115	Notice of Application and Hearing for Right to Attach Order and Writ of Attachment	<u>10, 15</u>
F	AT-120	Right to Attach Order After Hearing and Order for Issuance of Writ of Attachment	<u>5, 10, 15</u>
G	AT-135	Writ of Attachment (Ex Parte)	<u>9</u>
H	AT-135	Writ of Attachment (After Hearing)	<u>10</u>
I	AT-140	Temporary Protective Order	<u>11</u>
J	AT-155	Notice of Opposition to Right to Attach Order and Claim of Exemption	<u>12-13, 15</u>
K	AT-145	Application and Notice of Hearing for Order to Terminate, Modify, or Vacate Temporary Protective Order	<u>14</u>
L	AT-150	Order to Terminate, Modify, or Vacate Temporary Protective Order	<u>14</u>
M	AT-165	Notice of Attachment	<u>16</u>
N		Procedural Checklist	

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/APPENDIXES/APPENDIX A Sample Application for Right to Attach Order, Temporary Protective Order, Etc. (Ex Parte Application)

APPENDIX A

Sample Application for Right to Attach Order, Temporary Protective Order, Etc.
(Ex Parte Application)



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Peter M. Rehon (Bar # 100123) REHON & ROBERTS Ten Almaden Boulevard, Suite 550 San Jose, California 95113 TELEPHONE NO.: (408) 494-0900 FAX NO.: (408) 494-0909 ATTORNEY FOR (Name): MOST GENEROUS BANK, Plaintiff	FOR COURT USE ONLY
NAME OF COURT: Superior Court of California, County of Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Superior Court of California, County of Santa Clara	
PLAINTIFF: MOST GENEROUS BANK, a California Banking Corporation DEFENDANT: DEDLOCK CORPORATION, a California Corporation	
APPLICATION FOR <input checked="" type="checkbox"/> RIGHT TO ATTACH ORDER <input checked="" type="checkbox"/> TEMPORARY PROTECTIVE ORDER <input checked="" type="checkbox"/> ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT <input type="checkbox"/> ORDER FOR ISSUANCE OF ADDITIONAL WRIT OF ATTACHMENT <input type="checkbox"/> After Hearing <input checked="" type="checkbox"/> Ex Parte <input type="checkbox"/> Against Property of Nonresident	CASE NUMBER: <p style="text-align: center;">CV-000001</p>

1. Plaintiff (name): **MOST GENEROUS BANK, a California Banking Corporation**
 applies after hearing ex parte for
- a right to attach order and writ of attachment.
 - an additional writ of attachment.
 - a temporary protective order.
 - an order directing the defendant to transfer to the levying officer possession of
 - property in defendant's possession.
 - documentary evidence in defendant's possession of title to property.
 - documentary evidence in defendant's possession of debt owed to defendant.
2. Defendant (name): **DEDLOCK CORPORATION, a California Corporation**
- is a natural person who
 - resides in California.
 - does not reside in California.
 - is a corporation
 - qualified to do business in California.
 - not qualified to do business in California.
 - is a California partnership or other unincorporated association.
 - is a foreign partnership that
 - has filed a designation under Corporations Code section 15800.
 - has not filed a designation under Corporations Code section 15800.
 - is other (specify):
3. Attachment is sought to secure recovery on a claim upon which attachment may issue under Code of Civil Procedure section 483.010.
4. Attachment is not sought for a purpose other than the recovery on a claim upon which the attachment is based.
5. Plaintiff has no information or belief that the claim is discharged or the prosecution of the action is stayed in a proceeding under Title 11 of the United States Code (Bankruptcy).

(Continued on reverse)

Page one of three

SHORT TITLE: Most Generous Bank v. Dedlock Corporation	CASE NUMBER: CV-000001
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6. Plaintiff's claim or claims arise out of conduct by the defendant who is a natural person of a trade, business, or profession. The claim or claims are not based on the sale or lease of property, a license to use property, the furnishing of services, or the loan of money where any of the foregoing was used by the defendant primarily for personal, family, or household purposes.
7. The facts showing plaintiff is entitled to a judgment on the claim on which the attachment is based are set forth with particularity in the
- a. verified complaint.
 - b. attached affidavit or declaration.
 - c. following facts (*specify*):
8. The amount to be secured by the attachment is: \$ 1,000,000.00
- a. which includes estimated costs of: \$ 5,000.00
 - b. which includes estimated allowable attorney fees of: \$ 25,000.00
9. Plaintiff is informed and believes that the following property sought to be attached for which a method of levy is provided is subject to attachment:
- a. Any property of a defendant who is **not** a natural person.
 - b. Any property of a nonresident defendant.
 - c. Property of a defendant who is a natural person that is subject to attachment under Code of Civil Procedure section 487.010 described as follows (*specify*):
- d. Property covered by a bulk sales notice with respect to a bulk transfer by defendant on the proceeds of the sale of such property (*describe*):
- e. Plaintiff's pro rata share of proceeds from an escrow in which defendant's liquor license is sold (*specify license number*):
10. Plaintiff is informed and believes that the property sought to be attached is not exempt from attachment.
11. The court issued a Right to Attach Order on (*date*):
 (*Attach a copy.*)
12. Nonresident defendant has not filed a general appearance.

(Continued on page three)



SHORT TITLE: Most Generous Bank v. Dedlock Corporation	CASE NUMBER: CV-000001
--	---------------------------

13. a. Plaintiff alleges on ex parte application for order for writ of attachment is informed and believes on application for temporary protective order that plaintiff will suffer great or irreparable injury if the order is not issued before the matter can be heard on notice because
- (1) it may be inferred that there is a danger that the property sought to be attached will be
- (a) concealed.
 - (b) substantially impaired in value.
 - (c) made unavailable to levy by other than concealment or impairment in value.
- (2) defendant has failed to pay the debt underlying the requested attachment and is insolvent as defined in Code of Civil Procedure section 485.010, subdivision (b)(2).
- (3) a bulk sales notice was recorded and published pursuant to Division 6 of the Commercial Code with respect to a bulk transfer by the defendant.
- (4) an escrow has been opened under the provisions of Business and Professions Code section 24074 with respect to the sale by the defendant.
- (5) other circumstances (*specify*):

b. The statements in item 13a are established by the attached affidavit or declaration the following facts (*specify*):

14. Plaintiff requests the following relief by temporary protective order (*specify*): The defendant is restrained from transferring or encumbering any interest in its property or impairing its value.

15. Plaintiff
- a. has filed an undertaking in the amount of: \$
 - b. has not filed an undertaking.

Date: July 26, 2009

.. **Most Generous Bank by Peter M. Rehon, Esq.** ..
(TYPE OR PRINT NAME OF PLAINTIFF OR PLAINTIFF'S ATTORNEY)

(SIGNATURE OF PLAINTIFF OR PLAINTIFF'S ATTORNEY)

DECLARATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 26, 2009

... **James G. Generous, Jr., Vice President** ...
(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

16. Number of pages attached: 10

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/APPENDIXES/APPENDIX B Sample Application for Right to Attach Order, Temporary Protective Order, Etc. (Application After Hearing)

APPENDIX B
Sample Application for Right to Attach Order, Temporary Protective Order, Etc.
(Application After Hearing)



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Peter M. Rehon (Bar # 100123) REHON & ROBERTS Ten Almaden Boulevard, Suite 550 San Jose, California 95113 TELEPHONE NO.: (408) 494-0900 FAX NO.: (408) 494-0909 ATTORNEY FOR (Name): MOST GENEROUS BANK, Plaintiff	FOR COURT USE ONLY
NAME OF COURT: Superior Court of California, County of Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Superior Court of California, County of Santa Clara	
PLAINTIFF: MOST GENEROUS BANK, a California Banking Corporation DEFENDANT: DEDLOCK CORPORATION, a California Corporation	
APPLICATION FOR <input checked="" type="checkbox"/> RIGHT TO ATTACH ORDER <input checked="" type="checkbox"/> TEMPORARY PROTECTIVE ORDER <input checked="" type="checkbox"/> ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT <input type="checkbox"/> ORDER FOR ISSUANCE OF ADDITIONAL WRIT OF ATTACHMENT <input checked="" type="checkbox"/> After Hearing <input type="checkbox"/> Ex Parte <input type="checkbox"/> Against Property of Nonresident	CASE NUMBER: <p style="text-align: center;">CV-000001</p>

1. Plaintiff (name): **MOST GENEROUS BANK, a California Banking Corporation**
 applies after hearing ex parte for
- a right to attach order and writ of attachment.
 - an additional writ of attachment.
 - a temporary protective order.
 - an order directing the defendant to transfer to the levying officer possession of
 - property in defendant's possession.
 - documentary evidence in defendant's possession of title to property.
 - documentary evidence in defendant's possession of debt owed to defendant.
2. Defendant (name): **DEDLOCK CORPORATION, a California Corporation**
- is a natural person who
 - resides in California.
 - does not reside in California.
 - is a corporation
 - qualified to do business in California.
 - not qualified to do business in California.
 - is a California partnership or other unincorporated association.
 - is a foreign partnership that
 - has filed a designation under Corporations Code section 15800.
 - has not filed a designation under Corporations Code section 15800.
 - is other (specify):
3. Attachment is sought to secure recovery on a claim upon which attachment may issue under Code of Civil Procedure section 483.010.
4. Attachment is not sought for a purpose other than the recovery on a claim upon which the attachment is based.
5. Plaintiff has no information or belief that the claim is discharged or the prosecution of the action is stayed in a proceeding under Title 11 of the United States Code (Bankruptcy).

(Continued on reverse)

Page one of three

SHORT TITLE: Most Generous Bank v. Dedlock Corporation	CASE NUMBER: CV-000001
---	---------------------------

6. Plaintiff's claim or claims arise out of conduct by the defendant who is a natural person of a trade, business, or profession. The claim or claims are not based on the sale or lease of property, a license to use property, the furnishing of services, or the loan of money where any of the foregoing was used by the defendant primarily for personal, family, or household purposes.
7. The facts showing plaintiff is entitled to a judgment on the claim on which the attachment is based are set forth with particularity in the
- a. verified complaint.
 - b. attached affidavit or declaration.
 - c. following facts (*specify*):
8. The amount to be secured by the attachment is: \$ 1,000,000.00
- a. which includes estimated costs of: \$ 5,000.00
 - b. which includes estimated allowable attorney fees of: \$25,000.00
9. Plaintiff is informed and believes that the following property sought to be attached for which a method of levy is provided is subject to attachment:
- a. Any property of a defendant who is **not** a natural person.
 - b. Any property of a nonresident defendant.
 - c. Property of a defendant who is a natural person that is subject to attachment under Code of Civil Procedure section 487.010 described as follows (*specify*):
 - d. Property covered by a bulk sales notice with respect to a bulk transfer by defendant on the proceeds of the sale of such property (*describe*):
 - e. Plaintiff's pro rata share of proceeds from an escrow in which defendant's liquor license is sold (*specify license number*):
10. Plaintiff is informed and believes that the property sought to be attached is not exempt from attachment.
11. The court issued a Right to Attach Order on (*date*):
(*Attach a copy.*)
12. Nonresident defendant has not filed a general appearance.

(Continued on page three)



13. a. Plaintiff alleges on ex parte application for order for writ of attachment
 is informed and believes on application for temporary protective order
that plaintiff will suffer great or irreparable injury if the order is not issued before the matter can be heard on notice because
- (1) it may be inferred that there is a danger that the property sought to be attached will be
- (a) concealed.
(b) substantially impaired in value.
(c) made unavailable to levy by other than concealment or impairment in value.
- (2) defendant has failed to pay the debt underlying the requested attachment and is insolvent as defined in Code of Civil Procedure section 485.010, subdivision (b)(2).
- (3) a bulk sales notice was recorded and published pursuant to Division 6 of the Commercial Code with respect to a bulk transfer by the defendant.
- (4) an escrow has been opened under the provisions of Business and Professions Code section 24074 with respect to the sale by the defendant.
- (5) other circumstances (*specify*):

b. The statements in item 13a are established by the attached affidavit or declaration
 the following facts (*specify*):

14. Plaintiff requests the following relief by temporary protective order (*specify*): The defendant is restrained from transferring or encumbering any interest in its property or impairing its value.

15. Plaintiff
- a. has filed an undertaking in the amount of: \$
b. has not filed an undertaking.

Date: July 26, 2009

Most Generous Bank by Peter M. Rehon, Esq. . . .
(TYPE OR PRINT NAME OF PLAINTIFF OR PLAINTIFF'S ATTORNEY)

(SIGNATURE OF PLAINTIFF OR PLAINTIFF'S ATTORNEY)

DECLARATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 26, 2009

James G. Generous, Jr., Vice President
(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

16. Number of pages attached: 10

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/APPENDIXES/APPENDIX C Sample Ex Parte Right to Attach Order and Order for Issuance of Writ of Attachment (Resident)

APPENDIX C

Sample Ex Parte Right to Attach Order and Order for Issuance of Writ of Attachment (Resident)



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Peter M. Rehon (Bar # 100123) REHON & ROBERTS Ten Almaden Boulevard, Suite 550 San Jose, California 95113 TELEPHONE NO.: (408) 494-0900 FAX NO.: (408) 494-0909 ATTORNEY FOR (Name): MOST GENEROUS BANK, Plaintiff	FOR COURT USE ONLY
NAME OF COURT: Superior Court of California, County of Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Superior Court of California, County of Santa Clara	
PLAINTIFF: MOST GENEROUS BANK, a California Banking Corporation DEFENDANT: DEDLOCK CORPORATION, a California Corporation	
EX PARTE <input checked="" type="checkbox"/> RIGHT TO ATTACH ORDER AND ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT (RESIDENT) <input type="checkbox"/> ORDER FOR ISSUANCE OF ADDITIONAL WRIT OF ATTACHMENT (RESIDENT)	CASE NUMBER: <p style="text-align: center; font-size: 1.2em;">CV-000001</p>

1. The application and supporting declaration or affidavit of plaintiff (name): **MOST GENEROUS BANK** for an ex parte right to attach order and order for issuance of writ of attachment order for issuance of an additional writ of attachment has been considered by the court.

FINDINGS

2. THE COURT FINDS

- a. Defendant (specify name): **DEDLOCK CORPORATION** is a natural person partnership unincorporated association corporation other (specify):
- b. The claim upon which the application is based is one upon which an attachment may be issued under Code of Civil Procedure section 483.010.
- c. Plaintiff has established the probable validity of the claim upon which the attachment is based.
- d. The attachment is not sought for a purpose other than the recovery on the claim upon which the application is based.
- e. The amount to be secured by the attachment is greater than zero.
- f. The affidavit or declaration accompanying the application shows that the property sought to be attached, or the portions thereof to be specified in the writ, are not exempt from attachment.
- g. The portion of the property sought to be attached described in item 3b is not exempt from attachment.
- h. An undertaking in the amount of: \$ **7,500.00** is required before a writ shall issue, and plaintiff has has not filed an undertaking in that amount.
- i. Great or irreparable injury will result to the plaintiff if issuance of the order is delayed until the matter can be heard on notice, based on the following:
 - (1) There is a danger that the property sought to be attached would be
 - (a) concealed
 - (b) substantially impaired in value.
 - (c) made unavailable to levy by other than concealment or impairment in value.
 - (2) Defendant has failed to pay the debt underlying the requested attachment and is insolvent as defined in Code of Civil Procedure section 485.010, subdivision (b)(2), as set forth in the affidavit or declaration filed in support of this application, which specifies the defendant's known undisputed debts and the basis for plaintiff's determination that the defendant's debts are undisputed.
 - (3) A bulk sales notice was recorded and published pursuant to Division 6 of the Commercial Code with respect to a bulk transfer by the defendant.
 - (4) An escrow has been opened pursuant to the provisions of Business and Professions Code section 24074 with respect to the sale by the defendant of a liquor license. The liquor license number is:
 - (5) Other circumstances (specify):
- j. A Right to Attach Order was issued on (date): pursuant to Code of Civil Procedure section 484.090 (on notice) Code of Civil Procedure section 485.220 (ex parte)
- k. Other (specify):

(Continued on reverse)



SHORT TITLE: Most Generous Bank v Dedlock Corporation	CASE NUMBER: CV - 000001
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ORDER

3. THE COURT ORDERS

a. Plaintiff has a right to attach property of defendant (*name*): DEDLOCK CORPORATION, a California Corporation in the amount of: \$ 1,000,000.00

b. The clerk shall issue a writ of attachment an additional writ of attachment in the amount stated in item 3a forthwith upon the filing of an undertaking in the amount of: \$

(1) for the property covered by a bulk sales notice with respect to a bulk transfer by defendant or the proceeds of the sale of such property, described as follows (*specify*):

(2) for plaintiff's pro rata share of proceeds from an escrow in which defendant's liquor license is sold. The license number is (*specify*):

(3) for any property of a defendant who is **not** a natural person for which a method of levy is provided.

(4) for property of a defendant who is a natural person subject to attachment under Code of Civil Procedure section 487.010 (*specify*):

c. Defendant shall transfer to the levying officer possession of

(1) any documentary evidence in defendant's possession of title to any property described in item 3b.

(2) any documentary evidence in defendant's possession of debt owed to defendant described in item 3b.

(3) the following property in defendant's possession (*specify*):

NOTICE TO DEFENDANT: FAILURE TO COMPLY WITH THIS ORDER MAY SUBJECT YOU TO ARREST AND PUNISHMENT FOR CONTEMPT OF COURT.

d. Other (*specify*):

e. Total number of boxes checked in item 3: 7

Date:

.....
(TYPE OR PRINT NAME)

(SIGNATURE OF JUDGE OR COMMISSIONER)

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/APPENDIXES/APPENDIX D Sample Ex Parte Right to Attach Order and Order for Issuance of Writ of Attachment (Nonresident)

APPENDIX D

Sample Ex Parte Right to Attach Order and Order for Issuance of Writ of Attachment (Nonresident)



SHORT TITLE:
Most Generous Bank v. Dedlock Corporation

CASE NUMBER:
CV-000001

ORDER

3. THE COURT ORDERS

- a. Plaintiff has a right to attach property of the nonresident defendant named in item 2a in the amount of: \$ 1,000,000.00
- b. The clerk shall issue a writ of attachment an additional writ of attachment in the amount stated in item 3a forthwith upon the filing of an undertaking in the amount of: \$ 7,500.00 against the following property of defendant:
ALL CORPORATE PROPERTY OF DEFENDANT DEDLOCK TELECOMMUNICATIONS CORPORATION WHICH IS SUBJECT TO ATTACHMENT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 487.010(a).

- c. Defendant shall transfer to the levying officer possession of
- (1) any documentary evidence in defendant's possession of title to any property described in item 3b.
 - (2) any documentary evidence in defendant's possession of debt owed to defendant described in item 3b.
 - (3) the following property in defendant's possession (*specify*):
See 3b above

NOTICE TO DEFENDANT: FAILURE TO COMPLY WITH THIS ORDER MAY SUBJECT YOU TO ARREST AND PUNISHMENT FOR CONTEMPT OF COURT.

- d. Other (*specify*):

- e. Total number of boxes checked in item 3: 3

Date: July 26, 2009

Hon. Conrad L. Rushing
(TYPE OR PRINT NAME)

(SIGNATURE OF JUDGE OR COMMISSIONER)

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/APPENDIXES/APPENDIX E Sample Notice of Application and Hearing for Right to Attach Order and Writ of Attachment

APPENDIX E

Sample Notice of Application and Hearing for Right to Attach Order and Writ of Attachment



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Peter M. Rehon (Bar # 100123) REHON & ROBERTS Ten Almaden Boulevard, Suite 550 San Jose, California 95113 TELEPHONE NO.: (408) 494-0900 FAX NO.: (408) 494-0909 ATTORNEY FOR (Name): MOST GENEROUS BANK, Plaintiff	FOR COURT USE ONLY
NAME OF COURT: Superior Court of California, County of Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Superior Court of California, County of Santa Clara	
PLAINTIFF: MOST GENEROUS BANK, a California Banking Corporation DEFENDANT: DEDLOCK CORPORATION, a California Corporation	
NOTICE OF APPLICATION AND HEARING FOR <input checked="" type="checkbox"/> RIGHT TO ATTACH ORDER <input checked="" type="checkbox"/> ORDER FOR ISSUANCE OF <input checked="" type="checkbox"/> WRIT OF ATTACHMENT <input type="checkbox"/> ADDITIONAL WRIT OF ATTACHMENT	CASE NUMBER: <p style="text-align: center; font-size: 1.2em;">CV-000001</p>

1. Notice to defendant (name, address, and telephone number, if known):
DEDLOCK CORPORATION, a California Corporation

2. Plaintiff has filed an application for
- a. a right to attach order and writ of attachment. (Check items 6a, 6b, and 6d(1).)
 - b. a writ of attachment. (Check item 6d(2).)
 - c. an additional writ of attachment. (Check item 6d(2).)

3. A hearing on plaintiff's application will be held in this court as follows:

Date: August 14, 2009	Time: 9:00 a.m.	<input checked="" type="checkbox"/> Dept.: 8	<input type="checkbox"/> Div.:	<input type="checkbox"/> Rm.:
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4. The request of plaintiff for an order is based upon the application and affidavit or declaration filed and served with this notice.
5. Your attention is directed to the following sections of the Code of Civil Procedure that set forth when attachment may or may not be issued, the manner of calculating the amount to be secured by the attachment, the court's discretion to include costs and attorney's fees, and special limitations on the amount to be secured by attachment in unlawful detainer proceedings. (Code Civ. Proc., §§ 482.110, 483.010, 483.015, 483.020.)
6. **You are notified that**
- a. A right to attach order will be issued if the court finds at the hearing that plaintiff's claim is probably valid and the other requirements for issuing the order are established. This hearing may include both written and oral presentations, but is not for the purpose of determining whether the claim is actually valid. Determination of the actual validity of the claim will be made in subsequent proceedings in the action and will not be affected by the decision at the hearing on the application for the order.
 - b. If you desire to oppose the issuance of a right to attach order or object to the amount to be secured by the attachment as provided in Code of Civil Procedure section 483.015 (or Code of Civil Procedure section 483.020 in unlawful detainer actions), you must file with this court and serve on plaintiff (no later than five court days prior to the date set for hearing in item 3) a notice of opposition and supporting declaration or affidavit as required by Code of Civil Procedure section 484.060.
 - c. If a right to attach order is or has been issued, a writ of attachment will be issued to attach your property described in 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. However, since the right to attach order will not necessarily be limited to your property described in plaintiff's application, a writ of attachment may later be issued to attach other nonexempt property of yours.

(Continued on reverse)

Page one of three



6. d. If you claim that all or some portion of the property described in plaintiff's application is exempt from attachment, you must no later than five court days prior to this hearing
- (1) include your claim of exemption in your notice of opposition filed and served pursuant to Code of Civil Procedure section 484.060 or file and serve a separate claim of exemption with respect to the property as provided in Code of Civil Procedure section 484.070.
- (2) file with the court and serve on plaintiff a claim of exemption with respect to the property as provided in Code of Civil Procedure section 484.350.
- If you fail to make a claim of exemption with respect to personal property, or make a claim of exemption with respect to real or personal property, but fail to prove that the property is exempt, any further claim of exemption with respect to the property will be barred unless you show a change in circumstances occurring after expiration of the time for claiming exemptions.
- e. Claims of exemption resulting from a change of circumstances, whether after denial of a previous claim or expiration of the time for claiming exemptions, may be asserted as provided in Code of Civil Procedure section 482.100.
- f. You may obtain a determination at the hearing whether property not described in the application is exempt from attachment. Your failure to claim that property not described in the application is exempt from attachment will not preclude you from making a claim of exemption with respect to the property at a later time.
- g. You may also obtain a determination at the hearing whether the amount sought to be secured by the attachment shall be reduced by
- (1) the amount of any money judgment in your favor and against plaintiff that remains unsatisfied and enforceable,
 - (2) the amount of any indebtedness of the plaintiff that you have claimed in a cross-complaint filed in the action if your claim is one upon which an attachment could be issued,
 - (3) the amount of any claim asserted by you as a defense in the answer pursuant to Code of Civil Procedure section 431.70 if the claim is one upon which an attachment could be issued had an action been brought on the claim when it was not barred by the statute of limitations, or
 - (4) the value of any security interest in your property held by plaintiff to secure the indebtedness claimed by plaintiff, together with the amount by which the value of the security interest has decreased due to the act of the plaintiff or a prior holder of the security interest.
- h. The amount to be secured by an attachment is determined pursuant to the following statutes:
- (1) **Code of Civil Procedure section 482.110.** A writ of attachment may include an estimate of the costs and allowable attorney fees.
 - (2) **Code of Civil Procedure section 483.010.** An attachment may issue on a claim for \$500 or more based on a contract, express or implied, exclusive of attorney fees, costs, and interests. If the claim was originally secured by an interest in real property (e.g., a mortgage or trust deed), an attachment may issue only if the security has become valueless or decreased in value to less than the amount owing on the claim, through no fault of plaintiff or the security holder (if different from plaintiff).
 - (3) **Code of Civil Procedure section 483.015.** The amount to be attached includes the amount of the indebtedness claimed by plaintiff, plus estimated costs and allowable attorney fees, reduced by the sum of the following:
 - (a) the amount of any unsatisfied money judgment held by defendant against plaintiff;
 - (b) the amount of any indebtedness of plaintiff claimed by defendant in a cross-complaint filed in the action (if a writ of attachment could issue on the claim);
 - (c) the amount of any cross-demand for money owed by plaintiff to defendant that is barred by the statute of limitations (but assertable as a Code of Civil Procedure section 431.70 defense) if the debt was one upon which a writ of attachment could have been issued before the statute of limitations ran; and
 - (d) the amount of any security interest held by plaintiff in defendant's property, together with any decrease in the value of the underlying security caused by plaintiff or a prior security holder.

(Continued on page three)

SHORT TITLE: Most Generous Bank v. Dedlock Corporation	CASE NUMBER: CV-000001
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- (4) **Code of Civil Procedure section 483.020.** An attachment ordered in an unlawful detainer proceeding may include:
- (a) the amount of rent past due when the complaint is filed;
 - (b) an additional amount for the estimated rent due from the date the complaint was filed until the estimated date of judgment or delivery of possession to plaintiff; plus
 - (c) estimated costs and attorney fees.

Any prepaid rent or lease deposits held by plaintiff are disregarded in calculating the amount of attachment. However, the amount of attachment will be reduced by the amounts described in Code of Civil Procedure section 483.015 (above).

- i. Either you or your attorney or both of you may be present at the hearing.
- j. YOU MAY SEEK THE ADVICE OF AN ATTORNEY AS TO ANY MATTER CONNECTED WITH PLAINTIFF'S APPLICATION. THE ATTORNEY SHOULD BE CONSULTED PROMPTLY SO THAT THE ATTORNEY MAY ASSIST YOU BEFORE THE TIMES FOR FILING YOUR OPPOSITION AND CLAIMS OF EXEMPTION, AND FOR THE HEARING.

Date: July 26, 2009

Most Generous Bank by Peter M. Rehon, Esq. . . .
(TYPE OR PRINT NAME OF PLAINTIFF OR PLAINTIFF'S ATTORNEY)

(SIGNATURE OF PLAINTIFF OR PLAINTIFF'S ATTORNEY)

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/APPENDIXES/APPENDIX F Sample Right to Attach Order After Hearing and Order for Issuance of Writ of Attachment

APPENDIX F

Sample Right to Attach Order After Hearing and Order for Issuance of Writ of Attachment



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Peter M. Rehon (Bar # 100123) REHON & ROBERTS Ten Almaden Boulevard, Suite 550 San Jose, California 95113 TELEPHONE NO.: (408) 494-0900 FAX NO.: (408) 494-0909 ATTORNEY FOR (Name): MOST GENEROUS BANK, Plaintiff	FOR COURT USE ONLY
NAME OF COURT: Superior Court of California, County of Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Superior Court of California, County of Santa Clara	
PLAINTIFF: MOST GENEROUS BANK, a California Banking Corporation DEFENDANT: DEDLOCK CORPORATION, a California Corporation	
<input checked="" type="checkbox"/> RIGHT TO ATTACH ORDER AND ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT AFTER HEARING <input type="checkbox"/> ORDER FOR ISSUANCE OF ADDITIONAL WRIT OF ATTACHMENT AFTER HEARING	CASE NUMBER: CV-000001

1. a. The application of plaintiff (name): MOST GENEROUS BANK, a California Banking Corporation for a right to attach order and order for issuance of writ of attachment an order for issuance of additional writ of attachment against the property of defendant (name): DEDLOCK CORPORATION, a California Corporation came on for hearing as follows:
 (1) Judge (name): Hon. Conrad L. Rushing
 (2) Hearing date: August 14, 2009 Time: 9:00 a.m. Dept.: 17 Div.: Rm.:
- b. The following persons were present at the hearing:
 (1) Plaintiff (name): Most Generous Bank (3) Plaintiff's attorney (name): PETER M. REHON
 (2) Defendant (name): Dedlock Corporation (4) Defendant's attorney (name): THOMAS TANGLE

FINDINGS

2. THE COURT FINDS
- a. Defendant (specify name): DEDLOCK CORPORATION is a natural person partnership unincorporated association corporation other (specify):
- b. The claim upon which the application is based is one upon which an attachment may be issued.
- c. Plaintiff has established the probable validity of the claim upon which the attachment is based.
- d. The attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.
- e. The amount to be secured by the attachment is greater than zero.
- f. Defendant failed to prove that all the property described in plaintiff's application is exempt from attachment.
- g. The following property of defendant, described in plaintiff's application
 (1) is exempt from attachment (specify):

 (2) is not exempt from attachment (specify):
- h. The following property, not described in plaintiff's application, claimed by defendant to be exempt
 (1) is exempt from attachment (specify):

 (2) is not exempt from attachment (specify):
- i. An undertaking in the amount of: \$ 7,500.00 is required before a writ shall issue, and plaintiff has has not filed an undertaking in that amount.
- j. A Right to Attach Order was issued on (date): _____ pursuant to
 Code of Civil Procedure section 484.090 (on hearing) Code of Civil Procedure section 485.220 (ex parte)
- k. Other (specify):

(Continued on reverse)

SHORT TITLE: Most Generous Bank v. Dedlock Corporation	CASE NUMBER: CV-000001
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3. THE COURT ORDERS

ORDER

a. Plaintiff has a right to attach property of defendant (*name*): DEDLOCK CORPORATION, a California Corporation in the amount of: \$ 1,000,000.00

b. The property described in items 2g(1) and 2h(1) of the findings is exempt and shall not be attached.

c. The clerk shall issue a writ of attachment an additional writ of attachment in the amount stated in item 3a forthwith upon the filing of an undertaking in the amount of: \$ 7,500.00

(1) for any property of a defendant who is **not** a natural person for which a method of levy is provided.

(2) for the property of a defendant who is a natural person that is subject to attachment under Code of Civil Procedure section 487.010, described as follows (*specify*):

(3) for the property covered by a bulk sales notice with respect to a bulk transfer by defendant or the proceeds of sale of such property, described as follows (*specify*):

(4) for plaintiff's pro rata share of proceeds from an escrow in which defendant's liquor license is sold. The license number is (*specify*):

d. Defendant shall transfer to the levying officer possession of

(1) any documentary evidence in defendant's possession of title to any property described in item 3c;

(2) any documentary evidence in defendant's possession of debt owed to defendant described in item 3c;

(3) the following property in defendant's possession (*specify*):
See 3b above

NOTICE TO DEFENDANT: FAILURE TO COMPLY WITH THIS ORDER MAY SUBJECT YOU TO ARREST AND PUNISHMENT FOR CONTEMPT OF COURT.

e. Other (*specify*):

f. Total number of boxes checked in item 3: 8

Date: July 26, 2009

Honorable Conrad L. Rushing

(TYPE OR PRINT NAME)



(SIGNATURE OF JUDGE OR COMMISSIONER)

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/APPENDIXES/APPENDIX G Sample Writ of Attachment (Ex Parte)

APPENDIX G
Sample Writ of Attachment (Ex Parte)



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): — Peter M. Rehon (Bar # 100123) REHON & ROBERTS TELEPHONE NO.: (408) 494-0900 E-MAIL ADDRESS (Optional): rehon@lawfirm.com FAX NO. (Optional): (408) 494-0909 ATTORNEY FOR (Name): Most Generous Bank, a California Banking Corporation	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose 95113 BRANCH NAME:	
PLAINTIFF: MOST GENEROUS BANK, a California Banking Corporation DEFENDANT: DEDLOCK CORPORATION	
WRIT OF ATTACHMENT <input type="checkbox"/> AFTER HEARING <input checked="" type="checkbox"/> EX PARTE	CASE NUMBER: CV - 000001

1. TO THE SHERIFF OR ANY MARSHAL OR CONSTABLE OF THE COUNTY OF: Santa Clara
2. TO ANY REGISTERED PROCESS SERVER: You are only authorized to serve this writ in accord with CCP 488.080.
3. This writ is to attach property of defendant (name and last known address): **DEDLOCK CORPORATION**
 One Dedlock Lane
 San Jose, CA 95113
 and the attachment is to secure: \$ 1,000,000.00
4. Name and address of plaintiff: **MOST GENEROUS BANK, c/o Rehon & Roberts, Ten Almaden Boulevard, Suite 550, San Jose, CA 95113**
5. YOU ARE DIRECTED TO ATTACH the following property or so much thereof as is clearly sufficient to satisfy the amount to be secured by the attachment (describe property and state its location; itemize by letter):
All corporate property of defendant DEDLOCK CORPORATION which is subject to attachment pursuant to Code Civ. Proc. sec. 487.010(a). Location: One Dedlock Lane, San Jose, CA 95131

This information is on an attached sheet.

6. An interest in the real property described in item 5 stands upon the records of the county, in the name of the following person other than the defendant:

- a. Name:
- b. Mailing address, if known, as shown by the records of the office of the county tax assessor (specify):

7. The real property on which the
 crops described in item 5 __ are growing
 timber described in item 5 __ to be cut is standing stands upon the records of the county in the name of
 a. Name:
 b. Address:

[SEAL]

Date: _____ Clerk, by _____, Deputy

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/APPENDIXES/APPENDIX H Sample Writ of Attachment (After Hearing)

APPENDIX H
Sample Writ of Attachment (After Hearing)



<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):</p> <p>Peter M. Rehon (Bar # 100123) REHON & ROBERTS TELEPHONE NO.: (408) 494-0900 E-MAIL ADDRESS (Optional): rehon@lawfirm.com FAX NO. (Optional): (408) 494-0909 ATTORNEY FOR (Name): Most Generous Bank, a California Banking Corporation</p>	<p>FOR COURT USE ONLY</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose 95113 BRANCH NAME:</p>	
<p>PLAINTIFF: MOST GENEROUS BANK, a California Banking Corporation DEFENDANT: DEDLOCK CORPORATION</p>	
<p>WRIT OF ATTACHMENT <input checked="" type="checkbox"/> AFTER HEARING <input type="checkbox"/> EX PARTE</p>	<p>CASE NUMBER: CV - 000001</p>

1. TO THE SHERIFF OR ANY MARSHAL OR CONSTABLE OF THE COUNTY OF: Santa Clara
2. TO ANY REGISTERED PROCESS SERVER: You are only authorized to serve this writ in accord with CCP 488.080.
3. This writ is to attach property of defendant (name and last known address): **DEDLOCK CORPORATION**
 One Dedlock Lane
 San Jose, CA 95113
 and the attachment is to secure: \$ 1,000,000.00
4. Name and address of plaintiff: **MOST GENEROUS BANK, c/o Rehon & Roberts, Ten Almaden Boulevard, Suite 550, San Jose, CA 95113**
5. YOU ARE DIRECTED TO ATTACH the following property or so much thereof as is clearly sufficient to satisfy the amount to be secured by the attachment (describe property and state its location; itemize by letter):
All corporate property of defendant DEDLOCK CORPORATION which is subject to attachment pursuant to Code Civ. Proc. sec. 487.010(a). Location: One Dedlock Lane, San Jose, CA 95131

This information is on an attached sheet.

6. An interest in the real property described in item 5 stands upon the records of the county, in the name of the following person other than the defendant:

- a. Name:
- b. Mailing address, if known, as shown by the records of the office of the county tax assessor (specify):

7. The real property on which the
 crops described in item 5 __ are growing
 timber described in item 5 __ to be cut is standing stands upon the records of the county in the name of

- a. Name:
- b. Address:

(SEAL)

Date: _____ Clerk, by _____, Deputy

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/APPENDIXES/APPENDIX I Sample Temporary Protective Order

APPENDIX I
Sample Temporary Protective Order



SHORT TITLE: Most Generous Bank v. Dedlock Corporation	CASE NUMBER: CV-000001
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2. j. The following property of defendant is inventory or farm products held for sale and may be transferred in the ordinary course of business (*specify*):
- k. Other (*specify*):

ORDER

3. THE COURT ORDERS

- a. Defendant shall not transfer, directly or indirectly, any interest in the property described in item 2i of the findings.
- b. Defendant shall not dispose of the proceeds of any transfer of inventory or farm products held for sale except under the following restrictions:
- c. Other (*specify*):
- d. This order shall expire at the earliest of the following times:
 (1) when plaintiff levies upon specific property described in this order,
 (2) after (*date*): _____, or
 (3) 40 days after the issuance of this order.

4. Number of pages attached: 1
 Date: July 26, 2009

Honorable Conrad L. Rushing
 (TYPE OR PRINT NAME)

(SIGNATURE OF JUDGE OR COMMISSIONER)

NOTICE TO DEFENDANT: An undertaking has been filed with the court by plaintiff. You may object to the undertaking.

a. You may issue any number of checks against any of your accounts in a financial institution in this state 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 you C.O.D. for use in your 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 your representation in the action.

b. In addition, you may issue any number of checks for any purpose so long as the total amount of such 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 this notice.
 (2) One thousand dollars (\$1,000).

c. If the property is farm products held for sale or is inventory, the temporary protective order may not prohibit you from transferring the property in the ordinary course of business, but may impose appropriate restrictions on the disposition of the proceeds from such transfer.

[SEAL]

CLERK'S CERTIFICATE

I certify that the foregoing is a correct copy of the original on file in my office.
 Date:

Clerk, by _____, Deputy

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/APPENDIXES/APPENDIX J Sample Notice of Opposition to Right to Attach Order and Claim of Exemption

APPENDIX J

Sample Notice of Opposition to Right to Attach Order and Claim of Exemption



4. c. will claim exemption.
 will move the court for an exemption from attachment of the following property:
(1) Property exempt from execution under CCP 703.010 et seq. (specify code section and describe property):

All contents of DEDLOCK CORPORATION Profit-Sharing Plan.
(Code of Civil Procedure section 704.115.)

- (a) Property exempt under CCP 704.010 [motor vehicles] or 704.060 [tools of a trade] (describe all other property of the same type, including exempt proceeds of property of the same type, owned by defendant alone or in combination with others on the date of levy and identify the property to which the exemption is to be applied, regardless of whether it was levied upon):
- (b) Property exempt under CCP 704.100 [life insurance policies] (state the nature and amount of all other property of the same type owned by defendant or defendant's spouse alone or in combination with others on the date of levy):
- (2) Property which is necessary for the support of a defendant who is a natural person and the family of the defendant supported in whole or in part by the defendant (CCP 487.020(b)) (describe the property and attach a financial statement executed under oath as required in CCP 703.530):
- (3) Compensation paid or payable to a defendant employee by an employer for personal services performed by the employee whether denominated as wages, salary, commission, bonus, or otherwise (CCP 487.020(c)) (describe compensation):
- (4) Property not subject to attachment pursuant to CCP 487.010 (describe property):
- (5) Other (describe property and specify grounds for exemption):

5. Defendant's affidavit supporting any factual issues and points and authorities supporting any legal issues is attached.

6. Total number of pages attached: 10

Date: July 27, 2009

..... DEDLOCK CORPORATION
(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

By: Thomas Tangle, Esq.
(NAME AND TITLE)

**NOTICE OF OPPOSITION TO RIGHT TO ATTACH ORDER
AND CLAIM OF EXEMPTION (Attachment)**

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/APPENDIXES/APPENDIX K Sample Application and Notice of Hearing for Order to Terminate, Modify, or Vacate Temporary Protective Order

APPENDIX K

Sample Application and Notice of Hearing for Order to Terminate, Modify, or Vacate Temporary Protective Order



ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name and Address</i>): Thomas Tangle, Esq. (Bar # 000001) TANGLE & TULKINGHORN One Chancery Court San Jose, California 95113 ATTORNEY FOR (<i>Name</i>): DEDLOCK CORPORATION, Defendant	TELEPHONE NO.: (408) 555-1212 FAX NO.: (408) 555-1213	FOR COURT USE ONLY
NAME OF COURT: Superior Court of California, County of Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Superior Court of California, County of Santa Clara		CASE NUMBER: <div style="text-align: right; font-size: 1.2em;">CV-000001</div>
PLAINTIFF: MOST GENEROUS BANK, a California Banking Corporation DEFENDANT: DEDLOCK CORPORATION, a California Corporation		
APPLICATION FOR ORDER <input type="checkbox"/> AND NOTICE OF HEARING <input type="checkbox"/> TO TERMINATE TEMPORARY PROTECTIVE ORDER AFTER HEARING <input checked="" type="checkbox"/> TO MODIFY OR VACATE TEMPORARY PROTECTIVE ORDER <input checked="" type="checkbox"/> EX PARTE <input type="checkbox"/> AFTER HEARING		

1. To plaintiff (*name*): MOST GENEROUS BANK, a California Banking Corporation

You are notified that a hearing on defendant's application in item 2 will be held as follows:

date:	time:	<input type="checkbox"/> dept.:	<input type="checkbox"/> div.:	<input type="checkbox"/> rm.:
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2. Defendant (*name*):

makes application on notice for an order

a. to terminate the Temporary Protective Order issued on (*date*):

b. to vacate the Temporary Protective Order issued on (*date*):

c. to modify the Temporary Protective Order issued on (*date*):

as follows:

3. Defendant (*name*): DEDLOCK CORPORATION

makes ex parte application for an order

a. to vacate the Temporary Protective Order issued on (*date*):

b. to modify the Temporary Protective Order issued on (*date*): 7/26/09

as follows:

To exclude all money in deposit accounts necessary to meet payroll to become due within the next thirty days

4. Defendant's application to terminate the Temporary Protective Order is made on the grounds that defendant has filed will file a sufficient undertaking pursuant to CCP 489.320 in the amount of \$

(Continued on reverse)

SHORT TITLE: Most Generous Bank v. Dedlock Corporation	CASE NUMBER: CV-000001
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5. Defendant's application
 to vacate to modify the Temporary Protective Order is made on the grounds of the interests of justice and equity to the parties pursuant to CCP 486.100. Defendant's application is based upon the

a. attached affidavit.

b. following facts (*specify*):

c. attached points and authorities.

d. following points and authorities (*specify*):

Date: July 27, 2009

..... DEDLOCK CORPORATION
(TYPE OR PRINT NAME OF DEFENDANT)

_____ (SIGNATURE OF DEFENDANT)

By: Thomas Tangle, Esq.
(NAME AND TITLE)

DECLARATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 27, 2009

..... Daniel D. Dedlock
(TYPE OR PRINT NAME)

_____ (SIGNATURE OF DECLARANT)

6. Total number of pages attached:

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/APPENDIXES/APPENDIX L Sample Order to Terminate, Modify, or Vacate Temporary Protective Order

APPENDIX L
Sample Order to Terminate, Modify, or Vacate Temporary Protective Order



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Thomas Tangle, Esq. (Bar # 000001) TANGLE & TULKINGHORN One Chancery Court San Jose, California 95113 ATTORNEY FOR (Name): DEDLOCK CORPORATION, Defendant	TELEPHONE NO.: (408) 555-1212 FAX NO.: (408) 555-1213	FOR COURT USE ONLY
NAME OF COURT: Superior Court of California, County of Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Superior Court of California, County of Santa Clara		CASE NUMBER: <div style="text-align: center; font-size: 1.2em;">CV-000001</div>
PLAINTIFF: MOST GENEROUS BANK, a California Banking Corporation DEFENDANT: DEDLOCK CORPORATION, a California Corporation		
ORDER <input type="checkbox"/> TO TERMINATE TEMPORARY PROTECTIVE ORDER <input checked="" type="checkbox"/> TO MODIFY TEMPORARY PROTECTIVE ORDER <input type="checkbox"/> TO VACATE TEMPORARY PROTECTIVE ORDER		

1. The court has considered the application of defendant (name): **DEDLOCK CORPORATION, a California Corporation**

for an order

- to terminate Temporary Protective Order
 to modify Temporary Protective Order
 to vacate Temporary Protective Order

a. On hearing as follows (check boxes in items (3) and (4) to indicate personal presence):

- (1) Judge (name): _____ time: _____ dept.: div.: rm.:
 (2) Hearing date: _____
 (3) Plaintiff (name): _____ Attorney (name): _____
 (4) Defendant (name): _____ Attorney (name): _____

b. Ex parte.

2. THE COURT FINDS

a. The amount sought to be secured by the attachment is \$ 1,000,000.00

b. The interests of justice and equity to the parties require that the Temporary Protective Order issued on (date): **July 26, 2009** be modified.
 vacated because of the following facts (specify):

c. Other (specify):

(Continued on reverse)

SHORT TITLE: Most Generous Bank v. Dedlock Corporation	CASE NUMBER: CV-000001
---	---------------------------

ORDER

3. IT IS ORDERED

a. The Temporary Protective Order issued on (date): July 26, 2009 is
 terminated upon the filing of an undertaking in the amount of

\$
 vacated.

modified as follows (specify) :

To exclude all money in defendant's payroll account, up to \$35,000, located at Comerica Bank-California so that defendant may pay its July 31, 2009 payroll.

b Other (specify):

Date: July 27, 2009



(SIGNATURE OF JUDGE)

4. Total number of boxes checked in item 3: 1

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/APPENDIXES/APPENDIX M Sample Notice of Attachment

APPENDIX M
Sample Notice of Attachment



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):
 After recording return to:
 Peter M. Rehon (Bar #100123)
 REHON & ROBERTS
 Ten Almaden Boulevard, Suite 550
 San Jose, California 95113

TELEPHONE NO.: (408) 494-0900
 FAX NO. (Optional): (408) 494-0909

E-MAIL ADDRESS (Optional):
 ATTORNEY FOR (Name): Most Generous Bank, Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara
 STREET ADDRESS: 191 North First Street
 MAILING ADDRESS: 191 North First Street
 CITY AND ZIP CODE: San Jose 95113

FOR RECORDER'S USE ONLY

BRANCH NAME: Superior Court of California, County of Santa Clara
 PLAINTIFF: MOST GENEROUS BANK, a California Banking Corporation
 DEFENDANT: DEDLOCK CORPORATION, a California Corporation

CASE NUMBER
 CV-000001

LEVYING OFFICER (Name and Address):

NOTICE OF ATTACHMENT
 [This form is used in connection with levy under a writ of attachment.]

FOR COURT USE ONLY

TO THE PERSON NOTIFIED (name): DEDLOCK CORPORATION

- Plaintiff in this action seeks to attach property in which defendant has an interest. The property to be attached is
 - (describe property):
 - described in the Writ of Attachment and Order for Issuance of Writ of Attachment, attached hereto and incorporated by reference.
- You are notified as
 - a defendant.
 - a person other than defendant (state capacity in which person is being notified):

(Read Information for Defendant or Information for Person Other than Defendant on reverse.)

- A notice was filed with the
 - Secretary of State.
 - Department of Motor Vehicles.
 - Department of Housing and Community Development.

- Notice of Attachment was
 - mailed on (date):
 - delivered on (date):
 - posted on (date):
 - filed on (date):
 - recorded on (date):

Signed by: 

Levying officer Registered process server



— INFORMATION FOR DEFENDANT —

1. The levying officer may be required to take custody of property described in item 1 in your possession or under your control. You have a right to be represented by an attorney in this lawsuit.
2. You may claim any available exemption for your property. An exemption for real property may be claimed any time before the entry of judgment. If the right to attach order or writ of attachment was issued without a noticed hearing and you wish to claim an exemption for personal property, you must do so within 30 days after the levying officer serves you with the Notice of Attachment describing the property. If you do not claim an exemption, you may lose it and the property is subject to attachment. If you wish to seek the advice of an attorney, you should do so immediately so that a claim of exemption can be filed on time.
3. Plaintiff has filed an undertaking. You have the right to object to the undertaking and may apply for an order to substitute an undertaking for your property which has been or is subject to being attached.
4. You have a duty to release tangible personal property to the levying officer. You have the rights and duties specified in Code of Civil Procedure section 488.395 if your farm products or inventory of a going business have been or are subject to attachment.
5. If the property is perishable or will greatly deteriorate in value, or for other good reason, you may apply ex parte, or if the court or court rule requires, by noticed motion, for an order appointing a receiver or directing the levying officer to take any action necessary to preserve the value of the property, including selling the property. The court may order any receiver to be paid from the proceeds of the sale of your property.
6. You may apply for a release of the attachment to the extent that the value of your interest in the property exceeds the amount necessary to satisfy the attachment.
7. You may apply to the court for an order modifying or vacating any temporary protective order in the interests of justice or for an order terminating the same upon filing an undertaking.
8. If the writ of attachment has been issued against you because you are a nonresident, you may have the right to attach order set aside by filing a general appearance.
9. If the writ of attachment was issued on an ex parte application, you may apply for an order that the right to attach order be set aside, the writ quashed, and any property levied upon pursuant to the writ be released.
10. If you recover judgment against plaintiff, you may apply for a release of all property attached by plaintiff under the Writ of Attachment. If judgment is recovered against you and you appeal, you have the right to obtain the release of your property by filing a sufficient undertaking.
11. You may object to the amount sought to be secured by the attachment.
12. You may recover damages for wrongful attachment.

— INFORMATION FOR PERSON OTHER THAN DEFENDANT —

1. If the property attached or sought to be attached is in your possession or under your control and you do not claim the right to possession or a security interest, you must deliver the property to the levying officer. If you do not deny an obligation levied upon or do not claim a priority over the plaintiff's lien, you must pay to the levying officer the amount that is due and payable and that becomes due and payable during the period of the attachment lien. You must execute and deliver any documents needed to transfer the property.
2. You must complete the accompanying Memorandum of Garnishee.
3. 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 Code of Civil Procedure sections 720.010–720.800.
4. If you have an interest in the property attached or sought to be attached and the property is perishable or will greatly deteriorate in value, or for other good reason, you may apply ex parte, or if the court or court rule requires, by noticed motion, for an order appointing a receiver or directing the levying officer to take any action necessary to preserve the value of the property, including selling the property. The court may order any receiver to be paid from the proceeds of the sale of your property.
5. **Make checks payable to the levying officer.**

APPENDIX N
Procedural Checklist

Following is a basic procedural checklist, cross-referenced to the text, that is appropriate for a standard writ of attachment matter. The checklist may require modification for other than standard matters.

- Determine whether to seek writ and, if so, what property to attach and which procedure to use. See [steps 1-7](#).

IF MAKING EX PARTE APPLICATION (SEE [STEPS 8-9](#))

- Prepare documents:
 - Summons and complaint (if not prepared earlier)
 - Application for ex parte right to attach order and order for issuance of writ of attachment
 - Memorandum in support of application
 - Attorney's declaration regarding compliance with notice requirements
 - Proposed ex parte right to attach order and order for issuance of writ of attachment
 - Proposed writ of attachment
- Give notice (unless court will be asked to excuse notice requirement)
- Attend hearing (be prepared to seek writ and TPO under noticed motion procedure if ex parte application denied)
- If writ granted, file bond and obtain orders

IF MAKING NOTICED HEARING APPLICATION (SEE [STEPS 10-11](#))

- Prepare documents:
 - Summons and complaint (if not prepared earlier)
 - Application for TPO, right to attach order, and order for issuance of writ of attachment
 - Memorandum in support of application
 - Proposed temporary protective order
 - Proposed right to attach order after hearing and order for issuance of writ of attachment
 - Proposed writ of attachment
- Serve summons and complaint (if not served earlier), notice of application and hearing, application (including any declarations and memorandum in support of application), and TPO (if any)
- Attend hearing
- If writ granted, file bond and obtain orders
- Obtain any necessary additional writs of attachment. See [step 15](#).

IF WRIT OF ATTACHMENT GRANTED

- Levy on writ of attachment (see [step 16](#)):
 - Send to levying officer: instructions, check for fees and expenses, notice of attachment, writ of attachment, right to attach order and order for issuance of writ of attachment, and summons and complaint (if not previously served on defendant)
- Monitor levying officer's activities. See [step 17](#).

Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/TABLE OF STATUTES, REGULATIONS, AND RULES

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Source: Civil Litigation/Obtaining a Writ of Attachment (Action Guide)/TABLE OF CASES

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